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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
04MAN Managers/Supervisors	[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 regarding services performed for the firm from 2014 to June 2017 as an operations manager. The work done by the worker included handling the firm's email customer requests, which resulted in him placing orders through the firm's vendors. Once automotive parts were received from vendors, the worker handled the invoicing, overseas shipping, and re-labeling of packaging as instructed by the firm. The firm issued the worker Form 1099-MISC for the years in question. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC.

The firm's response states it is an automotive exporter business. The worker was engaged to sort and pack auto part from mid-2014 to mid-2017. The worker was classified as an independent contractor as the firm did not train, instruct, or supervise him. The worker made his own hours, he worked at his own location where he also performed services for his company's customers, and the firm did not provide benefits. The worker communicated to the firm what was completed and advised what work was left to be completed. Supplies and materials needed for the work were purchased by the worker but ultimately paid by the firm. Services were performed under a verbal agreement. The worker emailed a proposal to the firm in August 2017, after the work relationship had ended.

The firm stated it trained the worker on packing. Work assignments consisted of sorting parts by purchase order numbers provided as they came in. The worker determined the methods by which assignments were performed as long as the job got done. The firm's president was contacted if problems or complaints arose. The firm was responsible for problem resolution. Reports and meetings were not required. The worker set his own hours. The worker performed services at his company's location. The firm did not require the worker to personally perform services. It is unknown who hired substitutes or helpers. If hired by the worker, the firm's approval was not required. The firm and worker discussed who would pay the substitute or helper. If the worker paid the substitute, he was not reimbursed by the firm. The worker stated he communicated with the firm's president multiple times each day. Work assignments were received via customer email requests and daily communications with the firm's president. The firm determined the methods by which assignments were performed and it assumed responsibility for problem resolution. He was responsible for making sure all parts were charged and invoiced weekly after ordering and receiving. Customer invoices were sent to the firm and customers. His daily routine consisted of making sure all customer requests were ordered and completed in a timely manner. Hours were 9:30 am to 4:30 pm each day for deliveries and late-night shifts to catch up. For the first 2+ years of the work relationship, he worked from the firm's business location ([redacted]. He also periodically (3 - 4 times a year) performed services at the firm's facility located [redacted]. The last two years services were performed at a facility owned by an unrelated business entity, which the worker holds a partnership interest in. The firm sub-leased space from the non-related business based on a verbal agreement. Meetings consisted of daily phone calls. The firm required him to personally perform services. The firm was responsible for hiring and paying substitutes or helpers.

The firm stated it provided a hand jack, boxes for packing, and skids. The worker did not lease equipment, space, or a facility. As the worker provided his own space, the firm rented space from the worker. Copies of two 2016 rent checks evidence they were made payable to the unrelated business entity and not to the worker personally. The worker incurring expenses in the performance of services for the firm was not applicable. Customers paid the firm. The firm paid the worker salary; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker's economic loss or financial risk was associated with only the loss of salary if termination of the agreement occurred. The worker established the level of payment for the services provided. The worker stated the firm provided all, including an email account which he utilized to communicate with the firm's customers and potential customers. He did not incur economic loss or financial risk. The firm established the level of payment for the services provided and the products sold.

The firm stated benefits were not provided. The work relationship could be terminated by either party without liability or penalty. The worker did not perform similar services for others during the period in question. There was no agreement prohibiting competition between the parties. The worker advertising was not applicable. Finished products were returned to the firm. The firm represented the worker as a contractor to its customers. The work relationship ended when the firm terminated the agreement for cause. The worker stated he advertised the firm by writing and sending letters to potential new business customers. The firm represented him as an employee to its customers. As he was questioning the firm about his classification, the firm terminated the work relationship.

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.

Consideration was given to the August 2017 business proposal; however, it was proposed after the initial work relationship ended and proposed details do not align with information provided by the firm and the worker specific to the period in question. Therefore, it is not considered relevant for purposes of this determination.

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 services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customers served and it assumed responsibility for problem resolution. It appears the worker was given the ability to determine the methods by which assignments were performed as long as the job got done; therefore, it implies the firm retained the right to determine the methods used if it was dissatisfied with the worker's services. 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 expenses nor did he incur economic loss or financial risk. Based on the salary 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 similar business services to the general public during the term of this work relationship. Consideration was given to the worker's partnership with an unrelated business entity; however, as those business services are not the same or similar to those offered by the firm, they are not considered relevant. 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.