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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Business/Computer Services/Office/Sales	[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 June 2019 to January 2020, as an office administrator. The worker filled Form SS-8 as they are unsure of their worker status. The worker did not provide a written agreement signed between the two parties. The worker received specific training and/or instruction from the firm. The worker received work assignments from the firm. The firm determined the methods by which assignments were performed. The worker was required to contact the firm for problem or complaint resolution. The worker was required to attend meetings. Reports were required. The worker provided services at the firm's premises. The worker was required to personally provide services. The hiring of substitutes or helpers was the firm's responsibility. The firm provided everything. The worker provided nothing. The worker did not lease any equipment, space, or a facility from the firm. The worker incurred no expenses. The worker was paid an hourly rate of pay; a drawing account for advances was not allowed. The worker did not establish the level of payment for the services provided. Customers paid the firm. The worker did not incur an economic loss or a financial risk. The worker received no benefits. The work relationship could be terminated by either party without incurring a liability or penalty. The worker did not perform similar services for others during this work relationship. The worker was not a member of a union. The work relationship ended.

The firm's response states that the business is one that specializes in foundation stabilization. The firm agrees that the worker performed duties as an office administrator. The firm did not provide a written agreement. The firm classified the worker as an independent contractor due to a verbal agreement between the two parties. The firm provided specific training and/or instruction to the worker. The firm provided work assignments to the worker. The worker determined the methods by which assignments were performed. The firm was responsible for complaint or problem resolution. Reports were required. The worker was required to personally perform services. The paying of substitutes and helpers was the firm's responsibility. The firm provided an office and all necessary material. The worker provided nothing. The worker received an hourly rate of pay; a drawing account for advances was not allowed. The firm did not cover the worker under its workers' compensation insurance policy. Both parties established the level of payment for the services provided. All customers paid the firm. The worker did not experience an economic loss or carry a financial risk. The firm provided no benefits to the worker. The work relationship could be terminated by either party without incurring a liability or penalty. The worker did not perform similar services for others during this work relationship. The worker was not a member of a union. The work relationship 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 they have 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, co-adventurer, agent, or independent contractor must be disregarded. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments and was responsible for problem or complaint resolution. These facts are evidence that 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.

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.

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 payer's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. 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 payer 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 payer can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.