



## IRS Expands Independent Contractor Amnesty

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**By Robert W. Wood, Esq.**

[Wood LLP](#), San Francisco, CA

Every company with employees and independent contractors knows the IRS and other agencies can reclassify independent contractors. The IRS prefers employees. After all, IRS statistics show that contractors don't always pay their taxes. The IRS gets taxes quicker and more reliably via withholding. What's more, withholding includes payroll taxes, while self-employment tax—which independent contractors are **supposed** to pay—is notoriously under-collected.

Yet determining who is truly an independent contractor is not easy. The IRS considers 20 factors, but all facts are relevant. What if you fear the IRS and know you are at risk? Back taxes and penalties can cripple a business and involve personal liability too. That's why some companies take IRS amnesty. See Wood, "IRS Unveils Big Relief Program For Worker Status," *Forbes.com* (9/21/11).

The IRS Voluntary Classification Settlement Program (VCSP) involves **voluntarily** converting your contractors to employees for the future. So far nearly 1,000 employers have done it. See IRS IR-2013-23 . Now, the IRS has expanded this program.

Now, even employers under IRS audit can qualify as long as the audit isn't *specifically* over employment taxes. Plus, the program no longer triggers a special six-year statute of limitations. The normal three year statute applies. These and other changes to the program are described in Announcement 2012-45 and in questions and answers.

Normally, employers are barred if they failed to file Forms 1099 for the workers they want to reclassify. See Wood, "Is Failing To Issue IRS Forms 1099 Criminal?" *Forbes.com* (9/23/11). However, until June 30, 2013, the IRS is waiving this requirement. Details on this temporary change are in Announcement 2012-46. Employers applying for the

temporary relief for those who failed to file Forms 1099 pay a slightly higher amount than other participants plus some penalties. In addition, they must file any delinquent Forms 1099 for the workers they are seeking to reclassify.

To be eligible for the VCSP, an employer must:

- Currently be treating the workers as independent contractors;
- Consistently have treated them as such in the past, including filing Forms 1099 (see Wood, "Is Failing To Issue IRS Forms 1099 Criminal?" *Forbes.com* website (9/23/11));
- Not currently be under IRS audit on payroll tax issues;
- Not be under audit by the Department of Labor or state agencies for the
- classification of these workers; and
- Not be contesting the classification of the workers in court.

Employers apply by filing Form 8952, at least 60 days before they want to start treating workers as employees. Employers in the program generally pay just over 1% of the wages paid to the reclassified workers for the past year. There are no penalties and no interest, and employers will not be audited on payroll taxes related to these workers for prior years.

*For more information, in the Tax Management Portfolios, see Marmoll, 391 T.M., Employment Status - Employee vs. Independent Contractor, and in Tax Practice Series, see ¶15430, Employees and Independent Contractors.*

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