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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05ITE Art Teacher	[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 art teacher in tax year 2018, for which she received Form 1099-MISC. In this capacity she wrote lesson plans, organized materials, and gave lessons to elementary school-aged children. The firm's business is described as providing alternative education for grades K-12.

The firm's response was signed by the firm's founder and director. The firm's business is tutoring children; the worker provided services as a tutor for art activities.

The worker stated instructions from the firm were primarily about schedules and budget. The job assignments came from the firm; however, the worker 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 schedule/routine of weekly hours was determined by enrollment and attendance. There were occasional staff meetings. The worker services were rendered at the firm's residence. The worker indicated she was required to perform the services personally; any additional personnel (the firm's family members) were hired and paid by the firm.

According to the firm there were no specific training or instructions given to this worker. The worker prepared and implemented her own tutoring and activities, and determined the methods by which she performed her tasks. Any problems or complaints encountered by the worker were handled by the worker. The worker's services were dependent on parents scheduling when the student would attend. The worker's services were performed at the firm's house. The worker was required to perform the services personally; there were no additional helpers or substitutes.

The worker responded that the firm provided the site location, furniture, and a materials budget; and, she furnished lesson samples and examples. The worker did not lease equipment, space, or a facility. Any expenses for materials were reimbursed. The firm paid the worker an hourly wage. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker firm established the level of payment for services provided.

The firm replied that the firm and worker each provided 50% of the art supplies. The firm acknowledged the worker did not lease equipment, space, or a facility, was paid an hourly wage, with the customers/home-schooling parents paying the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm responded that the worker was responsible for her losses and the worker established the level of payment for the services provided.

Both parties acknowledge that there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker performed services for the firm/center until the firm's director terminated the work arrangement.

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.

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.

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.

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.

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.