



Client Alert

September 22, 2011

Worker Misclassification

The Internal Revenue Service has announced a new program to help employers resolve misclassification of employees. The program is voluntary and is designed to be simple and involve a low cost to the employer.

To be eligible, an employer:

- Must have consistently treated workers as non-employees.
- Must have filed required Forms 1099 for the misclassified workers for the past three years.
- Must not be currently under audit by any federal or state agency concerning classification of the workers in question.

To participate in the program, the employer files Internal Revenue Service Form 8952. The employer should file the form at least 60 days before changing its classification of the workers in question.

If an employer's application is accepted, it must pay an amount approximating just over one percent of the wages paid to the reclassified workers during the past year. The employer will not owe interest or penalties and the Internal Revenue Service will not audit the employer's payroll tax returns related to the workers in question for earlier years. However, the employer will, for the first three years of participating in the program, be subject to a six-year statute of limitations on payroll taxes, rather than the usual three-year statute of limitations.

IRS Circular 230 Notice

Internal Revenue Service regulations state that only a formal opinion that meets specific requirements can be used to avoid tax penalties. Any tax advice in this communication is not intended or written to be used, and cannot be used by a taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer, because it does not meet the requirements of a formal opinion.

For more information, please contact an attorney in the Armstrong Teasdale Tax Department:

Robert L. Jackson / 314.342.8076
rjackson@armstrongteasdale.com

John E. Dooling, Jr. / 314.259.4743
jdooling@armstrongteasdale.com

Daniel J. Cooper / 314.259.4715
dcooper@armstrongteasdale.com

Jonathan W. Igoe / 314.342.8019
jjgoe@armstrongteasdale.com

Guy Schmitz / 314.259.4738
gschmitz@armstrongteasdale.com

Joseph D. Demko / 314.342.4143
jdemko@armstrongteasdale.com

Scott E. Hunt / 314.342.4145
shunt@armstrongteasdale.com

Christopher J. Anderson / 816.472.3117
canderson@armstrongteasdale.com

Larry M. Sewell / 314.342.8020
lsewell@armstrongteasdale.com

Jill M. Palmquist / 314.552.6635
jpalmquist@armstrongteasdale.com

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