

September 26, 2011

New Worker Classification Procedures Affect IRS/DOL Compliance and Enforcement Efforts

On September 21, 2011, the Internal Revenue Service (IRS) introduced its new [Voluntary Classification Settlement Program](#) (VCSP), which provides meaningful tax relief for employers that agree to prospectively reclassify as employees workers previously treated as independent contractors. Unlike the current [Classification Settlement Program](#) (CSP), the VCSP is not limited to taxpayers under IRS examination. Rather, the VCSP allows employers to voluntarily reclassify workers as employees, without going through the normal IRS administrative correction procedure and with substantially limited federal tax liability for past non-employee treatment.

To participate in the VCSP, an employer must:

- Meet certain eligibility requirements, viz., the employer: (1) must have consistently treated its workers (or a class or group of workers) as independent contractors or otherwise as non-employees, and must have filed all required Forms 1099 for the previous three years; (2) cannot currently be under audit by the IRS (the existing CSP remains in effect in these circumstances), or under audit concerning the classification of the workers by the Department of Labor (DOL) or a state agency; and (3) if previously audited by the IRS or DOL regarding worker classification, must have complied with the results of the audit;
- Apply to participate in VCSP on new [Form 8952](#), which is to be filed with the IRS at least 60 days before the employer begins treating the affected workers as employees; and
- Agree to: (1) prospectively treat the class of misclassified workers as employees for future tax periods; and (2) extend the period of limitations on assessment of employment taxes for three years after each of the three calendar years beginning after the date on which it agrees, in the VCSP agreement, to begin treating workers as employees.

If the IRS accepts the employer's VCSP application, the employer will enter into a closing agreement and pay 10 percent of the employment tax liability that may have been otherwise due on compensation paid to the workers for the most recent tax year. The employer will not be liable for any interest or penalty, or subject to IRS employment tax audits with respect to the classification of the affected workers for prior years. Further details are provided in the [Form 8952 instructions](#) and in [FAQs](#) posted by the IRS.

Earlier in the week, on September 19, IRS and DOL signed a memorandum of understanding to share information and other materials as part of each agency's ongoing effort to address worker misclassifications. It is contemplated that DOL will refer some cases to the IRS for further investigation. The IRS is not at this time launching any new worker classification audit initiatives.

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If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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