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Part IV - Items of General Interest

Voluntary Classification Settlement Program

This document provides notice and details regarding a new Internal Revenue Service Voluntary Classification Settlement program that provides partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat workers as employees.

Announcement 2011-64

I. PURPOSE

The Internal Revenue Service (IRS) has developed a new program to permit taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes. The Voluntary Classification Settlement Program (VCSP) allows eligible taxpayers to voluntarily reclassify their workers for federal employment tax purposes and obtain relief similar to that obtained in the current Classification Settlement Program (CSP). The VCSP is optional and provides taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with limited federal employment tax liability for the past nonemployee treatment. To participate in the program, the taxpayer must meet certain eligibility requirements, apply to participate in VCSP, and enter into a closing agreement with the IRS.

II. BACKGROUND

Whether a worker is performing services as an employee or as an independent contractor depends upon the facts and circumstances and is generally determined under the common law test of whether the service recipient has the right to direct and control the worker as to how to perform the services. In some factual situations, the determination of the proper worker classification status under the common law may not be clear. For taxpayers under IRS examination, the current CSP is available to resolve federal employment tax issues related to worker misclassification, if certain criteria are met. The examination CSP permits the prospective reclassification of workers as employees, with reduced federal employment tax liabilities for past nonemployee treatment. The CSP allows business and tax examiners to resolve the worker classification issues as early in the administrative process as possible, thereby reducing taxpayer burden and providing efficiencies for both the taxpayer and the government.

In order to facilitate voluntary resolution of worker classification issues and achieve the resulting benefits of increased tax compliance and certainty for taxpayers, workers and the government, the IRS has determined that it would be beneficial to provide taxpayers with a program that allows for voluntary reclassification of workers as employees outside of the examination context and without the need to go through normal administrative correction procedures applicable to employment taxes.

III. ELIGIBILITY

The VCSP is available for taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are

currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees. To be eligible, a taxpayer must have consistently treated the workers as nonemployees, and must have filed all required Forms 1099 for the workers for the previous three years. The taxpayer cannot currently be under audit by the IRS. Furthermore, the taxpayer cannot be currently under audit concerning the classification of the workers by the Department of Labor or by a state government agency. A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the workers will only be eligible if the taxpayer has complied with the results of that audit.

IV. EFFECT OF VCSP

A taxpayer who participates in the VCSP will agree to prospectively treat the class of workers as employees for future tax periods. In exchange, the taxpayer will pay 10 percent of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of section 3509 of the Internal Revenue Code; will not be liable for any interest and penalties on the liability; and will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years. Additionally, a taxpayer participating in the VCSP will agree to extend the period of limitations on assessment of employment taxes for three years for the first, second and third calendar years beginning after the date on which the taxpayer has agreed under the VCSP closing agreement to begin treating the workers as employees.

V. APPLICATION PROCESS

Eligible taxpayers who wish to participate in the VCSP must submit an application for participation in the program. Information about the VCSP and the application will be available on www.irs.gov. Along with the application, the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848) should be provided. The IRS will contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility. The IRS retains discretion whether to accept a taxpayer's application for the VCSP. Taxpayers whose application has been accepted will enter into a closing agreement with the IRS to finalize the terms of the VCSP and will simultaneously make full and complete payment of any amount due under the closing agreement.

VI. DRAFTING INFORMATION

The principal author of this announcement is Joseph Perera of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement contact Joseph Perera at 202-622-6040 (not a toll-free call).