

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.93 Truck Driver

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a trucking company in the business of the transportation of goods. The worker provided his services to the firm as a truck driver delivering frozen commodities in 2011 and 2012 and received the Form 1099-MISC in 2012 for these services.

The firm trained and instructed the worker to do all the tasks the job required such as; when and where to pick up loads and drop them off, and safety training. The worker received his assignments from the firm and the firm determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm required the worker submit a daily driving log book, and a signed bill of lading. The worker's schedule varied; he would drive, pick up or deliver a load. The firm indicated that the worker was required to attend a safety meeting once a year. He provided his services personally at the firms' customers' locations. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services including the truck, trailer, fuel, repairs and computer. The worker did not lease any equipment and was reimbursed by the firm for any business expenses incurred in the performance of his services such as; the scale tickets and fluids for the truck. The worker stated that he received a commission for his services. The firm stated that the worker received a percentage of the load pay. The firm also reported that the worker was allowed a drawing account for advances. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The worker maintains that the firm and the consignee established the level of payment for the services provided by the worker. The firm expressed that the percentage of payment was established at hire for the worker.

The firm provided the worker with bonuses. The worker did not perform similar services to others during the same time period. He provided his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of his services. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered his services personally. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. His pay was based on an hourly rate. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.