

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.24 Farm/RanchWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

According to the information and documentation submitted, the firm's business is pasture cattle. The worker performed services checking and watering pasture cattle. The worker provided his services in 2013 and the firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with his job assignments as he arrived at the pasture assigned to him. The worker was given a certain amount of cattle to watch. He gave the cattle water and salt to any sick cattle. The worker contacted the cattle boss for any problems or complaints that arose. The cattle boss determined the methods by which the assignments were performed.

The firm furnished the necessary feed and materials for the worker to perform the services. The worker had his own pickup truck. The worker was paid per cattle head. The worker had no investment in a business providing similar services. The worker's services were terminated without the worker incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the firm provided the worker with his job assignments. The worker personally performed his services at the firm's pasture.

The firm provided the necessary feed supplies and equipment for the worker to perform his services. The firm controlled the payment to the worker for his services. The worker had no investment in facilities and did not have the opportunity for profit or loss. The worker was free to terminate his services without incurring any liabilities.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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.

If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Therefore, the firm exercised direction and control over the services performed by the worker, during the entire work relationship, to establish that an employee/employer relationship existed.

Section 3121(g)(1) of the Internal Revenue Code, relating to the FICA, provides that the term "agricultural labor" includes all services performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur bearing animals and wildlife.

Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, fur bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses, and other similar structures as are used primarily for the raising of agricultural or horticultural commodities.

However, it is held that services performed by an employee of a company in connection with the racing of horses and exhibiting them at horse shows are not "agricultural labor" within the meaning of section 3121(g)(1) of the Federal Insurance Contributions Act and section 3306(k) of the Federal Unemployment Tax Act. This conclusion is also applicable for purposes of the Collection of Income Tax at Source on Wages (chapter 24, subtitle C of the Code).

Under section 3121(a)(8)(B) of the Internal Revenue Code, with exceptions not material here, when the cash remuneration paid to an individual farm worker in a calendar year is \$150 or more, or the employer's expenditures for agricultural labor in the year equals or exceeds \$2,500, the income is subject to FICA.

Section 3306(c)(1) of the Code provides in effect, that with exceptions not material here, remuneration paid to individuals for agricultural labor is not subject to FUTA taxes unless the agricultural labor is performed for a person who, during any calendar quarter in the calendar year or the preceding calendar year, paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or on each of some 20 days during the calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day, 10 or more individuals.

Analysis

Continued.

Under section 3401(a)(2) of the Code the term “wages” does not include remuneration for services that constitute agricultural labor as defined in section 3121(g). However, beginning in 1990, the Revenue Reconciliation Act of 1989 modified that rule to provide that income tax withholding is applicable if the remuneration is subject to FICA withholding.

“Wages” for services other than “agricultural labor” are not to be reported on Form 943. Such wages are to be reported on Form 941 Employer’s Quarterly Federal Tax Return. However, if you file Form 943 and pay wages to household workers who work on your for-profit farm, you may include the wages and taxes of these workers on Form 943. If you choose not to report these wages and taxes on Form 943, or if your household worker does not work on your for-profit farm, then they should be reported on Schedule H, which is filed with your individual income tax return. Schedule H is also used to report FUTA taxes for household employees.

Accordingly, if only part of an employee’s services constitute “agricultural labor,” or if some of an employer’s workers perform services which constitute “agricultural labor” and others do not, it is necessary for the employer (1) to segregate the “wages” for “agricultural labor” from the other “wages” paid; (2) to file Form 943 reporting the Federal Insurance Contributions Act taxes due with respect to the “wages” for “agricultural labor;” and (3) to file Form 941 reporting the Federal Insurance Contributions Act taxes due with respect to the “wages” for other “employment.”

Therefore, in this case, as the employer of the worker, you are liable for FICA and FUTA taxes for the worker, absent the application of the foregoing limited exceptions. Whenever you pay the employee’s tax for federal income, social security and Medicare in lieu of collecting it from the employee, this amount must be included in the employee’s wages for income tax purposes. However, they are not counted as social security and Medicare wages or as federal unemployment (FUTA) wages.

For further information regarding agricultural employees, you may wish obtain Publication 51, Agricultural Employer’s Tax Guide.

The employment tax liabilities for income tax withholding and FICA generally also apply to resident and non-resident aliens, except that non-resident aliens may have an exception depending on their immigrant status. FUTA may also apply to the income earned by aliens, even when the income is not subject to FICA tax. However, agricultural workers that are here on temporary H-2A visas are usually exempt from social security and Medicare taxes, whether they are resident or non-resident aliens. Also, their income is not considered “wages” for withholding or the use of Form(s) 943 and W-2. If your worker is a resident or non-resident alien, and you need additional information, you may wish to obtain Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.