



[CLICK HERE](#) to return to the home page

Internal Revenue Manual 4.23.5.3.3.6 (12-10-2013)

Safe Haven—Industry Practice

1. To qualify for the industry practice safe haven, the taxpayer must show that it reasonably relied on a long-standing recognized practice of a significant segment of its industry. An industry generally consists of businesses located in the same geographic or metropolitan area which provide the same product or service and compete for the same customers.
2. Section 530(e)(2)(B) clarifies that 25 percent of the taxpayer's industry (determined without taking the taxpayer into account) is deemed to constitute a significant segment of the industry. The legislative history notes that a lower percentage may be a significant segment, depending on the facts and circumstances.
3. Section 530(e)(2)(C) provides that practices that have existed for more than 10 years are long-standing. The legislative history notes that the 10-year rule is merely a safe haven. A shorter period may be long-standing, depending on the facts and circumstances.
4. A claim of reliance on industry practice necessarily requires that the business knew of the industry practice at the time the employment decisions were being made for the periods at issue. The long-standing industry practice must have existed at that time to be relied upon.
5. Whether the taxpayer relied on industry practice can generally be established by several types of evidence. Examine taxpayer records, such as corporate minutes or unanimous consents in lieu of director's meetings, to determine whether any written record exists that shows the reason for treatment of workers as independent contractors. Interview the workers themselves to determine what reasons were given to them by the taxpayer when establishing their status as independent contractors.