Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
02SAL Rental Associate	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 is seeking a determination of worker classification for services performed for the firm as a rental associate from January 2019 until February 2019. The worker received a 1099-MISC for 2019. The worker feels that they were misclassified as an independent contractor because they previously worked for the firm as an employee the previous year. There were no written agreements between the parties.

The firm states that it provides communication services. The firm requested that the worker provide radio technology assistance for a project. The firm feels that the worker was an independent contractor because they were providing extra help for a project and the relationship was not ongoing.

The firm states that the worker previously worked for the firm and had previous experience regarding the job duties. The worker would perform services as directed by the firm. The worker was not responsible for providing the firm with any reports. The worker performed services from 8am until 5pm during the days of the event. The worker performed all services at the event's location, Superbowl Stadium. There were no meetings required of the worker. The firm states that they did not require the worker to personally perform services. Helpers and substitutes were not applicable to the work situation. The worker states that they received rental software training from the firm. The worker received job assignments through verbal instruction and order sheets. The worker states that the firm owners determined the methods by which job assignments were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm owners for problem resolution. The worker assisted with rentals from 8am until 5pm. The worker states that they were required to attend morning meetings and to perform services personally. All helpers and substitutes were hired and paid by the firm.

The firm states that the worker did not lease any space, facilities, or equipment. The worker did not incur any expenses during the performance of their job duties. The firm states that the firm reimbursed the worker for travel and lodging expenses. The firm states that the worker was paid in a lump sum amount with no access to a drawing account for advances. The firm carried worker's compensation insurance on the worker. The worker did not have any exposure to economic loss or financial risk during their job duties. The firm states that the worker set the level of payment for services provided. The worker states that the firm provided radio equipment and the worker provided nothing. The worker did not lease any space, facilities, or equipment. The worker incurred meal expenses. The firm reimbursed the worker per diem for meals. The worker states that they were paid an hourly wage by the firm with no access to a drawing account for advances. Customers paid the firm. The worker's only exposure to financial risk was the risk of injury. The worker states that the firm set the level of payment for services provided.

The firm states that it did not provide the worker with any benefits. The worker did not perform similar services for other firms during the work relationship. There were no non-compete agreements in place between the parties. The worker was not a member of a union and did not advertise their services to the public. The work relationship ended when the job was completed. The worker states that the relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms during the work relationship. The worker did not advertise their services to the public. The worker states that the firm represented the worker as an employee performing services under the firm's name. The worker performs services on an annual basis, only working during 2 weeks a year, and will return for the next event to provide services for the firm.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of providing rentals to customers. The firm provided work assignments by virtue of the customers served and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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 worker incurred no expenses during their job duties and the firm also carried worker's compensation insurance on the worker. Based on the lump sum pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.