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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Medical Practioner	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 worker initiated the request for a determination of her work status as a licensed massage therapist doing spot massage treatments in tax years 2015 through 2017. The firm's business is described as physical therapy and spot massage treatments. The worker indicated that she started as an employee on a part time bases, but, was switched to 1099-MISC with no changes in the services performed.

The firm's response was signed by the owner of the firm/the physical therapist. The firm's business is described as a physical therapy office providing evaluation and treatment of musculoskeletal conditions. The worker was hired as a massage therapist (employee) from November 2015 to April 2016, when she was converted to an independent contractor. The firm indicated the change was because the worker's duties included sales and promotions of vitamins/supplements.

The firm wanted to introduce the wellness aspect, and therefore, the firm and worker agreed that she would be a massage therapist and vitamin/ supplement distributor/promoter. The firm indicated he did not receive any proceeds from the sale of these vitamins and supplements. The worker stated she brought only literature into the firm's office; but, did not generate any sales.

According to the firm and worker, the worker received specific instructions from the physical therapist to perform massage therapy. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered at firm's location. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

Both parties concurred that the firm provided everything (place/space, equipment, massage cream); and, the worker furnished nothing other than malpractice/professional insurance. The worker did not lease equipment and did not incur expenses in the performance of the job. The worker was paid an hourly wage and was required to punch in and out; the clients/patients paid the firm. The firm confirmed the worker was covered under the firm's workers' compensation insurance policy. The firm indicated the worker was at risk for a financial loss in this work relationship as it pertained to malpractice; the worker stated she was not at risk for a loss in this work arrangement. The firm and worker did not agree as to which party established level of payment for services provided or products sold.

The firm and worker acknowledged that there were no benefits extended to the worker other than a holiday bonus. Either party could terminate the work relationship without incurring a liability or penalty. The firm responded that the worker was performing same or similar services for others during the same time frame; the worker disagreed, stating that she had a few massage therapy clients outside to the firm's business.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

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 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 customer 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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. 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 business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. 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.

CONCLUSION

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.