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Internal Revenue Manual 4.23.5.3.3.3 (12-10-2013)

Section 530 — Reasonable Basis

1. In addition to the consistency requirements, the taxpayer must have had a reasonable basis for not treating the worker as an employee. It is the intent of Congress that the reasonable basis requirement should be construed liberally in favor of the taxpayer.
2. A taxpayer will be treated as having a reasonable basis for not treating a worker as an employee if the treatment was in reasonable reliance on one of three safe havens:
 - A. Judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer. See *IRM 4.23.5.3.3.4*, Safe Haven – Judicial Precedent or Published Rulings.
 - B. A past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual. See *IRM 4.23.5.3.3.5*, Safe Haven – Prior Audit.
 - C. A long-standing recognized practice of a significant segment of the industry in which the taxpayer was engaged. See *IRM 4.23.5.3.3.6*, Safe Haven – Industry Practice.
3. To satisfy one of the safe havens, a taxpayer must demonstrate that it actually and reasonably relied on the safe haven in treating the workers as non-employees for the period at issue. The taxpayer must have relied on the asserted reasonable basis during the periods in issue, at the time the employment decisions were being made. See *Nu-Look Design, Inc. v. Commissioner*, T.C. Memo. 2003-52, aff'd., 356 F.3d 290 (3d Cir. 2004).
4. A taxpayer that fails to meet any of the three "safe havens" may nevertheless be entitled to relief if the taxpayer can demonstrate, in some other manner, any reasonable basis for not treating the worker as an employee. See *IRM 4.23.5.3.3.7*, Other Reasonable Basis.