



Robert W. Wood

THE TAX LAWYER

Dec. 13 2011 — 6:16 am

Don't Send Money For Worker Status Amnesty!



Image via coastalrides.com

Don't Send Money! That's a strange admonition from the IRS. Yet that's just what they are saying to employers seeking the limited amnesty for misclassifying independent contractors. You'll pay later, not when applying, according to this [note on the IRS website](#).

The worker status deal known as the IRS Voluntary Classification Settlement Program ([VCSP](#)) is worth a look if you have workers you treat as independent contractors. See [IRS Unveils Big Relief Program For Worker Status](#).

To be eligible, you must:

1. Have consistently treated the workers as independent contractors;
2. Have filed all required [Forms 1099](#) for the workers for the previous three years;
3. Not be under IRS [audit](#);
4. Not be under audit by the Department of Labor (DOL) or a state concerning worker classification; and
5. If you were previously audited by the IRS or DOL over worker

classification, you must have complied with the results of that audit.

If the IRS accepts you, you pay just 10% of the employment tax liability that would have been due on what you paid your workers for the most recent year, but determined under the reduced rates of tax code [Section 3509\(a\)](#). To see how this payment is computed, see [VCSP FAQ 16](#). See also Instructions to [Form 8952](#).

There are no interest charges or penalties, and the IRS won't audit you for these workers' payroll taxes for prior years. You must switch them to employee status for the future and agree to a special six-year [statute of limitations](#). You'll sign a closing agreement with the IRS, and **that's** when you'll pay.

More FAQs. The IRS has issued more frequently-asked questions (FAQs) on the VCSP covering the following:

If the IRS rejects your application it will not automatically trigger a federal audit. See [VCSP FAQ 21](#).

The VCSP concerns future years only. When you sign a VCSP closing agreement you are **not** admitting liability or wrongdoing for past periods. See [VCSP FAQ 22](#).

A taxpayer can't participate in the VCSP if its parent or subsidiary or another member of its consolidated group is under IRS audit. See [VCSP FAQ 23](#).

One of the threshold qualifications for the VCSP is filing Forms 1099 for the previous three years for affected workers. What if you file late? The IRS says a taxpayer will be eligible for the VCSP if it files the required Forms 1099 within six months of their due date (including extensions), assuming the other eligibility requirements are met. See [VCSP FAQ 20](#).

The IRS won't share information about VCSP participants with DOL or state agencies. See [IRS Won't Tell States Worker Status Amnesty Details](#) and [VCSP FAQ 18-19](#). A worker's filing of [Form SS-8](#), Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, is not an audit and won't bar the taxpayer from participating in the VCSP. See [VCSP FAQ 17](#).

The updated list of VCSP FAQs can be viewed on the IRS website [here](#).

For more, see:

[IRS Won't Tell States Worker Status Amnesty Details](#)

[States Start Conforming To IRS Independent Contractor Amnesty](#)

[Will IRS Independent Contractor Amnesty Cover States Too?](#)

[Is Failing To Issue IRS Forms 1099 Criminal?](#)

[California's Tough New Independent Contractor Law](#)

[Is IRS Making Independent Contractor Treatment Even Harder?](#)

[1099 or W-2?](#)

[Miranda-Like Warnings To Independent Contractors?](#)

[IRS Narrows Independent Contractor Relief](#)

[Are Lawyers Independent Contractors Or Employees?](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*