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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
06MPX Medical Practitioner	☒ 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 requested a determination of employment status for services performed for the firm in 2016 as an optometrist. The firm offers vision care to its customers and responded to our request for information as follows:

The firm is in the business of providing professional optometry and ophthalmology services. The worker was engaged to provide optometric coverage at the practice location, which included a comprehensive ocular exam and any indicated treatment. The worker was given instruction on the operation of equipment and the medical records system utilized by the firm. The worker was required to contact the medical director if problems occurred. The worker personally performed his services at the firm's location. The firm provided everything the worker needed. The worker was responsible for his own licensing and medical insurance. He was paid a daily rate and customers paid the firm. Either party could have terminated without liability. The worker was not prohibited from working for others.

The worker agreed to be an independent contractor. The worker was offered available days and able to pick from those day as to when he wanted to work. The worker assigned an independent contractor agreement to work as needed for a daily rate.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below. Therefore, a statement that the worker was an independent contractor pursuant to an 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.

Generally, dentists, physicians, and other professionals engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees. However, if the requisite relationship exists between a physician and another, he or she is an employee rather than an independent contractor with respect to any services performed under such circumstances. As pointed out above, one of the major factors to be considered in determining the existence of an employment relationship is the right of direction and control. In determining what constitutes the requisite degree of direction and control, it must be borne in mind that the methods by which professional men and women work are prescribed by the techniques and standards of their profession, and the high degree of skill required by a professional sometimes makes it difficult or impossible for the employer to supervise his or her services. Therefore, the control of an employer over the manner in which professional employees conduct the duties of their positions must necessarily be more general than control over nonprofessional employees. See, Wendell E. and Evelyn C. James v. Commissioner, 25 T.C. 1296 (1956).

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.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. The worker performed his services for the firm's customers as a representative of the firm.

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. The worker had no investment in the firm's business, received a daily rate, and could not suffer a loss.

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 while performing his services for the firm.

Firm: For further information please go to www.irs.gov Publication 4341