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Will IRS Independent Contractor Amnesty Cover States Too?

As noted [here](#), the IRS has a new amnesty program to convert independent contractors to employees.

[Announcement 2011-64](#) unveils the Voluntary Classification Settlement Program—VCSP—allowing you to **prospectively** reclassify independent contractors as employees.

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 currently be under audit by the IRS;
4. Not currently be under audit by the Department of Labor or a state government agency concerning worker classification; and



5. If you were previously audited by the IRS or the Department of Labor concerning the classification of the workers, you will only be eligible if you complied with the results of that audit.

Once you're accepted, you will pay the IRS just over 1% of the wages paid to the reclassified workers for the past year. That's it, no penalties, and no interest, and you're even protected from IRS liabilities for the past! If you have a weak case for contractor treatment, that may be a good deal.

Section 530 and More

Not so fast. Of all the variables to consider, employers feeling they have a virtual lock on [Section 530 relief](#) may be *least* likely to sign up. After all, Section 530 relief allows them to avoid liability for their past misclassification and to continue it! See [IRS Narrows Independent Contractor Relief](#).

Another significant issue can be the effects of state law. Although the IRS issues a closing agreement for the past, it's not yet clear if the states will conform. Could your state view participation in the IRS program as an admission for the past?

Another concern is how your workers *themselves* may react. You might want to make sure they have no objection to being reclassified from independent contractors to employees. But with their new employee status, some workers might consider whether they have a claim against you (for benefits, etc.) for the past. See [Ten Consequences of Reclassifying Independent Contractors as Employees](#).

There also could be tort and agency liabilities to consider. Most employers will reclassify their workers for *all* purposes not merely with the IRS. They will begin paying unemployment insurance, workers' compensation premiums and more. Liability issues could muddy the analysis.

Example: Suppose your "independent contractor" driver was in an accident and a lawsuit is brewing. If he's an independent contractor, he is liable but you are not. But if he's your employee you have liability too. Reclassifying the driver prospectively may be protected

from the IRS by the IRS closing agreement. But the state law liability issue may be worrisome. Could a reclassification be like erecting a fence around a swimming pool after a drowning accident?

The [IRS program](#) can still be a **very good deal** for some. But like most things with the IRS, you need to examine the whole picture before deciding.

For more, see:

[U.S. and local governments crack down on employers who pay workers as contractors](#)

[Price of Reclassifying Workers](#)

[IRS: Independent Contractor \(Self-Employed\) or Employee?](#)

[Ten More Consequences of Reclassifying Independent Contractors as Employees](#)

[Employers Who Violate Tax Law May Go To Jail](#)

[IRS, DOL And States Mount Independent Contractor Attack](#)

[IRS Nightmare: What Employment Taxes?](#)

[Independent Contractor or Employee? The 100-Year War](#)

[Some Control Won't Convert Independent Contractors To Employees](#)

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