

CLIENT ADVISORY**April 2013****IRS Eases Qualifications for Employers to Reclassify Independent Workers as Employees**

The Internal Revenue Service (IRS) has recently announced expansion of its Voluntary Classification Settlement Program (VCSP). This program, developed by the IRS, allows employers to voluntarily reclassify independent contractors as employees for future tax periods. The program's expansion arises from the relaxation of certain qualification requirements so as to incentivize more employers to properly classify employees.

The VCSP provides partial relief from federal payroll taxes for eligible employers who have treated any workers as independent contractors or other nonemployees and who now wish to treat them as employees.

In exchange for agreeing to reclassify these workers, the participating employer will not be subject to an employment tax audit with respect to the worker classification for prior years. The employer will be required to pay only 10% of the employment tax liability, calculated under statutorily reduced rates that would have been due for the most recent tax year if those workers had been classified as employees. No interest or penalties are imposed.

Since its initial launch in September, 2011, the program has been used by nearly 1,000 employers.

Relaxed Qualifications

Under the revised program, described in IRS Announcement 2012-45, employers who are under an IRS audit, other than an employment tax audit, can still qualify for the VCSP. Previously, any federal or state audit precluded participation. In addition, taxpayers accepted into the program will now only be subject to the usual three (3) year, and no longer to a six (6)-year, audit of their payroll taxes.

Until recently, employers were barred from the program if they failed to file the required Forms 1099 for the past three (3) years with respect to the workers they are seeking to reclassify. Pursuant to IRS Announcement 2012-46, however, the IRS will waive this additional eligibility requirement until June 30, 2013.

Filing Requirement

Employers who wish to participate in this relief program must file IRS Form 8952, Application For Voluntary Classification Settlement Program, at least sixty (60) days prior to the date the taxpayer wants to

begin treating the applicable workers as employees. Eligible applicants will be asked to enter into a VCSP closing agreement with the IRS. Payment of any amounts due will be made at the time the signed agreement is returned by the employer.

All business employers with concerns about their current worker classifications should consider taking advantage of this program, as worker classification is currently an area of increased scrutiny. Given the favorable settlement provisions offered by this program, now is the time to make these corrections. Because reclassification can have ramifications with respect to other areas of the law aside from tax, taxpayers are strongly advised to consult with counsel in exploring their potential participation in the program.

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