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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC Drivers & Vessel Control	[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, a truck driver, submitted forms SS-8 and 1099-MISC related to services the Worker provided the Firm, a trucking company, from April 2018 to November 2018. The Worker believes he was the Firm's employee and should have been issued a W-2. The Firm submitted its responsive SS-8 stating the Worker was an independent contractor because he informed the Firm when he wanted to leave and return; was only paid for days he chose to be on the road; had no obligations; and "chose his own lanes." The Firm didn’t submit a 1099-MISC but did include a screenshot of a text message exchange, with no visible date, that the Firm contends is evidence the Worker requested a Form 1099. Though the screenshot seems to show only a portion of a dialogue with both parties to the exchange mentioning "1099," for purposes of this determination only, we will accept the Firm's contention that the Worker requested a Form 1099-MISC from the Firm.

The parties agree the Worker didn’t work for the Firm in any capacity before providing the services at issue here and that there was no written agreement between them regarding the services the Worker provided.

The Firm trained the Worker on how to use an electronic logbook. The parties generally agree the Worker received assignments from the Firm, with the Firm elaborating “Once the worker lets us know he is ready to leave we find a load/check with him, then agree to it and he goes to pick it up.” The Worker states the “Company & Driver” determined the methods by which assignments were performed; the Firm did not respond to that question. Although the parties generally agree the Firm required the Worker to contact the Firm if problems or complaints arose, the Firm adds “if the problem is worker’s fault, he is responsible personally.” The Worker maintains the Firm was responsible to resolve problems or complaints.

The Firm required the Worker to provide reports in the form of electronically submitted logbooks. The Firm describes the Worker’s daily routine as “pick up load, drive for as much as needed or log book permits, rest. Next day deliver.” The Worker describes his daily routine as a fourteen-hour workday “allowed by DOT to drive no more than 11 hrs in 14 hr period,” and a ten-hour mandatory break. The Firm states the Worker performed his services on “Company’s truck” (presumably "Company" is the Firm); the Worker elaborates he drove “to shipper’s location then to receiver’s location.” The parties agree the Worker was not required to attend meetings and that the Firm required the Worker to personally provide services. The Firm states no helpers were ever needed and no substitutes could be used but the Firm’s approval would be required in any event; the Worker generally agrees.

The parties agree the Firm provided the Worker with a truck, trailer, fuel, and logbook; the Firm submits the Worker provided his clothes, tools, food, and “everything else.” The parties also agree the Worker didn’t lease equipment, space, or a facility. The Firm states the Worker incurred expenses for parking, food, and clothes in the performance of service for the Firm; the Worker maintains he incurred no expenses other than “if any, tolls.” The parties agree the Firm reimbursed the Worker for tolls. The Firm contends it paid the Worker “$220.00 for each day on the road,” while the Worker submits the Firm paid him a salary. The parties agree the customers paid the Firm and that the Firm didn’t allow the Worker a drawing account for advances, -- although the Firm notes a drawing account was “never discussed.” The Firm contends it didn’t carry worker’s compensation insurance on the Worker, while the Worker states it did.

The Firm submits the Worker incurred economic loss or financial risk beyond the normal loss of salary through “damage to truck or customer property due to negligence of Worker, is his responsibility to cover,” while the Worker contends he incurred no economic loss or financial risk. The parties agree the Firm determined the level of payment for the services provided.

The Firm states it provided benefits to the Worker in the form of bonuses and “if driven more than 2500 miles, additional .50/mile.” The parties agree their working relationship could be terminated by either party without incurring liability or penalty. The Firm states the Worker provided similar services for others during the time he worked for the Firm and didn’t need the Firm’s approval to do so; the Worker maintains he did not provide similar services to others during that period. The parties agree they’d made no agreements prohibiting competition while the Worker performed services for the Firm or during any later period. The parties also agree the Worker wasn’t a union member and did not advertise.

The Firm states it represented the Worker to its customers as “Driver” while the Worker maintains the Firm represented him as “employee” and that he performed his services under the Firm’s business name. The Firm describes the ending of its relationship with the Worker as “parted ways. Worker was not interested in continuing the relationship.” The Worker did not definitively respond to the question of how his relationship with the Firm ended.

Analysis

Generally, the relationship of employer and employee exists when the person or entity the worker is performing services for has the right to control and direct what the worker must do and how the worker must do it. It isn't necessary for the person or entity to actively direct or control the worker, only for it to have the right to do so.

Whether an employer-employee relationship exists between two parties is a factual matter that's not negotiable between those parties. And if an employer-employee relationship does exist, the designation or description of the parties as anything but employer and employee is immaterial. Thus, the Worker's request for a 1099-MISC -- via text message or otherwise -- is immaterial to this determination. Though it may seem counterintuitive, in determining worker classification for federal employment tax purposes, if an employer-employee relationship exists any oral or written contract, handshake agreement, intent, or understanding between the parties that designates the worker as an independent contractor must be disregarded -- in this context, the actual working relationship between the parties is what matters. US Treasury Regulation 31.3121(d)-1(c).

As a trucking company engaged in trucking freight for customers, the Firm needed drivers to haul the freight. As one of the Firm's truck drivers, the Worker was tasked with performing the trucking jobs the Firm assigned to him, using the Firm's semi-truck. Given that, it's reasonable to conclude the Firm's truck drivers were integral to the Firm's core business operations -- the Firm's business success depended on its ability to satisfactorily deliver freight for its customers so the customers would, in turn, pay the Firm. The Firm was ultimately responsible for the quality and standard of the Worker's service and for the satisfaction of the Firm's customers. How the Worker conducted the Firm's hauling and delivery could make or break the Firm's reputation and, ultimately, its business survival. This gave the Firm the right to direct and control the Worker in order to protect its financial investment, business reputation, and customer relationships. Such integration of the Worker's services into the Firm's business operations generally points to the Worker being subject to the Firm's direction and control and is highly indicative of an employer-employee relationship.

While workers who can realize a profit or suffer a loss as a result of their services are generally independent contractors, workers who cannot are generally employees. Although the Firm states it would hold the Worker responsible for negligently causing damage to the Firm's trucks or customer property, it offers no evidence to show the Worker invested capital or incurred economic loss or financial risk in working for the Firm. The risk of negligently damaging Firm equipment or customer property is inherent to many jobs and, in isolation, does not establish independent contractor status. With the per diem rate of pay arrangement set by the Firm, the Worker could not realize a profit or incur a loss. Thus, the facts here are indicative of an employer-employee relationship

The Worker was not providing services to the Firm through engagement in an independent enterprise; rather, the services performed by the Worker were a necessary and integral component of the Firm's trucking business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence suggesting 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.

As noted above, common law factors are considered when examining worker classification issues. Based on the facts presented and researched, this analysis under the common law concludes with the determination that the Firm had the right to exercise direction and control over the Worker to the degree necessary to establish the Worker was a common law employee of the Firm during the relevant time period, and not an independent contractor operating a trade or business. Accordingly, the Worker is classified as an employee of the Firm for employment tax purposes.

The Firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.