



IRS Reminds Businesses to Classify Workers Correctly

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The rash of natural disasters that have hit the United States in the last several months have caused many businesses to hire additional workers to help them meet increased demand for their goods or services. These businesses must make sure they treat their workers properly to make sure everyone can meet their tax obligations.

Most workers fall into two categories:

- I Independent contractors
- I Common-law employees

The main factor a business must use in determining how to classify its workers is the degree of control the business has over its worker. The more control the business has over a worker; the more likely it is that the worker is an employee rather than an independent contractor.

A business must base its determination as to whether a worker is an employee or an independent contractor on all facts and circumstances of its relationship with the worker. Businesses can use [Form SS-8](#), Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, to have the IRS make the determination.

It is critical that the business correctly determine whether the individuals providing services are employees or independent contractors. An employer must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. In addition, other tax issues, including the provision of certain employee benefits, depend upon the proper classification of workers.

A business generally does not have to withhold or pay any federal taxes on payments to independent contractors. However, independent contractors are subject to self-employment tax and should plan accordingly.

If a business incorrectly classifies a worker, the business could be subject to penalties.

There may be relief for employers who want to correct any errors they may have made by classifying an employee as an independent contractor.

[IRS Headliner 152](#), IRS Offers Tips on How to Correct Misclassification of Employees, contains additional information about correcting worker classification.

Also, additional information about worker classification and classification correction are in:

- [Publication 15-A](#), Employer's Supplemental Tax Guide
- [Publication 1779](#), Independent Contractor or Employee brochure.
- [Publication 1976](#), Independent Contractor or Employee? Section 530 Employment Tax Relief Requirements

Part I Behavioral Control

- 1 What specific training and/or instruction is the worker given by the firm? _____
- 2 How does the worker receive work assignments? _____
- 3 Who determines the methods by which the assignments are performed? _____
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? _____
- 5 What types of reports are required from the worker? Attach examples. _____
- 6 Describe the worker's daily routine (i.e., schedule, hours, etc.). _____
- 7 At what location(s) does the worker perform services (e.g., firm's premises, own shop or office, home, customer's location, etc.)? _____
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (e.g., sales meetings, monthly meetings, staff meetings, etc.). _____
- 9 Is the worker required to provide the services personally? Yes No
- 10 If substitutes or helpers are needed, who hires them? _____
- 11 If the worker hires the substitutes or helpers, is approval required? Yes No
If "Yes," by whom? _____
- 12 Who pays the substitutes or helpers? _____
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? Yes No
If "Yes," by whom? _____

Part II Financial Control

- 1 List the supplies, equipment, materials, and property provided by each party:
The firm _____
The worker _____
Other party _____
- 2 Does the worker lease equipment? Yes No
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) _____
- 3 What expenses are incurred by the worker in the performance of services for the firm? _____
- 4 Specify which, if any, expenses are reimbursed by:
The firm _____
Other party _____
- 5 Type of pay the worker receives: Salary Commission Hourly Wage Piece Work
 Lump Sum Other (specify) _____
If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount \$ _____.
- 6 Is the worker allowed a drawing account for advances? Yes No
If "Yes," how often? _____
Specify any restrictions. _____
- 7 Whom does the customer pay? Firm Worker
If worker, does the worker pay the total amount to the firm? Yes No If "No," explain. _____
- 8 Does the firm carry worker's compensation insurance on the worker? Yes No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (e.g., loss or damage of equipment, material, etc.)? _____

Part III Relationship of the Worker and Firm

- 1 List the benefits available to the worker (e.g., paid vacations, sick pay, pensions, bonuses). _____
- 2 Can the relationship be terminated by either party without incurring liability or penalty? Yes No
If "No," explain your answer. _____
- 3 Does the worker perform similar services for others? Yes No
If "Yes," is the worker required to get approval from the firm? Yes No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. _____
- 5 Is the worker a member of a union? Yes No
- 6 What type of advertising, if any, does the worker do (e.g., a business listing in a directory, business cards, etc.)? Provide copies, if applicable. _____
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? _____
- 8 What does the worker do with the finished product (e.g., return it to the firm, provide it to another party, or sell it)? _____
- 9 How does the firm represent the worker to its customers (e.g., employee, partner, representative, or contractor)? _____
- 10 If the worker no longer performs services for the firm, how did the relationship end? _____

Part IV For Service Providers or Salespersons—Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? _____
- 2 Who provides the worker with leads to prospective customers? _____
- 3 Describe any reporting requirements pertaining to the leads. _____
- 4 What terms and conditions of sale, if any, are required by the firm? _____
- 5 Are orders submitted to and subject to approval by the firm? Yes No
- 6 Who determines the worker's territory? _____
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? Yes No
If "Yes," whom did the worker pay? _____
If "Yes," how much did the worker pay? \$ _____
- 8 Where does the worker sell the product (e.g., in a home, retail establishment, etc.)? _____
- 9 List the product and/or services distributed by the worker (e.g., meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. _____
- 10 Does the worker sell life insurance full time? Yes No
- 11 Does the worker sell other types of insurance for the firm? Yes No
If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance. _____%
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation. _____%
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? Yes No
Describe the merchandise and state whether it is equipment installed on the customers' premises. _____

Part V Signature (see page 4)

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

Signature ► _____ Title ► _____ Date ► _____
(Type or print name below)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose

Firms and workers file Form SS-8 to request a determination of the status of a worker for purposes of Federal employment taxes and income tax withholding.

A Form SS-8 determination may be requested only in order to resolve Federal tax matters. If Form SS-8 is submitted for a tax year for which the statute of limitations on the tax return has expired, a determination letter will not be issued. The statute of limitations expires 3 years from the due date of the tax return or the date filed, whichever is later.

The IRS does not issue a determination letter for proposed transactions or on hypothetical situations. We may, however, issue an information letter when it is considered appropriate.

Definition

Firm. For the purposes of this form, the term "firm" means any individual, business enterprise, organization, state, or other entity for which a worker has performed services. The firm may or may not have paid the worker directly for these services. **If the firm was not responsible for payment for services, be sure to enter the name, address, and employer identification number of the payer on the first page of Form SS-8 below the identifying information for the firm and the worker.**

The SS-8 Determination Process

The IRS will acknowledge the receipt of your Form SS-8. Because there are usually two (or more) parties who could be affected by a determination of employment status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. The case will be assigned to a technician who will review the facts, apply the law, and render a decision. The technician may ask for additional information from the requestor, from other involved parties, or from third parties that could help clarify the work relationship before rendering a decision. The IRS will generally issue a formal determination to the firm or payer (if that is a different entity), and will send a copy to the worker. A determination letter applies only to a worker (or a class of workers) requesting it, and the decision is binding on the IRS. In certain cases, a formal determination will not be issued. Instead, an information letter may be issued. Although an information letter is advisory only and is not binding on the IRS, it may be used to assist the worker to fulfill his or her Federal tax obligations.

Neither the SS-8 determination process nor the review of any records in connection with the determination constitutes an examination (audit) of any Federal tax return. If the periods under consideration have previously been examined, the SS-8 determination process will not constitute a reexamination under IRS reopening procedures. Because this is not an examination of any Federal tax return, the appeal rights available in connection with an examination do not apply to an SS-8 determination. However, if you disagree with a determination and you have additional information concerning the work relationship that you believe was not previously considered, you may request that the determining office reconsider the determination.

Completing Form SS-8

Answer all questions as completely as possible. Attach additional sheets if you need more space. Provide information for all years the worker provided services for the firm. Determinations are based on the entire relationship between the firm and the worker.

Additional copies of this form may be obtained by calling 1-800-829-4933 or from the IRS website at www.irs.gov.

Fee

There is no fee for requesting an SS-8 determination letter.

Signature

Form SS-8 must be signed and dated by the taxpayer. A stamped signature will not be accepted.

The person who signs for a corporation must be an officer of the corporation who has personal knowledge of the facts. If the corporation is a member of an affiliated group filing a consolidated return, it must be signed by an officer of the common parent of the group.

The person signing for a trust, partnership, or limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Where To File

Send the completed Form SS-8 to the address listed below for the firm's location. However, for cases involving Federal agencies, send Form SS-8 to the Internal Revenue Service, Attn: CC:CORP:T:C, Ben Franklin Station, P.O. Box 7604, Washington, DC 20044.

Firm's location:

Send to:

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, American Samoa, Guam, Puerto Rico, U.S. Virgin Islands

Internal Revenue Service
SS-8 Determinations
P.O. Box 630
Stop 631
Holtsville, NY 11742-0630

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, all other locations not listed

Internal Revenue Service
SS-8 Determinations
40 Lakemont Road
Newport, VT 05855-1555

Instructions for Workers

If you are requesting a determination for more than one firm, complete a separate Form SS-8 for each firm.



Form SS-8 is not a claim for refund of social security and Medicare taxes or Federal income tax withholding.

If the IRS determines that you are an employee, you are responsible for filing an amended return for any corrections related to this decision. A determination that a worker is an employee does not necessarily reduce any current or prior tax liability. For more information, call 1-800-829-1040.

Time for filing a claim for refund. Generally, you must file your claim for a credit or refund within 3 years from the date your original return was filed or within 2 years from the date the tax was paid, whichever is later.

Filing Form SS-8 does not prevent the expiration of the time in which a claim for a refund must be filed. If you are concerned about a refund, and the statute of limitations for filing a claim for refund for the year(s) at issue has not yet expired, you should file **Form 1040X**, Amended U.S. Individual Income Tax Return, to protect your statute of limitations. File a separate Form 1040X for each year.

On the Form 1040X you file, do not complete lines 1 through 24 on the form. Write "Protective Claim" at the top of the form, sign and date it. In addition, you should enter the following statement in Part II, Explanation of Changes to Income, Deductions, and Credits: "Filed Form SS-8 with the Internal Revenue Service Office in (Holtsville, NY; Newport, VT; or Washington, DC; as appropriate). By filing this protective claim, I reserve the right to file a claim for any refund that may be due after a determination of my employment tax status has been completed."

Filing Form SS-8 does not alter the requirement to timely file an income tax return. Do not delay filing your tax return in anticipation of an answer to your SS-8 request. In addition, if applicable, do not delay in responding to a request for payment while waiting for a determination of your worker status.

Instructions for Firms

If a **worker** has requested a determination of his or her status while working for you, you will receive a request from the IRS to complete a Form SS-8. In cases of this type, the IRS usually gives each party an opportunity to present a statement of the facts because any decision will affect the employment tax status of the parties. Failure to respond to this request will not prevent the IRS from issuing a determination letter based on the information he or she has made available so that the worker may fulfill his or her Federal tax obligations. However, the information that you provide is extremely valuable in determining the status of the worker.

If **you** are requesting a determination for a particular class of worker, complete the form for **one** individual who is representative of the class of workers whose status is in question. If you want a written determination for more than one class of workers, complete a separate Form SS-8 for one worker from each class whose status is typical of that class. A written determination for any worker will apply to other workers of the same class if the facts are not materially different for these workers. Please provide a list of names and addresses of all workers potentially affected by this determination.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker under section 530 of the 1978 Revenue Act. However, this relief provision cannot be

considered in conjunction with a Form SS-8 determination because the determination does not constitute an examination of any tax return. For more information regarding section 530 of the 1978 Revenue Act and to determine if you qualify for relief under this section, you may visit the IRS website at www.irs.gov.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. This information will be used to determine the employment status of the worker(s) described on the form. Subtitle C, Employment Taxes, of the Internal Revenue Code imposes employment taxes on wages. Sections 3121(d), 3306(a), and 3401(c) and (d) and the related regulations define employee and employer for purposes of employment taxes imposed under Subtitle C. Section 6001 authorizes the IRS to request information needed to determine if a worker(s) or firm is subject to these taxes. Section 6109 requires you to provide your taxpayer identification number. Neither workers nor firms are required to request a status determination, but if you choose to do so, you must provide the information requested on this form. Failure to provide the requested information may prevent us from making a status determination. If any worker or the firm has requested a status determination and you are being asked to provide information for use in that determination, you are not required to provide the requested information. However, failure to provide such information will prevent the IRS from considering it in making the status determination. Providing false or fraudulent information may subject you to penalties. Routine uses of this information include providing it to the Department of Justice for use in civil and criminal litigation, to the Social Security Administration for the administration of social security programs, and to cities, states, and the District of Columbia for the administration of their tax laws. We may also disclose this information to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. We may provide this information to the affected worker(s) or the firm as part of the status determination process.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 22 hrs.; **Learning about the law or the form**, 47 min.; and **Preparing and sending the form to the IRS**, 1 hr., 11 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the tax form to this address. Instead, see **Where To File** on page 4.

