



Alert

Employee Benefits & Executive Compensation
Client Service Group

To: Our Clients and Friends

September 30, 2011

IRS Establishes a Voluntary Classification Settlement Program

The Internal Revenue Service (“IRS”) recently announced a new settlement program for employers with misclassified workers. Under the Voluntary Classification Settlement Program (“VCSP”), employers can get a significant reduction in their federal employment tax liability associated with past nonemployment treatment by agreeing to properly classify their workers for future tax periods. This announcement comes on the heels of recent announcements that the IRS, Department of Labor (“DOL”) and various state agencies are collaborating on examining worker misclassification issues.

Employer Eligibility

The VCSP is available to employers who want to voluntarily change the prospective classification of their misclassified workers from independent contractors (or other nonemployee status) to employees. To be eligible, the employer must have consistently treated the workers as nonemployees and for the three previous three years filed all required Forms 1099 for such workers. Further, the employer cannot be under audit by the IRS or by the DOL or a state government agency concerning the classification of the workers. An employer who has been previously audited by the IRS or DOL concerning the classification of workers is eligible for the VCSP only if it has complied with the results of that audit.

Scope of Relief

In exchange for agreeing to prospectively treat the class of workers as employees for future tax periods, the employer will pay only 10% of the employment tax liability that would otherwise have been due on the compensation paid to the workers for the most recent tax year, but determined under the reduced rates of Section 3509 of the Internal Revenue Code. Additionally, the employer will not be liable for any interest and penalties and will not be subject to an employment tax audit with respect to the classification of such workers for prior years. However, the employer must agree to extend the period of limitations on assessment of employment taxes for three years for the first, second and third

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calendar years beginning after the date on which the employer has agreed under the VCSP closing agreement to begin treating the workers as employees.

Program Participation

Eligible employers who wish to participate in the VCSP must submit an application, which should include the name of a contact or an authorized representative with a valid Form 2848 (Power of Attorney), to the IRS. The IRS retains discretion whether to accept an employer's application for the VCSP. An employer whose application is accepted must enter into a closing agreement with the IRS and simultaneously make full and complete payment of any amount due under the closing agreement.

Overall, the VCSP provides employers with an attractive avenue to come into tax compliance and obtain closure with respect to any worker misclassification. Note however, that the VCSP does not address or provide relief for worker misclassification as it relates to the employer's employee benefit plans and there's no guarantee that the IRS will accept an employer's application to the program.

Information about the VCSP is available on the [IRS website](#).

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The following articles on [benefitsbryancave.com](#) may also be of interest to you:

- [Is Prime +1% a Reasonable Interest Rate for Qualified Plan Loans](#)
- [IRS Treatment of Employer-Provided Cell Phones and Employer Reimbursement of Personal Cell Phone Use](#)
- [DOL New Electronic Delivery Guidance: The Good, The Bad, and the Not So Bad](#)

If you have any questions regarding anything discussed in this Alert, the attorneys and other professionals of the [Employee Benefits and Executive Compensation](#) group of Bryan Cave LLP are available to answer your questions.

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