

Voluntary Classification Settlement Program (VCSP)

Frequently Asked Questions

(9/11) Q1. What is the Voluntary Classification Settlement Program (VCSP)?

A1. The VCSP is a new program developed by the IRS that allows taxpayers to voluntarily reclassify their workers as employees for future tax periods for employment tax purposes. Under the VCSP, a taxpayer will pay 10 percent of the amount of employment taxes calculated under the reduced rates of section 3509(a) of the Internal Revenue Code for the compensation paid for the most recent tax year to the workers being reclassified under the VCSP. In addition, the taxpayer will not be liable for any interest and penalties on the payment under the VCSP, and will not be audited for employment tax purposes for prior years with respect to the worker classification of the workers. Taxpayers may apply for the VCSP using Form 8952, Application for Voluntary Classification Settlement Program.

(9/11) Q2. Do all workers have to be reclassified as employees?

A2. No. The VCSP permits taxpayers to reclassify some or all of their workers. However, once a taxpayer chooses to reclassify certain of its workers as employees, all workers in the same class must be treated as employees for employment tax purposes.

Example: ABC Company is a construction firm that currently contracts with its drywall installers, electricians and plumbers to perform services at housing construction sites. ABC Company determines it wants to voluntarily reclassify its drywall installers as employees. ABC Company submits an application, is accepted into the VCSP and enters into a closing agreement with the IRS. Once the VCSP closing agreement is executed, ABC Company must treat all drywall installers as employees for employment tax purposes.

(9/11) Q3. Which taxpayers are eligible for the VCSP?

A3. Taxpayers who want to voluntarily change the classification of their workers going forward and who meet certain requirements are eligible for the VCSP. Specifically, a taxpayer must be treating the workers as independent contractors or other nonemployees and must have consistently treated the workers as nonemployees, including having filed any required Forms 1099 with respect to each of the workers for the past 3 years. In addition, the taxpayer cannot be currently under audit by the IRS and cannot be under audit by the Department of Labor or any state agency regarding the classification of the workers.

(9/11) Q4. Are exempt organizations eligible for the VCSP?

A4. Yes, exempt organizations are eligible if all eligibility requirements are met.

(9/11) Q5. Are government entities eligible for the VCSP?

A5. Yes, government entities are eligible if all eligibility requirements are met.

(9/11) Q6. Is the VCSP available to state and local government agencies for workers covered under a Section 218 agreement?

A6. No, the VCSP is not available to state and local government employers for workers covered under a Section 218 agreement. However, the VCSP is available to state and local government employers for workers not provided Social Security coverage under a section 218 agreement.

(9/11) Q7. Is an exempt organization that is currently under a Form 990 series examination considered to be “currently under audit by the IRS” such that the exempt organization is not eligible for the VCSP?

A7. Yes, an exempt organization that is currently under a Form 990 series examination is considered to be “under audit by the IRS” and is not eligible to participate in the VCSP.

(9/11) Q8. Can a taxpayer who is not currently under audit but who was previously audited be eligible for the VCSP?

A8. A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the workers may be eligible for the VCSP if the taxpayer has complied with the results of the IRS or Department of Labor audit.

(9/11) Q9. How does a taxpayer take part in the VCSP?

A9. In order to participate in the VCSP, an eligible taxpayer must complete and submit an application, using Form 8952, Application for Voluntary Classification Settlement Program (which will be available in early October). The application should be filed at least 60 days from the date the taxpayer wants to begin treating its workers as employees.

(9/11) Q10. Should payment be submitted with the application?

A10. No, taxpayers should not submit payment with the VCSP application.

(9/11) Q11. What happens once the VCSP application has been submitted?

A11. Once submitted, the IRS will review the application and verify the taxpayers eligibility. Once the IRS accepts the taxpayer into VCSP, the IRS will contact the taxpayer (or the taxpayers authorized representative if an executed Power of Attorney is included with the application) to enter into the VCSP closing agreement with the IRS.

(9/11) Q12. When does the taxpayer pay the amount due under the VCSP?

A12. Taxpayers must make full and complete payment of any amount due under the VCSP when they return the signed VCSP closing agreement to the IRS.

(9/11) Q13. What are the results of participating in the VCSP?

A13. A taxpayer who participates in the VCSP agrees to treat the class or classes of workers as employees for future tax periods for employment tax purposes and will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years. The taxpayer will pay 10% of the employment tax liability that may have been due on the compensation paid to the workers, calculated at the reduced rates of IRC section 3509(a), for the most recent year, with no liability for any interest or penalties. In addition, the taxpayer will extend the period of limitations on the assessment of employment taxes for three years for the first, second and third calendar years beginning after the date the taxpayer has agreed under the VCSP closing agreement to begin treating the class or classes of workers as employees.

(9/11) Q14. Will I be contacted if my application is rejected?

A14. Yes, if you are not eligible, the IRS will contact you to inform you that your VCSP application has not been accepted.

(9/11) Q15. If my application is rejected, can I apply again at a later point in time?

A15. Yes, if your VCSP application has been rejected because you are not eligible, you may reapply.

(9/11) Q16. How is the amount of the VCSP payment calculated?

A16. Payment under the VCSP is 10% of the amount of employment taxes calculated under the reduced rates of section 3509(a) of the Internal Revenue Code for the compensation paid for the most recent tax year to the workers being reclassified under the VCSP. Under section 3509(a), the effective tax rate for compensation up to the Social Security wage base is 10.68% in 2010 or 10.28% in 2011, and 3.24% for compensation above the Social Security wage base.

The amount due under the VCSP is calculated based on compensation paid in the most recently closed tax year, determined at the time the VCSP application is being filed. Accordingly, the 10.68% effective rate applies under the VCSP in 2011 since the most recently closed tax year is 2010. The 10.28% effective rate applies under the VCSP in 2012 since the most recently closed tax year is 2011. The rate of 3.24% applies to compensation above the Social Security wage base in both situations. These effective rates constitute the sum of the rates as calculated under section 3509(a), and are made up of the following:

Description	3509(a) Percentage in 2011 (For compensation paid in 2011 up to the Social Security wage base)	3509(a) Percentage in 2010 (For compensation paid in 2010 up to the Social Security wage base)	3509(a) Percentage in 2010, 2011, and 2012 (For compensation paid in 2010, 2011 and 2012 above the Social Security wage base)
Federal Income Tax Withholding	1.5	1.5	1.5
Employee Social Security Tax	.84	1.24	0
Employer Social Security Tax	6.2	6.2	0
Employee Medicare Tax	.29	.29	.29
Employer Medicare Tax	1.45	1.45	1.45
Totals	10.28	10.68	3.24

Under the VCSP, the taxpayer then pays 10% of the amount calculated under section 3509(a).

Example: In 2010 you paid \$1,500,000 to workers that are the subject of the VCSP. All of the workers that are the subject of the VCSP were compensated at or below the Social Security wage base (e.g., under \$106,800 for 2010). You submit the VCSP application on October 1, 2011 and you want the beginning date of the quarter for which you want to treat the class or classes of workers as employees to be 1/01/2012. You look to amounts paid to the workers in 2010 for purposes of calculating the VCSP amount, since 2010 is the most recently completed tax year at the time the application is being filed. Under section 3509(a), the employment taxes applicable to \$1,500,000 would be \$160,200 (10.68% of \$1,500,000). Under the VCSP, your payment would be 10% of \$160,200, or \$16,020.

Example: The facts are the same as in the example above, except that some of the workers that are the subject of the VCSP were compensated above the Social Security wage base in the amount of \$250,000. Under section 3509(a), the employment taxes applicable to \$1,250,000 would be \$133,500 (10.68% of \$1,250,000) and the employment taxes applicable to the other \$250,000 would be \$8,100 (3.24% of \$250,000). Under the VCSP, your payment would be 10% of \$141,600 (\$133,500 plus \$8,100), or \$14,160.

(11/11) Q17. I was just contacted by the IRS for information based on one of my workers filing an IRS SS-8 determination letter. Can I still apply for the VCSP?

A17. Yes. The SS-8 determination process is not an audit, and, therefore, does not prevent you from being eligible for the VCSP.

(11/11) Q18. Will the IRS share information about VCSP applicants with the Department of Labor?

A18. No, the IRS will not share information about VCSP applicants with the Department of Labor.

(11/11) Q19. Will the IRS share information about VCSP applications with state agencies?

A19. No, the IRS will not share information about VCSP applications with the states.

(11/11) Q20. To be eligible under the VCSP, you must have filed all required Forms 1099 for the previous 3 years for the workers you want to reclassify. If I filed Forms 1099 late, am I still eligible for the VCSP?

A20. Yes, the IRS will consider you eligible for the VCSP if you filed the required Forms 1099 within 6 months of their due date (including extensions), assuming you meet the other eligibility requirements. Taxpayers who have not previously filed required Forms 1099 or who filed them more than 6 months after their due date (including extensions) are not eligible for the VCSP.

(11/11) Q21. If I apply for the VCSP and my application is rejected, will I open myself up to an audit?

A21. No, rejection of a VCSP application will not automatically trigger initiation of a Federal audit. You could be audited for another reason, but not as a result of filing Form 8952.

(11/11) Q22. By signing the VCSP closing agreement am I admitting any liability or wrong doing for past periods?

A22. No, the VCSP concerns future years only. The IRS is not making any determination with regard to prior years and you are not making any representation as to the workers' proper status for prior years for federal employment tax purposes.

(11/11) Q23. If my parent or subsidiary or another member of my consolidated group is under IRS audit, can I still participate in the VCSP?

A23. No, an audit of one of the members of a consolidated group is treated as an audit of the applicant for purposes of the VCSP.