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Internal Revenue Manual 4.23.5.3.3 (11-22-2017)

Establishing Section 530 Relief

1. The taxpayer must meet two consistency requirements before the relief provisions of section 530 apply. The relief applies only if:
 - A. All federal tax returns, including information returns such as Form 1099 MISC / Form 1099 NEC required to be filed with respect to the worker for the period, are timely filed and filed on a basis consistent with the taxpayer's treatment of the worker as not being an employee. See discussion at *IRM 4.23.5.3.3.1*, Consistency Requirement—Reporting Consistency, and
 - B. The treatment of the worker as not being an employee is consistent with the treatment by the taxpayer (or predecessor) of all workers holding substantially similar positions. See discussion at *IRM 4.23.5.3.3.2*, Consistency Requirement—Substantive Consistency.
2. In addition to the consistency requirements, the taxpayer must have had a reasonable basis for not treating the worker as an employee. See discussion at *IRM 4.23.5.3.3.3*, Section 530 - Reasonable Basis, and following subsections.
3. Examiners must address and develop all three requirements of section 530 even if the taxpayer fails one of them.

Example:

If the examiner initially determines that the taxpayer fails the reporting consistency test, the examiner must still address and develop the substantive consistency and reasonable basis tests even though failing the reporting consistency test is sufficient to deny the taxpayer section 530 relief.

4. The examiner should work with the taxpayer to determine what information is needed to decide whether the taxpayer has met the requirements for section 530 relief. Exercise caution to ensure requested information is both relevant and reasonable.
5. Under the section 530(e)(4) "Burden of Proof" provision, if the taxpayer establishes a prima facie case by meeting:
 - The reporting consistency requirement,
 - The substantive consistency requirement,
 - One of the three reasonable basis safe havens, **and**

- The taxpayer has fully cooperated with reasonable requests from the examiner,

the Service will bear the burden of proving that the taxpayer's treatment is inaccurate. The burden of proof does **not** shift to the Service if the taxpayer relied on some other reasonable basis. A prima facie case means that the taxpayer has presented evidence that will allow the taxpayer to prevail unless the government presents other evidence that contradicts and overcomes the taxpayer's evidence.

6. If the examiner determines that the taxpayer is entitled to relief under section 530, the examination of the worker classification issue will be discontinued. The taxpayer should continue to file the required federal tax returns (such as Form 1099 MISC / Form 1099 NEC) with respect to the workers.

7. Comments on Form 4318-ET, Employment Tax Examination Workpapers, Standard Audit Index Number (SAIN) lead sheet, "Section 530 Lead Sheet Worker Classification Issues," Form 5773, EP/EO Workpaper Summary Continuation Sheet, or other similar workpapers, should explain the basis for allowing or denying the relief. In unagreed cases, address the section 530 relief issue in the Employment Tax Examiner's Report (ETER) in the same manner as any other unagreed issue (issue, statement of facts, law, taxpayer position, and conclusion). See IRM 4.23.10.16.1, Preparing Explanation of Adjustments.