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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Construction/Technical Services/Trades	[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 landscaping services performed for the firm from September 2019 until February 2021. The worker received a 1099-MISC from the firm for 2019 and 2020. The worker believes that they were misclassified by the firm as an independent contractor because they were hired by the firm as a full-time employee. There were no written agreements between the parties.

The firm states that they provide general lawn care and landscaping services. The worker was requested to provide general lawn services and landscaping services as a landscaping specialist. The firm classified the worker as an independent contractor per a verbal agreement when the worker was hired based upon the advisement of their accountant.

The firm states that they provided the worker with instructions on a daily basis with a daily list of customers and their respective tasks. The worker received job assignments through text messages or written lists. The worker determined how job assignments were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm's owner for problem resolution. The worker was required to provide the firm with the daily list of customers and tasks completed, and the firm attached a copy of this for our consideration. The worker would arrive at 6 am, receive the list of tasks, complete tasks at customer locations for approximately 45 minutes at each location, then confirm task completion to the firm via text message. There were no meetings applicable, and the firm required the worker to personally perform services. The firm's owner was responsible for hiring and paying all helpers and substitutes. The worker states that they were given daily assignments through texts, phone calls, and verbally. The firm determined the methods by which jobs were performed and assumed responsibility for problem resolution. Reports were not applicable, and the worker typically performed services Monday through Friday for an average of 30 hours weekly. The worker performed services at customer residences and commercial locations for approximately 30 minutes to one hour at each location. There were no meetings required of the worker and the worker was required to perform services personally. The firm's owner hired and paid all helpers needed.

The firm states that they provided trucks, trailers, mowers, and weed eaters. The worker did not provide anything or lease anything for their job duties. The worker incurred no expenses. The firm paid the worker an hourly wage with no access to a drawing account for advances. Customers paid the firm for services provided. The firm carried worker's compensation insurance on the worker. The worker had no exposure to economic loss or financial risk. The firm's owner established the level of payment for services. The worker states that the firm provided shirts, sweatshirts, trucks, trailers, a lawn mower, edger, weed whacker, hedger, backpack blower, shovels, and rakes. The worker did not provide or lease anything and incurred no expenses. The firm paid the worker on an hourly basis. Customers paid the firm. The worker did not have exposure to financial risk. The firm established the level of payment for services provided.

The firm states that there were no benefits applicable. The relationship between the parties could be terminated by either party without liability or penalty. 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 worker was not formally introduced to customers but performed services under the firm's name. The worker quit and ended the work relationship. The worker states that they did not perform similar services for other firms. The worker did not advertise their services to the public. The worker was represented by the firm as an employee performing services under the firm's name. The worker quit. The worker gave new customers pamphlets advertising 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 landscaping services. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, 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 firm provided all supplies, equipment, and materials needed. 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. Based on the hourly rate of 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.