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 worker submitted a request for a determination of worker status in regard to services performed for the firm from January 2017 to April 2018 as a driver. The work done included picking up and dropping off clients to methadone clinics and various medical appointments, i.e. dentist, psychologist, surgery, etc. The firm issued the worker Form 1099-MISC for 2017. A copy of the 2018 tax reporting document was not provided for our review. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC as he does not own a business.

The firm's response states it is a logistics company that offers scheduling and dispatching services to companies and contractors who are engaged in the business of providing non-emergency medical transportation to individuals. The worker was engaged to provide non-emergency medical transportation directly to individuals by driving them to/from appointments that he elected, at his own discretion, to perform. The worker was classified as an independent contractor as the firm did not maintain control over whether, when, or how the worker performed transportation services. The worker was free to choose when and where he wanted to work and how he wanted to perform his transportation services. The firm did not create any restrictions. The worker's only restrictions were from government regulations and contracts. Services were performed under a written agreement. An attempt was made to obtain a copy of the written agreement from the firm; however, a copy was not provided as requested.

The firm stated it provided the worker specific training and/or instruction related to HIPPA laws, consumer sensitivity, defensive driving, and child safety. Work assignments were provided as requested by the worker, typically through email and text messages. The worker determined the methods by which assignments were performed in accordance with government regulations. The firm's dispatcher or manager was contact if problems or complaints arose and they were responsible for resolution. The firm required the worker to notify dispatch if a client did not show up or otherwise perform the transport as agreed. The worker elected which trips he wanted to perform, if any, and he rejected those he did not want to perform. Individuals were transported as determined by the worker. The worker could also elect to perform additional trips later in the day. There were no requirements regarding where he performed services except with respect to the trip locations where he picked up and dropped off individuals. There were no required meetings. The firm did not require the worker to personally perform services. The worker could hire his own driver; however, the government required approval of drivers. The worker would have been responsible for paying his own driver. The firm would have paid the worker's invoice for services performed by his driver. The worker stated the firm instructed him to be on time for pick-ups or to call clients in advance if running late. Work assignments consisted of an email list documenting scheduled pick-ups. Once the scheduled pick-ups were done, the dispatcher gave him additional pick-ups until he was off the clock. The firm determined the methods by which assignments were performed and assumed responsible for problem resolution as drivers never dealt directly with the firm's (contracted) customers. The firm required him to do a daily vehicle inspection and to report when an oil change or other service was needed. The worker performed services on a regular, recurring basis. The firm required him to attend mandatory meetings once or twice a year and to personally perform services. The firm ultimately hired substitutes or helpers.

The firm stated if workers do not want to provide or use their own vehicles, the firm offers, on a voluntary basis, a vehicle available for lease. The worker did lease equipment per the written agreement. The worker did not incur expenses in the performance of services for the firm as the firm fully reimbursed all expenses such as gas, tolls, and vehicle maintenance. Customers paid the firm. The firm paid the worker an hourly rate of pay; advances were provided upon request by the worker. The amount advanced could not exceed the amount that would be owed to the worker. The firm did carry workers' compensation insurance on the worker. The worker's economic loss or financial risk related to parking tickets or tolls incurred when using a leased vehicle for personal use. The government established the level of payment for the services provided. The worker stated he used the firm's vehicle; however, it really wasn't a valid lease. In June 2017, the firm sent a letter to its subcontractors stating its customer required (mandatory) workers' compensation insurance. Covered under the firm's policy, it cost drivers a fixed amount every two weeks. The firm was informing drivers it could avoid paying that fee if they registered their own company and provided an exemption form from the Department of Labor. The firm's accountant could set up their corporation and request their tax ID number at a discounted rate. If unable to pay, the firm would pay its accountant upfront and drivers could then repay the firm in two future payments every pay period. The firm established the level of payment for the services provided.

The firm stated it provided the benefit of bonuses to the worker. The work relationship could be terminated by either party without penalty. The worker did not perform similar services for others or advertise. The worker was free to perform similar services for others. The worker may have provided a business card to the customer being driven so they could later contact a dispatcher. The firm represented the worker as a driver to its customers. The work relationship ended when the worker voluntarily resigned. The worker stated services were performed under the firm's business

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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to a written 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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. In this case, the firm trained the worker to ensure he performed services in accordance with the government regulations established by the firm's customers. Furthermore, the driving services performed by the worker were integral to the firm’s business operation. The firm provided work assignments by virtue of the customers and clients served, required the worker to report on transactions, 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, 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. As acknowledged by the firm, the worker did not incur unreimbursed expenses as the firm paid for all expenses. Based on the hourly 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.