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December 21, 2004

The Honorable Mark W. Everson
Commissioner of Internal Revenue
Internal Revenue Service
Room 5226
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Proposed Changes to the Internal Revenue Service's Classification
Settlement Program to Resolve Worker Classification Cases

Dear Commissioner Everson:

Enclosed are comments on the Internal Revenue Service's
Classification Settlement Program to resolve worker classification cases as prepared
by members of the Committee on Employment Taxes. These comments represent the
individual views of those members who prepared them and do not represent the
position of the American Bar Association or of the Section of Taxation.

Sincerely,

Kenneth W. Gideon
Chair, Section of Taxation

Enclosure

cc: Anita Bartels, Senior Program Analyst, SB/SE Compliance Policy,
Employment Tax, Internal Revenue Service

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**COMMENTS ON
PROPOSED CHANGES TO THE INTERNAL REVENUE SERVICE'S
CLASSIFICATION SETTLEMENT PROGRAM ("CSP") TO RESOLVE
WORKER CLASSIFICATION CASES**

The following comments are the individual views of members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

These comments were prepared by individual members of the Task Force on Reform of IRS Administrative Programs for Resolving Employment Tax Disputes, which was appointed by Russell Hollrah, the Last Retiring Chair of the Employment Taxes Committee of the Section on Taxation. Harvey J. Shulman, exercised principal responsibility and substantive contributions were made by Martin Press, Barry H. Frank and Chaya Kundra. The comments were reviewed by GJ Stillson MacDonnell and Russ Hollrah, the current Chair and Last Retiring Chair, respectively, of the Employment Taxes Committee. In addition, the comments were reviewed by Larry Campagna of the Committee on Government Submissions and by Thomas A. Jorgensen, Council Director for the Employment Taxes Committee.

Although some of the members who participated in preparing these comments have clients who would be affected by the federal tax principles addressed by these comments, or they have advised clients on the application of these principles, no such member (or firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise influence the development or outcome of, the specific subject matter of these comments.

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Date: December 21, 2004

**COMMENTS ON
PROPOSED CHANGES TO THE INTERNAL REVENUE SERVICE'S
CLASSIFICATION SETTLEMENT PROGRAM ("CSP") TO RESOLVE
WORKER CLASSIFICATION CASES**

EXECUTIVE SUMMARY

The issue of worker classification – i.e., whether a worker retained by a service recipient to perform services is either an independent contractor or an employee – has received a great amount of attention over the years. The issue is raised most directly in employment tax audits that are conducted by the Internal Revenue Service ("IRS"). The proper classification of a worker must be determined accurately to ensure that workers and service recipients can anticipate and meet their tax responsibilities timely and accurately.

Sometimes, however, in the course of an employment tax audit, IRS examiners and other IRS personnel are faced with a very difficult task in determining the proper classification of workers. Congress and the IRS have taken a number of steps in recent years to improve the processes by which such determinations are made, and to promote more certainty and uniformity. For its part, among other things, the IRS issued extensive, updated guidelines for its personnel in 1996. Independent Contractor or Employee?, Training Materials (Training 3320-102, Rev. 10-96, TPDS 84238I). That same year, the IRS also established its Classification Settlement Program (CSP), a process for resolving worker classification disputes that arise during employment tax audits. The CSP is now part of the Internal Revenue Manual ("IRM"), IRM §4.23.6.1 et seq. Although IRS examiners must follow certain procedures set forth in the CSP, those procedures can lead to a voluntary alternative for taxpayers to resolve disputes at the examination level that might otherwise result in more costly, time-consuming and adversarial appeals.

In general, the CSP has been successful in many respects in resolving disputes over the classification of workers as employees or independent contractors. However, now that the CSP has been in operation for several years, it is appropriate to ask whether changes should be made as the result of experience and changes in the law.

We conclude that the success of the CSP could be enhanced by clarifying and expanding the CSP and by including some additional improvements. Along with these comments and pursuant to an informal request, we developed a "red-lined" version of the current CSP, with each proposed addition or deletion to the CSP clearly marked to reflect the changes suggested by the comments. This "red-lined" version is attached to the comments as Appendix A.

COMMENTS

The CSP addresses a number of different issues that arise in the context of employment tax examinations. These issues include what employment law tests are applied by IRS examiners (e.g., common law employment test, “safe haven” under Section 530 of the Revenue Act of 1978); the need for compliance by employers with IRS filing requirements for payments made to independent contractors, and with prior agreements or cases involving the same employer; the strength of an employer’s arguments that its classification of workers is correct and consistent; the exclusion of certain employers from the CSP; the relationship between an audit covered by the CSP and other “open” tax years; the computation of the amount of tax liability under the CSP; and how statutory or regulatory changes may impact a previous CSP agreement between the IRS and an employer.

Our comments should be read in conjunction with the “red-lined” suggestions attached pursuant to an informal request as Appendix A.

1. We recommend that the IRS conform the CSP to the IRS Training Materials by including references to the fact that employment status is determined not only by the common law employment test (which is mentioned throughout the CSP), but also by other statutory standards (e.g., IRC §3121(d)(1), IRC §3121(d)(3)).

Explanation: Workers may be classified as “employees” under either the common law rules or pursuant to other statutory provisions in the IRC. See, e.g., IRC §3121(d)(1), IRC §3121(d)(3). Other sections of the IRM recognize that relief under Section 530 of the Revenue Act of 1978 may be available in either case. IRM §4.23.5.2, ¶4. Likewise, the IRS Training Materials at 1-36 through 1-37 also explain that Section 530 may apply regardless of the standard applied. The CSP itself recognizes that employers who employ workers who are classified as “employees” pursuant to other statutory provisions may be covered by the CSP, IRM 4.23.6.7 at ¶¶ 1-4, but the statement is not constant throughout the CSP. See, e.g., IRM 4.23.6.2 at ¶4. In order to assure consistency within the CSP, and between the CSP and other sections of the IRM and Training Materials, we propose additional references within the CSP itself. See, e.g., IRM 4.23.6.2 at ¶4 and IRM 4.23.6.13.3 at ¶1.

2. We recommend that the IRS clarify that (a) non-issuance of IRS Form 1099s by an employer disqualifies it from the CSP for only those workers for whom the Form 1099s were not filed, (b) non-issuance of Form 1099s to workers for whom no Form 1099’s were required (e.g., incorporated entities) does not disqualify an employer from the CSP for those workers, and (c) late-filed Forms 1099s may be considered “timely filed” if they represent a de minimis number of all Forms 1099s or if an auditor concludes that any late filing was due to inadvertence, excusable neglect, or good cause, that the late-filing taxpayer acted in good faith, and that the taxpayer filed the Form 1099s prior to any contact from an IRS examiner.

Explanation: Timely-filed Forms 1099s are a fundamental principle on which the CSP is based. The CSP contains a de minimis exception to the requirement for timely filing. IRM 4.23.6.13 at ¶2. However, we believe that there should be other circumstances – identified above – under which a taxpayer would not lose the opportunity to qualify for the CSP due to late filed Forms 1099s. We recognize the theoretical possibility that intentionally non-compliant taxpayers might try to take advantage of this limited exception, but the proposed

safeguards should make that possibility extremely remote, while at the same time it would bring more taxpayers into the CSP program.

3. We recommend that the IRS clarify that non-compliance with prior closing agreements or court decisions involving the employer, or pending proceedings involving the employer, disqualifies the employer from the CSP for only workers holding substantially similar positions to those covered by the prior agreements or court decisions or covered by the pending proceedings.

Explanation: The CSP properly concludes that if a taxpayer has been found in non-compliance with respect to worker classification issues in prior years, then it should not be eligible for coverage under the CSP in later years. But because an analysis of the proper treatment of workers is often very fact-intensive and involves the application of less than clear legal standards, we believe that a taxpayer should be ineligible for CSP relief only if a prior finding of non-compliance involved workers holding substantially similar positions to the workers whose status is being reviewed in a later year audit. We realize that this approach may allow previously non-compliant taxpayers to avoid paying the full amount of back taxes that would otherwise be due in a later year audit. However, the applicability of the CSP in the later year audit depends on the taxpayer's ability to persuade an examiner that it meets the filing consistency, substantive consistency and reasonable basis standards in that later year and rather than a wholesale disqualification of a taxpayer, any non-compliance in prior years by that taxpayer could be considered on a case-by-case basis in determining whether these standards have been met for the later year. We also believe that this approach is likely to bring more taxpayers into the CSP. See IRM §4.23.6.8 at ¶¶ 2, 3, 4, 8 and 9.

4. We recommend that the IRS clarify, through further explanation, what is a "colorable" argument that an employer meets the reporting consistency, substantive consistency, and reasonable basis tests of §530 of the Revenue Act of 1978, as amended.

Explanation: In order for a taxpayer to qualify for the CSP, it must have a "colorable argument" that it meets the substantive consistency requirement and the "reasonable basis" requirement of Section 530. The CSP does not define what is a "colorable argument", and we believe that this uncertainty is an impediment to further expansion of the CSP.

Accordingly, we have proposed a definition and provided several examples of what would be a "colorable argument". See IRM 4.23.6.13.1 at ¶1.B.

5. We recommend that the IRS extend the CSP, in limited circumstances, to employers that are technical services firms covered by Section 1706 of the 1986 Tax Reform Act (§530(d) of the Revenue Act of 1978, as amended), with a new "intermediate" CSP rate (33% of the IRC §3509 rate).

Explanation: Pursuant to Section 1706 of the 1986 Tax Reform Act (Section 530(d) of the Revenue Act of 1978, as amended), technical services firms that pay workers who perform services for customers of those technical services firms are ineligible for any safe haven relief under Section 530. Several of the factual assertions that led to enactment of Section 1706 have been disproved or at least questioned. Taxation of Technical Services Personnel: Section 1706 of the Tax Reform Act of 1986 – A Report to Congress (Dept of Treasury, March 1991) at Chapter 5, §III.C at page 55; Independent Contractors: Compliance and Classification Issues, A White Paper for the American Tax Policy Institute (August 1993) at III-6 – III-7. Even though Section 1706 remains the law, the IRS has discretion in the context of the CSP to provide some relief to technical services firms that may have

misclassified workers but are willing to agree to future compliance. We believe that because technical services firms are excluded from Section 530 relief on the basis of Section 530(d), it would be inappropriate to use the lower 25 percent rate that is available to other taxpayers under the CSP. However, it would also be inappropriate to make a full employment tax assessment because that would place the technical services firm in the same CSP category as a noncompliant non-technical services firm that was not statutorily excluded from Section 530 relief, but that nonetheless failed to qualify for such relief because it clearly failed to meet the substantive consistency requirement or the reasonable basis test. We suggest that the technical services firm receive a better offer than the latter taxpayer. In addition, the reason that the technical services firm will be offered a 33 percent rate – and not a higher rate, such as 50 percent – is that the technical services firm’s colorable reasonable basis argument is being limited solely to a reasonable basis in the common law, and not any of the other reasonable bases for which other taxpayers might more easily qualify. If the technical services firm can meet this higher threshold of a colorable argument under the common law test, then it is reasonable to offer it a 33 percent rate – a rate that is closer to 25% than to 50%. If this change is made to the CSP, then it is theoretically possible that a technical services firm might be more willing to risk non-compliance because it still might be able to get a reasonable settlement under the CSP. However, we believe this possibility is speculative and highly unlikely, and we believe that instead, an expansion of the CSP to technical services firms is likely to resolve more audits at the examination level and be a better alternative for many of those taxpayers than pursuit of a settlement through the Appeals Office. See IRM 4.23.6.13.1 at ¶1.D, 4.23.6.13.5 at ¶9.

6. We recommend that the IRS clarify how the CSP applies to different classes of workers, even though they may perform the same or similar duties, when their relationships with the employer are different (e.g., the workers do not hold substantially similar positions) (see new proposed Example 1 in IRM §6.13.1.2, as well as ¶10 below).

Explanation: As a result of amendments to Section 530 that were part of the Small Business Job Protection Act of 1996, Congress clarified that workers who perform the same general jobs might not necessarily hold “substantially similar positions” if their relationships with a taxpayer are different. We believe that the CSP would be more attractive to taxpayers if it contained a better explanation of this situation, including a specific example or two. We see no downside in this clarification. See IRM 4.23.6.13.1 at ¶2.

7. We recommend that the IRS clarify how the CSP applies when a technical services firm has a colorable argument that a class of workers is not covered by Section 1706 because the workers are not “engineers, designers, drafters, computer programmers, systems analysts, or other similarly skilled workers in a similar line of work” (see new proposed IRM §6.13.1.3).

Explanation: Apart from whether the CSP should be extended to taxpayers who are clearly excluded from Section 530 relief by Section 1706 (see ¶5 above), there is a basic question of what types of workers paid by technical services firms come within that exclusion. Presently, the CSP does not provide guidance to examiners or to taxpayers on how to handle situations in which a technical services firm has a “colorable argument” that its workers are not “engineers, designers, drafters, computer programmers, systems analysts, or other similarly skilled workers in a similar line of work.” We believe that such situations should be covered by the CSP and we see any downside to doing so as theoretical and remote (see ¶5 above). See IRM 4.23.6.13.1 at ¶3.

8. We recommend that the IRS clarify that an audit will not become more onerous and will not be expanded to additional years because an employer will not accept the CSP at the examination level, but instead wants to appeal; we suggest that the proper course of action is to obtain extensions to statute of limitations while an appeal is taken, and not to expand the audit.

Explanation: The CSP is somewhat contradictory or at least unclear about how examiners should handle situations in which the taxpayer refuses a CSP offer at the exam level, and instead decides to pursue an appeal with the IRS Appeals Office. On the one hand, the CSP offer is to remain open during an appeal. IRM 4.23.6.6 at ¶1, 4.23.6.13.6 at ¶3. Keeping the CSP offer open during an appeal continues to provide the taxpayer with an incentive to resolve the audit after receiving more feedback during the appeals process, while not “penalizing” the taxpayer for having taken an appeal instead of accepting the CSP offer at the exam level. On the other hand, however, it appears that an examiner might still be able to open later years for examination while the appeal is pending on the year initially under audit that led to the initial CSP offer. IRM 4.23.6.13.9 at ¶3. The opening of other years for exam could be counter-productive, though it might serve other IRS goals. In this regard, we initially note that the CSP is somewhat unclear as to what would happen if multiple years are opened as an appeal proceeds – e.g., would any subsequent settlement under the CSP involve more than one year? In terms of being counter-productive, opening multiple years has the risk of “hardening” the positions of the examiner and the taxpayer, making acceptance of a CSP offer even less likely. It also may make the CSP offer appear coercive if the taxpayer faces the option of rejecting the CSP at the examination level and appealing to the Appeals Office – but at the expense of having the exam expanded. In terms of serving other IRS goals, opening multiple years would enable the IRS to see the full extent of potential taxpayer liability. It would also prevent taxpayers from trying to use the CSP to “freeze” the examination process and the scope of an audit while they proceed with an appeal. After weighing these considerations, we believe that the CSP should remain a viable option during the examination and appeals process, and the CSP goal of future compliance should be more important than maximizing the amount of taxes collected. However, for this to happen, the examination process would essentially be put on hold after the examiner has audited one year and made a CSP offer based on that one year, and the taxpayer would be allowed to proceed to appeal. At that point, during the appeals process, the taxpayer can reflect again upon the CSP offer. We also recognize that in that situation, it is important that the IRS not lose the opportunity to go back and examine an unopened year on the basis that the statute of limitations has run. Therefore, we urge adoption of a mechanism for obtaining extensions to the statute of limitations in circumstances where a CSP offer has been made but not accepted, the taxpayer has expressed an intent to go to IRS Appeals, and the statute of limitations on an unopened year is about to expire.

9. We recommend that the IRS clarify when workers hold and do not hold “substantially similar positions” (see ¶6 above).

Explanation: See ¶6 above.

10. We recommend that the IRS modify the CSP to state that in cases of multi-year audits, consistent with the goal of future compliance rather than punishment, the CSP tax liability will be computed on the basis of the year with the lowest tax liability.

Explanation: The CSP now provides that any assessment will be made based on the “latest audit year”. IRM 4.23.6.13.4 at ¶3. However, we believe that if multiple years are being

audited, the assessment under the CSP should be computed on the basis of the year with the lowest tax liability.

It is important to protect the government fisc and to avoid “rewarding” noncompliant taxpayers. Limiting liability to the year for which the lowest amount of taxes are due would deprive the government of needed revenue; in fact, one may ask whether the CSP assessment should be based on the tax year with the greatest liability or at least an average of the years under audit. Also, if multiple years are being audited and without the CPS the examiner would be inclined to propose an assessment for all of those years, then reducing the assessment to the lowest amount of taxes as reflected in only one of those years may appear unduly generous to the noncompliant taxpayer.

But at the same time, we believe that there are many more reasons, and much better reasons, to base the CSP liability on the year with the lowest tax liability. First, it is very important to emphasize that the current CSP already limits the proposed assessment to one year, i.e., “the latest audit year”, indicating that the government has already decided that it is more important to resolve the audit under the CSP than to maximize taxes by covering several years. We agree that taxes for only one year should be used as the basis of CSP liability. Second, the IRS has already decided that when it bases the CSP liability on only one year’s worth of taxes, it will not consider all open years to determine a one year average. We also agree with this current IRS policy because if an average were to be used, that approach could actually encourage the opening of additional years for audit, with attendant complexity, disputes and time consumed in investigating and determining potential liability in all of those years. Third, in our view, there is no persuasive reason why “the latest audit year” makes any more sense as the basis for a proposed assessment than the year for which the assessment would be the lowest; indeed, we do not see any important policy that is served by using “the latest audit year”, and certainly not a policy of maximizing revenue collection. Using “the latest audit year” does not necessarily maximize revenue collection because a taxpayer’s CSP liability may be lowest in “the latest audit year” if its business has been declining. Apart from revenue enhancement – which may or may not exist – we saw no other persuasive reason behind using “the latest audit year”. Fourth, if the primary goal of the CSP is to encourage future compliance, the use of the “latest audit year” as the basis for CSP liability does not seem sufficiently related to that goal and, in fact, it may be counterproductive to that goal. For example, it may be that a taxpayer’s business has been growing and that its CSP liability for “the latest audit” year is highest of all of the years under audit. But even in that case, it could be that the taxpayer’s business may have experienced relatively slow but constant growth in the earlier years under audit, and then spiked in “the latest audit year” for reasons relating to general economic upturn, increased customer demand or the like – even though the business has since declined somewhat since “the latest audit year”. To require the CSP liability to be computed on the basis of “the latest audit year” in this case seems unfair to the taxpayer, and is likely to discourage the taxpayer from accepting the CSP offer. Fifth, we note that in many situations it is possible that an Appeals Officer may reduce tax liability for past years to amounts even smaller than that calculated under the CSP for a single year, this possibility would actually encourage a taxpayer to go to IRS Appeals to get a better deal when the liability for “the latest audit year” is not the lowest liability of the open years under audit. Sixth, basing the CSP liability on what would be the lowest liability for any of the open years would not only encourage the acceptance of CSP offers, but it would discourage many taxpayers from going to IRS

Appeals. This is because it is less likely that they could convince an IRS Appeals Officer to lower their liability to a level that is less than the lowest liability for all of the years under audit.

For these reasons, and based on our experience and judgment, we believe that in the event that multiple tax years were examined, a taxpayer that is willing to accept the CSP should have its liability calculated on the basis of the year with the lowest tax liability. See IRM 4.23.6.13.4 at ¶ 3.

11. We recommend that the IRS modify the CSP to explain that the IRS is now considering other changes to the CSP that would allow taxpayers to receive future clarification of their CSP obligations or release from their CSP obligations based on changed legal or factual circumstances in the future.

Explanation: The current version of the CSP does not discuss situations in which taxpayers may be released from their CSP obligations in future years or have those obligations clarified. For example, laws may change, or how a taxpayer operates may change significantly. Taxpayers who believe that they are forever “trapped” by their agreement to the CSP, even if such changes occur, are deterred from accepting a CSP offer. For this reason, we urge that the CSP recognize that the IRS should and will develop guidance for these situations. See IRM 4.23.6.17.

12. We recommend that the IRS make minor editorial and miscellaneous changes to various parts of the CSP.

Explanation: These changes are included on the red-lined version of the CSP.

APPENDIX A
to
COMMENTS ON
PROPOSED CHANGES TO THE INTERNAL REVENUE SERVICE'S
CLASSIFICATION SETTLEMENT PROGRAM ("CSP") TO RESOLVE
WORKER CLASSIFICATION CASES

4.23.6.1 (04-21-1999)

Overview

1. This section explains the Classification Settlement Program (CSP).
2. The Classification Settlement Program or "CSP" establishes procedures under an optional classification settlement program that will allow businesses and tax examiners to resolve worker classification cases as early in the administrative process as possible, thereby reducing taxpayer burden. The procedures will also ensure that the taxpayer relief provisions under section 530 of the Revenue Act of 1978 are properly applied. Under the CSP, Internal Revenue Service (IRS) examiners will be able to offer businesses under examination a worker classification settlement using a standard closing agreement.

4.23.6.2 (04-21-1999)

Introduction

1. When an IRS examiner selects a business for an employment tax examination of the treatment of certain workers as independent contractors, the examiner must first determine whether the business is entitled to relief from retroactive and prospective liability for employment taxes under section 530 of the Revenue Act of 1978. To qualify for relief, the business must meet three requirements:
 - A. **Reporting Consistency:** All Federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for the period, must have been filed by the business on a basis consistent with the business' treatment of the individual as not being an employee.
 - B. **Substantive Consistency:** The business must have consistently treated similarly situated workers as independent contractors. That is, if the business treated a similarly situated worker as an employee, there is no section 530 relief.
 - C. **Reasonable Basis:** The business must have had some reasonable basis for not treating the worker as an employee. This may consist of reasonable reliance on: a judicial precedent, a published ruling, a private letter ruling or technical advice memorandum issued to the taxpayer; the results of a past audit of the taxpayer; or a long-standing recognized practice of a significant segment of the industry. Any other reasonable basis will also suffice.
2. Refer to section 5.2.1, Section 530 Relief, Section 5 of this handbook for additional instructions.
3. In cases where the business clearly meets the reporting and substantive consistency requirements and satisfies the reasonable basis test, the requirements of section 530 are fully met. As a result, no assessment will be made and the business may choose to continue treating its workers as independent contractors.
4. If the business does not meet the relief provisions, the IRS examiner will determine whether the workers in question are independent contractors or employees. [In general](#), Section 3121(d)(2) of the Internal Revenue Code (IRC) requires that the issue of worker classification be resolved using the common-law standard. This requires the IRS to examine facts and circumstances to determine whether a business has the right to direct and control the details of the performance of its workers. [In certain situations, a worker's classification may also be determined by statutory standards such as Section 3121\(d\)\(1\) \(corporate officer\) or Section 3121\(d\)\(3\) \(agent drivers and other types of workers\).](#)

5.1. Because IRS administrative procedures do not permit examiners to weigh the chances of success in court when proposing adjustments, businesses seeking to negotiate a settlement of the issue, including relief under section 530 will generally take their cases to IRS Appeals or to the courts. This increases costs for both taxpayers and the government.

4.23.6.3 (04-21-1999)

Area Responsibilities

1. **Approving Officials.** All group managers can be designated authority to approve CSP offers. However, if they are responsible for considering CSP offers, they should be sufficiently familiar with the worker classification and section 530 issues. Areas may choose to identify specific managers who will have the responsibility of reviewing and approving CSP settlement offers.
2. **Area Coordinators:** Because of the multifunctional nature of CSP, a coordinator is needed to assist the area. Each area will identify a coordinator who will ensure the CSP is consistent throughout the area and provide a contact point for the area.
 - A. The area coordinator will be responsible for monitoring CSP and providing summary information to the area.
 - B. Area Coordinators must maintain a file of closed CSP information. The file will include an original Form 906 Closing Agreement, Settlement Memorandum, and audit report.
 - C. The coordinator should be familiar with employment taxes but no specific position is required. For example, an area may name the Employment Tax Group Manager or [a manager who is](#) an analyst from Technical Support as the area coordinator.

4.23.6.4 (04-21-1999)

Role of the Group Manager

1. Specific group managers are delegated the authority to sign the CSP closing agreements. This authority should be exercised with care to ensure correct and consistent determinations are made.
2. CSP settlements are intended to simulate the results that would be obtained under current law, if the businesses accepting those offers had instead exercised their right to an administrative and/or judicial appeal. Settlements should not be made simply to expedite case closing. In addition, all group managers must ensure that settlement offers are not made in an effort to induce businesses to change worker status when independent contractor status is correct, or when the taxpayer is clearly entitled to section 530 relief.
3. Group managers must ensure that the evaluation of whether the business was entitled to section 530 relief and the examination of the worker classification issue for a year was completed and fully developed to support the change in classification. An offer should not be made if additional audit work is needed for the year.
4. Examiners should be advised that the examination for the year must be completed before a settlement offer can be approved. This situation may require group manager communication with the taxpayer, if an offer has already been discussed by the examiner. It is important that the group managers work with examiners to assure that premature offers are not made.
5. It is crucial that taxpayers are treated consistently under CSP. Group managers are responsible for assuring that examiners make offers in appropriate cases, explain the terms and conditions clearly to taxpayers, and correctly apply the settlement provisions so that taxpayers who are similarly situated receive the same CSP offer. Group managers should also work with examiners to explain the benefits of CSP to taxpayers.

4.23.6.5 (04-21-1999)

Role of the Examiner

1. The IRS examiner will first determine whether the business is eligible for relief under section 530 for the examination year. Where the business is not eligible for relief under section 530, the examiner will initiate a single year examination. Generally, this will be the most recent file year.
2. If the examiner determines that no reclassification issue exists, the CSP procedures will not apply.
3. If a reclassification issue does exist, examiners will then consider whether CSP applies. If the examination includes a proposal to reclassify workers as employees and the taxpayer has timely filed required Forms

1099, a CSP offer should generally be made. (Refer to the section 6.8, Cases Excluded from CSP, below for cases which are specifically excluded from CSP.)

4. Examiners should follow the procedures in the CSP Offer Process section below, in order to determine which CSP offer, if any, is appropriate. Then the examiner will need to consider the facts and circumstances of each case and make a CSP recommendation to a group manager authorized by the area director to accept and approve CSP offers. The recommendation will be made on a Settlement Memorandum, as described in section 6.14.1 below.
5. The final decision regarding whether a CSP offer is appropriate will be made by the manager, after a discussion with the examiner and a thorough review of the case.

4.23.6.6 (04-21-1999)

Eligible CSP Employment Tax Cases

1. The CSP is available to businesses with an open employment tax case in either Examination, TE/GE or Appeals on or after March 5, 1996. Businesses that have not filed the required information returns are not entitled to participate in the CSP [for workers for whom such returns should have been filed](#). Instead, the IRS will follow traditional methods of seeking compliance, and these businesses will be able to use the traditional administrative and judicial appeal processes. [In situations where information returns were not required to be filed \(e.g., payments to corporations\), failure to file such returns does not exclude a business from the CSP.](#)
2. In cases where the businesses clearly meet both the reporting and substantive consistency tests and clearly meets the reasonable basis test, section 530 applies. However, some taxpayers may prefer to treat workers as employees. A CSP offer for prospective treatment will be made to the taxpayer, [but the offer should be accompanied by an explanation that the taxpayer can continue treating the workers as independent contractors as long as information returns continue to be timely filed](#). Since this reclassification of the workers is purely at the option of the taxpayer, the taxpayer may begin treating the workers as employees currently or at the beginning of the next year. This will provide taxpayers who wish to treat workers as employees, but have a fear of negating their claim to relief under section 530, an option to begin this treatment without giving up their claim to section 530 relief for the prior years.

4.23.6.7 (04-21-1999)

Cases Included in the CSP

1. Form 940/941 Non-filers: Taxpayers who have not filed Forms 940 or 941, may still be eligible for CSP. Often, the non-filing of the forms is consistent with the taxpayer's reasonable basis argument. For example, if the taxpayer correctly treated all workers as independent contractors, the taxpayer would not have had a Form 940/941 filing requirement. The taxpayer is eligible for a CSP offer if Forms 1099 were timely filed.
- ~~2.~~ Statutory Employees: If a business treated workers as independent contractors and the examiner determines the workers are statutory employees, as defined in IRC 3121(d)(3), CSP should be considered. If the business timely filed Forms 1099, the business is eligible for a CSP offer.
3. Household Employees: Household employers (who have timely filed Forms 1099, if required) are included in the CSP. Most household employers are not required to file Forms 1099; they are still eligible, however, for CSP.
- ~~4.~~ Government Employers: The CSP program is available to federal government employers and to state and local government employers whose employees are not covered under a section 218 agreement.
- ~~5.~~ Corporate Officers: If a business treated a corporate officer as an independent contractor and timely filed a Form 1099, the business is eligible for CSP. Except in cases where 6.8(7) applies.

4.23.6.8 (04-21-1999)

Cases Excluded from CSP

1. The CSP program is not available for issues other than worker classification. This includes cases in which a threshold issue, such as the nature of a payment as dividends or wages, has not been resolved at the examination level. In addition, the CSP program is available only if the taxpayer timely filed Forms 1099.

Thus, if the taxpayer did not timely file required Forms 1099 [for some workers](#), CSP is not available [for those workers](#) even if other forms were timely filed. Also, the CSP program is not available for worker classification issues that are the subject of a prior closing agreement. Specific exceptions are provided below.

2. Prior Closing Agreement: A business that has previously entered into a closing agreement to resolve classification of the workers at issue in the year under examination is not eligible for CSP [in regard to the same type of workers holding similarly situated positions covered by the prior closing agreement](#). The prior closing agreement provides the final resolution regarding treatment of these workers. [However, the CSP would be available in regard to other workers](#).
3. A business that is not in compliance with the terms of an existing closing agreement relating to worker classification issues is not eligible for CSP [in regard to the same type of workers holding similarly situated positions](#). Inasmuch as the CSP program is designed to encourage compliance, it is not appropriate to extend its benefits to taxpayers that have demonstrated noncompliance with closing agreements.
4. In addition, the CSP program is not available if the misclassified workers are employed by a business that is owned, operated or controlled by a business or the principals of a business that previously entered into a closing agreement resolving the classification of the [same type of workers holding similarly situated positions](#), if the newer business was incorporated or entered into after the closing agreement was signed. Ownership for purposes of CSP will mean that at least 80 percent of the value of the new business is directly or indirectly owned or controlled by the business or the principals of the business that previously entered into a closing agreement resolving the classification of workers.
5. Three Party Arrangements: Any examination that requires identifying the correct employer should not be included in CSP unless this issue is agreed at the examination level [that the taxpayer is the correct employer](#). If the identity of the employer cannot be resolved at the examination level, any settlement of worker classification issues must occur through normal appeals procedures. This includes cases in which the relevant legal issue is whether the worker was employed by the business or by the worker's corporation as well as cases in which one business "leases" workers to another.
6. Information Returns Other Than Forms 1099: Worker classification cases in which information returns other than Forms 1099 were timely filed will not be included in CSP. Thus, if K-1's were filed treating workers as partners, CSP does not apply.
7. Wage Issues: Cases which involve reclassifying officer/shareholder distributions as wages will not be included in CSP. This is most often seen in S Corporations.
8. Administrative or Judicial Proceeding: If the prior year employment tax returns are the subject of an administrative or judicial proceeding [involving the same type of workers holding similarly situated positions](#), the taxpayer will not automatically be eligible for CSP. For example, if prior year returns are in litigation for the misclassification issue, the CSP offer should not be made without consultation with the Department of Justice or Counsel attorney handling the case.
9. A CSP offer should not be made in subsequent year examinations of cases in which the worker classification issue [involving the same type of workers holding similarly situated positions](#) has been resolved through litigation.
10. If an income tax or other related return is part of an on-going criminal investigation, the CSP offer should not be made without consultation with the Special Agent assigned to the investigation.
 - A. Fraud Cases: Cases which have assessments that include either the Civil Fraud or Criminal Fraud penalty will not be eligible for CSP.
 - B. Cases which have assessments that reasonably have the potential to include either the Civil Fraud or Criminal Fraud penalty should be developed in full before any decision is made regarding CSP.
11. Claims: Taxpayers may file claims requesting CSP settlements on cases which were closed prior to the implementation of CSP. Such claims will be disallowed. CSP is only available to businesses with an open case in either Examination, TE/GE or Appeals on March 5, 1996.
12. Government Employers: The CSP program is not available to state and local government employers whose employees are covered under a section 218 agreement.

4.23.6.9 (04-21-1999)

Eligible for Relief under Section 530

1. In cases where the business ~~clearly~~ meets the reporting and substantive consistency requirements and satisfies the reasonable basis test, the requirements of section 530 are fully met. As a result, no assessment will be made and the business may continue treating its workers as independent contractors.
2. Some businesses, however, may prefer to begin treating its workers as employees. In this case, the examiner should determine whether the workers are employees. If so, an agreement for prospective treatment will be made available, [but the offer of such an agreement should be accompanied by an explanation that the taxpayer can continue treating the workers as independent contractors as long as information returns continue to be timely filed.](#) A business that enters into such an agreement may begin treating the workers as employees currently or at the beginning of the next year [and no tax will be due.](#) By doing so, the business will not give up its claim to section 530 relief for prior years.

4.23.6.10 (04-21-1999)

Not Eligible for Section 530 Relief

1. Where the taxpayer is not eligible for Section 530 relief and it appears that a business may have erroneously treated a worker as an independent contractor rather than an employee, the IRS examiner will gather the facts necessary to determine whether improper classification has occurred.
2. The examiner will then consult with the examination group manager. After thoroughly reviewing the facts and circumstances of the case, the group manager will confirm the business' eligibility for a CSP settlement offer. If an offer is made and accepted by the business, the parties will sign a CSP closing agreement based on a standard closing agreement provided by the Headquarters Office.

4.23.6.11 (04-21-1999)

Mandatory CSP Comment

1. On any case involving a determination that a worker was misclassified, the examiner must comment on CSP. The examiner should fully explain in his/her workpapers that CSP was considered, whether or not an offer was made, and what type of offer was made, if any, and why.

4.23.6.12 (04-21-1999)

Effect on TE/GE Programs

1. CSP applies to worker classification issues that arise in examinations conducted by Examination, as well as TE/GE employees. CSP does not alter the procedures that apply to the TE/GE Closing Agreement Programs (CAP), as detailed in Revenue Procedure 94-16. Nor does it affect the TE/GE Voluntary Compliance Resolution (VCR) program, as detailed in Revenue Procedure 94-62.

4.23.6.13 (04-21-1999)

Procedures for CSP

1. First, the examiner will analyze the extent to which a business meets the requirements for section 530 relief, which is critical to determining whether the business can continue current classification practices or the appropriate nature of the offer the business will receive under the CSP. Every settlement offer will be based on a full examination of the facts and circumstances for the year under examination. Only through an examination can the IRS explore whether a worker should be treated as an employee or an independent contractor.
2. [Timely Filing of Required Forms 1099:](#) A de minimis failure to timely file Forms 1099 [for a class of workers](#) should not affect the taxpayer's eligibility for CSP [for that entire class.](#) [Similarly, if Forms 1099 were filed late, you have the discretion to determine they were timely filed for purposes of applying the CSP if the facts and circumstances show that the late filing was due to inadvertence, excusable neglect or other good cause, that the taxpayer acted in good faith, and that the late filing occurred before your initial contact with the taxpayer.](#)

A. For example **Example 1**: Your recent review of a retail outlet revealed the taxpayer had treated one class of 150 workers as independent contractors. You inspected Forms 1099 and determined that all required Forms 1099 were timely filed except for three which were missed by the processing department. Here the taxpayer's failure to timely file a de minimis number of Forms 1099 would not indicate that the taxpayer has clearly failed the reporting consistency requirement. You will continue your analysis to determine whether the taxpayer meets the substantive consistency and reasonable basis test. However, if the taxpayer failed to file Forms 1099 for 50 of the 150 workers, then only the 100 workers for whom such forms were issued could be included within any CSP offer; the 50 workers for whom such forms were not issued are excluded from the CSP.

Example 2: Your recent review of a retail outlet revealed the taxpayer had treated one class workers as independent contractors. You inspected Forms 1099 and determined that all required Forms 1099 for that class were filed 90 days late because the processing department's internal computer system lost relevant data during the reporting process and the data had to be manually reconstructed. The loss of data occurred due to an unintentional data entry error by a processing clerk. Historically, the taxpayer has otherwise filed its employment tax returns and Forms 1099 on a timely basis. In these circumstances, the delay in filing would be considered inadvertent and does not indicate that the taxpayer has clearly failed the reporting consistency requirement. You will continue your analysis to determine whether the taxpayer meets the substantive consistency and reasonable basis test.

Example 3: Your recent review of a manufacturing company revealed the taxpayer had treated one class of workers as independent contractors. Your inspection showed that no Forms 1099 had been filed for that year before your initial contact with the taxpayer. However, after that initial contact and prior to your discovery of the non-filing of Forms 1099, the taxpayer filed such forms. You may not consider the Forms 1099 to be "timely filed" in this situation, and so the taxpayer will not be eligible for the CSP's reduced rates.

3. Full examinations and the attendant review should ensure that all businesses are provided appropriate settlement offers under the CSP and thus should ensure the consistency and uniformity of the CSP.

4.23.6.13.1 (04-21-1999)

CSP Settlement Offers

1. Under the CSP, a series of graduated settlement offers will be available.
 - A. If the business meets the section 530 reporting consistency requirement but either clearly does not meet the section 530 substantive consistency requirement or clearly cannot meet the section 530 reasonable basis test, the offer will be a full employment tax assessment for the one taxable year under examination computed using IRC section 3509, if applicable.
 - B. If the business meets the reporting consistency requirement and has a colorable argument that it meets the substantive consistency requirement and the reasonable basis test, the offer will be an assessment of 25 percent of the employment tax liability for the audit year, computed using section 3509, if applicable. A "colorable argument" is an argument that is not clearly wrong, or an argument that has some merit or some validity to it. Even if the you disagree with the argument and you determine it is not justified by the facts or the law, or you believe that the taxpayer has a weak argument, that does not mean that the argument is clearly wrong or has no merit or validity to it. For example, a "colorable argument" can be supported by less than a preponderance of the facts or the law, and it does not have to be an argument that is "more likely than not" to succeed; rather, it needs only some facts or some law to support it so that it cannot be said it is clearly wrong, or so that it can be concluded that it has some merit or some validity to it. Even if there is no direct legal precedent on point to support the taxpayer's argument, it could still be a "colorable argument" if it is not clearly wrong or if it has some merit or some validity to it; and even if there is direct legal precedent contrary to taxpayer's argument, it could still be a "colorable argument" if the taxpayer's effort to distinguish or overturn that precedent is not clearly wrong or has some merit or some validity to it.
 - C. In each instance, the business will agree to properly classify its workers prospectively, thus ensuring future compliance.

- D. Notwithstanding paragraphs A and B in this section 6.13.1, if the taxpayer cannot qualify for section 530 relief because it is a technical services firm paying workers clearly covered by section 530(d), but the taxpayer meets the reporting consistency requirement, has a colorable argument that it meets the substantive consistency requirement, and has a colorable argument that it has a reasonable basis for treating the workers as independent contractors based on a common law evaluation (for example, see section 6.13.5.8 below, Example 2), then the offer will be an assessment of 33 percent of the employment tax liability for the audit year, computed using section 3509, if applicable.
2. A business may qualify for more than one CSP offer if several different classes of workers or the same classes of workers who do not hold similarly situated positions are at issue. For example, a business may receive an offer based on 25 percent of its one year liability for one class of workers and an offer based on the full one-year liability for another class. The same business may not have timely filed Forms 1099 for another class of workers, and therefore, may not qualify for any CSP offer. On yet another class, the business may be in full compliance with section 530 and would therefore be permitted to continue to treat the workers as independent contractors.
- Example 1:** You are examining a painting company that hires painters in three different situations and also hires a cleaning crew. First, it has painters who are year-round, full-time employees that it can assign from project to project, for whom it provides all tools, equipment and transportation, who are not permitted to work for other painting firms, who are supervised daily by the company's more experienced painting foreman, and who are paid a weekly salary and provided benefits and vacation. Second, it has painters to whom it subcontracts as independent contractors year-round, but on a part-time project by project basis, who work without daily supervision of the company's foreman, who provide all of their own tools, equipment and transportation, who are paid by the hour, and who receive no benefits and vacation. Third, the company also hires college students as independent contractors during the summer months on a part-time basis, but it can assign them from project to project, they must call in each morning to learn if they have work to do that day (which work they may not reject), it provides them with all tools, equipment and transportation, they are supervised daily by the company's foreman, and they receive no benefits or vacation. As to the cleaning crew, they are hired as independent contractors on a part-time basis, all of their supplies and equipment are provided by the company, they are supervised by the company's foreman, and they are paid by the hour. Although the "class of workers" involved in the first three cases consists of painters, the painters do not hold similarly situated positions because each class is treated differently by the company in its relationships with the workers. Further, the company issued Forms 1099 for the year-round, part time painters, the summer college students and the cleaning crew. After your analysis, you conclude that the company is in full compliance with section 530 as to the year-round, part-time painters who are treated as independent contractors or, alternatively, that it is properly classifying these painters under the common law. But you also conclude that the summer college students and the cleaning crew should have been treated as employees. You find that the company has a colorable argument for treating the summer college students as independent contractors, but no colorable argument as to the cleaning crew. In this situation, no action would be taken in regard to the year-round, part-time painters; you would offer a 25% of the §3509 tax rate and the CSP in regard to the summer college students hired as painters; and you would offer 1 year of taxes at the full §3509 rate and the CSP in regard to the cleaning crew. In this example, it is also important to recognize that although the CSP agreement would cover the summer college student painters, it would be inappropriate for the CSP to refer solely to "painters". That latter reference might unreasonably preclude the company from continuing to hire independent contractors who might perform the same or similar work tasks (e.g., painting), but who do not hold similarly situated positions with the company because the nature of their relationships is different from that of the summer college student painters.
3. Where the facts are clear that a taxpayer is a technical services firm that has paid workers as independent contractors to perform services for a third party, and if the workers are engineers, designers, drafters, computer programmers, systems analysts, or other similarly skilled workers in a similar line of work, then section 530(d) (Section 1706 of the Tax Reform Act of 1986) disqualifies the taxpayer from receiving section 530 relief. In that clear situation, the CSP offer is covered by section 6.13.1.1.A or section 6.13.1.1.D above. However, if the taxpayer has a colorable argument that it is not disqualified by section

530(d), the CSP offer would be covered by section 6.13.1.1.B above. For example, a technical services firm may have paid certain technicians as independent contractors to perform services for third parties who are the firm's clients. Forms 1099 were timely filed. The firm has argued that these certain technicians are not among the types of workers disqualified by section 530(d), and it has distinguished the skills of and type of work done by these certain technicians from the skills of and type of work done by the specifically mentioned classes of workers in section 530(d). Although you disagree with the firm's argument, you have determined that it has a colorable argument that these certain technicians are not "similarly skilled workers engaged in a similar line of work". As a result, if you determine that these certain technicians should have been treated by the firm as its common law employees, but the firm also has a colorable argument that it has met the substantive consistency and reasonable basis test, you would offer the CSP with an assessment of 25 percent of the employment tax liability for the audit year, computed using section 3509, if applicable.

3.4. The graduated settlement offers comprising CSP are intended to simulate the results that would be obtained under current law, if the businesses accepting those offers had instead exercised their right to an administrative and/or judicial appeal.

4.23.6.13.2 (04-21-1999)

Voluntary CSP Offer

1. Taxpayer participation in the CSP will be entirely voluntary, and a taxpayer may accept a CSP settlement offer at any time during the examination process. A taxpayer's rejection of a CSP offer will in no way affect the outcome of the examination or subject the taxpayer to greater or more onerous stringent examination procedures or requirements or cause the examiner to expand the audit to multiple years. Moreover, a taxpayer declining to accept a settlement offer under the CSP will retain all rights to administrative appeal that exist under the IRS' current policies and procedures, and all existing rights to judicial review.

4.23.6.13.3 (04-21-1999)

CSP Analysis

1. Before a settlement offer can be considered, the applicability of section 530 must be evaluated. An examination that includes looking at the worker activities and, the degree application of direction and control by the business common law test, and analysis under any applicable statutory employment test, must also be completed. When the reclassification issue is reviewed in conjunction with section 530, there are a number of possible outcomes. The type of CSP offer is based on the results of the examination.
2. Where the independent contractors retained by a taxpayer include different types of workers, or the same type of workers but holding positions that are not similarly situated, it is important to make sure that the description of the workers covered by the CSP are set forth with particularity. As an illustration, in Example 1 in section 6.13.1.2, it would be inappropriate to describe the workers covered by the CSP as "painters" because that term suggests that the taxpayer could not hire any "painters" as independent contractors, even though you concluded that the year-round, part-time painters could be hired in that capacity. After consultation with the taxpayer, you must arrive at a description of the workers covered by the CSP that includes the summer college students, but excludes the year-round, part-time painters.

2.3. The following chart summarizes the possible outcomes of an examination and the CSP offer applicable to each outcome. It can be used as a guide for reference throughout this text.

3.4. CSP ANALYSIS CHART

Are the Workers Employees?	Were Forms 1099 Timely Filed?	Is TP Entitled to S530 Relief?	Type of CSP Offer
1. Yes	Yes	Yes	TP's Option
2. No	Yes/No	N/A	None
3. Yes	No	No	None
4. Yes	Yes	No	1 YR. Tax +CSP
5. Yes	Yes	Maybe <u>(TP Has Colorable Arguments on Substantive</u>	25% Tax +CSP

		Consistency and on Any Reasonable Basis)	
6. Yes – Workers ‘Possibly’ Covered by §530(d) (TP Has Colorable Argument Workers Are Not Covered)	Yes	No, But Only Because §530(d) Applies (TP Has Colorable Arguments on Substantive Consistency and on Any Reasonable Basis)	25% Tax +CSP
7. Yes – Workers Covered by §530(d)	Yes	No, But Only Because §530(d) Applies (TP Has Colorable Arguments on Substantive Consistency and on Reasonable Basis in Common Law)	33% Tax +CSP

4.23.6.13.4 (04-21-1999) CSP Offer Process

1. The following steps provide a detailed description of the CSP process. When the examination of a single year is completed, examiners will follow the process below:
 - A. In a case where the business clearly meets both the reporting and substantive consistency tests and clearly meets the reasonable basis test, section 530 applies. NO ASSESSMENT SHOULD BE MADE , nor should an examiner request any changes in the employer's treatment of the workers for employment tax purposes. However, some taxpayers who are eligible for section 530 relief may prefer to treat workers who are employees under a common-law analysis, as employees. A CSP offer for prospective treatment will be made to the taxpayer- [but the offer should be accompanied by an explanation that the taxpayer can continue treating the workers as independent contractors as long as information returns continue to be timely filed.](#) Since this reclassification of the workers is purely at the option of the taxpayer, the taxpayer may begin treating the workers as employees currently or at the beginning of the next year.

EXAMPLE:

A taxpayer was examined in 1994, a prior year, in which workers were holding the same positions and no employment tax deficiencies were proposed. The taxpayer meets the reporting and substantive consistency tests. Relief provided by section 530 is therefore available. Such a taxpayer has a safe haven and no adjustment should be proposed. A CSP offer as described above would be appropriate.
 - B. If an examiner concludes that the workers are independent contractors, no reclassification issue exists. A CSP offer is not appropriate and should not be made. Examiners should remember that engaging the services of an independent contractor is a legitimate business practice. Examiners should not recommend changing a worker's status or present a CSP offer simply because it might result in a clearer paper trail for follow-up ~~or~~ increase tax collected through withholding. [or conform the taxpayer’s classification practices to those of some of its competitors.](#)
 - C. If the workers are determined to be employees but [the required](#) Forms 1099 were not timely filed, the taxpayer is not eligible for section 530 relief [for the workers for whom such forms were not filed.](#) Additionally, CSP provides that these taxpayers are not eligible for a CSP offer. ~~As noted above, all open years may be examined in accordance with the examination cycle.~~
 - D. If [the required](#) Forms 1099 were timely filed, but the business clearly fails the substantive consistency test or does not have a reasonable basis argument, section 530 is not applicable. However, a CSP offer will be made because the taxpayer has complied with the Form 1099 requirements.
2. The CSP offer will provide that the taxpayer begins to treat the workers correctly, as employees, and agrees to a deficiency assessment.

Example 1: You are examining a masonry construction company. Your examination reveals the company makes payments to two brick layers. You find that the two workers perform identical duties. ~~The company timely filed a Form 1099 for one worker and a W-2 for the other. Because the~~ and that they had identical relationships with the company (except for their employment classification), and that the company has ~~treated not even attempted to offer a colorable argument that the~~ ~~similarly situated~~ workers did not hold “substantially similar positions”. The company timely filed a Form 1099 for one worker and a W-2 for the other. Because it is clear that the company has inconsistently treated workers who hold substantially similar positions, the company is not entitled to relief under section 530. However, a one year CSP offer would be made if it is determined that the brick layer treated as an independent contractor should have been treated as an employee.

Example 2: You examine a painting company that engages the services of college students during the summer months to paint offices. The company timely filed Forms 1099. You ask the owner the reasoning for treating the painters as independent contractors. The owner replies that ~~the all~~ students are given an option of being treated as either employees or independent contractors based upon their own desires, and that there is no other basis on which the owner based the determination to pay students as independent contractors. As you discuss this further, you determine the taxpayer has not established a reasonable basis argument. Therefore, section 530 is not applicable. A one year CSP offer would be appropriate.

~~Example 3: You conclude the examination of a computer services firm. Forms 1099 were timely filed. You have determined the company is a technical service firm as described in section 530(d). If appropriate, if it is determined that the students treated as independent contractors should have been treated as employees. However, if the company retains other painters as independent contractors for whom you will propose a one year assessment CSP offer because the taxpayer is not entitled to relief find the company is protected by section 530 or has properly classified them under section 530.~~

~~A deficiency assessment will be made for the latest~~the common law, then these other painters should not be covered by the CSP as it relates to the college student painters. See Example 1 in section 6.13.1.2.

Example 3: You conclude the examination of a computer services firm that has paid certain technicians as independent contractors to perform services for third parties who are the firm’s clients. Forms 1099 were timely filed. You have determined the company is a technical service firm that operates as described in section 530(d). Although you disagree with the firm’s argument, you have also determined that at a minimum it has a colorable argument that these certain technicians are not “similarly skilled workers engaged in a similar line of work” as the types of workers specifically mentioned in section 530(d). If you determine that these certain technicians should have been treated by the firm as its common law employees, but the firm has a colorable argument that it meets the substantive consistency requirement and reasonable basis test in section 530, the CSP offer will be an assessment of 25 per cent of the employment tax liability for the audit year, in accordance with section 6.13.1.1.B above.

3. If more than one year has been opened for audit, a deficiency assessment will be made for the audit year in which the lowest assessment will result, computed using IRC section 3509, if applicable. Because the primary purpose of the CSP is future compliance, it is not inappropriate to forego assessing for a year in which the assessment would be higher. All usual case processing procedures apply. (If the examination was in process prior to CSP implementation examiners will need to follow the interim procedures below.)
4. The taxpayer should begin treating the worker as an employee effective the first day of the quarter following the agreement date. For example: The CSP agreement is signed by the taxpayer and approved by the IRS on March 15, 1997. The quarter ends March 31, 1997. Therefore, the taxpayer should begin treating the workers as employees on April 1, 1997.

5. However, if a taxpayer is willing to agree, but cannot comply until the second or third quarter, then it would not be in the government's nor taxpayer's best interest to proceed with ~~opening additional years or~~ preparing an unagreed report. In all cases, the agreed compliance date will be stated in the CSP agreement, and as long as the taxpayer complies by that date, future worker classification examinations will not cover any period prior to the compliance date. For example, in some situations if a taxpayer requires the workers to convert to employee status within a relatively short number of months and without adequate planning, the taxpayer's business might be harmed if workers threaten to resign; or problems could be created with a large influx of workers into the taxpayer's employee benefit plans and who must therefore abandon their own Keogh plans.

4.23.6.13.5 (04-21-1999) Reasonable Basis Argument

If the business has timely filed Forms 1099, does not clearly fail the substantive consistency test and does not clearly fail the ~~taxpayer has a~~ reasonable basis ~~argument with some merit~~ test, section 530 may apply. In other words the cases that fall in this category are cases where there is some problem with the taxpayer's substantive consistency argument or with reasonable basis or with both, but it cannot be said with sufficient certainty that section 530 is applicable. The CSP offer in these circumstances includes prospective compliance and agreement to a deficiency assessment equal to 25 percent of the ~~latest~~ applicable audit year deficiency, in accordance with section 6.13.4.3 above. As with the 100 percent CSP assessment described in number 4 of the CSP Analysis Chart, section 6.13.3 above, the taxpayer should begin treating the worker as an employee effective the first day of the quarter following the agreement date.

1. but subject to the provision in section 6.13.4.5 above
2. These cases are typically the most difficult. They involve significant development and legal research. The CSP offer reflects the hazards in these cases. Examiners will have to very carefully consider the taxpayer's position and determine if the taxpayer has demonstrated a reasonable basis. Cases in which no ~~valid~~ colorable reasonable basis argument is offered can be settled under number 4 of the CSP Analysis Chart, section 6.13.3 above.
3. Section 530(a)(2) provides three specific safe havens establishing a "reasonable basis" for not treating a worker as an employee, but these are not the exclusive means of establishing a "reasonable basis". "Reasonable basis" exists if the taxpayer reasonably relies on:
 - A. **Judicial Precedent:** judicial precedent, published ruling, or technical advice memorandum or private letter ruling with respect to the individual or specific taxpayer under examination; or
 - B. **Prior Audit:** prior IRS audit of the taxpayer in which employment tax deficiencies were not assessed for amounts paid workers holding positions substantially similar to that held by the worker in question; or
 - C. **Industry Practice:** long-standing recognized practice of a significant segment of the industry in which the worker is engaged; or
 - D. **Others:** A taxpayer who fails to meet any of the above safe havens may demonstrate some other reasonable basis for not treating the worker as an employee.
4. The courts have addressed reasonable basis in several cases. See the detailed discussion of the law presented regarding section 530 in the training document, Employee or Independent Contractor (Training 3320-102 (Rev.10-96)). The legislative history also indicates that reasonable basis should be construed liberally in favor of the taxpayer. See H.R. Rep. No. 95-1748, 95th Cong., 2d Sess., 5 (1978), 1978-3 C.B. 633.

When reviewing the reasonable basis argument presented by a taxpayer, examiners should first determine if ~~it is~~ clearly the taxpayer satisfies one of the three bases that are specifically described in section 530. If ~~it is~~ so, the taxpayer is, of course, entitled to relief, no assessment should be made and an offer under number 1 of the CSP Analysis Chart, section 6.13.3 above should be considered.

5. in accordance with section 6.6.2 above.
6. If there is no colorable argument that the taxpayer's position ~~does not clearly fall~~ falls within section 530(a)(2), examiners should consider whether the taxpayer has demonstrated ~~a~~ any other reasonable basis at all. In cases where the ~~taxpayer's position is without a~~ taxpayer has no colorable argument on the issue of some other reasonable basis, an offer under number 4 of the CSP Analysis Chart, section 6.13.3 above

should be made. No relief is available if the taxpayer fails to treat workers as employees for a reason other than a reasonable basis that they are independent contractors. Examples of reasons that are not colorable arguments for a reasonable basis ~~are classifying~~ basis upon which to classify workers as independent contractors ~~based on~~ are a desire to pay workers less, a worker's request, or the lack of a valid Social Security Number.

Example 1: If a taxpayer does not meet any of the safe havens in section 530(a)(2) and claims that treating workers as independent contractors lowers labor costs as reasonable basis, the taxpayer has not demonstrated a colorable argument for a reasonable basis and an offer under number 4 of the CSP Analysis Chart, section 6.13.4 above would be made.

Example 2: The owner of a lumber company explains that all businesses in the area treat skidders as independent contractors. In fact, the owner worked for two of the other local companies as an independent contractor in the prior year. The owner explained further that duties for work at the other two companies were identical to the workers' in question. While the taxpayer's statements by themselves do not clearly meet the industry practice safe haven, there may be merit to the taxpayer's argument. You should further explore the taxpayer's basis for an industry practice safe haven argument. If the taxpayer could reasonably substantiate the statements, the taxpayer would be eligible for Section 530 relief. If the taxpayer could offer no further substantiation, you would propose a CSP offer with a 25 percent assessment because the taxpayer has a colorable argument.

Example 3: If the taxpayer states that the advice of an accountant was followed in treating workers as independent contractors. You determine that the accountant gave oral advice and can no longer remember what facts were provided. The taxpayer has ~~established a~~ potential colorable argument for a reasonable basis. You would propose a CSP offer with a 25 percent assessment.

7. If the taxpayer presents a colorable argument for its reasonable basis position ~~that has some merit~~, the examiner should verify any facts upon which it is based. In determining if ~~a position has merit~~ an argument is colorable, examiners should be receptive to any rationale and facts that ~~is~~ are genuine. The objective of CSP is to recognize a taxpayer's potential reasonable basis position and efficiently resolve the contention with a settlement. ~~Common~~ Some arguments which may fall in this category include some prior state determinations. Industry practice arguments will also be presented frequently. This applies to cases where the taxpayer does not ~~clearly~~ meet the industry practice safe haven ~~The~~ and does not rely upon any other reasonable basis. For example, the safe haven is not clearly met where a survey is not contemporaneous and is insufficient or relied upon and the percentage of the industry treating workers as independent contractors is more than de minimis but less than 25% and less than what the examiner considers significant. The taxpayer would appear to have a colorable argument, even though it does not in fact constitute an industry practice safe haven.
8. The settlement offer for taxpayers, who have a potential colorable reasonable basis argument, requires prospective treatment of the workers as employees, and a deficiency assessment of 25 percent of the latest audit year. The 25 percent will be determined by computing the deficiency for the entire applicable year, using IRC section 3509, if applicable, and multiplying it by .25. The assessment will be made for the quarter ending December 31.

Example 1: You examine a painting company that engages the services of college students during the summer months to paint offices. The company timely filed Forms 1099. You ask the owner the reasoning for treating the painters as independent contractors. The owner replies that previously as a working student, the owner was given an option of being treated as either an employee or an independent contractor. Moreover the owner's discussions with other business owners at the local building trade meetings and shows indicate some other businesses handle treatment the same way. The taxpayer could not provide specifics, but indicated there were numerous business owners at the meeting and the owner only spoke to a few of them. You determine the taxpayer's argument ~~may have merit~~ is colorable, however, your research indicates that the local painting industry almost always treats painters as employees. The taxpayer is eligible for a CSP offer equal to an assessment of 25 percent of one year's deficiency.

Example 2: You are examining a masonry construction company. Your examination reveals the company makes payments to two brick layers. You find that the two workers perform similar duties. However, the company timely filed a Form 1099 for one worker and a W-2 for the other worker. The worker for whom

the W-2 was filed works with the business owner and uses the equipment owned by the business. The worker for whom the Form 1099 was filed works with the same supervisor, but provides the equipment. You determine the taxpayer had a reasonable basis argument for filing a Form 1099 for one worker as an independent contractor based on a common law evaluation. The taxpayer is eligible for relief under section 530.

9. [Where a taxpayer is excluded from section 530 relief because it is covered by section 530\(d\), in accordance with section 6.13.1.1.D the only reasonable basis argument that will be considered is the common law test. If a taxpayer covered by section 530\(d\) qualifies for the 33 percent rate, the assessment will be determined by computing the deficiency for the entire applicable year, using IRC section 3509, if applicable, and multiplying it by .33. The assessment will be made for the quarter ending December 31.](#)

4.23.6.13.6 (04-21-1999)

Making the CSP Offer

1. After approval by the authorized group manager, examiners will make the settlement offer to the taxpayer, allowing 30 days for acceptance. Examiners should remember that the settlement offer is totally optional for the taxpayer. The examiner should explain the normal audit and appeals process, ~~including the policy to expand examinations to include other open years.~~
2. If the examination ~~is expanded to other~~ [includes multiple](#) open years, the taxpayer may not be entitled to the same, if any, CSP offer. For example, an examiner may discover that in a prior year the taxpayer may not have timely filed required Forms 1099, and, therefore would not be eligible for a CSP offer for the prior year. (The taxpayer is still eligible for the CSP offer in the initial offer year.)
3. The taxpayer retains the right to an administrative appeal. The taxpayer should be advised that if the CSP offer is not accepted at the examination level, the CSP offer will remain available throughout the appeal process

4.23.6.13.7 (04-21-1999)

More Than One Offer

1. It is possible that the taxpayer will qualify for several CSP offers because several classes of workers may be at issue [or all of the workers within a class of workers do not hold similarly situated positions](#). In other words, the taxpayer may qualify for one offer on a particular class of workers and for a different offer relative to another class of workers. The same taxpayer may not qualify for any CSP offer on a third class of workers because Forms 1099 were not filed. [As an illustration, see Example 1 in section 6.13.1.2.](#)

4.23.6.13.8 (04-21-1999)

CSP Offer Accepted

1. If a taxpayer accepts the offer, the standard closing agreement will be completed in accordance with procedures in the Standard Closing Agreement section below. Remember, this document must be prepared without any modification of the terms. The authorized group manager will execute the agreement on behalf of the Commissioner.

4.23.6.13.9 (04-21-1999)

CSP Offer Rejected or not Applicable

1. If a taxpayer rejects the offer or the taxpayer does not qualify for CSP, normal examination procedures should be followed, the audit completed, and an unagreed report prepared (if appropriate). ~~This~~ [Because a taxpayer's eligibility for the CSP and an offer of the CSP may result in expanding considered only when the examination for a year has been completed, the preparation of an unagreed report should proceed without delay after it is determined that the taxpayer is ineligible or after the taxpayer rejects the CSP offer. In the situation where the taxpayer files a timely administrative appeal, additional years should not be opened for examination until the appeal is decided. However, if the statute of limitations for opening up additional years is about to include expire, whether before the examination of the initial year is completed or while an](#)

administrative appeal is pending in regard to the initial year, the taxpayer should be asked to extend the statute while awaiting completion of the initial year examination or a decision on the administrative appeal of a determination regarding that initial year. If the taxpayer refuses to extend the statute, it is permissible to open an examination that includes all other open tax years in accordance with the examination cycle.

2. Since CSP is intended to provide greater consistency in resolving worker classification cases, it is critical that examiners remain consistent in initiating the prior and subsequent years examinations when a CSP offer is not involved.
3. A taxpayer who rejects the CSP offer when it is initially proposed may reconsider the offer and accept it later in the examination, for example, while an unagreed report is being prepared. The original CSP offer will remain open even if ~~later-year~~ returns covering other years have been examined, unless the taxpayer has failed to timely file information returns. The CSP offer will not apply to years in which the taxpayer has not complied with reporting requirements. See section 6.13 above.

4.23.6.13.10 (04-21-1999)

Calculation of CSP Tax Due and Procedures

1. CSP offer at 100 percent assessment: Follow regular tax calculation procedures for a single year calculation.
2. CSP offer at ~~100~~25 or 33 percent assessment: First, calculate tax for each of the 4 quarters using Form 4668. The CSP assessment will then be computed by multiplying the total tax (plus penalty if applicable) by 25 or 33 percent. Attach a cover sheet to Form 4668 showing this calculation tax due example below.

Example:

Tax Due Before CSP
(Total tax plus penalty box
on Form 4668)
Multiply by 25 percent

\$ 1,068.00
X .25 (or X .33)

Total Tax Due After CSP

\$ 267.00 (or \$352)

Examiners should note clearly on top of Form 4668: "25 percent CSP Offer Applies -- Do Not Process~~ing~~" (or "33 percent CSP Offer Applies -- Do Not Process"). This will alert group secretaries and tax examiners that the cover sheet 25 percent or 33 percent calculation should be used in lieu of line 13 on Form 4668 for assessment purposes. Special Instructions: In cases involving other returns, such as Form 943, for agricultural employers or a Form 942, for household employers, examiners should follow procedures as stated above for the Form 941. Where appropriate, references to Form 941 should be replaced with the correct form number and the corresponding Master File Tax Code (MFT). Federal Unemployment Tax Act (FUTA) and FICA: FUTA is included in the CSP offer but will be calculated separately and assessed for a full year. For the year examined, the first three quarters of Forms 941, will be closed with the "No Change with Adjustment" closing code, 01, for Examination and "Regulatory/Revenue Protection" closing code 01, for TE/GE. Beginning in 1995, Household Employment Taxes will be reported on the Form 1040, using Schedule H. Examiners will need to follow updated procedures for assessing these taxes on the Form 1040. As noted above, form references and MFTs will change.

4.23.6.13.11 (04-21-1999)

Information Returns

1. The information returns will generally not be adjusted for the examination years. Settlements in numbers 4 and 5 of the CSP Analysis Chart, section 6.13.3 above will satisfy Federal Insurance Contributions Act (FICA) and Income Tax Withholding employment tax liabilities for the periods examined.
2. Form W-2/W-2C: The section located at the bottom of Form 4668, regarding filing Form W-2/W-2C should be noted "N/A." This pertains to CSP offers with 25 percent assessment and 100 percent assessment.

4.23.6.13.12 (04-21-1999)

Notification to Employees

1. Examiners will follow the instructions in section 8.5.3, Supplemental Determination Procedures -- Worker Notification. This formal notification establishes that the IRS has made an in-depth analysis of the employer's control over the worker, and determined the worker to be an employee.

4.23.6.13.13 (04-21-1999)

Statute Considerations

1. Usual guidelines regarding the statute of limitations apply to CSP. If a statute is imminent and procedures require an extension, the taxpayer should sign the consent to extend the statute before a CSP agreement is executed. [See also section 6.13.9.1.](#)

4.23.6.13.14 (04-21-1999)

Full Payment

1. Examiners should make every effort to collect the balance due at the time the CSP agreement is executed. If, however, the taxpayer is unable to make full payment, the examiner should follow Accounts Receivable Dollar Inventory, or ARDI, procedures to ensure the taxpayer has made payment arrangements.

4.23.6.14 (04-21-1999)

CSP Offer Case Closing Procedures

1. Generally, regular closing procedures apply. However, closures involving a CSP offer will require the following additions or changes.

4.23.6.14.1 (04-21-1999)

CSP Settlement Memorandum

1. Each case file in which a CSP settlement offer is made must contain a memorandum explaining it. The settlement memorandum is required whether or not the offer was accepted. The settlement memorandum documents the examiners determination and will be used by the group manager, the CSP review teams, a follow-up examiner, and Appeals if the case is not agreed. The Area CSP Coordinator should also receive a copy of the CSP settlement memorandum.
2. The settlement memorandum should contain the following:
 - the facts and the law relative to the taxpayer's section 530 claim for relief,
 - the strengths and weaknesses in the taxpayer's position, and
 - the examiner's determination that the taxpayer's position has merit justifying a CSP offer.
3. Authorized group managers should sign the settlement memorandum indicating approval. The settlement memorandum is not part of the examination report and should not be provided to the taxpayer.

4.23.6.14.2 (04-21-1999)

CSP Examination Reports

1. Form 3198 -- Special Handling Notice. Note in the "other" section: CSP offer -- 25 percent assessment, CSP offer -- [33 percent assessment](#), [CSP offer](#) -- 100 percent assessment, or CSP Offer -- no assessment, as appropriate.
2. Form 5344 -- Examination Closing Record or Form 5599 -- Exempt Organizations Closing Record. The Disposal Code "01" No Change with Adjustment, for Examination, and Disposal Code "01" Regulatory/Revenue Protection, for TE/GE, will be used for any periods that have been examined but accepted as filed as a result of a CSP offer.
3. The quarters in which the assessments are made will be closed using Disposal Code "03" Agreed for both Examination and TE/GE. Generally, when the 25 percent assessment and CSP offer is applied, the assessment will be made on the 4th quarter for Forms 941 and the most current examination year for Form

940. For the 100 percent assessment and CSP offer, examiners should follow all usual case processing procedures.

4. Form 2504 -- Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment. When using the 100 percent full year assessment, examiners will follow the usual procedures for completing the Form 2504. However, the assessment summary will need to be entered manually when the assessment includes a 25 percent [or 33 percent](#) settlement offer.
5. Form 4666 -- Summary of Employment Tax Examination. When examiners are using the 100 percent full year assessment, they will follow the usual procedures for completing the Form 4666. However, the assessment summary will need to be entered manually when the assessment includes a 25 percent [or 33 percent](#) settlement offer.
6. Form 4667 -- Examination Changes -- Federal Unemployment Tax. All CSP offers will include a single year 100 percent assessment for FUTA. Usual processing procedures apply.
7. The Disposal Code "01" No Change with Adjustment, for Examination and Disposal Code "01" Regulatory/Revenue Protection, for TE/GE will be used for any periods that have been examined but accepted as filed as a result of a CSP offer.
8. The period in which the assessments are made will be closed using Disposal Code "03," agreed. Generally, when the assessment and CSP offer is applied, the assessment will be made on the most current Form 940 under examination. (This would be the same year that the Forms 941 are being adjusted.)
9. Form 4668 -- Employment Tax Examination Changes Report.

4.23.6.14.3 (04-21-1999)

CSP Standard Closing Agreement

1. A standard closing agreement will be used for CSP. No changes will be made to the terms and conditions of the agreement. Examiners will insert certain taxpayer and return information when preparing the standard closing agreement. Detailed instructions are included with the standard closing agreements.
2. The standard closing agreement should be prepared in triplicate. Original signatures will be secured on all three copies of the agreement. When the agreements are signed by the approving official, examiners should provide one copy to the taxpayer, the second copy should be forwarded with the CSP Tracking Sheet to the area CSP coordinator, and one copy should be retained in the case file.
3. Examiners should exercise caution where authorized representatives wish to execute the closing agreements for the taxpayer. If the authorization form, Form 2848 only authorizes the representative with respect to the tax years under examination, then the taxpayer's signature should be obtained in order to avoid any confusion with respect to future compliance. If the Form 2848 contains appropriate language, then the representative's signature is acceptable. Language authorizing the representative to represent the taxpayer "with respect to employment tax issues arising in [years under examination] and all related specific items affecting other taxable periods" would be appropriate.

4.23.6.14.4 (04-21-1999)

Examination Referrals to Employee Plans (EP)

1. Examiners will follow manual procedures for EP referrals. If a CSP agreement is entered into and the case meets the referral criteria, examiners should provide the following information in addition to the referral Form 4632-A:
 - A copy of the CSP agreement(s).
 - Name and EIN of qualified plan.
 - Name and TIN of reclassified employees. (Where the number of reclassified employees is too large to provide this information, include the class of workers and number of workers reclassified in each.)

4.23.6.15 (04-21-1999)

CSP Quality Control

1. The CSP includes safeguards to ensure the program is implemented and executed consistently and in accordance with program guidelines. There are three layers of quality control built into the program:

2. The first safeguard is inherent in the structure of the program. The standard closing agreement provides a uniform settlement offer that was reviewed and approved by the Headquarters Office. Modifications are not permitted.
3. Group manager review and approval of all settlement offers is required. This will ensure a high level of managerial involvement. The authorized group manager has the expertise and the familiarity with other open cases to assure the accuracy and consistency of determinations.
4. Finally, a post review process using cross-functional reviewers will evaluate both the quality of the offer and the overall success of CSP. The review team will consist of members from Appeals, Counsel, and Examination or TE/GE who are thoroughly trained in employment taxes and the methodology of the CSP. The team will conduct post reviews of a statistically valid sample of closed CSP cases. The purpose of the quality review will be to evaluate the appropriateness of the CSP offer and identify trends in CSP for use in future evaluation of the program.

4.23.6.16 (04-21-1999)

CSP Compliance Follow-up

1. Area CSP Coordinators will identify taxpayers participating in CSP and areas will establish systems for follow up. Since the CSP closing agreement includes a provision that the taxpayer complies prospectively, taxpayer information will be purged and Corporate Files On Line (CFOL) command codes will be researched to ensure that taxpayer are in compliance with the CSP closing agreements.
2. In addition to monitoring prospective compliance, the following data will be collected by the areas and rolled up to the headquarters level upon request:
 - A. Number of businesses accepting and rejecting CSP offers, including type of offer.
 - B. Number of workers affected under CSP offers accepted.
3. Feedback will also be requested from those involved in the program. This will make it possible to identify trends and evaluate program success.
4. The Director, Specialty Tax and Technical Support, will oversee the review and follow-up activities, and coordinate with other functions as needed.

4.23.6.17 (- -2003)

Interpretation of or Release from CSP Obligations

1. In some situations a taxpayer's obligations under a CSP agreement into which it entered may become unclear in future circumstances. In other situations, a taxpayer may wish to be relieved from the terms of a CSP into which it entered years earlier.
Example 1. A taxpayer entered into a CSP agreement under which it agreed to treat 'periodical subscription salespersons' as employees. Several years later, the salespersons who sell 'subscriptions' to 'periodicals' also sell subscriptions to newspapers, cable television, satellite television, and Internet radio, as well as sell records/CDs, DVDs, and videotape cassettes on a non-subscription basis. Their original "periodical subscription" duties remain more than a de minimis part of their work, but are not a substantial part of their work. The taxpayer believes that the CSP does not cover these salespersons.
Example 2. A taxpayer entered into a CSP agreement under which it agreed to treat 'periodical subscription salespersons' as employees. Several years later, there have been a series of consistent court decisions finding that these types of workers, holding similarly situated positions as those workers used by the taxpayer, are independent contractors pursuant to the common law; no contrary court decision exists. The taxpayer wishes to be relieved from its obligations under the CSP to treat these workers as employees.
2. Currently there is no process by which the taxpayers discussed above in section 6.17.1 may receive clarification of or release from their CSP obligations. This matter is now being considered and appropriate guidance will be given in subsequent modifications of the CSP.