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	[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 firm provides delivery services. As the owner of the firm, you began your career as an owner-operator providing services to a company that utilizes numerous owner-operators with multiple leases. You decided to add more semis of your own and leased those to the company. You engaged the worker, among others, to drive your semis. You did not withhold taxes from the worker's remuneration in 2017 and 2018.

Information from the parties supports that you relied upon the worker's prior training and experience to perform his services. Trips are dispatched by the company that you provide services for, and their company policy is that they are a non-forced dispatch. If someone declines a trip for any reason, the next driver on the list is called by you or by dispatch. The driver's only responsibility, once he accepted a trip, was to make sure he arrived by the appointed time and at the correct location while following DOT rules, and hours of service regulations. He determined the time to be at work and the time to leave, and when or where to take breaks.

You provided the truck and fuel. The worker was responsible for the $1,000 deductible for any damages he may have caused by his negligence, his commercial driver's license, and maintaining his DOT physical. He was responsible for any tolls or tickets incurred while making a delivery, and his own personal expenses, which include food, lodging, and clothing. The worker was also responsible for his own communication equipment. You reimbursed the worker for any minor repairs while on the road such as tail lights, turn signals, and truck washes. You paid the worker by the trip, based on the number of miles of the trip. You did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in your firm or a related business.

You did not make general benefits available to the worker. After 90 days, the worker received a one-time sign-on bonus. You did not prohibit the worker from providing similar services for others during the same time period. There was no evidence submitted showing the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

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, 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. If a firm has to make a worker "understand" or even if a worker "agreed to" being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker's status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you relied upon the worker's prior training and experience to perform his services. 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. It is only reasonable to assume that you were ultimately responsible for resolving any problems or complaints that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. The worker was not engaged in an independent enterprise, but rather the services performed by the worker as a truck driver were a necessary and integral part of your firm's delivery business. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although you did not make benefits available to the worker, the worker terminated the work relationship without incurring liability or penalty. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.