

IRS Announces the Voluntary Classification Settlement Program



E. Jason Tremblay

On the heels of the U.S. Department of Labor's announcement that it was going to share independent contractor misclassification information with the Internal Revenue Service ("IRS"), the IRS recently announced the implementation of the "Voluntary Classification Settlement Program" ("VCSP"). The VCSP is intended to encourage employers who have misclassified workers, for a relatively small payment to the IRS, to reclassify those workers as employees for federal employment tax purposes. In effect, this allows employers to avoid all but 10% of the past employment tax liability that the companies would have owed for prior years. The IRS will also not conduct employment tax audits of the companies for prior years with respect to the classification of the workers.

Sound good? Well, in certain circumstances, this may be appropriate. However, employers must carefully consider all potential ramifications before participating in the VCSP. For example, reclassifying workers as employees raises many issues other than federal employment tax issues, including retirement benefit plan issues, state tax classification issues, unemployment and workers' compensation tax issues and health and welfare benefit plan issues. Companies choosing to participate in the VCSP will also have to begin providing employee benefits, comply with wage and hour laws and comply with all other federal and state employee obligations to the reclassified employees. And, since the VCSP would not provide any amnesty for violations of other laws, such as state or federal overtime laws or state tax law violations, care must be given before deciding to whether to participate in the VCSP.

To be eligible for the VCSP, employers must (1) consistently have treated the workers as non-employees, (2) have filed all required 1099s for the workers for the prior three years, and (3) not currently be under audit by the IRS, Department of Labor or any state agency concerning the classification of workers. Employers accepted into the VCSP must enter into a closing agreement with the IRS whereby they agree to (1) prospectively treat the workers as employees, (2) pay 10% of the federal employment



tax liability that may have been due on compensation paid to workers for the most recent year, and (3) allow a six-year statute of limitations on the assessment of IRS employment taxes for the first three calendar years after the employer is enrolled in the IRS Program.

For any questions regarding the VCSP or your company's classification of workers, you should immediately consult with your experienced employment law attorney or contact [E. Jason Tremblay](mailto:ejtremblay@arnstein.com) of Arnstein & Lehr LLP at (312) 876-6676 or by email at ejtremblay@arnstein.com.