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## **Internal Revenue Manual 4.23.5.3.3.4 (12-10-2013)**

### **Safe Haven—Judicial Precedent or Published Rulings**

1. To qualify for the judicial precedent safe haven, a taxpayer must have reasonably relied on a particular judicial precedent or published ruling or on technical advice relating to the taxpayer or a letter ruling to the taxpayer. For judicial precedent or a published ruling, the facts must be similar to the situation of the taxpayer.
2. The taxpayer must have relied on the judicial precedent or published ruling during the periods in issue, at the time the employment decisions were being made. The reliance does not necessarily have to have taken place when the taxpayer first engaged the workers, but it must have been before the tax period at issue. See *Nu-Look Design, Inc. v. Commissioner*, T.C. Memo. 2003-52, aff'd., 356 F.3d 290 (3d Cir. 2004) and *Peno Trucking, Inc. v. Commissioner*, T.C. Memo. 2007-66, rev'd in unpublished opinion, 296 Fed.Appx. 449, 2008 WL 4463765 (6th Cir. 2008).
3. State court decisions and rulings of agencies other than IRS do not constitute judicial precedent. Under some circumstances, however, state court decisions and federal agency rulings may be the basis for findings that the taxpayer reasonably relied on some other reasonable basis. This distinction, that state court decisions may qualify as other reasonable basis rather than judicial precedent, is important because the burden of proof may shift to the IRS if the taxpayer establishes a prima facie case for "judicial precedent" but not for "other reasonable basis."