THETAXBOOK News Release Date: 1/13/25

Section 530 Relief for Worker Classification Disputes

Cross References

- Rev. Proc. 2025-10

Section 530 of the Revenue Act of 1978 (Section 530) was enacted to provide relief to taxpayers involved in worker classification disputes with the IRS. The IRS recently updated its guidance regarding the implementation of Section 530. The updated guidance also includes new provisions that reflect statutory changes made to Section 530 since its original enactment.

Section 530 provides that a taxpayer will not be liable for federal employment taxes, with respect to an individual or class of workers if certain statutory requirements are met. Under Section 530, the taxpayer, not the individual worker, is eligible for relief from the employment tax liability that would otherwise apply under the Internal Revenue Code (FICA, RRTA, and FUTA employment taxes that are imposed on the employer).

Author's Comment

If a worker is treated as a non-employee under Section 530, use Form 8919, *Uncollected Social Security and Medicare Tax on Wages,* to pay the employee's share of FICA and use Code C as the reason. Do not treat the worker as self-employed by filing Schedule SE (Form 1040). The worker is only subject to his or her half of Social Security/Medicare taxes even if the employer is granted Section 530 relief.

In general, Section 530 provides that if a taxpayer did not treat an individual as an employee for any period, then the individual will be deemed not to be an employee for that period, unless the taxpayer had no reasonable basis for not treating the individual as an employee. This only applies if all federal tax returns, including information returns (Form 1099-MISC, Form 1099-NEC, etc.) with respect to the individual are filed on a basis consistent with the taxpayer's treatment of the individual as not being an employee, and the taxpayer has not treated any other individual holding a substantially similar position as an employee.

A taxpayer has a reasonable basis for not treating the individual as an employee if the taxpayer relied on any of the following.

a) Judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer (judicial precedent),
b) A past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding substantially similar positions (prior audit),

c) Long-standing recognized practice of a significant segment of the industry in which that individual was engaged (industry practice), or
d) The taxpayer had some other reasonable basis for not treating the individual as an employee.

Application and scope of Section 530. Section 530 applies only when a taxpayer did not treat an individual as an employee for employment tax purposes, and the IRS is proposing to reclassify the individual from a non-employee to an employee. Thus, section 530 relates solely to worker classification controversies involving the employment status of an individual as an employee or as an independent contractor (or other non-employee).

For purposes of Section 530, the term "employee" includes:
1) An officer of a corporation under IRC sections 3121(d)(1), 3306(i), or 3401(c)8,
2) An individual, who under the common law rules, has the status of an employee under IRC sections 3121(d)(2) or 3306(i),
3) Agent-drivers, commission-drivers, full-time life insurance salespersons, home workers or traveling or city salespersons under IRC sections 3121(d)(3) (statutory employees) or 3306(i),
4) An individual who performs services that are included under an agreement pursuant to Section 218 or Section 218A of the Social Security Act (218 Agreement) [IRC §3121(d)(4)], and
5) An officer, employee or elected official of a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of the foregoing under IRC section 3401(c).

The IRS applies the following guidelines when determining whether there was "treatment" of an individual as an employee.
1) The withholding of income tax or FICA taxes from any payments made to an individual, whether or not the tax is paid to the IRS, indicates "treatment" of the individual as an employee.
2) Except as provided in paragraphs (6) and (7) below, the filing of an original or amended employment tax return (Form 940, 941, 943, 944, etc.) with respect to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.
3) The filing of Schedule H (Form 1040), *Household Employment Taxes*, with respect to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.
4) The filing of a Form W-2 with respect to an individual, or the furnishing of a Form W-2 to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.
5) Contracting with a third party to perform acts required of employers with respect to an individual, whether or not tax is withheld or paid to the IRS or the third party otherwise satisfies the terms of the contract, indicates "treatment" of the individual as an employee.
6) The filing of a delinquent or amended employment tax return for a particular tax period with respect to an individual as a result of IRS collection or examination activities

or other compliance procedures, does not indicate "treatment" of the individual as an employee for that period. IRS correspondence that merely advises the taxpayer that no return has been filed and requests information from the taxpayer is not a compliance procedure. However, if the taxpayer takes any of the actions above in paragraphs 1 through 5 with respect to those individuals in a later period (for example, the taxpayer withholds employment taxes or files employment tax returns with respect to those individuals for the periods following the period audited), those actions indicate "treatment" of the individuals as employees for those later periods.

7) A return prepared by the IRS under IRC section 6020(b) for a period is not "treatment" of an individual as an employee for that period.

IRS notice and consideration. The IRS will provide written notice of the availability of Section 530 treatment before or at the start of any employment tax audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer or when it appears that a determination concerning worker classification will be made.

In any employment tax audit of a taxpayer relating to the employment status of a worker, the IRS will first consider whether the taxpayer has satisfied the requirements of Section 530 before analyzing whether the individuals are employees.

Payment characterizations. Section 530 relief applies only to matters involving the status of an individual as an employee or non-employee and not to matters involving the proper characterization of payments to that individual. Section 530 does not apply to controversies concerning whether a particular type of payment made to an employee constitutes "wages" as defined under the FICA, FUTA, or income tax withholding provisions. Nor does Section 530 apply to the issue of whether services performed by an employee constitute "employment" as defined under the FICA, FUTA, or income tax withholding provisions. Matters involving exceptions from "wages" and "employment" involve the proper characterization of payments made to employees, or services provided by employees, as defined under the FICA, FUTA, or income tax withholding provisions. Section 530 is not applicable to these matters because they do not involve an issue concerning whether the individual is an employee or non-employee. These matters involve the issue of whether the payment made to an employee is exempt from employment taxes under a particular provision of the Internal Revenue Code (because the payment is not wages or the services are not employment).

Accordingly, in determining if Section 530 applies, the IRS will first determine whether the matter involves the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment."

Dual status workers. In unusual cases, an individual may perform services for a taxpayer that are completely separate and distinct from the services giving rise to the employment relationship, and the individual may be separately compensated for those services. For the services performed outside of the employment relationship to be completely separate and distinct from the services performed within the employment relationship, there must be no interrelation as to duties or remuneration in each capacity. In circumstances where an individual performs services in separate and distinct capacities,

the status of the individual as an employee or non-employee will be considered separately with respect to each distinct relationship under which the separate services are provided.

In such circumstances, a taxpayer may have treated an individual as an employee in one distinct relationship but may assert that Section 530 applies to another distinct relationship. The IRS will first determine whether the matter involves the issue of the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment" before analyzing whether the taxpayer is entitled to Section 530 relief.

Certain technical personnel. Section 530 does not apply in the case of an individual who, through an arrangement between the taxpayer and another person, provides services for the other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. Thus, whether an individual retained by a taxpayer to provide technical services to a client as an employee of the taxpayer for purposes of liability for employment taxes will be determined under the usual common law rules without applying Section 530.

Test room supervisors and proctors. For periods after December 31, 2006, Section 530 relief may apply to services performed by an individual as a test proctor or room supervisor who assists in the administration of college entrance or placement examinations for IRC section 501(c) organizations, regardless of whether the organization previously treated the individual, or an individual holding a substantially similar position, as an employee.

Federal agencies. Section 530 relief is not available to taxpayers that are federal agencies.

Abatement and refund. If a taxpayer is relieved of liability for employment taxes under Section 530, the IRS will abate any assessed liability and refund any payment of the assessed tax related to the worker reclassification issue, including applicable penalties and interest for any tax periods for which the period of limitations has not expired.

Reporting consistency requirement. A taxpayer must satisfy the reporting consistency requirements to obtain Section 530 relief. Reporting consistency requires a taxpayer to file all required federal tax returns with respect to an individual for the period, on a basis consistent with the good faith treatment of the individual by the taxpayer as a non-employee.

For example, if a taxpayer's position is that an individual was an independent contractor for a taxable period, the taxpayer must have filed all required Forms 1099 consistent with its position that the individual was an independent contractor for the period, reporting the payments for services for which the taxpayer is treated as a non-employee. All relevant returns will be considered in determining whether the taxpayer satisfies the requirement that all required returns be filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee.

Reporting consistency must be satisfied on a period-by-period basis. A taxpayer that filed information returns for one period but that did not file information returns for a prior or

subsequent period may satisfy the reporting consistency requirement only for the period for which it filed information returns.

For example, if a taxpayer whose position is that an individual was an independent contractor did not file Form 1099-NEC, *Nonemployee Compensation,* in year 1, but did file Form 1099-NEC in year 2, the taxpayer is not entitled to Section 530 relief in year 1 but may be entitled to Section 530 relief for year 2 if it otherwise meets the requirements for Section 530 relief for that year.

Reporting consistency must be satisfied on an individual-by-individual basis. A taxpayer that filed information returns for some individuals but that did not file information returns for other individuals may satisfy the reporting consistency requirement only for the individuals for whom it filed information returns. For example, if a taxpayer whose position is that an individual was an independent contractor filed Forms 1099-NEC for individual workers A, B, and C in year 1, but did not file Forms 1099-NEC for individual workers D, E, and F in year 1, the taxpayer is not entitled to Section 530 relief for individuals D, E, and F for year 1. The taxpayer may be entitled to Section 530 relief for individual workers A, B, and C in year 1 if it otherwise meets the requirements for Section 530 relief for that year. If the taxpayer files Forms 1099-NEC for all the individuals in year 2, the taxpayer may be entitled to Section 530 relief for all the individuals in year 2 if it otherwise meets the requirements for Section 530 relief for that year.

A taxpayer will not fail the reporting consistency requirement if the taxpayer, in good faith, mistakenly files the wrong type of information return or, as long as the return demonstrates a good faith attempt to accurately report the amount paid, reports an inaccurate amount paid. Moreover, a taxpayer will not fail the reporting consistency requirement if the taxpayer was not required to file an information return because, for example, the taxpayer paid the individual less than the threshold amount required to file a Form 1099.

Substantive consistency requirement. To obtain Section 530 relief, a taxpayer must satisfy the substantive consistency requirement. Substantive consistency requires that a taxpayer or a predecessor not have treated an individual, or any individual holding a substantially similar position, as an employee for any period beginning after December 31, 1977. This determination includes consideration of the relationship between the taxpayer and the individual. Substantially similar position exists if the job functions, duties, and responsibilities are substantially similar and the control and supervision of those duties and responsibilities are substantially similar.

Entering into a Classification Settlement Program (CSP) or Voluntary Classification Settlement Program (VCSP) agreement with the IRS will be considered treatment of the individual as an employee for substantive consistency purposes.

Reasonable basis requirement. To obtain Section 530 relief, a taxpayer must satisfy the reasonable basis requirement. Reasonable basis requires a taxpayer to demonstrate that it reasonably relied on one of the safe harbors or it had another reasonable basis for treating the individual as a non-employee.

The IRS considers the following when determining whether there was reasonable reliance on a safe harbor.

1) Judicial precedent or published rulings, whether or not relating to the particular industry or business in which the taxpayer is engaged, or technical advice, a letter ruling, or a determination letter issued to the taxpayer under audit.
   a) Reliance on judicial precedent or published rulings requires that the taxpayer reasonably relied upon the judicial precedent or published rulings at the time it began treating the individual as a non-employee for the tax period under audit.
   b) Thus, a taxpayer does not meet this safe harbor if the judicial precedent that the taxpayer relied on was issued after the tax period for which the taxpayer treated the individual as a non-employee.
2) A past IRS audit that resulted in no assessment of employment taxes attributable to the employment status reclassification of individuals holding positions substantially similar to the position held by the individual.
   a) If a taxpayer is relying on the results of an audit that began before 1997, the audit does not have to have been an audit of whether the same individuals, or individuals holding substantially similar positions, should have been treated as employees of the taxpayer, so long as the prior audit did not result in an assessment of employment taxes attributable to the IRS's reclassification of the same individuals, or individuals holding substantially similar positions.
   b) If a taxpayer is relying on the results of an audit that began after 1996, the audit must have been an employment tax examination of the same individuals, or individuals holding substantially similar positions, that did not result in a reclassification of the same individuals or individuals holding substantially similar positions.
   c) A taxpayer does not meet this safe harbor if, in the conduct of the prior audit, a proposed assessment attributable to the IRS's reclassification of the individual was offset by other claims asserted by the taxpayer.
   d) A taxpayer does not meet this safe harbor if the relationship between the taxpayer and the individuals during the period under audit is different from that which existed at the time of the prior audit.
   e) A taxpayer does not meet this safe harbor if the prior audit began after 1996 and was only for purposes of determining a taxpayer's liability for failure to subject a reportable payment to backup withholding, as required by IRC section 3406 and accompanying regulations, if the workers' underlying worker classification was not examined, since the imposition of backup withholding liabilities does not involve the reclassification of workers by the IRS.
3) A long-standing recognized practice of a significant segment of the industry in which the individual was engaged.
   a) Reliance on industry practice requires that the taxpayer reasonably relied upon the industry practice at the time it began treating the individual as a non-employee for the tax period under audit.
   b) An industry generally consists of businesses located in the same geographic or metropolitan area that compete for the same customers. However, if the area includes only one or a few businesses in the same industry, or if the business competes in regional or national markets, the geographic area may be expanded.

c) 25 percent of the taxpayer's industry (determined by not taking into account the taxpayer) is deemed to be a significant segment of the industry. A lower percentage may be a significant segment, depending on the facts and circumstances.
d) A practice that has existed for 10 years is deemed to be long-standing. A shorter period may be long-standing, depending on the facts and circumstances.

A taxpayer that does not meet any of the above three safe harbors may still satisfy the reasonable basis requirement if the taxpayer can demonstrate by facts and circumstances that it relied on another reasonable basis for treating the individual as a non-employee. The legislative history of Section 530 states that the reasonable basis requirement should be construed liberally in favor of the taxpayer. Liberal construction does not mean that the reporting consistency and substantive consistency requirement should be liberally construed. Rather, the Congressional direction to liberally construe the reasonable basis requirement means the facts that indicate whether the taxpayer reasonable relied on one of the safe harbors are to be viewed liberally in favor of the taxpayer.

A taxpayer is not considered to have a reasonable basis for its treatment of individuals as non-employees if the facts and circumstances indicate negligence, intentional disregard of the rules and regulations, or fraud.

If the taxpayer cannot demonstrate reasonable reliance on any of the above three safe harbors, then the IRS may consider facts raised by the taxpayer that demonstrate whether the taxpayer considered the individual as an employee for other purposes, including whether the taxpayer:

1) Claimed income tax deductions, or treated payments made to or on behalf of the individual as excludable from income, under provisions of the Internal Revenue Code that are applicable only to employees, including under IRC sections 62(a)(2)(A), 105, 106, 117(d), 119, 127, 129, 132 (portions thereof), or 137,
2) Claimed employer credits such as credits for paid sick and/or family leave under the Families First Coronavirus Response Act (IRC sections 3131 through 3133), the Employee Retention Credit under the Coronavirus Aid, Relief, and Economic Security Act (IRC section 3134), or any other credits specified in future guidance that are calculated with respect to wages or compensation paid to an employee,
3) Complied with federal or state labor law including minimum wage and overtime pay rules with respect to the individual that are applicable to employees or treated workers as employees for purposes of state or non-tax federal laws,
4) Treated the individual as an employee for purposes of collectively bargained agreements entered into by the taxpayer,
5) Permitted participation of the individual in any qualified pension, profit-sharing, or stock bonus plan,
6) Permitted participation of the individual in any nonqualified deferred compensation plan if such participation is limited to employees of the taxpayer,
7) Provided state unemployment insurance or worker's compensation insurance coverage for such individual if the requirements for obtaining such state unemployment or worker's compensation insurance is that coverage is limited to individuals performing

services for the taxpayer as common law employees under the common law rules or persons that would qualify as employees for federal employment tax purposes.

Author's Comment

In other words, if the taxpayer did not treat the worker as an employee under any of the above circumstances, the IRS may consider that fact as a possible reasonable basis for not treating the worker as an employee.

Burden of proof. If the taxpayer establishes that it meets the reporting consistency requirement, the substantive consistency requirement, and one of the reasonable basis safe harbors, and the taxpayer has fully cooperated with reasonable requests from the IRS, then the burden of proof shifts to the IRS.

The shift in the burden of proof does not apply with respect to the reasonable basis requirement if the taxpayer relied on some other reasonable basis for treating the individual as a non-employee.

Status of individuals. Section 530 does not change the status, liabilities, and rights of the individual whose classification is at issue. It does not convert individuals from employees to self-employed individuals.

If a taxpayer receives Section 530 relief for a class of workers, that taxpayer is relieved from having to withhold income tax and withhold and pay FICA taxes from payments made to members of that class of workers. However, if any individual member or members of that class of workers is otherwise determined to be an employee of the taxpayer, each such employee remains liable for their employee share of FICA. Such individual can file a Form SS-8 to request a worker status determination under the common law rules.

Employees who incorrectly paid the self-employment tax may file a claim for refund if the period of limitations has not expired. However, the amount of any refund may be offset by the amount of the employee's share of FICA tax. If the period of limitations to claim a refund of self-employment tax has expired, IRC section 6521 may authorize a credit against the employee share of FICA tax owed in the amount of self-employment tax that was erroneously paid.