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IRS Won't Tell States Worker Status Amnesty Details



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When the IRS announced a new amnesty program—this time for businesses who misclassify workers as “independent contractors” I got excited. See [IRS Unveils Big Relief Program For Worker Status](#). After all, millions of dollars and liability can be at stake, and the IRS program can be a darned good deal for some.

But then I started thinking of the myriad ways that worker status disputes can pyramid or, to mix metaphors, can be like dominoes falling one after another. See [Will IRS Independent Contractor Amnesty Cover States Too?](#) Consider the

IRS, the states, the Department of Labor, state departments of industrial relations, workers compensation, unemployment insurance, and private party lawsuits over things like accidents workers cause. The list is long, and like osmosis in liquid (another metaphor), once the mix starts, you can't undo it.

So it was a nice piece of news that the IRS says it [isn't sharing the data](#) on who is participating in the IRS Voluntary Classification Settlement Program ([VCSP](#)) with the states. Sure, the IRS and the states are often

crowding about their now seamless [information sharing](#) and cooperation. And it's also true that some states are doing their own rendition of the IRS program. See [States Start Conforming To IRS Independent Contractor Amnesty](#).

But if a business is participating in the IRS program and is not in a state (or not operating in a state) that has its **own** program, the IRS is staying mum. In fact, the IRS is staying mum to the U.S. Department of Labor too. See [IRS Not Sharing VCSP Applicant Data With States](#). The IRS has presumably figured that it would undermine its amnesty efforts to share the information. That's good news.

Yet so far the numbers of participants hardly seems impressive. The [VCSP](#) was introduced on September 21, 2011. So far, the IRS says it has received [127 applications](#) (as of November 18, 2011). That's a puzzle, since I think the program can be a bargain.

Why? Only a pittance of a payment is required and there is guaranteed protection (via a closing agreement with the IRS) for the past. See [IRS Unveils Big Relief Program For Worker Status](#). Others seem to agree, including David Fuller of Morgan, Lewis & Bockius, who described the VCSP as generally a bargain. See [IRS Not Sharing VCSP Applicant Data With States](#).

Interestingly, the IRS says that it is seeing an uptick in IRS [Form SS-8](#) submissions. These are the forms that allow any worker or any employer to ask the IRS to rule whether a worker is an independent contractor or employee. But remember, the old adage, "Don't ask the question if you can't stand the answer."

Most Forms SS-8—about 90 percent—are submitted by workers. And most forms produce an IRS ruling that the worker is an employee. In fact, in one recent year, 72 percent of Form SS-8 requests the IRS received produced rulings saying: "employee." Twenty five percent were closed without ruling, and only 3 percent were ruled independent contractors! Form SS-8 and its instructions can be viewed [here](#).

For more, see:

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

[Even Consulates Have Independent Contractor Problems!](#)

[1099 or W-2?](#)

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

[IRS Narrows Independent Contractor Relief](#)

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

[How Not to Get Sued by Your Independent Contractors](#)

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