

EOTS NewsFlash

Exempt Organizations Tax Services

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New IRS program presents an opportunity to resolve worker classification issues; IRS and DOL agree to coordinate on misclassification compliance and education

The proper classification of workers for federal tax purposes has been a recurring issue between institutions and the IRS for some time. During audits, the IRS generally has favored classifying individuals as employees rather than as independent contractors.

In order to enable employers to resolve past worker classification issues and achieve certainty under the tax law, the IRS just announced (Announcement 2011-64) a new Voluntary Classification Settlement Program (“VCSP”) that permits eligible employers to reclassify certain nonemployees and independent contractors as employees for federal employment tax purposes and simultaneously obtain relief in the form of reduced tax liabilities and protection from interest, penalties, and audits.

Yesterday’s announcement of the VCSP, which is part of the IRS’s larger “Fresh Start” initiative, comes just two days after IRS Commissioner Doug Shulman and Secretary of Labor Hilda Solis signed a memorandum of understanding aimed at improving the agencies’ coordination on employee misclassification compliance and education.

An IRS news release accompanying the announcement explains that the VCSP is available to tax-exempt organizations that currently erroneously treat their workers or a class or group of workers as nonemployees or independent contractors, and now want to correctly treat these workers as employees. Eligible employers must apply for the program by filing Form 8952, Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees.

According to the IRS, employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first three years under the program, be subject to a special six-year statute of limitations, rather than the usual three years that generally applies to payroll taxes.

To be eligible, an employer must (1) have consistently treated the workers as non-employees; (2) have filed all required Forms 1099 for the workers for the previous three years; and (3) not be currently under audit by the IRS, the Department of Labor, or by a state government agency.

Related links:

- Announcement 2011-64 ([Link](#))
- IRS news release regarding Announcement 2011-64 ([Link](#))
- Voluntary Classification Settlement Program (VCSP) FAQ ([Link](#))
- Form 8952 ([Link](#))
- Instructions for Form 8952 ([Link](#))
- Department of Labor news release regarding the recently-signed memorandum of understanding with the IRS ([Link](#))

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