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## Fresh Start Resolution of Employee v. Independent Contractor Issues

*By James T. Montgomery, Jr.*

Note that the Internal Revenue Service (“IRS”) recently initiated a new program designed to address the longstanding controversy over whether workers are properly classified as “independent contractors” (for whom the employer is not required to pay the employer’s portion of payroll taxes, or to withhold the worker’s income and payroll taxes, or to provide employee benefits), or should be classified as “employees” (for whom all payroll tax payments, withholding and employee benefits are required).

The IRS has launched a new voluntary classification settlement program (“VCSP”) designed to provide employers with a new **low-cost** opportunity for voluntarily reclassifying workers as “employees” as a means to achieve final resolution of past employee versus independent contractor misclassification issues. Essentially, the new VCSP provides employers with a fresh start with respect to any and all workers erroneously classified as independent contractors in the past – and, in exchange, the employer commits to consistent reclassification of the workers as employees in the future, and must make only a relatively minimal payment to the IRS to resolve the matter once and for all.

Specifically, if an employer (including for-profit businesses, tax-exempt organizations and governmental entities) has consistently treated the worker (or group or class of workers) as independent contractor(s) in the past, and has filed all required Form 1099s for such worker(s) for the previous 3 years, then the employer may be eligible for participation in the VCSP. If accepted in the VCSP, the employer is required to pay a calculated amount just over 1.0% of the wages paid to the reclassified worker(s) for only the **preceding (1) year**. Further, **no interest or penalty charges** are due from the employer for the past misclassification, and **all prior years** will be forever closed to IRS audit of the worker classification issue. The employer enters into a closing agreement with the IRS to finalize the matter.

As an incentive to prompt action by employers, the VCSP will not be available to employers if an audit has already been commenced by the IRS, the Labor Department or a comparable State agency. In addition, a VCSP application must be submitted at least 60 days prior to the desired effective date (the beginning of a forthcoming payroll tax quarter) for reclassification of the workers as employees, and the IRS anticipates that the entire process can be completed from start-to-finish within such 60-day period.