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Client Alert: A Low Cost Option to Voluntarily Reclassify Workers

In September 2011, in the wake of its continuing worker classification audit program, the Internal Revenue Service (IRS) announced the Voluntary Classification Settlement Program (VCSP), a voluntary initiative allowing taxpayers the opportunity to change the prospective classification of their workers at a low cost. Taxpayers seeking to apply to the VCSP for the fourth quarter of 2011 must act quickly to meet the initial deadlines set by the IRS.

The VCSP allows employers to reclassify independent contractors and other non-employees as employees for purposes of employment tax liability and reporting requirements. If accepted into the program, employers would be liable for only about 10% of the payroll taxes that would have been owed if the misclassifications were found in an audit.

“This settlement program provides certainty and relief to employers in an important area,” said Doug Shulman, IRS Commissioner. “This is part of a wider effort to help taxpayers and businesses to help give them a fresh start with their tax obligations.”

Eligibility

In order to be eligible, the applicant must meet the following requirements:

- Applicant currently must be treating the workers as independent contractors or other non-employees;
- Applicant must have treated the workers as non-employees consistently and filed all required Form 1099s for the previous three years;
- Applicant cannot be under audit currently by the IRS or under audit concerning worker classification by the Department of Labor or by another state government agency.

To participate, the applicant must apply by filing a Form 8952, *Application for Voluntary Classification Settlement Program*, at least 60 days from the date the applicant wants to begin treating its workers as employees. If accepted into the VCSP, the applicant will enter into a closing agreement with the IRS and pay the taxes due.

Exempt organizations and government entities are also eligible to participate, so long as they meet the eligibility requirements above.

Agreement under VCSP

A participating taxpayer must agree to treat the workers in question as employees for future tax periods. In exchange, the taxpayer will be required to pay only 10% of the employment tax

liability that may have been due on compensation paid to those workers for the most recent tax year, without interest or additional penalties. In addition, such liability will be calculated based on reduced statutory rates. Finally, by entering into an agreement, the taxpayer will avoid an employment tax audit for those prior years.

With the number of employment-related audits rising, now is the time to speak with an experienced attorney. Whether it is conducting a corporate audit or helping to comply with the VCSP or other parts of the “Fresh Start” initiative, the Nexsen Pruet Tax Practice Group is ready to help if you have any questions about worker classification issues.

[Nexsen Pruet's Tax Practice Group](#) has extensive experience in all facets of federal and state taxation. Our team consists of business attorneys, litigators, and former IRS District Counsel who work to help businesses and individuals understand and comply with complex tax rules and regulations as well as plan to minimize taxes.