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Internal Revenue Manual 4.23.5.3.3.7 (11-22-2017)

Other Reasonable Basis

1. A taxpayer that fails to meet any of the three "safe havens" may still be entitled to relief if it can demonstrate that it relied on some other reasonable basis for not treating a worker as an employee. The legislative history indicates that reasonable basis should be construed liberally in favor of the taxpayer. H.R. Rep. No. 95-1748 (1978).
2. Reliance on an attorney or accountant may constitute a reasonable basis. The taxpayer need not independently investigate the credentials of the attorney or accountant to determine whether such advisor has any specialized experience in the employment tax area. However, the taxpayer should establish at a minimum, that it reasonably believed the attorney or accountant to be familiar with taxpayer's tax issues and that the advice was based on sufficient relevant facts furnished by the taxpayer to the adviser. If other evidence clearly shows that the adviser was not qualified, the mere holding of a law or accounting license would not make the reliance on the advice of the attorney or accountant reasonable. Advice could not have been relied upon unless it had been furnished at the time the employment decisions were being made for the periods in issue. See *In re Compass Marine Corporation*, 146 B.R. 138 (Bkrpcy E.D. Pa. 1992). In that case, it was held that advice from its labor counsel issued three years after the treatment does not support the treatment.
3. Prior state administrative action (e.g., workers' compensation decisions) and other federal determinations (e.g., determinations under the Federal Labor Standards Act (Wage and Hour Division)) may or may not constitute a reasonable basis. This will depend on whether they use the same common law rules that apply for federal employment tax purposes. If the state or federal agency uses the same common law standard and interprets it similarly, its determination may constitute a reasonable basis. If the state or federal agency uses a different statutory standard or interprets the common law standard differently, its determinations should not constitute other reasonable basis.
4. Although a Private Letter Ruling (PLR) or Technical Advice Memorandum (TAM) issued to the taxpayer's predecessor does not qualify as judicial precedent, the business may qualify for relief under other reasonable basis if there has merely been a change in the form of the business. The successor must be in the same line of business.