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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC.188 Truck Driver	☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

[redacted]

The worker initiated the request for a determination of his work status as a truck driver delivering water to oil wells in tax years 2012 and 2013. The worker stated he did not own or lease the truck or pay any of the expenses for the truck or business. The firm’s business is described as transportation/trucking.

The firm’s response was signed by the vice president. The firm’s business is described as subcontracting for master service agreements in the oil fields leasing trucks and trailers. The worker performed services hauling water or sand into well sites.

Both parties acknowledged that the worker was not given specific training or instructions. The worker was required to report on the contract loads completed, as well as providing the firm with the fuel receipts and maintenance log. The firm responded that the worker was not required to provide the services personally; the worker could have another driver approved. The worker disagreed; he indicated he was not in a position to hire and pay for substitutes or helpers. The services were rendered at oil wells and the worker stated he was required to attend safety meetings.

The firm and worker concurred the firm provided truck and trailer. The firm indicated the worker provided his clothing and equipment as mandated in oil fields. The worker indicated he furnished nothing, he did not lease equipment, and did not incur expenses in the performance of the job; but, stated the firm provided the fuel, registration, insurance on truck, loads, etc. The firm indicated the worker was paid a commission; the worker responded he was paid an hourly wage. Both parties confirmed the customer paid the firm.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

The firm provided a copy of an Independent Contractor Agreement dated January 6, 2013 which addressed the following:
• Valid for 6 months
• Driver to be paid gross commission equivalent to 25% of the net invoice amount
• Company provided vehicle insurance while worker was operating company’s vehicle
• Company to provide the fuel card

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.

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.
If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

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 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.

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.