[**Internal Revenue Service Launches New Voluntary Classification Settlement Program for Worker Misclassification Amnesty**](http://www.esrcheck.com/wordpress/2011/10/03/internal-revenue-service-launches-new-voluntary-classification-settlement-program-for-worker-misclassification-amnesty/)

**Posted October 3, 2011 — By** Tom Ahearn, ESR News Editor

Designed to increase tax compliance and provide past payroll tax relief to employers, the Internal Revenue Service (IRS) has launched a new Voluntary Classification Settlement Program (VCSP) that will enable employers to resolve past worker classification issues and achieve certainty under the tax law at a low cost by voluntarily reclassifying their workers, according to [**a news release from the IRS website**](http://www.irs.gov/newsroom/article/0,,id=246203,00.html).

Part of a larger “Fresh Start” initiative at the IRS to help taxpayers and businesses address their tax responsibilities, the VCSP 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. 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 businesses that currently – and erroneously – treat their workers as nonemployees or independent contractors, and now want to correctly treat these workers as employees. To be eligible for the program, 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, and
* Not currently be under audit by the Department of Labor or a state agency concerning the classification of these workers.

Employers interested in the VCSP may apply for the program by filing [**Form 8952, Application for Voluntary Classification Settlement Program (VCSP)**](http://www.irs.gov/formspubs/article/0,,id=242970,00.html), at least 60 days before they want to begin treating the workers as employees.

However, Rosen explains that the advantages enjoyed by a business in classifying a worker as an independent contractor are disadvantages for the IRS and state agencies that administer tax collection programs. The IRS has an interest in businesses putting workers on payroll to better ensure the collection and withholding of payroll taxes. States want employers to pay workers’ compensation premiums and unemployment insurance. As a result, the IRS and the states want to ensure that businesses do not misclassify a worker as an “independent contractor” when in fact they should be on payroll.

Rosen says the IRS and state agencies have the authority, which they exercise, to conduct extensive audits of a business to determine if the classification was correct. If the IRS or state agencies determine that workers should have been classified as employees, then the business can be subject to fines, penalties, back taxes, and lawyer’s fees.

Rosen says the consequences of misclassifying employees as independent contractors can be substantial. The IRS or state may flag the business for an audit of how it classifies its independent contractors, a process that can be extremely time consuming and expensive.

* Liability for all federal and state payroll taxes that should have been paid for all misclassified workers.
* Interest, fines and penalties to the IRS or state. Penalties can be substantial.
* Costs, and attorney’s fees, and compensatory and punitive damages if litigation is involved.
* Benefits the workers would have received if classified as employees, including vacation, health, paid holidays and retirement.
* Overtime pay under the Fair Labor Standards Act and comparable state laws if the hours he or she provided to the contracting party in the past exceeded the standard work week.
* Unemployment claims.
* Extending any stock option plan the worker would have had if they were properly treated as employees.