



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D C. 20224

Date: April 24, 2015  
Control Number: TE/GE-04-0415-0010  
Expiration Date: April 23, 2017  
Impacted IRM: 4.90.9

MEMORANDUM FOR FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES  
FROM: Paul Marmolejo, Director /s/ *Paul A. Marmolejo*  
Federal, State and Local Governments Division  
SUBJECT: CSP Procedures for Section 218 Taxpayers

This memorandum issues guidance on CSP Agreement signature authority for workers covered by Agreements under Section 218 of the Social Security Act until IRM 4.90.9 is updated.

**Purpose:** To provide new procedures for offering and executing agreements for worker classification issues for Section 218 taxpayers under the Classification Settlement Program (CSP). When this memo is issued, FSLG field managers are authorized to sign specific CSP agreements for Section 218 taxpayers under Delegation Order 7-13 (Rev. 1) (IRM 1.2.46.14).

**Background/Source(s) of Authority:** In recent years, FSLG sought legal guidance from Chief Counsel and coordinated with the Social Security Administration (SSA) to avail CSP to Section 218 taxpayers. In 2009, Chief Counsel issued Program Technical Manager's Advice (PMTA 2009-034), stating that Section 3509 rates could be given to FSLG taxpayers with Section 218 agreements. In March 2014, FSLG obtained SSA's concurrence for using CSP for Section 218 taxpayers. On March 20, 2015, TE/GE Counsel issued guidance to FSLG permitting the use of CSP for qualifying Section 218 taxpayers. However, SSA must concur and there are some limitations about Section 530 as explained below.

**Procedural Change:**

**Concurrence from SSA:** Continue to evaluate CSP's availability and eligibility, using current guidelines in IRM 4.23.6, *Classification Settlement Program*, when audits include worker classification issues for taxpayers with Section 218 coverage. Section 218 taxpayers must meet the criteria for CSP in that IRM section. However, before offering any CSP, obtain concurrence from the SSA that the affected workers are covered under the taxpayer's Section 218 agreement following IRM 4.90.1.6 (4) provisions. Document the SSA's concurrence in each case file. After securing the SSA's concurrence, follow current CSP procedures.

Specialists will obtain their manager's approval of the taxpayer's eligibility for the CSP offer. FSLG group manager review and approval of all settlement offers ensures that determinations

are accurate and consistent. Complete the standard closing agreement following IRM 4.23.6.15.3 provisions. Don't modify the agreement forms, except as specifically provided in the instructions below.

**Use Current CSP Template Forms 14491 and 14492 with these additional instructions:** If FSLG determines that an FSLG taxpayer with a 218 agreement covering the subject workers qualifies for the CSP program, use Forms 14491 and 14492 and **precisely** follow the forms' instructions.

- Form 14491, *Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification* (CSP WC).
- Form 14492, *Closing Agreement on Final Determination Covering Specific Matters Regarding the Classification of Workers Currently Treated as Employees* (CSP CC).

After listing the type(s) of worker(s) being reclassified in block 7, add the following language, including the parentheses, directly after the list.

**(These workers' positions are covered under the Taxpayer's section 218 Agreement and the Social Security Administration concurs.)**

**Example:**

*7. Type of worker(s) being reclassified.* County Landscape Workers (These workers' positions are covered under the Taxpayer's section 218 Agreement and the Social Security Administration concurs.).

Don't make further modifications to the fill-in-the-blank part of the CSP agreement.

**Section 530 Limitations:** The IRS position, discussed in PLR 9336005 (June 2, 1993), when a FSLG taxpayer with a 218 agreement covering the subject workers qualifies for relief under Section 530 of the Revenue Act of 1978, is that relief doesn't apply to FICA taxes although Section 530 relief might be available for income tax withholding liability.

CSP Forms 14491 and 14492 include a numbered paragraph stating that the taxpayer waives any claim it may have to Section 530 relief. This general waiver doesn't depend on whether the taxpayer actually had any claim to Section 530 relief; it simply states that the taxpayer waives whatever claim it had.

A taxpayer may raise a Section 530 claim even if such claim is not meritorious. Thus, the fact that the IRS believes a FSLG taxpayer with a 218 agreement covering the subject workers had no more than a possible limited Section 530 claim does not make the waiver paragraph less appropriate.

However, due to the limited availability of section 530 relief for FSLG taxpayers with a 218 agreement covering the subject workers, Specialists should not use CSP Form 14490.

**CSP Agreements transmitted to the CSP Coordinator:** Most CSP Agreements will be 100% electronic and these must be emailed to the FSLG CSP Coordinator by the manager prior to the case being closed. The documents required include Forms 14491 or 14492, the CSP

Settlement Memorandum, and the audit report. In cases where the \$250,000 dollar threshold is met, paper files must continue to be mailed to the CPM CSP Coordinator at:

Internal Revenue Service  
T:GE: FSLG:CPM  
1111 Constitution Avenue NW  
NCA 534-10  
Washington, D.C. 20224-0002  
ATTN: Closing Agreement Coordinator

**Conclusion:** Use CSP agreement Forms 14491 and 14492 for FSLG taxpayers with a 218 agreement covering the subject workers, as long as the above specific instructions are precisely followed.

**Effect on Other Documents:** This guidance will be incorporated into IRM 4.90.9 by April 23<sup>th</sup>, 2017.

**Effective Date:** This memorandum is effective when issued.

**Contact:** If you have any questions, please contact Kathleen Rodegeb, CPM Manager, at (925) 974-3827.

Distribution: [IRS.gov \(http://www.irs.gov\)](http://www.irs.gov)