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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
03TRA Tradespersons	[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 submitted a request for a determination of worker status in regard to services performed for the firm from June 2013 to August 2018 as a mechanic. The services performed included making repairs and performing maintenance on jets as instructed. The firm issued the worker Form 1099-MISC for the years in question. The worker filed Form SS-8 as he believes he received Form 1099-MISC in error.

The firm's response states it is a general aircraft maintenance and repair on turbine jets business. The worker was engaged as a mechanic to perform general maintenance on aircraft. The worker was classified as an independent contractor based on verbal and written agreements. It was also agreed that should the worker have sheetrock jobs to do, he could go work those jobs since they paid more.

The firm stated it provided the worker specific instruction on more technical tasks and general guidance on menial tasks. The firm provided work assignments, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. The firm required the worker to provide verbal reports only. The firm has established business hours, which were set by workers. The worker could come and go as he wanted without repercussion. The firm just asked that the worker let it know if he was going to be there or not. 95% of the worker's time was spent at a regional airport building. If there was no airplane work to be performed, the worker could do yard work for money. Meetings were not required. The firm required the worker to personally perform services. The firm was responsible for hiring and paying substitutes or helpers. The worker stated the firm provided him all the needed training to perform the job. Reports included internal work orders with a list of items to be completed. His schedule consisted of Monday through Friday, 7 am to 4 pm.

The firm stated it provided all supplies, equipment, and materials, except for the tools provided by the worker. The worker also provided clothing. The worker did not lease equipment, space, or a facility. The worker incurred the unreimbursed expenses associated with the items provided, transportation, and accounting. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The firm established the level of payment for the services provided. The worker stated the firm provided all supplies, equipment, materials, and property. He did not incur expenses in the performance of services for the firm.

The firm stated benefits were not applicable. The work relationship could be terminated by either party without incurring liability or penalty. The worker did not perform similar services for others during the period in question; however, he was free to do so. The written agreement states that for a period of six months following termination of the agreement, the worker would not hire or solicit any of the firm's current employees, consultants, or contractors or individuals who had left the firm's engagement within one year of such engagement. It is unknown if the worker advertised. The firm represented the worker as a contractor to its customers. Services were performed under the firm's business name. The firm terminated the work relationship. The worker stated the benefit of sick pay, paid holidays, insurance, and bonuses was made available to him. He did not advertise. The firm released him with two-week severance pay.

The May 2013, independent contractor agreement states, in part, the worker would provide general aircraft maintenance. He would report to the firm and to any other party designated by the firm. He would fulfill any other duties reasonably requested by the firm and agreed to by the worker. The firm could request written reports in such form and setting as requested by the firm. The worker could not assign or delegate the performance of duties, without the firm's prior written consent.

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, the firm's statement that the worker was an independent contractor pursuant to a written and 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. The firm provided work assignments, determined the methods by which assignments were 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, 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. As acknowledged by the firm, the worker did not incur economic loss or financial risk. 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.