

# **Worker Classification**

# Webinar Agenda

- Basic Definitions
- Categories of Evidence
- Applicable Forms
- Officer Compensation
- Misclassification & Section 530
- Voluntary Classification Settlement Program

# Basic Definitions

## **Employee:**

An individual who performs services for you who is subject to your control regarding what will be done AND how it will be done (Treas. Reg 31.3121(d)-1(c)(1) )

## **Independent Contractor:**

An individual who performs services for you – but you control only the result of the work.

# Employee vs. Independent Contractor

Categories of Evidence:

1. Behavioral control
2. Financial control
3. Type of relationship of the parties

# Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business

# Right to Control

The key fact to consider is whether the business retains the **RIGHT** to control the worker regardless of whether the business actually exercises that right

# Financial Control

- Significant investment?
- Unreimbursed expenses?
- Opportunity for profit or loss?
- Services available to the market?
- Method of payment?

# Type of Relationship

- Is there a written contract?
- Are employee-type benefits provided?
- Permanency of the relationship?
- Are services provided a key activity of the business?



# What if I'm Still Not Sure?

- File Form SS-8 with IRS
- At least 6 months to process

# **Form 8919**

Misclassified workers report their share of  
Social Security and Medicare on Form 8919

# Officer Compensation

- Officers are defined as employees for FICA, FUTA and income tax withholding - IRC 3121(d)(1)
- Officers are not considered employees if:
  - They perform no services or only minor services
  - They are not entitled to remuneration (direct or indirect)

# Officer Compensation

## Compensation can include:

- Distributions
- Loans to shareholders
- Payments of personal expenses
- Excessive rent payments
- Management Fees
- Fringe Benefits

# Misclassification of Workers

- What if workers have been incorrectly classified?
- Does Section 530 relief apply?

# Section 530 Relief Requirements

Three requirements for relief:

- Reporting consistency
- Substantive consistency
- Reasonable basis

# Consistency

The business must meet **both** consistency requirements:

- Treat all workers in similar positions the same (**substantive consistency**)
- File all required returns – for example, Form 1099-MISC (**reporting consistency**)

# Reasonable Basis

The business must have a **reasonable basis** for not treating the workers as employees:

- judicial precedent
- prior audit
- industry practice
- other reasonable basis



# VCSP

## Voluntary Classification Settlement Program

- Advantages for businesses
- Simple application process
- Eligibility
- Resources

# VCSP Advantages

- The application and process are simple
- Businesses pay just 10% of tax computed on favorable rates
- No penalties or interest
- Audit protection for past years on workers being reclassified
- Program provides certainty for Federal Employment Tax purposes

# VCSP is Simple

- Complete Form 8952, *Application for Voluntary Classification Settlement Program*
- File 60 days prior to treating workers as employees
- IRS will review application and prepare closing agreement if applicable
- Payment sent by business after receipt of the closing agreement

# VCSP Eligibility

Eligible businesses:

- Must be currently treating workers as nonemployees
- Must have filed 1099s for nonemployees
- Cannot be under audit
- Can be tax-exempt organizations or government entities
- Agree to extend the Statute of Limitations

# VCSP Resources

- Form 8952 and instructions
- VCSP pages of IRS.gov, including F.A.Q.s
- Announcement 2011-64

# In Review

- Form 8952 and instructions
- VCSP pages of IRS.gov, including FAQs
- Announcement 2011-64

# Audience Questions

