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Tax Alert: The IRS Announces New Voluntary Worker Classification Settlement Program

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On September 21, 2011 the IRS announced a new program to permit taxpayers to voluntarily reclassify workers as employees rather than independent contractors for employment tax purposes with minimal tax consequences for prior years. The new program is called the Voluntary Classification Settlement Program (“VCSP”) and permits employers to make the change with minimal federal tax consequences. To be eligible, an applicant must meet the following criteria:

- Consistently have treated the workers in the past as non-employees.
- Have filed all required Forms 1099 for the workers for the previous 3 years.
- Not currently be under audit or investigation by the IRS, the Department of Labor or any State agency concerning the classification of these workers.

In exchange for prospectively treating the workers as employees for future tax periods, the taxpayer will only have to pay an amount equal to 10% of the employment taxes that may have been due related to compensation paid to the workers for the most recent tax year. This typically equals just over 1% of compensation. No interest or penalties will be due on the liability and the taxpayer will not be subject to an employment tax audit with respect to the worker classification issue for prior years. Taxpayers participating in the VCSP must agree to extend the period of limitations on assessment of employment

taxes for 3 years for the first, second and third calendar years beginning after the date on which the taxpayer has agreed to begin treating the workers as employees.

Before participating in the program other issues need to be considered including, without limitation employee benefits, retirement plans, wage and hour and state tax considerations.

You should consult a qualified professional with respect to these issues.

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