Form **14430-A** (July 2013)	Department of the Treasury - Internal Revenue Service
	SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC Drivers & Vessel Control	☒ Employee ☐ Contractor

UILC	Third Party Communication:
	☒ 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

Information provided indicated the firm provides transportation services. The worker performed services in 2016 and 2017 transporting children to and from school, transporting dialysis patients to appointments for the firm. The firm issued Form 1099-MISC in 2017. The firm indicated the amount reported on the 2017 1099 was the amount earned for both tax years. The worker performed services on a part time basis. He worked from six-thirty to eight-thirty am and two to three-thirty in the pm. The firm indicated he works at his own business during down times. The firm provided a copy of the work agreement. It stated the person understands he is an independent contractor responsible for his own worker's compensation. It states the firm will hold the first week's pay. If the worker is late three times without prior notice would attract disciplinary action including outright dismissal. It states he would be responsible for his own taxes and a 1099 form would be issued. At the bottom, it has spaces for the 'employee' 'employer' signatures. Copies of the 2016-2017 payments logs were also provided. The firm indicated they provided the van. The worker was part time so he was paid on a weekly basis. The firm indicated he was given holiday bonuses also. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker quit.

The worker indicated he was paid by the hour. He agreed he drove the firm's van. Work assignments were given from the firm. Scheduled update meetings were required. He was required to perform his services personally. He was represented as an employee of the firm. The worker indicated the firm took over his route and recovered their van.

ANALYSIS

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.

Therefore, 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.

-The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions.
-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.
-Payment by the hour, week, or month generally points to an employer-employee relationship.
-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.

Analysis

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. All services were performed under the firm's business name, utilizing the firm's equipment. The fact he own his own business (not a transportation business), in this instance is irrelevant. The fact services are performed on a part time basis also does not make the individual an independent contractor. The firm determined the work schedule, and scheduled the clients to be serviced. The firm retained the right to discharge the worker. The services were an integral part of the firm's business.