

ALERT

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New IRS Voluntary Classification Settlement Program for Workers Misclassified as Independent Contractors

For years, the issue of classifying workers as independent contractors or employees has been an area of significant scrutiny by the IRS. At its core, the determination of employee versus independent contractor status boils down to whether and to what extent the employer has the right to control and direct the worker regarding the job he or she is doing. Over the years, decisions emanating from court cases have developed control factors that are now used by the IRS to determine if an individual is an employee or an independent contractor.

The consequence of a misclassification of an employee as an independent contractor has been to assess the employer for all employment taxes for one year plus potentially being assessed interest and penalties.

On September 21, 2011, the IRS launched a new “Voluntary Classification Settlement Program” that allows employers to prospectively reclassify—as employees—those workers they have erroneously treated as independent contractors. The program carries generous settlement terms and provides audit relief for previous years.

The new Voluntary Classification Settlement Program (“Program”) is available to employers who are presently misclassifying a certain group of their workers as independent contractors and would like to treat the workers properly as employees. The program is available to businesses and tax-exempt organizations.

There are certain eligibility requirements:

- An employer must have consistently treated the workers as independent contractors;
- All required Forms 1099 must have been filed for the previous three years.
- The employer must not currently be under audit by IRS, or currently under audit concerning the classification of the workers by the Department of Labor (DOL) or by a state government agency.

Consequence

An employer that enters into and is accepted into the Program will agree to prospectively treat the class of workers as employees, and is required to pay 10% of the employment tax liability that would have been due on compensation paid to the workers for the most recent tax year, but will not be liable for any interest and penalties on the liability. Additionally, the employer will not be subject to an employment tax audit with respect to the worker classification of the workers being reclassified under the Program for prior years, and the employer agrees to extend the statute of limitations on assessment of employment taxes for three years.

If you have any questions about how this may apply to your company or any other questions, please contact your Green Hasson Janks advisor at (310) 873-1600.

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