IRS

Worker reclassification – Section 530 relief

Section 530 of the Revenue Act of 1978 provides businesses with relief from federal employment tax obligations if certain statutory requirements are met.

IRC Section and Treasury Regulation

Section 530 of the Revenue Act of 1978

Section 530 is not part of the IRC, though some publishers include its text after IRC Section 3401.

Resources (court cases, Chief Counsel Advice, Revenue Rulings, internal resources)

- Section 530 of the Revenue Act of 1978
- Section 1706 of the Tax Reform Act of 1986
- Section 1122 Small Business Job Protection Act of 1996
- Rev. Proc. 85-18; 1985-1 C.B. 518
- Rev. Rul. 83-16, 1983-1 C.B. 235
- Rev. Rul. 84-161, 1984-2 C.B. 202
- Rev. Rul. 81-224, 1981-2 C.B. 197
- IRM 4.23.5.3 Section 530 of the Revenue Act of 1978 (11-22-2017)
- IRM 4.75.21.9 General Guidance Related to Federal Government Entities (11-05-2019)
- IRM 4.75.21.11 Contacting SSA Regional Office on Section 218 Coverage Issues (11-05-2019)
- Publication 1976, Do you Qualify for Relief Under Section 530? (Must be provided to the taxpayer at the start of a worker classification audit).

Analysis

1. What is Section 530 relief?

Section 530 is a relief provision that terminates a taxpayer's employment tax liability with respect to an individual not treated as an employee if three statutory requirements are met: 1) reporting consistency; 2) substantive consistency; and 3) reasonable basis. Section 530 does not extend to the worker, who may still be

liable for the employee share of FICA, not self-employment tax.

2. When does Section 530 apply?

Applies to taxpayers in cases involving determinations of employment status, i.e. worker classification cases. Relief applies to periods under audit and all future periods so long as requirements are met. Section 530 provides a permanent cure for an organization's employment tax liabilities relating to a particular group(s) of workers. It is not necessary for the business to claim Section 530 relief for it to be applicable. An examiner must first explore the applicability of Section 530 even if the taxpayer does not raise the issue. Publication 1976, Do You Qualify for Relief under Section 530, must be provided to the taxpayer for all instances when Section 530 is considered even though it is not applicable. (IRM 4.23.5.3)

Section 530 applies only to worker classification issues; Section 530 does not apply to wage issues. However, if a wage issue is determined to be an IRC Section 7436 issue, Section 530 must be addressed (IRM 4.23.5.2.2)

Section 530 Relief is available to state and local government taxpayers for workers performing services included under a Section 218 Agreement for purposes of both FITW and FICA. Inclusion of a position or class of workers in a Section 218 Agreement does not equate to an employee determination for all workers holding that position. (CCA 202038010)

SSA is responsible for determining coverage of state and local government employees under a state's Section 218 Agreement and modifications. SSA coverage determinations include an independent common law analysis to determine whether the workers at issue are employees. (IRM 4.75.21.11)

The IRS has consistently practiced that Section 530 does not apply to federal agencies. Nothing in its legislative history indicates that Congress intended Section 530 to apply to federal agencies. When Section 530 was enacted in 1978, Congress didn't consider its application to federal agencies because federal agencies were generally not subject to the FICA tax. Section 3402(d) mitigated the consequences of failure to withhold income tax, and the IRS didn't have a program for auditing federal agencies. Later, Section 530 amendments, including those made after the 1983 legislation, which extended social security coverage to new federal employees, didn't extend the application of Section 530 to federal agencies. (PMTA 2013-017 and IRM 4.75.21.9)

Section 530(e) provides that a worker does not have to be an employee of the business in order for relief to apply. It is not necessary for the business to concede or agree that the workers are employees in order for section 530 relief to be available.

3. Three statutory requirements that must be met.

A. Reporting Consistency – The taxpayer must have timely filed the requisite information returns consistent with its treatment of the worker as a non-employee. (For example, if the taxpayer claims the worker is an independent contractor, Forms 1099 must have been filed for the taxable years at issue). If no information return

requirement exists, relief will not be denied on the basis that the return was not filed. (For example, if the taxpayer claims the worker was a volunteer, no information returns would be required). (Rev. Proc. 85-18, 3.03(B); Rev. Rul. 81-224)

B. Substantive Consistency – If the taxpayer or predecessor treated the worker, or any worker holding a substantially similar position, as an employee at any time after December 31, 1977, the taxpayer will not be eligible for relief. See: Section 530(e)(6); Rev. Proc. 85-18; Rev. Rul. 83-16, Rev. Rul. 84-161. This is a facts and circumstance determination. A review of the day to day services performed and comparison of the job functions must be done. The mere fact of similar job titles or categories alone are not sufficient.

C. Reasonable Basis – The taxpayer must have reasonably relied on one of the following three "safe harbors": 1) prior audit; 2) judicial precedent; or 3) industry practice. Taxpayer must have relied on the alleged authority at the time the employment decisions were being made for the periods at issue. The statute does not allow ex post facto justification.

The taxpayer may demonstrate other reasonable basis. This requirement is to be liberally construed in favor of the taxpayer.

Prior Internal Revenue Service examination -

- **After December 31, 1996,** audit must have included an examination for employment tax purposes of the status of the class of workers at issue or a substantially similar class of workers.
- **Before January 1, 1997,** the IRS audit does not have to have been an audit for employment tax purposes as long as the audit entailed no assessment attributable to the taxpayer's treatment, for employment tax purposes, of workers holding positions substantially similar to the position held by the workers whose treatment is at issue.

Federal judicial precedents and administrative rulings

- The facts in the case must be similar to the situation of the taxpayer at hand.
- The judicial precedent or published ruling must have been in existence at the time the taxpayer began treating workers as non-employees. One case is sufficient to establish a precedent that creates a safe haven. This is true even if case law can be found to support either side of the non-employee/employee issue.
- State court decisions and rulings of agencies other than IRS do not constitute judicial precedent. (However, such reliance may fall under the other reasonable basis safe haven).

Industry practice –

- The taxpayer must show reasonable reliance on a long-standing recognized practice of a significant segment of its industry. An industry generally consists of firms located in the same geographic or metropolitan area which provide the same product or service and compete for the same customers.

Other reasonable basis –

- A taxpayer that fails to meet any of the three "safe havens" may still be entitled to relief if it can demonstrate that it relied on some other reasonable basis for not treating a worker as an employee. Examples may include: Advice of an attorney or accountant; State, non-tax federal law, and other determinations; Prior audit of a predecessor; PLR or TAM to predecessor; or Good faith.

Who is covered by Section 530?

Section 530 relief applies to all employees under IRC Section 3121(d), including corporate officers, an individual under the common law rules that is an employee, statutory employees, and any individual providing services included under an agreement entered into pursuant to Section 218 or 218A of the Social Security Act. It does not apply to third party arrangements for engineers, designers, drafters, computer programmers, systems analysts or other similarly skilled workers.

Burden of proof

The taxpayer must establish a prima facie case that it was reasonable not to treat an individual as an employee and cooperate fully with reasonable requests from the examiner. If the taxpayer has cooperated fully with the examiner, the burden of proof shifts to the Service for the reporting consistency requirement, substantive consistency requirement, and three safe havens.

Effect of Section 530

In general

IRS is prohibited from issuing Regulations and Revenue Rulings regarding worker classification (See Section 530(b)); however, there is no prohibition on sub-regulatory advice including CCAs, PMTAs, FSAs, etc.

Section 530 Relief does not determine a worker to be an independent contractor. It provides relief from employment tax liabilities for the service recipient, regardless of the proper classification of the workers. The worker can still be determined to be an employee through some other means (i.e. SS-8 determination)

The employer

Provides relief from employment tax liabilities associated with the class of workers for which relief has been granted. Relief extends into perpetuity unless there is a material change in facts surrounding the relationship. Employer may continue to report payments on Forms 1099 – reporting payments on Forms W-2 would cause the employer to lose relief for future years.

The worker

Section 530 Relief does not change status of worker – the worker can still be determined to be employee through some other means (i.e. SS-8 determination). If the worker is determined to be an employee:

- Not liable for self-employment tax

- Liable for employee share of FICA – uses Form 8919
- Expenses deducted on Schedule A subject to 2% AGI limitation

Issue indicators or audit tips

- Section 530 relief must be considered first on all worker reclassification audits.
- If the employer is eligible for section 530 relief, the examiner is to discontinue the examination with regard to the qualified occupation. This discontinuance means that the worker status has not been determined as to whether the occupation class is that of employee or independent contractor.
- If either or both of the reporting and substantive consistency rules are not met, the business is not entitled to Section 530 relief even if it meets the requirements of reasonable basis.
- Businesses seeking Section 530 relief must cooperate fully with reasonable requests from the examiner in order to shift the burden of proof to the Service.

Page Last Reviewed or Updated: 20-Aug-2024