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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.214 OfficeWorker	Determination: ☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

Information provided indicated the firm is a management consulting firm. The worker had been employed by the firm as a [redacted] in tax year 2014. The firm reported the income on Form 1099-MISC as it was a temporary assignment for a specific contract with the federal government. The firm provided the copy of the contract employee's non-disclosure agreement, with the employee's name/signature and the contractor's (firm) signature. The firm provided a copy of the reports provided by the worker. The firm indicated she was given a copy of the client's scope and instruction on completing the [redacted] Forms. She was given the contract task order and was required to follow directions of that task work order. The firm stated the Validator determined how the work was performed. The worker reported to the program manager if there were any issues. The firm indicated there were no specific hours. Work was of a confidential nature. The work must be conducted during office hours in the office. Services were performed on firm's premises. The worker attended conference calls, and client meetings. There were no penalties for not attending. She was to perform her services personally. The firm provided the paper for the computer or desktop. The worker provided her own computer. She was paid by the hour. The customer paid the firm. She was represented as a contractor. The firm indicated the contract ended.

The worker indicated she was provided training and/or instructions from the CEO [redacted], based on work plan provided for the project. Either the CEO or VP [redacted] gave work assignments. They determined how the work was performed, and the responsible parties, for resolution of problems or complaints. She was required to submit weekly status reports and time sheets. She performed services Monday through Friday eight-thirty a.m. through five p.m.. Services were performed at the [redacted] office location. She was required to perform weekly staff meetings, and weekly meetings with project Subject Matter Experts who worked remotely. These meetings were mandatory. She was required to perform her services personally. The firm hired and paid all individuals. The worker stated the firm provided all equipment and supplies. She agreed she was paid by the hour and the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as the assistant project manager of the firm. She stated she was laid off by the CEO. The worker also provided a copy of the Non-disclosure agreement. She also provided a copy of the employment offer from the firm. It offered an hourly rate of pay of twenty-five dollars an hour, subject to deductions for taxes and other withholdings as required by law and the policies of the company. She could expect to work twenty-five to thirty hours per week.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. Therefore, your 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.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

Payment by the hour, 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.

We have applied the above law to the information submitted. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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.