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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC Survey Pilot	[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 submitted a request for a determination of worker status in regard to services performed for the firm from September 2016 to July 2017 as a survey pilot. The services performed included safely operating an aircraft under the federal aviation administration rules. Relocating aircraft, coordinating with air traffic control, and assisting with maintenance procedures. Filing daily reports, flying the aircraft, and operating cameras simultaneously. The firm provided airplanes and pilots for surveys throughout the united states. The firm issued the worker Form 1099-MISC for 2016 and 2017. He filed Form SS-8 as he believed he received Form 1099-MISC in error. A contract was signed between both parties stating the worker would be penalized if he left prior to the end date.

The worker stated the firm provided training on how to operate the equipment, maintenance procedures, create company reports, and request reimbursement from payroll. Work assignments were received by phone or email. The firm determined the methods by which assignments were performed. The firm and the worker assumed responsibility for problem resolution. Flying reports, maintenance reports, and aircraft hours report were required. The hours varied by the angle of the sun. Longer working days during the summer and shorter days in the winter. The worker performed services everyday unless the weather did not allow him to fly. Services were performed in the air, inside the aircraft, or at an assigned airport. He was constantly relocating to different states. Meetings were not required. The firm did not require the worker to personally perform services.

The worker stated the firm provided the aircraft and maintenance personnel. The worker did not lease equipment, space, or a facility. The worker incurred the expense of hotels, meals, and his pilot gear. The firm reimbursed the worker for some gear, half of the insurance for aircraft, and payments made by the worker when needed. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. If the aircraft was damaged due to the worker's error, he would be expected to pay for the damage. The firm established the level of payment for the services provided.

The worker stated he would have had to pay the firm if he left prior to the date agreed upon. There was an agreement prohibiting competition between the parties. He could not work for any other firm that performed aerial surveys for at least 5 years. The worker did not advertise. The work relationship ended when the contract ended.

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. In this case, the firm provided training to the worker. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm determined the methods by which assignments were performed and required the worker to report on services performed. 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 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. 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.