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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC.171 Truck Driver	☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

[redacted]

The worker initiated the request for a determination of her work status as a driver in tax years 2014 and 2015. The firm's business is described as medical transportation; trips were assigned by the firm to pick up individuals at their residence and transport them to appointments. The worker there were no differences between the 2014 and 2015 tax years, except, that in 2014 she travelled to pick up the vehicle at the firm owner's house and in 2015 she kept the vehicle at her house and was responsible for gas and tolls.

The firm's response was signed by [redacted], owner. The firm's business is described as a broker for insurance companies. The firm helps to get drivers for transport of insurance members to their appointments. The worker performed services as a driver. The firm provided copies of the 2014 and 2015 Forms 1099-MISC issued to the worker.

According to the firm, the worker's training and instructions consisted of the worker being sent a link on wheelchair training. The worker was emailed a list of individuals to be picked up and she contacted them as to time/location. The worker determined the methods to use to perform her job. Any problems encountered by the worker were directed to the firm and the firm contacted the insurance company. The worker was required to keep a signature log with times of pick ups. The firm responded that the worker was required to perform the services personally.

The worker indicated that she was given training and instructions as to how to operate the wheelchair lift and fill out paperwork. The worker concurred that job assignments were sent via email and any problems or complaints she directed to the firm for resolution. The worker responded that the firm determined the methods by which she performed her services which were rendered based on scheduled appointments. She stated she was required to perform the services personally, with any additional personnel being hired and paid by the firm.

Both parties acknowledged the firm provided the van and that the worker did not lease equipment, space, or a facility. The firm stated the worker provided a cell phone, clothes, and a computer. The worker indicated she furnished fuel, ink/paper to print out log sheets, cell phone, and internet. The worker responded she was at risk for a financial loss in this work relationship if there were damages to the vehicle. The worker stated she was paid per trip and the firm defined the compensation paid to the worker as piecework and depending upon the trips done.

The firm and worker agreed that no benefits were extended to the worker, that either party could terminate the work relationship without incurring a liability or penalty, and the worker was not performing same or similar services for others during the same time frame. The worker stated there was a non-compete agreement; however, no copy was submitted.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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.

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.

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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor 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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

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.