Form **14430-A** (July 2013) | Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 02COO Dispatcher	Determination: ☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

I have read Notice 441 and am requesting:

☐ Additional redactions based on categories listed in section entitled “Deletions We May Have Made to Your Original Determination Letter”

☐ Delay based on an on-going transaction

☐ 90 day delay

For IRS Use Only:

Facts of Case

The worker initiated the request for a determination of his work status as a dispatcher for a trucking company in tax years 2015 to 2018, for which he received Form 1099-MISC.

The firm’s response was signed by the president. The firm’s business is over-the-road freight dispatching and delivery company. The worker provided services as a dispatcher; his job was to locate freight for drivers to move and discuss rates with the brokers.

The worker indicated there was no specific training and/or instruction given since he had the basic knowledge and training for the job. The job assignment was to find the truck drivers loads and make sure they were delivered on time. The firm responded that the worker was provided minimal computer training and information and was given job assignments when he showed up to work. It was the firm’s office manager that provided general oversight with regards to the methods by which the worker’s services were performed. Both parties concur that any problems or complaints encountered by the worker were directed to the firm for resolution, that the worker's services were rendered 8am to 5pm Monday through Friday, and that worker was required to perform the services personally, with any additional personnel were hired and paid by the firm.

The firm and worker acknowledge the firm provided office space, computer, monitor, fax, desk phone, and stationery supplies; and, the worker furnished his cell phone. The worker did not lease equipment, space, or a facility. The worker indicated he was paid a salary; the firm stated he was paid weekly based on the number of days worked. The firm and worker agree that the customers paid the firm and that the worker was not covered under the firm’s workers’ compensation insurance policy. The worker stated he was not at risk for a financial loss in this work relationship; however, the firm replied the worker was at risk for losing his job because the worker negotiated the freight rates and coordinated the deal, and if it proved to be consistently not profitable for the firm, the firm would terminate his employment. The worker did have flexibility with regards to freight rates charged, yet he did not establish level of payment for services provided or products sold.

Both parties agree as to the benefits of paid vacations, sick pay, holiday pay, and bonuses were available to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker terminated the work relationship.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.