

An IRS Discount. . . 90% Off Payroll Taxes; 100% Off Interest and Penalties

By Jewell Lim Esposito on September 23, 2011

A devotee of Groupon and Living Social, I am a tax/ERISA geek at heart. . . and this offer from the IRS is the best discount that I have seen in a verrrry long time. . .



Just two days ago, the IRS unveiled a hard-to-resist deal that allows a company to dodge all but 10 percent of past employment tax liability, all the interest, and all penalties that it would have owed for prior years if the company had treated individuals as "independent contractors," but where the IRS nonetheless had mandated a reclassification as "employees." See [2011 Voluntary Amnesty Employee Classification.pdf](#).

The IRS refers to this amnesty-type program as a "Fresh Start," with the IRS Commissioner, Doug Shulman, confirming that it is a "part of a wider effort" to give a company certainty under the federal tax law for previous 1099ers. To apply for the tax relief, a company:

1. must have treated the workers as nonemployees in the past;
2. filed all required Forms 1099 for the previous three years; and
3. not be under audit by the IRS, DOL, or state agency with respect to these workers.

In exchange, the company *avoids* the significant dollar amounts above by paying the most minimal of sanctions. It also *saves* itself an employment tax audit of these workers for prior years. Prospectively, the company will voluntarily agree to classify these workers as employees (and thus issue W-2s) for future payroll tax periods.

Companies should look long and hard at this new IRS settlement program, as the DOL -- in coordination with various states that include Illinois, Maryland, Massachusetts, Minnesota, Missouri, Montana, and New York -- are increasing their enforcement activity on this very same issue with

respect to wage and hour laws. In fact, [Robin Shea](#), my colleague, cautions regarding pure employment aspects in our sister [Employment and Labor Insider](#) blog.

From a federal tax aspect, however, if I controlled the credit card of a company struggling with worker classification compliance, I know that I would be clicking the "BUY" button right about now.

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