

**SS-8 Determination—Determination for Public Inspection**

Occupation

03MIS.36 MiscLaborServices

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a residential and commercial construction and remodeling company. The worker performed services as a laborer for tax years 2013 and 2014. The firm stated he was instructed on the scope of the job, (what needed to be done) verbally from the firm. He would report to [REDACTED] owner of the firm for any issues. The firm stated he invoiced for his services. The firm indicated the worker set his own hours. Services were performed at the firm's customer job site. The firm stated they provided specialty tools and materials. The worker provided his hand tools and transportation. Sometimes customers provided materials. The firm stated the worker was paid by the hour and it was verbally agreed upon for a lump sum for the job in 2014. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the job completed. The firm provided copies of the "invoices" which in fact were the list of hours worked submitted weekly.

The worker indicated all installation and decision making was guided by the owner or the onsite supervisor. The work assignments came from the supervisor. The worker indicated he would arrive at the job site in the morning, take lunch, return to work and close down for the day. No hours were indicated. Services were performed at the firm's customer home or commercial site. Services were to be performed personally. The firm hired and paid all workers. The worker indicated the firm provided the power tools, drills, saws specific to the trade. He provided his own hand tools (hammer, square, marking utensils etc). The worker indicated he was paid by the hour. He agreed the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated all work was performed under the firm's business name. He indicated he quit.

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.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. See Rev. Rul. 56-694, 1956-2 C.B. 694.

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.

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

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## Analysis

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for another indicated 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.

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.