

## Drilling into Money Not Boring



by **Mark E. Battersby**

### Misclassified Independent Contractor Solutions

The long-running controversy over properly labeling employees and independent contractors shows no signs of easing. At its most basic, the employee-independent contractor controversy boils down to the argument that by labeling a worker as an independent contractor rather than as an employee, the employer can avoid the voluminous paperwork and payroll tax burden. A worker who is an independent contractor can exclude certain types of compensation from income or deduct work-related expenses.

Late in 2011, the Internal Revenue Service (IRS) launched a new Voluntary Classification Settlement Program, or

VCSP, which allows employers to prospectively reclassify - as employees - those workers they erroneously treated as independent contractors or as other nonemployees.

The VCSP is available to any drilling business currently treating its workers as independent contractors and wants to prospectively treat those workers as employees. To be eligible, the business must have: (a) consistently treated the workers as nonemployees; (b) filed all required Forms 1099 for the workers for the previous three years; and (c) not currently under audit by the IRS. A taxpayer previously audited by the IRS or the U.S. Department of Labor about worker classifications will only be eligible if it has complied with the results of the audit.

Any drilling company accepted into the VCSP agrees to prospectively treat the class of workers as employees for future tax periods and in exchange:

- A. Pays only 10% of the employment tax liability which may have been due on compensation paid to the workers for the most recent tax year;
- B. Won't be liable for any interest and penalties on the liability;
- C. Won't be subject to an employment tax audit for the worker classification of the workers for prior years; and
- D. Agrees to extend the period of

limitations on assessment of employment taxes for three years.

Even better, a rejected drilling business could be audited for another reason, but not as a result of filing Form 8952 (Application for VCSP). Also keep in mind the VCSP concerns future years only. Thus, the IRS won't make any determination about prior years and any drilling company that signs a VCSP.

While the IRS's recently introduced Voluntary Classification Settlement Program may provide an answer for some drilling contractors and business owners caught up in the ongoing employee or independent contractor brouhaha, this is one area in which a little thought, a little preparation, and professional guidance, can be better than a cure.

*Mark*

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