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 a kennel tech and groomer for the firm from January 2019 until September 2019. The firm issued the worker a 1099-MISC as well as a W-2 for 2019. The worker received a 1099-MISC for services performed as a groomer and a W-2 for services performed as kennel tech. The worker feels that they were misclassified as an independent contractor because the firm set the schedule and pay rate, the worker had to request time off, the worker was required to wear a uniform, and the firm provided supplies needed for the job. There were no written agreements between the parties. The worker provided a copy of a record of commissions they would provide the firm, a copy of a schedule, and a text exchange between the parties.

The firm states that it is a pet grooming salon and boarding kennel. The worker was requested to provide grooming services as a 1099-MISC independent contractor and kennel tech services as a W-2 employee. The firm states that the worker did not have taxes taken out of their paycheck for their grooming services, making them an independent contractor.

The firm states that it did not provide the worker with any training. The worker was assigned dogs to groom by the firm as a pet groomer, and as a kennel technician, they were responsible for cleaning kennels and taking dogs out. If the worker encountered any problems or complaints while working, they were required to contact the firm's manager for problem resolution. The worker started their workday at 8am, performed their job duties, then left to go home. All work was performed at the firm's shop premises. There were no meetings required of the worker and the worker was not required to personally perform services. The firm's manager was responsible for hiring all helpers needed, and the firm was responsible for paying all help. The worker states that they received verbal instructions from the firm. The firm booked appointments for scheduled services for dogs. The firm's owner determined the methods by which job assignments were performed and assumed responsibility for problem resolution. The worker was required to provide the firm with a detailed commission log. The worker states that they would start their daily routine by arriving in the morning, checking in clients, and bathing and grooming dogs. The worker also answered phones and helped other employees. The worker also checked out clients, cleaned, added invoices into QuickBooks, and took payments for the business. The worker performed services only at the firm's shop. The worker states that there were no meetings, and the worker was required to personally perform services. The firm's owner hired and paid all helpers needed.

The firm states that they provided shampoos, tubs, and blowers. The worker provided their own equipment to do haircuts on dogs. The worker did not have to lease any equipment, space, or facilities. The worker did not incur any expenses. The worker was paid commission as a groomer and an hourly wage as a kennel tech. The worker did not have access to a drawing account for advances. Customers paid the firm for services provided. The firm carried worker's compensation insurance on the worker. The worker had no exposure to economic loss or financial risk. The firm established the level of payment for services provided. The worker states that the firm provided shampoos, cologne, cleaners, office supplies, driers, a table, chair, tubs, and kennels. The worker provided their own grooming equipment. The worker incurred expenses of having their grooming equipment sharpened and serviced. The worker states that they were paid commission for their services. The worker states that they could potentially face the financial risk of dog bites because they felt that the firm did not carry worker's compensation insurance. The worker also faced the possible financial risk of having their equipment broken or misplaced. The firm's owner set the level of payment for services provided.

The firm states that 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 during the work relationship. There were no non-compete agreements in place between the parties. The worker was not a member of a union. The worker was represented by the firm as performing services under the firm's name. The work relationship ended when the worker quit. The worker states that they were offered a holiday bonus as a benefit by the firm. The worker states that they did not advertise their services to the public. The worker states that they were represented by the firm as an employee performing services under the firm's name. The worker resigned and ended 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.

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 as a dog grooming salon. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, 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 hourly and commission 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 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.