

The Bankler Report

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INTRODUCTION

IRS offers new settlement program for “employees” misclassified as “independent contractors”.

Background. Whether a worker is an independent contractor or employee is determined by whether the company he works for has the right to control and direct him regarding the job he is to do and how he is to do it. Under the common law rules (so-called because they originate from court cases rather than from the Internal Revenue Code), multiple factors are used to determine if an individual is a common law employee. The law provides retroactive and prospective relief from employment tax liability for employers who misclassified workers as independent contractors using the common law facts and circumstances standards. Relief was difficult to obtain and REQUIRED the taxpayer be under audit.

New voluntary compliance initiative. IRS has now created a program that allows for voluntary reclassification of workers as employees outside of the examination process. The IRS believes that this program will facilitate voluntary resolution of worker classification issues while achieving the benefits of increased tax compliance and certainty for all parties involved.

Eligibility. The voluntary classification settlement program (VCSP) is available to taxpayers who are currently treating their workers (or a class or group of workers) as independent contractors or other non-employees and want to prospectively treat the workers as employees. This program is open to businesses, tax-exempt organizations, and government entities.

To be eligible :

1. A taxpayer must have consistently treated the workers as non-employees;
2. A taxpayer must have filed all required Forms 1099 for the workers for the previous three years.
3. The taxpayer cannot currently be under audit by IRS, or currently under audit concerning the classification of the workers by the Department of Labor (DOL) or by a state government agency. A taxpayer that was previously audited by IRS or DOL about the classification of the workers will only be eligible if it has complied with the results of that audit.

Terms of the offer. A taxpayer who applies for and is accepted into the VCSP will agree to prospectively treat the class of workers as employees for future tax periods and in exchange:

- A. Will pay 10% of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of Code Sec. 3509;
- B. Will not be liable for any interest and penalties on the liability;
- C. Will not be subject to an employment tax audit for the worker classification of the workers for prior years; and
- D. Will agree to extend the period of limitations on assessment of employment taxes for three years.

Application process. Taxpayers will have to apply on Form 8952 for participation in the VCSP. The Instructions provide that the form should be filed at least 60 days before the date a service recipient wants to begin treating the class or classes of workers as employees. IRS will contact the authorized representative to complete the process after verifying the taxpayer's eligibility. IRS retains discretion as to whether to accept a VCSP application. Those who are accepted will enter into a closing agreement, finalize the terms of the VCSP, and make full payment of any amount due under the closing agreement.

Should you wish further information, please contact us.

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