

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.86 Driver	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the business of providing taxi cab services. The worker was engaged as a driver. He received a Form 1099-MISC for his services in 2011 through 2014. There was a written agreement.

According to both the firm and the worker, there were initial instructions as well as some on-the-job training. The worker received his driving assignments from the firm's dispatch as well as by the worker soliciting fares on the street or receiving calls on his cell phone. Each party indicated that the other determined the methods by which the assignments were performed. The firm would be contacted if there were problems/issues that couldn't be resolved by the worker. Both parties agreed that the worker was to submit a trip sheet daily including the pick-up/drop-off points, the fare amount and the method of payment. The worker's routine consisted of usually 12 hour shifts where he would cruise the streets, and wait for jobs from the dispatcher. The worker drove a cab in and around [REDACTED]. There were no meetings on a regular basis. Only the worker noted that he was to provide the services personally and that the firm would hire and pay any substitute drivers. The firm noted that the worker would hire substitutes.

The firm provided the taxi, radio, fuel, and tablet computer/other supplies. The worker provided a cell phone, and according to the firm, business cards if desired. Only the firm indicated that the worker leased the cab. The worker noted that he incurred gas and car washing/vacuuming expenses; he was reimbursed for the cleaning and used the firm's charge account for the gas. The worker noted that he was paid a commission; and would be liable for 50% of the liability deductible if an accident was his fault. The firm noted that he was paid fares by the clients and mentioned the same liability for the deductible. Both agreed that the customer paid the worker and that the worker did not turn over the whole amount to the firm. Both parties agreed that the worker did not establish the level of payment for services –the firm mentioned that fares were subject to city regulations.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker indicated that there were no non-compete clauses in effect; the firm referred to the state court rulings. The relationship had not ended at the time of the SS-8 responses.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

There are significant similarities between this case and Revenue Ruling 71-572, 1971-2 C. B. 347. In that ruled case, the drivers of taxicabs without a valid lease agreement were found to be employees of the taxicab company. The case addressed two types of taxicab operators: those without a valid lease agreement and those that had a valid lease agreement.

For the purposes of relevance to this instant case, the first situation will be addressed. In the first situation, the taxicab company owned the cabs and leased them to the operators who paid, as a regular fee (lease amount), a set percentage of the fares that they collected. The company also required that the operators submit reports showing the amount of fares. The receipt sharing arrangement diminished the likelihood of a true lessor-lessee relationship since the company retained the right to direct and control the drivers including requiring them to submit an accounting of the fares in order to insure that the company was getting the maximum amount of income possible. Accordingly, those operators were found to be employees of the cab company.

In this instant case, the circumstances closely resembled the above situation except in this case there was a written agreement. However, this 'lease' was also invalid because the arrangement was still a percentage of the fares. The agreement did not address or specify in the compensation clause that there was a lease arrangement. Even if the agreement terms could be construed to mean that the firm's percentage of the fares covered leasing the vehicle itself, this receipt sharing arrangement diminished the likelihood of a true lessor-lessee relationship especially with the daily reporting requirements. Other factors in this case support the existence of an employer-employee relationship. The worker had no capital investment in the business and did not even supply oil or gas. He only provided his labor since the firm owns the taxicabs and purchases liability insurance. The firm may discharge the worker for cause (per the agreement.) All of these were consistent with an employer-employee relationship. The worker was performing personal services constituting an integral part of the firm's business operations. He was not pursuing any separate trade, business, or profession involving a capital outlay, and was subject to general control over the manner and means of performing his services.

The worker also provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker was paid a percentage of the fare and had no other economic risk as he had no investment in the business. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. The firm provided the vehicle as well as its operating costs and maintenance; there was no valid lease agreement.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were no benefits and there was a written agreement. The firm is in the business of providing taxi cab services and engaged the worker was a driver. He was not engaged in an independent enterprise, but simply provided his labor services as a driver. Those services were integral and essential to the firm's continuing 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 the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.