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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
04MAN MANAGER	[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 initiated the request for a determination of her work status as an office manager in tax years 2016 and 2017. In this capacity, she answered the phones, provided customer service, and filing, among other duties. The firm's business is described as a doctor's office/pain management clinic.

The firm's response was signed by the physician. The firm's business is described as a medical clinic. The worker performed chart management services (pulling, updating, and replacing).

According to the firm, no specific training was given to the worker and only minimal instructions as to the location of charts and the organization of the charts. The firm stated the job assignments were offered to the worker and she was free to accept or reject them. The worker determined the methods by which the worker's services were performed. She was not required to report to anyone if there were any problems or complaints encountered. The worker's services were rendered on the firm's premises according to the physician's schedule. The worker was not required to perform the services personally; no additional personnel were hired.

The worker responded that she was given specific training and instructions from the doctor. The job assignments were given on a daily basis from the doctor/firm; and, it was the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises from 10 am to 4 pm Monday, Tuesday, and Thursday, the only days the office was open. The worker indicated she was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm acknowledged that the firm provided the charts. It was unknown to the firm if the worker leased equipment, space, or a facility or incurred expenses in the performance of the job. The worker was paid a lump sum per assignment; the customers paid the firm. The firm indicated the worker was not covered under the firm's workers' compensation insurance policy. It was unknown if the worker was at risk for a financial loss in this work relationship. The firm and worker negotiated the level of payment for services provided.

The worker indicated the firm provided all equipment and supplies. The worker stated she furnished nothing, she did not lease equipment, space, or a facility, and she did not incur expenses in the performance of the job. The worker responded she was paid a salary and that the patients/customers paid the firm. The worker was not at risk for a financial loss in this work relationship. She did not establish level of payment for services provided or products sold.

Both parties concurred that no benefits were extended to the worker; although, the worker noted she received paid holidays. Either party could terminate the work relationship without incurring a liability or penalty. The worker responded she was not performing same or similar services for others during the same time frame. The firm noted in its response that the worker had requested Independent Contractor status and flexibility of her work schedule and the firm agreed.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. 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 firm's business.

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.