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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05ITE.70 Instructor/Teacher	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] None [ ] Yes

Facts of Case

The worker submitted a request for a determination of worker status in regard to services performed for the firm from September 2014 to present (2016) as a head coach. The work done by the worker includes leading CrossFit classes, coaching gym members, ensuring member safety, and maintaining the facility's equipment and building to ensure cleanliness. The firm issued the worker Form 1099-MISC for 2014 and 2015. The 2016 tax reporting document is not yet due to be issued. The worker filed Form SS-8 as he believes he has erroneously received Form 1099-MISC.

The firm's response stated it is a CrossFit facility which has blocked class times. Members of the gym are only allowed to work out under the direct supervision of a coach while at the gym. The worker coaches classes for CrossFit, writes programs for CrossFit, and designs special programs for CrossFit. The worker also designs and produces clothing for CrossFit through a company he is affiliated with. The worker sets his own hours, negotiates the rate of pay, designs special program curriculums and schedules, can elect to not perform services, and performs duties as he sees fit and necessary given his personal expertise and experience.

The firm stated it does not train the worker. Special projects such as specialty classes may be designed by the worker; however, the worker does not receive assignments. The worker and industry standard determine the methods by which assignments are performed. All coaches have a similar certification. The worker has the ability to correct problems or complaints or he contacts the firm's business owner for assistance. The worker submits his work hours. The worker has a key to the gym and works various different class times. If the worker has a class before another coach, he unlocks the gym, brings the day's workout up on the coach's board, leads the members through a warm-up designed by the coach, demonstrates the movements of the workout, and makes corrections. The worker performs services at the firm's premises for approximately 20 to 30 hours a week. There are occasional coach meetings. There is no penalty if the worker is unable to attend. The firm requires the worker to personally perform services. The firm or worker can hire substitutes or helpers. The firm pays substitutes or helpers. The worker stated he instructs gym members during classes with the programming and scheduling provided by the firm. The firm determines the methods by which assignments are performed and assumes responsibility for problem resolution. The worker's schedule changes weekly based on the schedule pushed out by the firm. The firm hires and pays substitutes or helpers.

The firm provides the physical gym and workout equipment. The worker does not provide supplies, equipment, or materials. The worker does not lease equipment, space, or a facility. The firm stated the worker incurs the unreimbursed expense of designing promotional materials for special events. Customers pay the firm. The firm pays the worker an hourly rate of pay; a drawing account for advances is not allowed. The firm does not carry workers' compensation insurance on the worker. The worker does not establish the level of payment for the services provided. The worker stated he does not incur expenses in performing services for the firm. He does not incur economic loss or financial risk. The firm establishes the level of payment for the services provided.

The work relationship can be terminated by either party without incurring liability or penalty. The firm stated it is unknown if the worker performs similar services for others; however, he is not prohibited from doing so. Posts on social media for the gym and e-mails to members about special programs may be considered advertising. The firm represents the worker as a CrossFit coach to its customers. The worker still performs services for the firm. The worker stated he does not perform similar services for others or advertise. The firm represents him as an employee to its customers. Services are performed under the firm's business name.

The firm stated the worker is not responsible for soliciting new customers. Members would contact the worker directly. The worker is required to report the number of members participating in special programs. Special programs and fees to the gym are negotiated on an individual basis. The worker stated he explains gym membership fees and the process and structure of CrossFit in soliciting new customers.

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.

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 requires the worker to personally perform services. Furthermore, the coaching services performed by the worker are integral to the firm's business operation. The firm provides work assignments by virtue of the members served, requires the worker to report hours worked and members participating in special programs, and ultimately assumes responsibility for problem resolution. These facts evidence the firm retains 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 to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retains 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 has not invested capital or assumed 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. Based on the hourly rate of pay arrangement the worker cannot 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 is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business. Both parties retain the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performs similar services for others as an independent contractor or advertises 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 has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is 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.