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The Obama Administration Prepares for Tougher Enforcement of Independent Contractor Vs. Employee Rules

By Donald Butler, Marcum, LLP

The Obama administration's fiscal year 2011 federal budget proposes a reform to Section 530 of the Revenue Act of 1978, which provides a safe harbor rule for employers that have consistently treated workers as independent contractors and have a reasonable basis for doing so.

The proposal will allow the IRS to issue guidance about the proper classification of workers, increase funding to hire additional enforcement personnel to curb abuse, coordinate activities with the Department of Labor and commence random audits across a wide range of taxpayers.

The proposal would change the guidance in which many employers have relied upon for more than 30 years. Employers should take this time now in order to review their company policies and procedures regarding the classification of personnel as independent contractors ahead of the potential audits that will most likely result from these reforms.

Employers who have done less than an adequate job of reviewing their personnel's classification or are unsure of their workers classifications, are most at risk given the far reaching nature of the provision.

The potential exposure to being non-compliant includes:

- assessment of additional payroll taxes
- penalties for under payment and late payment of tax
- amending prior years payroll tax returns
- assessment of civil and other related penalties

Non compliance could create a liability in the thousands of dollars, even for a small employer. Lane Gorman Trubitt, LLP can help employers assess their categorization of independent contractors and correct misclassifications in order to comply with the proposed rules.

Source: Marcum, LLP