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# Heightened IRS Scrutiny on Worker Misclassification and Tax Compliance

Preparing for Federal and State Information Sharing;  
Evaluating Risks and Benefits of the New IRS Compliance Program

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THURSDAY, DECEMBER 1, 2011

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Bob Adams, Managing Director, Tax Services, RSM McGladrey, Washington, D.C.

Stephen Ashby, Accounting and Auditing Manager, Billups Company CPAs Inc., Clackamas, Ore.

Michael Gall, Baker Hostetler, Cleveland, Ohio

Wray Rives, Owner, RivesCPA, PLLC, Coppell, Texas

Tim Ellenwood, Director of Employment Tax, RSM McGladrey, Vienna, Va.

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE INTERNAL REVENUE SERVICE  
AND  
THE US DEPARTMENT OF LABOR**

**1. INTRODUCTION:**

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the United States Department of Labor (DOL) sets forth the agreement of the parties with respect to a joint initiative to improve compliance with laws and regulations administered by the IRS and DOL. This will be accomplished through enhanced information sharing and other collaboration. A joint IRS-DOL team will lead this initiative.

**2. AUTHORITY:**

This MOU is entered into between the IRS and the DOL pursuant to Internal Revenue Code Section 7602(a)(1), 29 U.S.C. § 551, 29 U.S.C. § 1136(a), and 44 U.S.C. § 3510.

**3. PURPOSE:**

A. The sharing of information and collaboration between the parties will help reduce the incidence of misclassification of employees as independent contractors, help reduce the tax gap, and improve compliance with federal labor laws. Increased collaboration will also strengthen the relationship between the IRS and DOL, enable both agencies to leverage existing resources and send a consistent message to employers about their duties to properly pay their employees and to pay employment taxes. This multi-agency approach presents a united compliance front to employers and their representatives.

B. Specific objectives of this initiative include the following:

- Expand the IRS-DOL partnership launched in the Questionable Employment Tax Practices program
- Reduce the employment tax portion of the tax gap
- Increase compliance with federal employment and unemployment tax requirements
- Increase compliance with federal labor laws enforced by the DOL
- Reduce fraudulent filings
- Reduce abusive employment/unemployment tax schemes
- Reduce worker misclassification
- Reduce questionable employment tax practices
- Work together to create educational and outreach materials and guidance for employers and workers

**4. CONTACTS:**

Contacts for the purpose of this MOU will be the IRS Small Business/Self Employed Division designee, the IRS Governmental Liaison designee, the IRS Disclosure Office Designee, and the DOL designee (see Attachment I).

## **5. JOINT OUTREACH:**

The parties to this agreement will coordinate national outreach activities relating to worker classification and other issues of mutual interest. These include, but are not limited to, joint national press releases, joint messages to national stakeholder organizations, and other education/outreach efforts.

## **6. DUTIES AND RESPONSIBILITIES OF THE IRS-DOLTEAM:**

The team is comprised of representatives from the IRS and DOL.

A. The members of the team will meet on a regular basis to discuss issues of concern, review MOU actions, and make recommendations for improvement in partnership activities. The team will monitor trends and developing issues.

B. The team will create processes with all stakeholders in mind. Recommendations will focus on educating taxpayers/employers, promoting fairness and improved compliance, and creating a level playing field for law-abiding taxpayers and employers.

## **7. DUTIES AND RESPONSIBILITIES OF THE DOL:**

A. The DOL will refer to the IRS, at DOL's discretion and consistent with applicable law, Wage and Hour Division investigation information and other data that DOL believes may raise Internal Revenue employment tax compliance issues related to misclassification.

B. The DOL will share DOL Wage and Hour Division training materials and opportunities with the IRS to the extent possible.

C. The DOL will participate in joint outreach events with the IRS to the extent possible.

## **8. DUTIES AND RESPONSIBILITIES OF THE IRS:**

A. The IRS will evaluate and classify employment tax referrals provided by the DOL and at the IRS's discretion, conduct examinations to determine compliance with employment tax laws.

B. The IRS will, at its discretion and consistent with applicable federal laws, share the employment tax referrals provided by the DOL with the state and municipal taxing agencies that are authorized to receive tax return information under approved agreements with the IRS.

C. The IRS will provide annual reports to the DOL summarizing the results achieved by using DOL referrals. These reports will be provided only if the results can be compiled in a manner that protects return information, including taxpayer identities, in accordance with legal requirements.

D. The IRS will share employment tax training materials and opportunities with the DOL to the extent possible.

E. The IRS will participate in joint outreach events with the DOL to the extent possible.

F. The IRS will annually provide the DOL with aggregate data relating to trends in misclassification. The IRS will not share confidential Federal Tax Information with DOL unless disclosure is authorized by 26 U.S.C. § 6103.

G. The IRS will, at its discretion and pursuant to 26 U.S.C. § 6103(i)(3)(A)(i), provide DOL with information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) that the DOL enforces.

**DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:**

9. It is the policy of DOL to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with the DOL's statutory obligations and enforcement efforts. It is the DOL's view that an exchange of information in cases in which both entities are proceeding on related matters is to our mutual benefit. There is a need for the government to provide information to other law enforcement bodies without making a public disclosure.

Accordingly, the parties intend to pursue their common interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to his MOU. Further:

- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- When confidential information is exchanged, the receiving party shall use and access it only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The receiving party shall also comply with the requirements of the Trade Secrets Act, 18 U.S.C. § 1905, the Privacy Act, 5 U.S.C. § 552a, and the Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, or any other laws and regulations to the extent that they apply to confidential information.
- Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. Confidential information includes: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in DOL enforcement files that were obtained under such conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by, but not limited to, the attorney-client privilege and the protections against disclosure of attorney-work-product product and the deliberative process, investigative files, confidential informants, and confidentiality agreements and orders that may apply to shared information; personal information on living persons; individually identifiable health information, confidential business information and trade secrets, and any other information so labeled by the parties. Such information will remain confidential and subject to the privileges and protections of this MOU notwithstanding its termination.

- In the event that there is a judicial proceeding brought by the employer after an IRS examination based on information from a DOL referral, the IRS will, when possible, provide DOL with a copy of the filed complaint or petition. If records in DOL's possession are relevant and necessary for use in the proceeding, the IRS will follow DOL's *Touhy* regulations, 29 CFR Part 2, Subpart C, if the IRS seeks DOL records, or testimony from DOL's employees.

## **10. TRANSMITTAL PROCEDURES:**

### **A. Transmissions from DOL to IRS:**

- At its discretion, the DOL will send any information, data, and materials subject to this MOU to the IRS at the following address:  
IRS  
Employment /Excise Tax  
Stop 5702A  
Covington, KY 41011
- All information exchanged will include a Document Transmittal (IRS Form 3210 or equivalent) or other means of verifying receipt, with a count of documents by type and a brief description of the information being provided.
- The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

### **B. Transmissions from IRS to DOL:**

- At its discretion, IRS will send any information, data, and materials subject to this MOU to the DOL designees (See Attachment I).

## **11. LIABILITY:**

The liability of IRS and the DOL is governed by the Federal Tort Claims Act [28 U.S.C. § 1346(b), 2672, et seq.], or other applicable federal statutory authority.

## **12. THIRD PARTY RIGHTS:**

This MOU does not confer any rights or benefits on any third party.

### **13. PRIVACY:**

The IRS and DOL will assure the integrity and accuracy of personal and financial data as required by the relevant section of the Privacy Act of 1974, 5 U.S.C. § 552a and the Right to Financial Privacy Act, 12 U.S.C. § 3401, *et seq.* The IRS and DOL will perform their duties in a manner that recognizes and enhances individuals' rights of privacy and will make certain that their activities are consistent with applicable laws, regulations, and sound administrative practices and procedures.

### **14. EFFECTIVE DATE:**

The effective date of this MOU is the date it has been signed by all parties to the agreement.

### **15. AMENDMENT OF MOU:**

This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by authorized representatives of the IRS and DOL.

### **16. TERMINATION OF MOU:**

This MOU may be cancelled upon thirty days written notice by either the IRS or the DOL or immediately by signed agreement of the IRS and the DOL.

### **17. LIMITATIONS:**

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this MOU which conflicts with federal law will be null and void.

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties.

This agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out its statutory and regulatory duties, or other current or future agreements between DOL or its component agencies and the IRS. This agreement also does not limit or restrict the parties from participating in similar activities or arrangement with other entities.

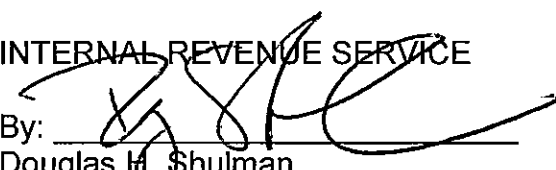
Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.

**18. EVALUATION OF DATA EXCHANGE:**

The IRS and DOL will review this MOU annually (or more frequently as necessary) to evaluate the existing data exchange, examine the continuing needs for a data exchange, to discuss the utility of categories of data heretofore exchanged, and determine whether the provisions of this agreement require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison Office, Office of Safeguards, Business Operating Division, and the DOL designees.


**APPROVALS:**

INTERNAL REVENUE SERVICE

By:   
Douglas H. Shulman  
Commissioner of Internal Revenue

September 19, 2011

UNITED STATES DEPARTMENT OF LABOR

By:   
Hilda L. Solis  
Secretary of Labor

September 19, 2011



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## IRS Announces New Voluntary Worker Classification Settlement Program; Past Payroll Tax Relief Provided to Employers Who Reclassify Their Workers

IR-2011-95, Sept. 21, 2011

WASHINGTON – The Internal Revenue Service today launched a new program that will enable many employers to resolve past worker classification issues and achieve certainty under the tax law at a low cost by voluntarily reclassifying their workers.

This new program will allow employers the opportunity to get into compliance by making a minimal payment covering past payroll tax obligations rather than waiting for an IRS audit.

This is part of a larger “Fresh Start” initiative at the IRS to help taxpayers and businesses address their tax responsibilities.

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

The new Voluntary Classification Settlement Program (VCSP) is designed to increase tax compliance and reduce burden for employers by providing greater certainty for employers, workers and the government. Under the program, eligible employers can obtain substantial relief from federal payroll taxes they may have owed for the past, if they prospectively treat workers as employees. The VCSP is available to many businesses, tax-exempt organizations and government entities that currently erroneously treat their workers or a class or group of workers as nonemployees or independent contractors, and now want to correctly treat these workers as employees.

To be eligible, an applicant must:

- Consistently have treated the workers in the past as nonemployees,
- Have filed all required Forms 1099 for the workers for the previous three years
- Not currently be under audit by the IRS
- Not currently be under audit by the Department of Labor or a state agency concerning the classification of these workers

Interested employers can apply for the program by filing [Form 8952](#), Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees.

Employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first three years under the program, be subject to a special six-year statute of limitations, rather than the usual three years that generally applies to payroll taxes.

Full details, including FAQs, will be available on the [Employment Tax pages of IRS.gov](#), and in [Announcement 2011-64](#).

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*Page Last Reviewed or Updated: September 29, 2011*



## Part IV - Items of General Interest

### Voluntary Classification Settlement Program

This document provides notice and details regarding a new Internal Revenue Service Voluntary Classification Settlement program that provides partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat workers as employees.

Announcement 2011-64

#### I. PURPOSE

The Internal Revenue Service (IRS) has developed a new program to permit taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes. The Voluntary Classification Settlement Program (VCSP) allows eligible taxpayers to voluntarily reclassify their workers for federal employment tax purposes and obtain relief similar to that obtained in 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 in the program, the taxpayer must meet certain eligibility requirements, apply to participate in 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 examination CSP permits the prospective reclassification of workers as employees, with reduced federal employment tax liabilities for past nonemployee treatment. The CSP allows business 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 resulting benefits of increased tax compliance and certainty for taxpayers, workers and the government, the IRS has 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.

## 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 or group 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 for the workers for the previous three years. The taxpayer cannot currently be under audit by the IRS. Furthermore, the taxpayer cannot be currently under audit concerning the classification of the 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 workers will only be eligible if the taxpayer has complied with the results of that audit.

#### IV. EFFECT OF VCSP

A taxpayer who participates in the VCSP will agree to prospectively treat the class of workers as employees for future tax periods. In exchange, the taxpayer will pay 10 percent of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of section 3509 of the Internal Revenue Code; will not be liable for any interest and penalties on the liability; and will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years. Additionally, a taxpayer participating in the VCSP will agree to extend the period of limitations on assessment of employment taxes for three years for the first, second and third calendar years beginning after the date on which the taxpayer has agreed under the VCSP closing agreement to begin treating the workers as employees.

## V. APPLICATION PROCESS

Eligible taxpayers who wish to participate in the VCSP must submit an application for participation in the program. Information about the VCSP and the application will be available on [www.irs.gov](http://www.irs.gov). Along with the application, the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848) should be provided. 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. The IRS retains discretion whether to accept a taxpayer's application for the VCSP. Taxpayers whose application has been accepted will enter into a closing agreement with the IRS to finalize the terms of the VCSP and will simultaneously make full and complete payment of any amount due under the closing agreement.

## VI. DRAFTING INFORMATION

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



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## Voluntary Classification Settlement Program (VCSP) Frequently Asked Questions

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(9/11) Q1. What is the Voluntary Classification Settlement Program (VCSP)?

A1. The VCSP is a new program developed by the IRS that allows taxpayers to voluntarily reclassify their workers as employees for future tax periods for employment tax purposes. Under the VCSP, a taxpayer will pay 10 percent of the amount of employment taxes calculated under the reduced rates of section 3509(a) of the Internal Revenue Code for the compensation paid for the most recent tax year to the workers being reclassified under the VCSP. In addition, the taxpayer will not be liable for any interest and penalties on the payment under the VCSP, and will not be audited for employment tax purposes for prior years with respect to the worker classification of the workers. Taxpayers may apply for the VCSP using [Form 8952, Application for Voluntary Classification Settlement Program](#). For more information on the VCSP, see [Announcement 2011-64](#) (PDF)

(9/11) Q2. Do all workers have to be reclassified as employees?

A2. No. The VCSP permits taxpayers to reclassify some or all of their workers. However, once a taxpayer chooses to reclassify certain of its workers as employees, all workers in the same class must be treated as employees for employment tax purposes.

Example: ABC Company is a construction firm that currently contracts with its drywall installers, electricians and plumbers to perform services at housing construction sites. ABC Company determines it wants to voluntarily reclassify its drywall installers as employees. ABC Company submits an application, is accepted into the VCSP and enters into a closing agreement with the IRS. Once the VCSP closing agreement is executed, ABC Company must treat all drywall installers as employees for employment tax purposes.

(9/11) Q3. Which taxpayers are eligible for the VCSP?

A3. Taxpayers who want to voluntarily change the classification of their workers going forward and who meet certain requirements are eligible for the VCSP. Specifically, a taxpayer must be treating the workers as independent contractors or other nonemployees and must have consistently treated the workers as nonemployees, including having filed any required Forms 1099 with respect to each of the workers for the past 3 years. In addition, the taxpayer cannot be currently under audit by the IRS and cannot be under audit by the Department of Labor or any state agency regarding the classification of the workers.

(9/11) Q4. Are exempt organizations eligible for the VCSP?

A4. Yes, exempt organizations are eligible if all eligibility requirements are met.

(9/11) Q5. Are government entities eligible for the VCSP?

A5. Yes, government entities are eligible if all eligibility requirements are met.

(9/11) Q6. Is the VCSP available to state and local government agencies for workers covered under a Section 218 agreement?

A6. No, the VCSP is not available to state and local government employers for workers covered under a Section 218 agreement. However, the VCSP is available to state and local government employers for workers not provided Social Security coverage under a section 218 agreement.

(9/11) Q7. Is an exempt organization that is currently under a Form 990 series examination considered to be "currently under audit by the IRS" such that the exempt organization is not eligible for the VCSP?

A7. Yes, an exempt organization that is currently under a Form 990 series examination is considered to be "under audit by the IRS" and is not eligible to participate in the VCSP.

(9/11) Q8. Can a taxpayer who is not currently under audit but who was previously audited be eligible for the VCSP?

A8. A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the workers may be eligible for the VCSP if the taxpayer has complied with the results of the IRS or Department of Labor audit.

(9/11) Q9. How does a taxpayer take part in the VCSP?

A9. In order to participate in the VCSP, an eligible taxpayer must complete and submit an application, using Form 8952, Application for Voluntary Classification Settlement Program (which will be available in early October). The application should be filed at least 60 days from the date the taxpayer wants to begin treating its workers as employees.

(9/11) Q10. Should payment be submitted with the application?

A10. No, taxpayers should not submit payment with the VCSP application.

(9/11) Q11. What happens once the VCSP application has been submitted?

A11. Once submitted, the IRS will review the application and verify the taxpayers eligibility. Once the IRS accepts the taxpayer into VCSP, the IRS will contact the taxpayer (or the taxpayers authorized representative if an executed Power of Attorney is included with the application) to enter into the VCSP closing agreement with the IRS.

(9/11) Q12. When does the taxpayer pay the amount due under the VCSP?

A12. Taxpayers must make full and complete payment of any amount due under the VCSP when they return the signed VCSP closing agreement to the IRS.

(9/11) Q13. What are the results of participating in the VCSP?

A13. A taxpayer who participates in the VCSP agrees to treat the class or classes of workers as employees for future tax periods for employment tax purposes and will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years. The taxpayer will pay 10% of the employment tax liability that may have been due on the compensation paid to the workers, calculated at the reduced rates of IRC section 3509(a), for the most recent year, with no liability for any interest or penalties. In addition, the taxpayer will extend the period of limitations on the assessment of employment taxes for three years for the first, second and third calendar years beginning after the date the taxpayer has agreed under the VCSP closing agreement to begin treating the class or classes of workers as employees.

(9/11) Q14. Will I be contacted if my application is rejected?

A14. Yes, if you are not eligible, the IRS will contact you to inform you that your VCSP application has not been accepted.

(9/11) Q15. If my application is rejected, can I apply again at a later point in time?

A15. Yes, if your VCSP application has been rejected because you are not eligible, you may reapply.

(9/11) Q16. How is the amount of the VCSP payment calculated?

A16. Payment under the VCSP is 10% of the amount of employment taxes calculated under the reduced rates of section 3509(a) of the Internal Revenue Code for the compensation paid for the most recent tax year to the workers being reclassified under the VCSP. Under section 3509(a), the effective tax rate for compensation up to the Social Security wage base is 10.68% in 2010 or 10.28% in 2011, and 3.24% for compensation above the Social Security wage base.

The amount due under the VCSP is calculated based on compensation paid in the most recently closed tax year, determined at the time the VCSP application is being filed. Accordingly, the 10.68% effective rate applies under the VCSP in 2011 since the most recently closed tax year is 2010. The 10.28% effective rate applies under the VCSP in 2012 since the most recently closed tax year is 2011. The rate of 3.24% applies to compensation above the Social Security wage base in both situations. These effective rates constitute the sum of the rates as calculated under section 3509(a), and are made up of the following:

Description	3509(a) Percentage in 2011 (For compensation paid in 2011 up to the Social Security wage base)	3509(a) Percentage in 2010 (For compensation paid in 2010 up to the Social Security wage base)	3509(a) Percentage in 2010, 2011, and 2012 (For compensation paid in 2010, 2011 and 2012 above the Social Security wage base)
Federal Income Tax Withholding	1.5	1.5	1.5
Employee Social Security Tax	.84	1.24	0
Employer Social Security Tax	6.2	6.2	0
Employee Medicare Tax	.29	.29	.29
Employer Medicare Tax	1.45	1.45	1.45
Totals	10.28	10.68	3.24

Under the VCSP, the taxpayer then pays 10% of the amount calculated under section 3509(a).

Example: In 2010 you paid \$1,500,000 to workers that are the subject of the VCSP. All of the workers that are the subject of the VCSP were compensated at or below the Social Security wage base (e.g., under \$106,800 for 2010). You submit the VCSP application on October 1, 2011 and you want the beginning date of the quarter for which you want to treat the class or classes of workers as employees to be 1/01/2012. You look to amounts paid to the workers in 2010 for purposes of calculating the VCSP amount, since 2010 is the most recently completed tax year at the time the application is being filed. Under section 3509(a), the employment taxes applicable to \$1,500,000 would be \$160,200 (10.68% of \$1,500,000). Under the VCSP, your payment would be 10% of \$160,200, or \$16,020.

Example: The facts are the same as in the example above, except that some of the workers that are the subject of the VCSP were compensated above the Social Security wage base in the amount of \$250,000. Under section 3509(a), the employment taxes applicable to \$1,250,000 would be \$133,500 (10.68% of \$1,250,000) and the employment taxes applicable to the other \$250,000 would be \$8,100 (3.24% of \$250,000). Under the VCSP, your payment would be 10% of \$141,600 (\$133,500 plus \$8,100), or \$14,160.

(11/11) Q17. I was just contacted by the IRS for information based on one of my workers filing an IRS SS-8 determination letter. Can I still apply for the VCSP?

A17. Yes. The SS-8 determination process is not an audit, and, therefore, does not prevent you from being eligible for the VCSP.

(11/11) Q18. Will the IRS share information about VCSP applicants with the Department of Labor?

A18. No, the IRS will not share information about VCSP applicants with the Department of Labor.

(11/11) Q19. Will the IRS share information about VCSP applications with state agencies?

A19. No, the IRS will not share information about VCSP applications with the states.

(11/11) Q20. To be eligible under the VCSP, you must have filed all required Forms 1099 for the previous 3 years for the workers you

want to reclassify. If I filed Forms 1099 late, am I still eligible for the VCSP?

A20. Yes, the IRS will consider you eligible for the VCSP if you filed the required Forms 1099 within 6 months of their due date (including extensions), assuming you meet the other eligibility requirements. Taxpayers who have not previously filed required Forms 1099 or who filed them more than 6 months after their due date (including extensions) are not eligible for the VCSP.

(11/11) Q21. If I apply for the VCSP and my application is rejected, will I open myself up to an audit?

A21. No, rejection of a VCSP application will not automatically trigger initiation of a Federal audit. You could be audited for another reason, but not as a result of filing Form 8952.

(11/11) Q22. By signing the VCSP closing agreement am I admitting any liability or wrong doing for past periods?

A22. No, the VCSP concerns future years only. The IRS is not making any determination with regard to prior years and you are not making any representation as to the workers' proper status for prior years for federal employment tax purposes.

(11/11) Q23. If my parent or subsidiary or another member of my consolidated group is under IRS audit, can I still participate in the VCSP?

A23. No, an audit of one of the members of a consolidated group is treated as an audit of the applicant for purposes of the VCSP.

References/Related Topics:

- [Voluntary Classification Settlement Program](#)

*Page Last Reviewed or Updated: November 29, 2011*

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