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Employment Tax Issues





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Agenda

- Worker Classification – Exam
- Worker Classification – Non-Exam
- 1120S Focus on Officer Compensation
- Back Up Withholding
- National Research Program (NRP)
- 2016 Updates





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Worker Classification - Factors

- May be employees or independent contractors
- Three broad categories of evidence
 - Behavior Control
 - Financial Control
 - Relationship of Parties





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Behavioral Control

- Control – when, where, and how
- Type and Degree of instructions
- Evaluation systems and feedback
- Training provided
- KEY – whether the business has the RIGHT to control whether or not they actually exercise that right





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Financial Control

- Investment in the business
- Method of payment
- Cost reimbursement(s)
- Services available to others
- Opportunity for profit or loss





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Relationship of the Parties

- Written Contracts?
- Permanency of the relationship
- Integral part of the business
- Benefits provided





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Classification Settlement Program (CSP)

- Offered during an examination or Appeal
- Provides audit protection for certain years
- Ensures prospective treatment as employees





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Resolving Worker Classification Outside of Examinations

- Voluntary Classification Settlement Program (VCSP)
- SS-8 Determination
- Form 8919





VCSP

- Businesses Only
- Simple Application Process
- Audit Protection for past years
- Prospective treatment of workers as employees
- Must include list of workers
- Small payment required

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VCSP – Eligibility

- Consistently treated workers as non-employees
- Filed 1099s for previous three years
- Not be under Employment Tax audit by IRS, DOL or State Agency
- Not subject of a criminal investigation by the IRS
- Can be Tax-exempt or Government Entity





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SS-8 Determination

- Individual or Business
- SS-8 Process is NOT an examination
- Determination Letters are binding on the Service
- Service may revoke the determination pending new facts





Form 8919

- Individual Only
- Evidence that worker is employee
- Attached to 1040
- Allows individual to pay only their share of Social Security and Medicare
- Identifies business who paid worker

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1120 S – Officer Compensation – Applicable Law

- Officers are Employees for FICA (IRC 3121(d)(1); FITW (IRC 3401(c)) and FUTA (IRC 33-6(i))
- Rev. Rul. 73-361
- Rev. Rul. 74-44





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Remuneration in Lieu of Wages

- Officer must receive some sort of remuneration, characterized as:
- Distributions
- Loans to Shareholders
- Payment of Personal Expenses
- Independent Contractor
- Payments to Related Companies





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Officer Compensation in Examinations

- Reasonable salary
- Comparable to a fair wage paid to unrelated party
- Corporate Officers are, by statute, employees





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Backup Withholding

- IRC 3406 requires backup withholding
- IRC 3406(a) provides criteria:
- Payee fails to furnish a TIN
- IRS has notified payer that TIN is incorrect (CP2100)
- Business fails to obtain correct TIN





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Employer Responsibilities

- Reportable on Form 945
- Withholding rate = 28%
- Employer liable for full 28% if required to backup withhold but does not





NRP

- 6,000 randomly selected taxpayers
- Audits are complete
- Data is being perfected for future analysis
- Study results will be available in 2017

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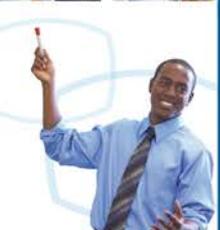


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DOJ Tax Division Civil Employment Tax Enforcement

- Lawsuits to Reduce Tax Assessments to Judgment
- Lawsuits to Collect Employment Tax Liabilities
- Lawsuits against Third Parties Paying Wages
- Counterclaims in Trust Fund Recovery Penalty Refund Suits
- Complaints for Civil Injunctions
 - Monitoring Injunctions and Contempt Proceedings

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Recent Civil Injunctions

- *Randy G. Rogers* (E.D. Tennessee)(May 27, 2016)
- *Mauricio Consalter and Medici Health Care Providers SC* (N.D. Illinois)(May 12, 2016)
- *Heritage Custom Kitchens, Inc., Michael Mazzara and Joseph Mazzara* (E.D. Michigan)(May 5, 2016)
- *Edward G. Holsinger* (E.D. Virginia)(April 26, 2016)

<https://www.justice.gov/tax/recent-civil-employment-enforcement-news>





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DOJ Tax Division Criminal Employment Tax Enforcement

- Authorizing Grand Jury Investigations and Prosecutions for Matters referred to U.S. Attorneys' Offices
- Investigations and Prosecutions Assigned to Tax Division Attorneys, either alone or with Assistant U.S. Attorneys
- Sentencing (Incarceration, Fines and Restitution)





Recent Criminal Prosecutions

- *Michael Manning (E.D. Virginia)(sentenced May 31, 2016)*
- *Scott Sogge (D. South Dakota)(sentenced April 25, 2016)*
- *Kyle Archie & Linda Archie (D. Nevada)(guilty pleas April 22, 2016)*
- *Larry C. Thornton (W.D. Tennessee)(guilty plea March 28, 2016)*

<https://www.justice.gov/tax/recent-criminal-employment-enforcement-news>

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Additional Resources for Addressing Employment Tax Violations

- Civil and Criminal Points of Contact in Tax Division
- Litigation Assistance to U.S. Attorneys' Offices
- Updated Chapter in Criminal Tax Manual – September 2015
- Proposed Change to U.S. Sentencing Guidelines
- Employment Tax Enforcement Page on Tax Division Internet

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Hot Topics on IRS.gov

Search Word(s)

IRS Future State

future state

Tax scams/consumer alerts

scams

Annual Filing Season Program

filing season program

Continuing education for tax pros

tax pros

E-Services – online tax tools

eservice

Identity theft

ID theft

Practitioner events on IRS.gov

practitioner events

Affordable Care Act

ACA

Taxpayer Bill of Rights

taxpayer rights

SB/SE Tax Calendar

tax calendar

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