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## **IRS Gives a Break on Payroll Taxes... But Beware**

The Internal Revenue Service (IRS) has announced a tax amnesty program that allows businesses to reclassify independent contractors as W-2 employees subject to paying 10 percent of the employment tax liability that may have been due on compensation paid to the misclassified workers for the most recent tax year. Businesses that make the payment will neither owe any interest or penalties for the misclassified workers' remuneration nor be audited for those workers' past tax years. The program is part of a companion IRS initiative to aggressively pursue employers who misclassify workers as independent contractors.

To be eligible for this program, a business must:

- Consistently have treated the workers in the past as nonemployees;
- Have filed all required IRS Forms 1099 for the workers for the previous three years; and
- Not currently be under audit by the IRS, the Department of Labor, or a state agency concerning the classification of these workers.

There are several material risks associated with the program. A reclassification could be used as an admission that the workers were employees for a significant period prior to the reclassification, opening the door to many claims, including those based on wage and hour laws, benefits plans, state tax, worker's compensation, and wrongful termination lawsuits. Any such change also should be regarded as not limited to payroll and related tax issues. Thus, a worker who is reclassified as an employee under the program will also be an employee (on a moving forward basis) for a wide variety of claims that require an employee/ employer relationship. Needless to say, these issues need to be carefully evaluated before participating in the IRS program.