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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Personal Service Providers	[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 services performed as an assistant for the firm from April 2020 until October 2020. The worker received a 1099-NEC from the firm for 2020. The worker performed personal assistant duties around the firm's household. The worker states that they were misclassified by the firm as an independent contractor because they performed duties as dictated by the firm. There were no written agreements in place between the parties.

The firm states that it is an auto body repair shop. The firm did not provide any information regarding why they classified the worker as an independent contractor. The firm also did not fill out their copy of the Form SS-8 and therefore we do not have any explanation of their classification of the worker in any of the areas of control of common law standard. The firm provided a copy of a statement of payments made to the worker during their work relationship.

The worker states that the firm provided the worker with instruction on what duties to perform. The firm gave the worker job assignments and determined the methods by which they were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm for problem resolution. There were no reports required of the worker. The worker's job duties and routine varied every day and depended upon the needs of the firm. The majority of work was performed in the firm's household. There were no meetings required of the worker. The worker was required to personally perform services. Helpers and substitutes were not applicable.

There were no supplies, equipment, or materials applicable to the job duties as the worker performed duties as a personal assistant. The worker did not lease any space, facilities, or equipment. The worker did not incur any expenses on the job. The firm paid the worker on a weekly basis depending upon what the firm felt the worker had earned. The worker did not have access to a drawing account for advances. Customers were not applicable. The firm did not carry worker's compensation insurance on the worker. The worker did not have any known exposure to economic loss or financial risk. The firm set the level of payment for services provided.

The worker was not offered any benefits by the firm. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms. There were no non-compete agreements applicable between the parties. The worker was not a member of a union and did not advertise their services to the public. The worker was represented by the firm as an employee of the firm. The worker moved from the residence and therefore the work relationship ended.

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. The firm provided work assignments by virtue of the needs of the firm 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 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 weekly 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. 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.