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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05CCP.61 Childcare Provider	☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

[redacted]

The worker initiated the request for a determination of her work status as a household employee in tax years 2014 through 2017. The worker indicated that in prior years 1999 through 2003 she was issued Form W-2 for providing nanny/domestic services.

The payer's/parents' response was signed by [redacted]. The worker performed services that revolved around personal domestic and household services. The payer acknowledged that domestic/nanny services had been rendered in 1999 through 2003 and that Form W-2 was issued. In the more recent years, the worker was paid for a minimum of 12 hours for either overnight babysitting, housecleaning, and/or running errands.

The parent left a list of tasks and the worker would work to complete the tasks. The parent would discuss errands that needed to be done or outline the date of the overnight schedule on an ongoing basis. The worker determined how and when assignments were done; the parent was contacted if there were any issues or changes to the worker's availability. There were no set hours; the worker was paid for 12 hours per week whether she worked it or not. The services were rendered in family home since services were related to supervising the children and then house cleaning and errands. The worker was required to perform the services personally.

The worker concurred that there was no specific training and instructions given and that the job assignments came from the parents. The worker indicated the parent determined the methods by which the worker's services were performed and any problems or complaints encountered by the worker were directed to the parent for resolution. The services were rendered at the home of the parents and other than taking the children to school, the daily activities varied. The worker was required to perform the services personally.

Both parties agreed the parents provided cleaning supplies and equipment as well as food and food prep equipment. The worker furnished her vehicle and was reimbursed for mileage. The worker was paid an hourly wage. The worker stated she was not at risk for a financial loss in this work relationship. The parent responded that the worker established the level of payment for services provided and they agreed to the amount.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed.

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.

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 opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties relationship. In this case, the parents retained the right to change the worker’s methods and to direct the worker to the extent necessary to ensure the well-being of the children in her care. 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 family's daily routine generally shows that the worker is subject to direction and control.

In general, domestic services include services of a household nature in or about a private home performed by cooks, waiters, butlers, housekeepers, maids, valets, babysitters, janitors, laundresses, caretakers, handymen, gardeners, grooms, chauffeurs of family-use vehicles, and companions for convalescents, the elderly, or the disabled. A private home is a fixed place of abode of an individual or family.

CONCLUSION
Based on the above analysis, we conclude that the parents 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.

Because the worker’s services constitute domestic services, the employer is responsible for withholding the employee’s share of the FICA tax if the worker was paid up to a specific income threshold amount in each particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year’s Publication 926, Household Employer’s Tax Guide.