

**SS-8 Determination—Determination for Public Inspection**

Occupation

09DVC.176 Truck Driver

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicates the firm is a trucking company. The worker had been retained by the firm as a truck driver in 2010. The firm responded to our request for information. He indicated the firm only hires independent contractors. The firm stated the worker was shown how to maintain paperwork and pick up and drop off loads. Work assignments were given via cell phone or text messages. The firm stated the worker would pick what loads to do. The worker would resolve issues first; he would contact the firm if further help was needed. He was required to provide a daily log sheet. He hours are determined by the time the load had to be delivered. He could work up to eleven hours a day but usually did not. Services were only performed in the independent contractor truck. The firm provided the loads and daily log sheet; the firm indicated another party provided the truck and equipment. The worker was paid a percentage of the load. The customer paid the firm. The worker was responsible for mechanical breakdown of his equipment. The firm indicated the worker determined the level of payment. If the worker can't perform the job duties, the contractor is notified and they would make the decision to terminate the driver of contract. He did not perform similar services for others. The firm stated the contractor's equipment broke down, services ended.

The firm provided a copy of an owner/operator IC services agreement between [REDACTED] and a third party. No contracts provided between [REDACTED] and [REDACTED].

The worker stated he was told where to go, when to pick up loads, where to fuel and get maintenance done. Work assignments were done via phone. The owner determined how the work was performed and responsible for all resolution of issues. He provided log books, and bills of lading. The worker stated he worked per the 70 rule. Work performed on the road in eleven to twelve states. Services were to be performed personally. The worker indicated the firm's owner or the owner of the truck provided the equipment. He was paid by the mile. The customer paid the firm. Either could terminate the work relationship without incurring a penalty or liability. He stated he quit.

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.

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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## Analysis

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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. The worker had been retained to perform services as a truck driver for the firm. Work assignments were given directly from the firm. The firm stated he was paid a percentage of the load, the worker indicated he was paid per mile, both used in the trucking industry. Both agreed the firm's clients paid the firm for the services performed. The worker had no financial investment in the services provided for the firm. He provided daily log sheets, provided by the firm, under the firm's letterhead. Both parties agreed a third party owned and provided the truck and equipment utilized.