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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05ITE Instructors/Teachers	[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 his work status as an instructor to the firm's kid's Jiu Jitsu program in tax years 2016 and 2017. The firm's business is described as martial arts instruction to adults and children.

The firm's response was signed by the president. The firm's business is described as martial arts academy and school teaching children and adults. The worker's services were as a part-time instructor. The worker was originally a student of the firm and for approximately 7 years he trained in the martial art of Jiu Jitsu. The worker became a part-time instructor and was assigned classes to teach.

The firm and worker concur that the worker had volunteered to teach the kid's program as an assistant and later a volunteer instructor for 3 years before being offered a position to teach on a part-time basis. The worker required very little training or instructions as he was trained to lead the classes and to use this prior knowledge and work within the general parameters such as class times and general objectives. The firm responded that the worker determined the methods to teach the classes; the worker disagreed, stating that the firm had taught him how to perform the service. The schedule for the kids program was three classes each week. The firm stated any problems or complaints encountered in the class were handled by the worker and that parent/administrative issues were directed to the firm resolution. The worker stated that the clients went to the firm directly with any issues, or he would refer them to the firm's owners. The worker's services were rendered three days per week from from 5:30 pm to 6:30 pm at the firm's location. Both parties agree the worker was required to perform the services personally; any additional personnel were unpaid volunteers/ student members of the firm.

The firm provided the gym (with amenities), mats, crash pads, dodge balls, game equipment, waivers, and insurance. The worker furnished appropriate attire to teach the classes. The worker did not lease equipment, space, or a facility; but, did incur expenses for his membership fee to use the firm's gym and for his education there, as well as his commute from his full-time job. The firm paid the worker a salary/lump sum per month. The customers paid the firm. Both parties indicated the worker was not at risk for a financial loss in this work relationship and the firm established level of payment for services provided or products sold.

There were no benefits extended to the worker; although, the worker stated if he needed to miss a class the firm's owners would teach the class and worker would teach their class that they were scheduled to teach. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker was represented as an instructor.

The firm and worker provided a copy of the Independent Contractor Agreement with the services beginning August 1, 2016, which covered, but was not limited to the following: the worker would be teaching kids Brazilian Jiu Jitsu classes at the firm's place of business on days and at times mutually agreed to by the parties; the worker also may be required to perform other duties related to the services of the firm and the worker's skills and expertise, including administration of membership forms, marketing, responding to student or parent inquiries, and other duties as required by the firm; the worker was to be paid $XX/month; the worker was to abide by the firm's policies and procedures to the extent applicable to the duties of his position; as well as non-solicitation and non-competition for a period of two years.

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.

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.

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 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 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.

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.

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.

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 and that its contractual obligations were met. 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. For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of social security tax withheld by another employer.