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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC Pet Handlers/Caregivers	Determination: ☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ 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 firm claims that there was no training involved. The worker stated that she was trained on how to use the clinics computer system, software and the credit card machines. The firm and worker disagree on how the worker received her work assignments. The firm maintains that clients would call the worker personally to schedule appointments whereas the worker states that all appointments were made through the clinic. She worked 5 days a week. She was required to be there by 7:00 am. The number of worked hours during the day could vary depending on the number of grooms the worker had scheduled. The firm required that a groomer be on the premises until at least 4:30 every day. She received regular weekly remuneration for her services. The firm claims that the methods by which the assignments were performed were by the worker as opposed to the worker who contends that it was both the worker and the veterinarians who determined those methods. The firm and worker both agree that the owner of the clinic was responsible for complaints and problem resolution. The worker was required to submit daily invoices. She performed all services on firm's premises. The worker stated that she was required to attend meetings concerning rules, policies and any issues that arose. The firm stated the worker was not required to attend any meetings. The worker provided documented evidence of meetings that she attended with an itinerary of what was discussed. Topics of discussion were pricing, schedules, quality of work and specific procedures that needed to be followed on a daily basis. The relationship between the parties was continuous for 3 years as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. If the worker was to hire any substitutes, she would first need the approval of the firm. The worker and the firm disagree on who would hire and pay the substitutes or helpers. Her services were an integral and necessary part of the services the firm provided to its clients.

The firm contends that it furnished the worker with a grooming space, shampoo, kennels and paid for utilities. The worker stated that the firm also provided tubs, tables, dryers, laundry, cleaning supplies and a set of clippers at no expense to her. The worker did not lease equipment. The firm determined the fees to be charged to its clients. The worker did not have the ability to change any prices for service's without first receiving the veterinarian's approval. The worker was paid based on commission with no minimum guarantee. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The worker had no control of when she was paid. She could not receive payment for her service's until Friday. The firm's clients paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the worker's services at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform similar services for others. The firms claim that the worker advertised her services on social media and with a business card. The worker did provide a copy of a business card identifying her as being affiliated with the firm. She did not maintain a separate office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's clients. The relationship between the two parties has ended.

Analysis

The worker performed personal services on a continuous basis. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients .The firm determined the rates charged to the clients and the clients paid the firm's business directly for the services provided by the worker. The worker was not allowed a drawing account against future 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 risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's clients for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. 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 commission rate of pay arrangement the worker could not realize a profit or incur a loss. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.