

Announcement 2012–45

This document provides notice and information regarding the revised Voluntary Classification Settlement Program (VCSP) that provides partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat workers as employees.

I. PURPOSE

This announcement modifies and supersedes Announcement 2011–64, 2011–41 I.R.B. 503.

In light of feedback received from taxpayers and taxpayer representatives, the Internal Revenue Service (IRS) has modified the VCSP, described in Announcement 2011–64. The VCSP has been modified to: (1) permit a taxpayer under IRS audit, other than an employment tax audit, to be eligible to participate in the VCSP; (2) clarify the current eligibility requirement that a taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is not eligible to participate in the VCSP if any member of the affiliated group is under employment tax audit; (3) clarify that a taxpayer is not eligible to participate in the VCSP if the taxpayer is contesting in court the classification of the class or classes of workers from a previous audit by the IRS or the Department of Labor; and (4) eliminate the requirement that a taxpayer agree to extend the period of limitations on assessment of employment taxes as part of the VCSP closing agreement with the IRS.

The VCSP permits eligible taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes and obtain relief similar to that obtained through the current Classification Settlement Program (CSP). The VCSP is optional and provides taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with limited federal employment tax liability for the past nonemployee treatment. To participate, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP, and enter into a closing agreement with the IRS.

II. BACKGROUND

Whether a worker is performing services as an employee or as an independent contractor depends upon the facts and circumstances and is generally determined under the common law test of whether the service recipient has the right to direct and control the worker as to how to perform the services. In some factual situations, the determination of the proper worker classification status under the common law may not be clear. For taxpayers under IRS examination, the current CSP is available to resolve federal

employment tax issues related to worker misclassification if certain criteria are met. The CSP permits the prospective reclassification of workers as employees, with reduced federal employment tax liabilities for past nonemployee treatment. The CSP allows businesses and tax examiners to resolve the worker classification issues as early in the administrative process as possible, thereby reducing taxpayer burden and providing efficiencies for both the taxpayer and the government.

In order to facilitate voluntary resolution of worker classification issues and achieve the benefits of increased tax compliance and certainty for taxpayers, workers and the government, the IRS determined that it would be beneficial to provide taxpayers with a program that allows for voluntary reclassification of workers as employees outside of the examination context and without the need to go through normal administrative correction procedures applicable to employment taxes. Accordingly, the VCSP was established on September 21, 2011, through Announcement 2011-64.

The VCSP has been well-received and the IRS has received many applications to date. Taxpayers and taxpayer representatives have provided feedback regarding certain requirements that limit or discourage participation in the program. In particular, they requested that the IRS reconsider the requirement that a taxpayer not currently be under any IRS audit in order to be eligible and the requirement that a taxpayer agree to extend the period of limitations on assessment as part of the VCSP closing agreement with the IRS. The IRS is modifying these VCSP requirements for future applications.

III. ELIGIBILITY

The VCSP is available for taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are currently treating their workers (or a class of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees. To be eligible, a taxpayer must have consistently treated the workers as nonemployees, and must have filed all required Forms 1099, consistent with the nonemployee treatment, for the previous three years with respect to the workers to be reclassified. The taxpayer cannot currently be under employment tax audit by the IRS. A taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is considered to be under employment tax audit for purposes of the VCSP if any member of the affiliated group is under employment tax audit. Furthermore, the taxpayer cannot be currently under audit concerning the classification of the class or classes of workers by the Department of Labor or by a state government agency.

A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the class or classes of workers is eligible for the VCSP if the taxpayer has complied with the results of that audit and is not currently contesting the classification in court.

IV. EFFECT OF THE VCSP

A taxpayer who participates in the VCSP agrees to prospectively treat the class or classes of workers identified in the application as employees for future tax periods. In exchange, the taxpayer pays 10 percent of the employment tax liability that would have been due on compensation paid to the workers being reclassified for the most recent tax year if those workers were classified as employees for such year, determined under the reduced rates of section 3509(a); is not liable for any interest and penalties on the liability; and is not subject to an employment tax audit with respect to the worker classification of the class or classes of workers for prior years.

V. APPLICATION PROCESS

Eligible taxpayers who wish to participate in the VCSP must submit an application for participation in the program using Form 8952, *Application for Voluntary Classification Settlement Program (VCSP)*. Information about the VCSP and the application is available on www.irs.gov. Along with the application, the taxpayer may provide the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848). The IRS retains discretion whether to accept a taxpayer's application for the VCSP. The IRS will contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility. Taxpayers whose application has been accepted enter into a closing agreement with the IRS to finalize the terms of the VCSP and must simultaneously make full and complete payment of any amount due under the closing agreement.

VI. DRAFTING INFORMATION

The principal author of this announcement is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact Don Parkinson at 202-622-6040 (not a toll-free call).