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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
03MIS.11 MiscLaborServices	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] None [ ] Yes

Facts of Case

Information provided indicated the firm was an operating cattle ranch. The worker, nephew to the owner, had been retained as a ranch hand for tax years 2013 and 2014. The firm reported the income on Form 1099-MISC for 2013, changed to the worker to employee status in 2014 and issued a 1099-MISC.

Both parties have provided information pertaining to the work relationship. [redacted], CPA for [redacted] owner of the ranch, provides [redacted] requested his status was that of a self—employed contractor which was to receive a Form 1099 at year end. He was to be paid $500.00 per week. (The worker stated he was to be paid $650.00 per week on a bi-weekly basis, with $250.00 withheld for taxes). About February 2014 He stated he was confused about his tax status and insisted he converted to a W-2 employee. [redacted] states, [redacted] honored that request obtained an employer identification number. Both agree there were no changes in services provided. He also demanded she pay him for the FICA tax that should have been withheld in 2013. [redacted], states as evidenced by a copy of the attached check,(no copy was enclosed) she issued a check for $1,606.50 which was calculated as $21,000.00 x 7.65%. The work relationship was terminated as of March 12, 2014, with a severance allowance paid of $1,000.00.

The firm stated the worker had been given daily instructions on tasks that needed to be completed. These work assignments were given verbally from the owner. The worker was to provide oral reports, also on a daily basis as to the work performed. The schedule fluctuated dependent on the season. Both parties agree the firm provided all the equipment, materials and supplies. The firm stated they also reimbursed him for any expenses that were business related. Both agree he was paid on salary. Both agree he was represented as a ranch hand for [redacted]. Both agree he was terminated. A separation agreement was prepared and a copy was provided by both parties.

[redacted] however, has provided a copy of the 2013 W-4 form he stated was completed at the beginning of the work relationship. It was signed March 22, 2013. He agreed [redacted] wrote him a check for Sixteen hundred dollars, but that did not cover all of it.

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

Based on the information provided and common law we find the worker to have been an employee. The worker was hired as a ranch hand, to performed services that were at all times directed and control, and performed in the order they were assigned. The firm stated the worker requested to be hired as an independent contractor, however, the worker provided a copy of a W-4 signed March 22, 2013. The firm's representative also stated the firm honored the request to be classified as employee, however, our records show the firm issued Form 1099-MISC documents for both tax year 2013 and 2014. Issuing a check for FICA taxes, is not correcting the reclassification correctly, 941s should have been filed for both tax years. The 1099-MISC document should have been corrected for 2013, a W-2 should have been issued for both tax years. That did not happen. The firm should obtain Publication 4341 for instructions on how to correct amend the documents.

TAX RAMIFICATIONS

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 furbearing animals and wildlife.

Section 31.3121(g)-1 of the regulations includes within the definition of the term “farm,” stock, dairy, poultry, fruit, furbearing 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.

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.