

IRS NOT SHARING VCSP APPLICANT DATA WITH STATES

Although the IRS can and does share taxpayer-specific worker reclassification information with more than 30 states under memoranda of understanding on questionable employment tax practices, an official said November 17 that the Service has informed states that it will not share taxpayer information related to the voluntary classification settlement program (VCSP). The IRS had previously given assurances that VCSP information wouldn't be disclosed to the Labor Department.

"There is no connection whatsoever between the new [IRS/Labor MOU] and the new voluntary classification settlement program," said Ligeia Donis, assistant branch 1 chief (employment tax) in the IRS Tax-Exempt and Government Entities Division. "Under either the VCSP or the MOU, the IRS will not be sharing any information about the VCSP applicants with the Department of Labor. And there's been a policy decision made that no information from the VCSP will be shared with state agencies either." Donis spoke at the annual Philadelphia Tax Conference.

Introduced September 21, the VCSP allows small businesses to reclassify workers as employees while paying minimal back taxes and avoiding interest and penalties. Donis said that at last count, the IRS had received 127 applications for the VCSP, although no closing agreements have yet been signed. She added that Minnesota created a settlement program similar to the VCSP and that other states may be considering launching their own programs. (For prior coverage of the VCSP, see *Tax Notes*, Oct. 31, 2011, p. 573, *Doc 2011-22337*, or *2011 TNT 206-7*.)

David R. Fuller of Morgan, Lewis & Bockius LLP said the VCSP is generally a bargain for taxpayers. In

his example, an employer with 60 misclassified workers earning \$50,000 annually faces a \$4.8 million liability exposure over a four-year period. That employer can come into the VCSP, reclassify the workers as employees, and pay a mere \$32,000, he said.

Fuller said he has noticed an increase in the use of Forms SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding." An adverse Form SS-8 determination can lead to an IRS audit, but Donis said the IRS hasn't increased its focus on worker classification from an audit perspective.

"Audit coverage has remained pretty consistent for the last three years," Donis said, adding that the IRS isn't targeting any particular industry.

Employer-Provided Tablets

Donis confirmed that tablet devices such as iPads are considered "similar telecommunications equipment" under Notice 2011-72, which states that the IRS will not treat cellphones as listed property under section 274(d). The value of an employee's use of a cellphone or similar telecommunications equipment for reasons related to the employer's trade or business is excluded from gross income as a de minimis fringe benefit. (For prior coverage, see *Tax Notes*, Oct. 31, 2011, p. 574, *Doc 2011-22327*, or *2011 TNT 206-8*. For Notice 2011-72, 2011-38 IRB 407, see *Doc 2011-19552* or *2011 TNT 179-8*.)

"We do not anticipate issuing any additional guidance or clarification at this time," Donis said. ■

— Amy S. Elliott