

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & Vessel Control	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

According to the information and documentation submitted, the firm's business is automotive towing. The worker performed services as a tow truck driver. The worker's duties driving the tow truck and towing vehicles. The firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with the tow jobs to its customer's locations. The firm provided the tow truck, fuel, and towing equipment necessary for the worker to perform his services. The worker provided the services under the firm's name. The firm's customers paid the firm for the towing services and the firm provided payment to the worker for his services. The worker terminated his work relationship with the firm.

Analysis

According to the information and documentation submitted by the firm and the worker concerning the work relationship, the firm provided the worker with his towing assignments. The worker personally performed his services at the firm's customer's locations according to a job schedule provided by the firm.

The firm provided the tow truck, fuel, and all necessary towing equipment and supplies for the worker to perform his services. The firm's customers paid the firm for the towing services and the firm controlled the payment to the worker for his services. The worker had no investment in facilities and did not have the opportunity for profit or loss. The worker was free to terminate his services without incurring any liabilities. The worker's services of towing vehicles were integral to the towing services provided by the firm.

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.

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. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.

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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.