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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05PHC Groomer	[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 is seeking a determination of worker classification for services performed as a pet groomer for the firm from June 2019 until May 2020. The worker received a 1099-MISC from the firm for 2019 and a 1099-NEC from the firm for 2020. The worker feels that they were misclassified by the firm as an independent contractor because the firm gave the worker cleaning duties and the worker had set hours. The worker attached a copy of the written agreement between the parties.

The firm states that it offers pet grooming services. The worker was requested to provide pet grooming services for dogs only. The firm classified the worker as an independent contractor because the worker determined their own schedule and how many daily appointments to do, and the worker had keys to the firm's shop so they could come and go as they wished. The firm attached a copy of the contract between the parties.

The firm states that they did not provide any specific training to the worker. The worker received job assignments per customer instructions, which determined the methods by which assignments were performed. The worker was responsible for resolving problems with the customers. There were no reports required of the worker. The worker determined their own schedule and how to perform their job duties. The worker performed all job duties at the firm's shop premises. There were no meetings required of the worker, and the worker was not required to perform services personally. Helpers and substitutes were not applicable. The worker states that they were shown how to provide grooming services by the firm. The firm provided the worker with many notes on what tasks needed to be performed. The firm's owner determined how job tasks were performed and assumed responsibility for problem resolution. The worker provided the firm with a daily log of dogs groomed and prices. The worker would come to the shop's premises to work 45 minutes early, return phone calls and schedule appointments, groom dogs, answer the phone, and schedule appointments. The worker performed all services at the firm's shop. The worker was required to attend daily meetings and to perform services personally. The worker was not allowed to have help and the firm's owner was responsible for hiring all helpers needed.

The firm states that they provided grooming tables, dryers, shampoo, towels, tubs, water, electricity, and a garbage service. The worker provided all personal grooming equipment. The worker would pay the firm a small percentage of their pay for use of the space and supplies. There is no mention of a lease agreement between the parties in the contract provided by the firm or the worker. The worker was paid on a commission basis. Customers paid the firm for services provided. The firm did not carry worker's compensation insurance on the worker. The worker did not have any exposure to economic loss or financial risk. The worker established the level of payment for services provided. The worker states that the firm provided bathtubs, tables, drying and grooming supplies, conditioner, shampoo, water, and dryers. The worker provided clippers, scissors, and blades. The worker did not lease any space, facilities, or equipment. The worker's expenses included clippers, blades, and blade sharpening. The worker was paid on a piece work basis with no access to a drawing account. Customers paid the firm. The worker faced the possible financial risk of damage to their grooming equipment. The firm's owner established the level of payment for services provided.

The firm states that the only benefit offered was a choice of hours and days to work. The relationship between the parties could be terminated by either party without liability or penalty. The worker provided similar services to other firms and did not need approval from the firm. However, a non-compete clause exists in the agreement between the parties that prohibits the worker from performing similar services to other firms within a 20-mile radius during the work relationship and for a period of one year after termination of the relationship. The worker was not a member of a union. The worker was represented by the firm as an independent contractor groomer providing services at the firm's premises. The work relationship ended when the worker was reported to have stolen items from the firm and quit on the day of scheduled appointments. The firm attached a police report. The worker states that they did not perform similar services for other firms. The worker did not advertise their services to the public. The worker performed services under the firm's business name. The worker quit performing services for the firm due to checks being short and dogs being scheduled for grooming too closely together.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of dog grooming. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed by providing a log of dogs groomed and amounts paid, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the percentage rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.