

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.84 Driver

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm operates a towing business. The worker was engaged by the firm to perform services as a tow truck operator. The firm believes the worker entered into a valid lease agreement regarding the tow truck equipment, and operated a towing business of his own. As a result the firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received in the performance of his services as non employee compensation.

The worker received one week of training from the firm regarding the operation of the tow truck, securing vehicles on the truck, how to use equipment needed to perform the services, and how to do the job safely. The firm dispatched assignments to the worker, indicating that the worker had the option to accept or decline assignments offered to him. The worker was required to perform his services personally, and to be available during times set by the firm. Work methods were determined by both the firm and worker. Problems and complaints were reported to the firm for resolution purposes. The worker was required to attend the firm's weekly staff and safety meetings.

The firm provided the tow truck equipment and other items needed to perform the services (i.e. chains, tow lights, crow bar, and straps). The firm indicated that it leased the tow truck to the worker, and that the worker was required to pay a monthly minimum production fee, that was used to pay for use of the firm's tow truck, insurance, and maintenance. The worker incurred expenses for fuel, pagers, Nextel, and invoice costs paid on a monthly basis to the firm. The worker was paid on a 50% commission basis for his services, and kept any monies over the monthly payment due the firm. The firm indicated that the worker did not incur economic loss or financial risk with regard to the services he performed for the firm.

There was no information provided in this case to evidence that workers' compensation insurance was carried on the worker. There was no information provided to evidence that employment benefits were made available to the worker. The worker did not perform similar services for others. The work relationship was continuous as opposed to a one-time transaction. There was no information provided in this case to evidence that the worker advertised as being in business to perform similar services for others; the worker advertised the firm's business operations via use of its business cards.

Analysis

A review of the lease agreement provided for this case does not show that all criteria of 49 CFR 376.12 are met; therefore common law will be used to render a determination of worker classification for federal employment tax purposes.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov