

Instructions for Form 8952

(Rev. November 2011)

Application for Voluntary Classification Settlement Program (VCSP)



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Form

Use Form 8952 to apply for the Voluntary Classification Settlement Program (VCSP).



DO NOT send payment with Form 8952. You will submit payment later with a signed closing agreement. If you submit payment with Form 8952, it may cause processing delay.

Voluntary Classification Settlement Program

The Internal Revenue Service (IRS) has developed a new program to provide an opportunity for taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes. The Voluntary Classification Settlement Program (VCSP) allows eligible taxpayers to obtain relief similar to that available through the Classification Settlement Program (CSP) for taxpayers under examination. The VCSP is an optional program that provides taxpayers not under examination with an opportunity to voluntarily reclassify their workers as employees for future tax periods, with limited federal employment tax liability for the past non-employee treatment. To participate in the program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP, and enter into a closing agreement with the IRS. For more information on the VCSP, see Announcement 2011-64. For the latest information about Form 8952 and its instructions, go to www.irs.gov/form8952.

Eligibility Requirements

To participate in the VCSP, taxpayers must meet certain eligibility requirements and certify that they meet those requirements on Form 8952.

Specifically, to be eligible for the VCSP, a taxpayer must:

- 1) Want to voluntarily reclassify certain workers as employees for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act taxes (collectively, federal employment taxes) for future tax periods.
- 2) Be presently treating the workers as non-employees.

- 3) Have satisfied any Form 1099 requirements for each of the workers for the 3 preceding calendar years ending before the date Form 8952 is filed. A taxpayer will have satisfied its Form 1099 filing requirements if it provided Forms 1099 to the workers being reclassified for the period of time that the workers worked for the taxpayer. For example, a taxpayer who has only been in business for two years will have satisfied its Form 1099 filing requirements if it provided the workers being reclassified with Forms 1099 for those two years.
- 4) Have consistently treated the workers as non-employees.
- 5) Have no dispute with the Internal Revenue Service as to whether the workers are non-employees or employees for federal employment tax purposes.
- 6) Not be under examination by the Internal Revenue Service.
- 7) Not be under examination by the Department of Labor or any state agency for the proper classification of the workers.
- 8) a. Not have been examined previously by the Internal Revenue Service or the Department of Labor for the classification of workers; or,
b. If the taxpayer has been examined previously by the Internal Revenue Service or the Department of Labor for the classification of workers, taxpayer must have complied with the results of the prior examination.

In addition, as part of the VCSP, a taxpayer must agree to extend the period of limitations on assessment of employment taxes for 3 years for the first, second, and third calendar years beginning after the date the taxpayer elects to begin treating the workers as employees under the VCSP closing agreement. The taxpayer has the right to refuse to extend the period of limitations on assessment or to limit the extension to particular issues or to a particular period of time. However, if the taxpayer refuses to extend the period of limitations on assessment or provides only a limited extension, the IRS will not execute the VCSP closing agreement.

When to File

File Form 8952 at any time. However, Form 8952 should be filed at least 60 days before the date you want to begin treating the class or classes of workers as employees.

Private Delivery Services

Applicants can use certain private delivery services designated by the IRS. These private delivery services include the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx International Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell the taxpayer how to get written proof of mailing.

Where to File

File Form 8952 by United States Postal Service or private delivery service.

For United States Postal Service, mail Form 8952 to:

Internal Revenue Service
Government Entities Compliance Unit
P.O. Box 12220
Ogden, UT 84412

For private delivery service, mail Form 8952 to:

Internal Revenue Service
Government Entities Compliance Unit
1973 N. Rulon White Blvd.
Mail Stop 7700
Ogden, UT 84404

Who Must Sign

Form 8952 must be signed by the taxpayer under penalties of perjury. The taxpayer's representative may not sign Form 8952. By signing Form 8952, including all representations in Part V, the taxpayer is representing that it is eligible for this program and that all information presented is correct to the best of its knowledge. In addition, the taxpayer understands that by participating in the VCSP the taxpayer agrees to extend the 3-year period of limitations on assessment of employment taxes for 3 additional years, for periods beginning in 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. For calculating the period of limitations on assessment, employment tax returns reporting FICA tax or income tax withholding are generally deemed filed on April 15 of the following calendar year.

For a sole proprietorship, the form must be signed and dated by the individual who owns the business.

For a corporation (including a limited liability company (LLC) treated as a corporation), the form must be signed and dated by:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer; or
- Any other corporate officer (such as tax officer) authorized to sign.

For a partnership, the form must be signed and dated by a general partner. For an LLC classified as a partnership, the form must be signed by a member or manager who would be authorized to sign the partnership's Form 1065. For more information on who can sign for a partnership, see the Instructions for Form 1065.

For an estate or trust, the form must be signed by the fiduciary or an authorized representative. If there are joint fiduciaries, only one is required to sign the form.

If the form is filed on behalf of the taxpayer by a receiver, trustee, or assignee, the fiduciary must sign the form.

Assembling the Application

To ensure the application is both timely and correctly processed, attach all documents in the following order:

1. Form 8952.
2. Form 2848, Power of Attorney and Declaration of Representative, if applicable. See the instructions to Part II.

Complete every applicable entry space on Form 8952. Do not enter "See Attached" instead of completing the entry spaces. If more space is needed, attach separate sheets using the same size and format as the printed forms. If there are supporting statements and attachments, arrange them in the same order as the lines they support and attach them last. Show the total dollar figure on Part IV of Form 8952. Enter the taxpayer's name and EIN on each supporting statement or attachment.

Specific Line Instructions

Line 1. Employer Identification Number

Enter the taxpayer's employer identification number (EIN). If the taxpayer does not have an EIN, the taxpayer must apply for one using Form SS-4, Application for Employer Identification Number. An EIN can be applied for:

- Online- Click on the EIN link at www.irs.gov/businesses/small. The EIN is issued immediately once the application information is validated.
- By telephone at 1-800-829-4933.
- By mailing or faxing Form SS-4.

The taxpayer must have received an EIN by the time Form 8952 is filed for the form to be processed. For more information about EINs, see Publication 1635, Understanding Your EIN.

Lines 2 through 8

Enter the name and address of the location and contact numbers of the taxpayer's principal place of business. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to a street address and the taxpayer has a P.O. box, show the box number instead.

Line 9

Check the box for the applicable entity.

Line 10

Check the box that applies. If you are not a member of an affiliated group filing consolidated returns for income tax purposes, you can skip lines 11-14.

An affiliated group is one or more chains of includible corporations (section 1504(a)) connected through stock ownership with a common parent corporation. The common parent must be an includible corporation and the following requirements must be met:

1. The common parent must own directly stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of at least one of the other includible corporations.
2. Stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of each of the other corporations (except for the common parent) must be owned directly by one or more of the other includible corporations.

For this purpose, the term "stock" generally does not include any stock that (a) is nonvoting, (b) is nonconvertible, (c)

is limited and preferred as to dividends and does not participate significantly in corporate growth, and (d) has redemption and liquidation rights that do not exceed the issue price of the stock (except for a reasonable redemption or liquidation premium). See section 1504(a)(4). See section 1563(d)(1) for the definition of stock for determining stock ownership.

Lines 11 through 14

Enter the name, address, and EIN of the common parent of the affiliated group. See the instructions above for entering address information.

Part II

Enter the name and address of the contact person. See the instructions above for entering address and contact number information.

The contact person is the person the IRS may contact if there is an issue with the application. If the contact person does not have legal authority to bind the taxpayer, the taxpayer must attach to Form 8952 a properly executed Form 2848. On Form 2848, line 3, enter "Voluntary Classification Settlement Program" as the type of tax. Leave the entry spaces for Tax Form Number and for Year(s) or Period(s) blank. Check the box on line 4 of the Form 2848.

Line 15

Enter the total number of workers from all classes that you would like to reclassify.

Line 16

Describe the class or classes of workers to be reclassified. A class of workers includes all workers who perform the same or similar services.

Line 17

Enter the beginning date of the tax period (year or quarter) for which you want to begin treating the class or classes of workers as employees. To allow the IRS time to process your application, this date should be at least 60 days from the date you file Form 8952.

Examples: If you want to begin treating a class or classes of workers as employees for the first quarter of 2012, you will enter January 1, 2012. In this case, you should file Form 8952 at least 60 days before January 1, 2012, or by November 2, 2011.

If you want to begin treating a class or classes of workers as employees for the fourth quarter of 2012, you will enter October 1, 2012. In this case, you should file Form 8952 at least 60 days before October 1, 2012, or by August 1, 2012.

TIP If you want to begin treating a class or classes of workers as employees for the fourth quarter of 2011, file Form 8952 as soon as possible. The IRS will make every effort to process Form 8952 with sufficient time to allow for

the voluntary reclassification on the requested date.

Line 18

Enter the amount of taxable compensation paid to all classes of workers to be reclassified for the most recently closed tax year. In Column A, enter the compensation paid to all classes of workers that is at or below the social security wage base. The social security wage base for tax years 2010 and 2011 is \$106,800 and is applied on an employee by employee basis. In Column B, enter the compensation paid to all classes of workers that is above the social security wage base. For example, a taxpayer filing Form 8952 in October of 2011 with one worker would look to compensation paid to the worker in 2010 because 2010 is the most recently closed tax year. If the worker received \$125,000 in compensation in 2010, taxpayer would enter \$106,800 in Column A and \$18,200 in Column B of line 18. Column C will be the sum of Column A and Column B. In the above example, Column C will equal \$125,000.

Line 19

Multiply the amount in Column A of line 18 by the applicable percentage. The applicable percentage is the rate of employment taxes calculated under section 3509(a). Generally, the applicable percentage is 10.68% for compensation paid at or below the social security wage base. However, for compensation paid at or below the social security wage base in 2011 the applicable percentage is 10.28% because the employee social security tax rate was reduced to 4.2% for 2011. To determine which percentage to use, you will look to the most recently closed tax year. For example, a taxpayer reclassifying a class of workers for a tax period beginning in 2011 would look to compensation paid in 2010 and would multiply Column A of line 18 by 10.68%. A taxpayer reclassifying a class of workers for a tax period beginning in 2012 would look to compensation paid in 2011 and would multiply Column A of line 18 by 10.28%.

Line 20

Multiply the amount in Column B of line 18 by the applicable percentage. The applicable percentage is the rate of employment taxes calculated under section 3509(a). The applicable

percentage is 3.24% for compensation paid above the social security wage base.

Line 21

Add the amounts from Column A line 19 and Column B line 20.

Line 22

Multiply the amount on line 21 by 10%. This is the amount required to be paid upon IRS acceptance of your application and execution of your VCSP closing agreement. **DO NOT** send payment with Form 8952. You will submit payment later with a signed closing agreement. If you submit payment with Form 8952, it may cause processing delay.

Paid Preparer Use Only

A paid preparer must sign Form 8952 and provide the information in the *Paid Preparer Use Only* section at the end of the form if the preparer was paid to prepare the form and is not an employee of the filing entity. Paid preparers must sign paper forms with a manual signature. The preparer must give you a copy of the form in addition to the copy to be filed with the IRS.

If you are a paid preparer, enter your Preparer Tax Identification Number (PTIN) in the space provided. Include your complete address. If you work for a firm, you also must enter the firm's name and the EIN of the firm. You cannot use the EIN of the tax preparation firm, however, in place of your PTIN.

You can apply for a PTIN online or by filing Form W-12, IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal. For more information about applying for a PTIN online, visit the IRS website at www.irs.gov/taxpros.

Generally, do not complete this section if you are filing the form as a reporting agent and have a valid Form 8655, Reporting Agent Authorization, on file with the IRS. However, a reporting agent must complete this section if the reporting agent offered legal advice, for example, advising the client on determining whether its workers are employees or independent contractors for federal tax purposes.

Privacy Act and Paperwork Reduction Act Notice We ask for the information on these forms to carry out the Internal Revenue laws of the United States. We need this information to determine your

eligibility to participate in this program and to calculate the appropriate payment under the VCSP. Our authority to ask for the information on this form is Subtitle C, Employment Taxes, of the Internal Revenue Code. Section 6109 requires you to provide your identifying number. You are not required to apply for the VCSP; however, if you apply you must provide the information requested. Failure to provide all the requested information may prevent processing your application; providing false or fraudulent information may subject you to penalties. We may disclose this information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal non-tax criminal laws and to intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for taxpayers who file this form is shown below:

Recordkeeping	6 hrs., 56 min.
Learning about the law or the form	18 min.
Preparing and sending the form to the IRS	25 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this office. Instead, see *Where to File*, above.