

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.168 Truck 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

Information indicated the firm is an interstate trucking company. The worker had been retained as an independent truck driver for tax years 2013, 2014, 2015. The firm reported the income on Form 1099-MISC. The firm provided a copy of the lease agreement between the parties. The firm stated all work assignments were communicated by e-mail, text or phone to the worker's wife. He was provided with individual load information. He reported to [REDACTED] (position not identified) if he had any issues or complaints. He was required to provide driver logs, trip sheet recording miles and gallons and all State Revenue Agencies operated in. The work schedule was not provided. Services are provided on the road. When not working he and the truck are domicile at home. The firm stated the worker would have had to pay subs. The firm stated it provided the vibrator, air hose, broom, and rubber mallet for trailer & Paperwork required for state and federal government agencies. The worker provided his own safety equipment and whatever other tools he wanted to have with him. The firm stated the worker drove a leased semi-tractor (he does not state who leased the tractor) and the company provided the trailer. The worker was paid twenty-five percent of the freight revenue for each load. The customer paid the firm. Either could terminate the work relationship without incurring a penalty or liability. The firm stated the lease was terminated after damaging equipment, putting his insurability at risk.

The worker stated he was a truck driver for the firm for tax years 2013 through 2015. He stated he was instructed when and where to pick up loads and drop them off. Work assignments came from the firm's dispatch, via e-mail, phone or text. He was required to contact the firm if there were any issues or complaints. He submitted log sheets, receipts and bills of lading. He loaded, unloaded to various locations. Per DOT rules he could not drive more than 14 hours per day. The worker indicated the firm provided the truck/trailer, fuel card, paid for all upkeep and maintenance. He indicated he had to sign the truck lease agreement if he wanted a job. He agreed he was paid twenty-five percent of each load delivered. He was allowed cash advances. Either party could terminate the work relationship without incurring a penalty or liability.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

ANALYSIS

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Analysis

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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.

Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. All services were performed as dispatched by the firm. The firm provided the truck and trailer. The worker was a percentage of the loads delivered as is standard practice in the trucking industry. He was required to follow the firm's rules and regulations, submit all required logs and receipts to ensure they were in his file in case of an audit for the firm.