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Part 4. Examining Process

Chapter 23. Employment Tax

Section 6. Classification Settlement Program (CSP)

4.23.6 Classification Settlement Program (CSP)

Manual Transmittal

January 08, 2021

Purpose

(1) This transmits revised IRM 4.23.6, Employment Tax, Classification Settlement Program (CSP).

Material Changes

- (1) IRM 4.23.6.1.7. Added (4) for information on TAS.
- (2) IRM 4.23.6.7.1. Changes to (3) and (5) to provide corrected instructions to examiners on completion of a CSP agreement which involves an entity change.
- (3) IRM 4.23.6.14.3. Deleted CSP Analysis Chart and moved to Exhibit 4.23.6-1.
- (4) IRM 4.23.6.14.4.4. Revised introduction introducing new subsections.
- (5) IRM 4.23.6.14.4.4.1. New subsection, No Offer. Describes CSP offers when an examiner concludes that the workers are independent contractors.
- (6) IRM 4.23.6.14.4.2. New subsection, Taxpayer Option. Formerly IRM 4.23.14.4(a).
- (7) IRM 4.23.6.14.4.3. New subsection, 100% Offer. Formerly Examples 1, 2 and 3 of former IRM 4.23.14.4.
- (8) IRM 4.23.6.14.4.4. New subsection, 25% Offer. Items included from former IRM 4.23.14.4.
- (9) IRM 4.23.6.14.5. Revised to reflect references to the CSP Analysis Chart.
- (10) IRM 4.23.6.17(3). Address change for Employment Tax – Workload Selection and Delivery (ET-WSD) to Florence, KY per IGM SBSE-04-1218-0048.
- (11) IRM 4.23.6.17(3). Deleted individual TE/GE agreement submission sites, as all TE/GE agreements are now sent to a central location. IGM TE/GE-04-0820-0015, TE/GE CSP Agreements, reflected.

- Not Filed for All Years**
- 4.23.6.7 **Cases Included in the CSP**
 - 4.23.6.7.1 **CSP & Entity Change**
 - 4.23.6.8 **Cases Excluded from CSP**
 - 4.23.6.9 **CSP & Officer Compensation Procedures**
 - 4.23.6.10 **Eligible for Section 530 Relief**
 - 4.23.6.11 **Not Eligible for Section 530 Relief**
 - 4.23.6.12 **Mandatory CSP Comment**
 - 4.23.6.13 **Effect on TE/GE Programs**
 - 4.23.6.14 **Procedures for CSP**
 - 4.23.6.14.1 **CSP Settlement Offers**
 - 4.23.6.14.2 **CSP Offer Acceptance is Voluntary**
 - 4.23.6.14.3 **CSP Analysis**
 - 4.23.6.14.4 **CSP Offer**
 - 4.23.6.14.4.1 **No Offer**
 - 4.23.6.14.4.2 **Taxpayer**
- (12) Exhibit 4.23.6-1. New exhibit, CSP Analysis Chart. Chart formerly included in IRM 4.23.6.14.3 moved and expanded to include two additional columns, "Does TP Meet the Substantive Consistency Test?" and "Does TP Meet the Reasonable Basis Test?" Also, six additional scenarios added.
- (13) Editorial and technical changes and updates have been made throughout this section, includes updating date fields to more current dates.
- Effect on Other Documents**
- This material supersedes IRM 4.23.6 dated December 21, 2017. This IRM incorporates Interim Guidance Memorandum SBSE-04-1218-0048, Interim Guidance on IRM Address Changes, issued December 12, 2019. This IRM reflects Interim Guidance Memorandum TE/GE-04-0820-0015, TE/GE CSP Agreements, issued August 17, 2020.
- Audience**
- This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Governmental Entities (TE/GE), and Small Business/Self Employed (SB/SE) employees dealing with employment tax issues. This IRM also applies to Appeals employees working employment tax cases.
- Effective Date**
- (01-08-2021)
- Wanda R. Griffin
Director, Specialty Examination Policy
Small Business/Self-Employed Division
- 4.23.6.1 (12-21-2017)**
- Program Scope**
- (1) **Purpose:** This section explains the Classification Settlement Program (CSP).
 - (2) **Audience:** This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self-Employed (SB/SE) employees dealing with employment tax issues. This IRM also applies to Appeals employees working employment tax cases.
 - (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/ Self-Employed Division.
 - (4) **Program Owner:** Program Manager - Employment Tax Policy. The mission of Employment Tax Policy is to establish effective policies and procedures, to support compliance with employment tax laws.
 - (5) **Primary Stakeholders:**
 - Employment Tax – Workload Selection and Delivery (SE:S:DCE:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Examination Specialty Examination Policy, Employment Tax Policy (SE:S:DCE:E:HQ:SP:ETP)

- 4.23.6.15.2 CSP Examination Reports (4) IRM 4.23 provides Servicewide instructions for all operating divisions with employees involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
- 4.23.6.15.3 CSP Standard Closing Agreement By providing one source of authority for all operating divisions, the IRS greatly reduces philosophical and procedural inconsistencies.

4.23.6.1.3 (12-21-2017)

Responsibilities

- 4.23.6.15.4 Examination Referrals to Employee Plans (EP) and Exempt Organizations (EO)
 - (1) Director, Specialty Examination Policy is responsible for the procedures and updates addressed in this IRM.
 - (2) Director, Specialty Examination is the executive responsible for Specialty examination operational compliance.

4.23.6.1.4 (12-21-2017)

Program Objectives and Review

- 4.23.6.16 CSP Quality Control (1) **Program Goals:** The processes and procedures provided in this IRM are consistent with the objectives or goals for Employment Tax - Examination that are addressed in IRM 1.1.16.3.3.3, Employment Tax Examination, and for Employment Tax Policy, found in IRM 1.1.16.3.5.2.2, Employment Tax Policy.
- 4.23.6.17 Monitoring CSP Agreements (2) **Program Effectiveness:** Program goals are measured with Employment Tax Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.
- 4.23.6.18 CSP Compliance Follow-up (3) **Annual Review:** Employment Tax Policy - Program Manager, is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.
- 4.23.6.18.1 CSP Non-Compliance Procedures
 - 4.23.6.18.1.1 Right to Direct and Control Materially Changed (1) **Program Reports:** Information regarding the reporting of program objectives are included on, but not limited to, the following reports submitted to the Director, Specialty Examination Policy:
 - 4.23.6.18.1.2 Right to Direct and Control Not Materially Changed
 - Headquarters Examination Monthly Briefing
 - Program Manager Monthly Briefing
 - Examination Operational Review
 - Business Performance Reviews

4.23.6.1.4.1 (12-21-2017)

Program Reports

4.23.6.1.5 (12-21-2017)

Terms and Definitions

- 4.23.6.19 Voluntary Classification Settlement Program (VCSP) (1) The following table lists Terms and Definitions found in this IRM:

Term	Definition

- 4.23.6.19.1
Monitoring
VCSP
Agreements
- Exhibit 4.23.6-1
CSP Analysis
Chart
- Exhibit 4.23.6-2
General
Information
- Exhibit 4.23.6-3
General
Instructions –
To Be Used for
All CSP
Agreements
- Exhibit 4.23.6-4
Instructions for
Completing
Form 14490,
Closing
Agreement on
Final
Determination
Covering
Specific Matters
for Taxpayers
Entitled to
Section 530
Relief
- Exhibit 4.23.6-5
Example – Form
14490, Closing
Agreement on
Final
Determination
Covering
Specific Matters
for Taxpayers
Entitled to
Section 530
Relief
- Exhibit 4.23.6-6
Instructions for
Completing
Form 14491,
Closing
Agreement on
Final

Term	Definition
Section 530	Section 530 provides employers with relief from the reclassification of individuals as employees, and the corresponding federal employment tax liabilities if three requirements are met.
Section 530 - Reporting Consistency	The first requirement a taxpayer must meet to obtain section 530 relief is timely filing of all required federal tax returns consistent with the worker being treated as a non-employee.
Section 530 - Substantive Consistency	The taxpayer (or a predecessor) must also not have treated the worker, or any worker holding a substantially similar position, as an employee for any period after 1977.
Section 530 - Reasonable Basis	Finally, 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 a prior audit, judicial precedence, industry practice, or other reasonable basis.

4.23.6.1.6 (12-21-2017)

Acronyms

- (1) The following table lists commonly used acronyms and their definitions:

Acronym	Definition
CI	Criminal Investigation
CSP	Classification Settlement Program
EIN	Employer Identification Number
EO	Exempt Organization
ETER	Employment Tax Examiner's Report
ET-WSD	Employment Tax - Workload Selection and Delivery Unit
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State and Local / Employment Tax Area - EO Examination
FUTA	Federal Unemployment Tax Act
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
ITG	Indian Tribal Governments
LB&I	Large Business & International
PDF	Portable Document Format
RA	Revenue Agent

Determination
Covering
Specific Matters
Regarding
Worker
Classification

- Exhibit 4.23.6-7
Example – Form
14491, Closing
Agreement on
Final
Determination
Covering
Specific Matters
Regarding
Worker
Classification

- Exhibit 4.23.6-8
Instructions for
Completing
Form 14492,
Closing
Agreement On
Final
Determination
Covering
Specific Matters
Regarding The
Classification Of
Workers
Currently
Treated As
Employees

- Exhibit 4.23.6-9
Example – Form
14492, Closing
Agreement On
Final
Determination
Covering
Specific Matters
Regarding The
Classification Of
Workers
Currently
Treated As
Employees

Acronym	Definition
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self-Employed
SSA	Social Security Administration
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt/Government Entities
TEGEDC	Tax Exempt/Government Entities Division Counsel
VCR	Voluntary Compliance Resolution
VCSP	Voluntary Classification Settlement Program
WSD	Workload Selection and Delivery Unit

4.23.6.1.7 (12-21-2017)

Related Resources

- (1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 4.23	Employment Tax IRM	IRM sections owned by SB/SE Specialty Examination Policy. Provides Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
IRM 8.7.16	Technical and Procedural Guidelines - Appeals Employment Tax Procedures	Provides guidance to Appeals employees who work and process employment tax cases.

- (2) Other helpful information sources include:

- The SB/SE Knowledge Management home page for Employment Taxes: <https://portal.ds.irsnet.gov/sites/vl014/pages/default.aspx>.
- The Specialist Referral System home page: <https://srs.web.irs.gov/>.
- A list of SB/SE Employment Tax Policy Analysts, their contact information and program assignments, are found at: Policy Analyst Listing.

- The web site "Examining an Employment Tax Case" at:[https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=examining an employment tax case.](https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=examining%20an%20employment%20tax%20case)
- (3) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR, see <https://irssource.web.irs.gov/SitePages/Taxpayer%20Bill%20of%20Rights.aspx>
 - (4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal procedures, or who believe that an IRS system or procedure is not working as it should. Pub 1546, Taxpayer Advocate Service - We Are Here to Help You, provides contact and additional information. The program is designed to alleviate taxpayer hardships that arise from systemic problems or the application of the Internal Revenue Code. In addition, see IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*, and IRM 13.1.19, *TAS Operations Assistance Request (OAR) Process*, for additional information.

4.23.6.2 (04-22-2014)

Introduction

- (1) When an examiner initiates an employment tax exam of a taxpayer who treated certain workers as non-employees, the examiner must first determine whether the taxpayer is entitled to relief from the reclassification of the workers who were treated as non-employees, and resulting liability for employment taxes, under section 530 of the Revenue Act of 1978 (section 530 relief). To qualify for section 530 relief, the taxpayer must meet three requirements:
 - a. **Reporting Consistency:** All Federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for the period must have been filed by the taxpayer on a basis consistent with the taxpayer's treatment of the individual as being a non-employee. This test must be applied to each worker separately, since, for example, the taxpayer may have filed a Form 1099-MISC Miscellaneous Information (formerly, Miscellaneous Income), for one worker in a class, but not for another worker in the same class.
 - b. **Substantive Consistency:** The taxpayer must have treated similarly situated workers consistently. That is, if the taxpayer (or a predecessor) treated a similarly situated worker as an employee, the taxpayer will not be entitled to section 530 relief. This test must be applied to the class of workers having substantially similar job responsibilities and working under substantially similar conditions (e.g., supervisors vs. workers being supervised).
 - c. **Reasonable Basis:** The taxpayer must have had some reasonable basis for treating the worker as a non-employee. This may consist of

reasonable reliance on: a judicial precedent, a published ruling, a private letter ruling or technical advice memorandum issued to the taxpayer; the results of an employment tax audit of the taxpayer that takes place after 1996 (NOTE: An audit prior to 1997 can still qualify the taxpayer for the prior audit safe haven); or a long-standing recognized practice of a significant segment of the industry in which the worker is engaged. Any other reasonable basis could also suffice.

- (2) Requirements "b" and "c" above are applied separately to each class of worker.
- (3) Refer to IRM 4.23.5.3, Section 530 of the Revenue Act of 1978, for additional guidance.
- (4) If the firm clearly meets the reporting and substantive consistency requirements and satisfies the reasonable basis test, the requirements of section 530 are fully met. As a result, no adjustment will be made and the taxpayer may choose to continue treating its workers as non-employees for purposes of its employment tax liability, as long as the facts remain the same and the taxpayer continues to meet the reporting requirement for that class of worker.
- (5) If the taxpayer does not satisfy the requirements of section 530, the examiner will determine whether the workers in question are employees under the usual common law rules, as provided by IRC 3121(d)(2) and Treas. Reg. 31.3121(d)-1(c) or other appropriate statutory test, i.e.:
 - Corporate officer, as provided by IRC 3121(d)(1) and Treas. Reg. 3121(d)(1)-(b),
 - Statutory employee, as provided by IRC 3121(d)(3) and Treas. Reg. 3121(d)(1)-(d), or
 - Persons included under a section 218 Agreement with Social Security, as provided by IRC 3121(d)(4).
- (6) Because IRS administrative procedures do not permit examiners to weigh the chances of success in court when proposing adjustments, taxpayers seeking to negotiate a settlement of the issue, including section 530 relief, will generally take their cases to IRS Independent Office of Appeals or to the courts. This increases costs for both taxpayers and the government. The CSP can reduce these costs while preserving the government's interests in certain cases where the IRS determines that the taxpayer is not entitled to section 530 relief.

4.23.6.3 (12-21-2017)

Area Responsibilities

- (1) **Chief, Employment Tax:** The Chief, Employment Tax, is responsible for overall direction, coordination, and communication for policies and procedures concerning the administration of employment tax programs, including the overall operation of the CSP. Program Managers in each division of TE/GE are responsible for the operation of the CSP within their respective divisions and are responsible for ensuring CSP requirements and procedures are communicated to its compliance staff as appropriate.

- (2) **Compliance Group Managers:** Authority to execute CSP agreements is designated to all compliance group managers. (See Delegation Order 7-13, IRM 1.2.46.14, Delegation Order 7-13 (Rev. 1) (formerly DO-248, Rev. 1.) This includes SB/SE, TE/GE, and LB&I team managers with employment tax cases dealing with worker classification issues under their jurisdiction. For the role of the compliance group manager, see *IRM* 4.23.6.4, Role of the Compliance Group Manager.
- (3) **Employment Tax - Workload Selection and Delivery (ET-WSD):** With the exception of agreements secured in TE/GE, the Employment Tax - Workload Selection and Delivery Unit (ET-WSD) is responsible for receiving all executed CSP agreements, CSP memorandums, and executed Employment Tax Examiner's Report (ETER). The agreements will be filed for annual follow-up to determine if taxpayers are adhering to the provisions of their respective CSP agreements. If there is an indication that a taxpayer is not following the provisions of the CSP agreement, ET-WSD will forward a copy of the agreement, the CSP memorandum, and the ETER to the field for necessary actions. See *IRM* 4.23.6.17, Monitoring CSP Agreements, for a listing of the documents required to be sent.

4.23.6.4 (04-22-2014)

Role of the Compliance Group Manager

- (1) Compliance group managers are delegated the authority to sign the CSP closing agreements originating in their respective groups. This authority should be exercised with care to ensure correct and consistent determinations are made. As used in IRM 4.23.6, the term "compliance group manager" means any group manager whose group conducts employment tax return examinations, regardless of operating division.
- (2) CSP settlements are intended to simulate the results that would be obtained under current law if the taxpayers accepting those offers had instead exercised their right to an administrative and/or judicial appeal. In addition, all group managers must ensure that settlement offers are not made in an effort to induce taxpayers to change worker status when independent contractor status is correct or when the taxpayer is clearly entitled to section 530 relief.
- (3) Group managers must ensure that the evaluation of whether the taxpayer was entitled to section 530 relief and the examination of the worker classification issue for any year was completed and fully developed to support the change in classification. A CSP offer should not be made until the worker classification issue is fully developed and the examiner has determined that section 530 relief does not apply. If section 530 relief is appropriate, no adjustment would be proposed and a CSP offer would not be made (no determination on worker status would have been made) unless the taxpayer asks for a CSP agreement.
- (4) It is crucial that taxpayers are treated consistently under CSP. Group managers are responsible for assuring that examiners make offers in appropriate cases, explaining the terms and conditions clearly to

taxpayers, and correctly applying the settlement provisions so that taxpayers who are similarly situated receive the same CSP offer.

4.23.6.5 (12-21-2017)

Role of the Examiner

- (1) The examiner will first determine whether the taxpayer qualifies for section 530 relief for the examination year. Where the taxpayer does not qualify for section 530 relief, the examiner will develop the worker classification issue for the most current period that is already open for examination.
Example: If in 2020 the examiner is assigned the tax year 2018 employment tax returns for examination, the examiner would develop the worker classification issue for 2018. Although a CSP agreement would cover all other tax periods for which the statute of limitations has not expired, the examiner would not initiate an examination of any other tax period unless the taxpayer rejects the CSP offer or the taxpayer is not eligible for a CSP offer.
- (2) If the examiner determines that the workers were treated properly and no classification issue exists, CSP procedures will not apply. The examiner should explain this determination on the appropriate administrative lead sheet in the examination workpapers.
- (3) If a worker classification issue does exist, the examiner will consider whether CSP applies. If the examination includes a proposal to reclassify workers as employees and the taxpayer has timely filed required Forms 1099, **it is mandatory that the examiner make a CSP offer** unless an exclusion applies. See *IRM 4.23.6.8, Cases Excluded From CSP*.
- (4) To determine which CSP offer, if any, is appropriate, examiners should follow the procedures in *IRM 4.23.6.14, Procedures for CSP*. The examiner must consider the facts and circumstances of each case and make a CSP recommendation to the group manager for approval. The recommendation will be made on a Settlement Memorandum. See *IRM 4.23.6.15.1, CSP Settlement Memorandum*. If the examiner is unsure of which offer to propose to the taxpayer, the examiner should discuss the issues with the group manager and/or contact the CSP policy analyst for advice and assistance. See the listing *Employment Tax Policy Analysts at: Policy Analyst Listing*.
- (5) Before offering a CSP agreement to a taxpayer, the examiner and group manager will take the following steps:
 - a. The examiner must discuss the case with the group manager and record the discussion on the case activity record or in the workpapers. After the discussion with the examiner and a thorough review of the case, the compliance group manager will make the final decision regarding whether a CSP offer is appropriate. If necessary, the compliance group manager should consult with the CSP policy analyst or an employment tax group manager. TE/GE EO group

- managers **are required** to consult with the TE/GE Exempt Organization (EO) CSP Coordinator before approval.
- b. If the group manager agrees with the reclassification of workers, the examiner will prepare the CSP memorandum as described in *IRM 4.23.6.15.1* below.
 - c. The examiner will also prepare an Employment Tax Examination Report (ETER) on Form 4666, Summary of Employment Tax Examination, Form 4667, Examination Changes - Federal Unemployment Tax, Form 4668, Employment Tax Examination Changes Report, and Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436).
 - d. The examiner is also responsible for preparing the CSP agreement on the appropriate agreement form. See *IRM 4.23.6.15.3*, CSP Standard Closing Agreement, for appropriate agreement form. Also see *Exhibit 4.23.6-2*, General Instructions – To Be Used for All CSP Agreements, for definitions and instructions for completing the three standard CSP closing agreements.
 - e. After the TE/GE EO group manager reviews and concurs with the examiner, the items in subparagraphs "b" , "c" , and "d" , along with pertinent supporting workpapers for the worker reclassification issue, will be forwarded to the EO CSP Coordinator for a mandatory review prior to the group manager's approval.
- (6) Authority to sign the CSP agreement is delegated to the compliance group manager, who indicates final approval of the CSP settlement by signing the CSP agreement **after** the agreement has been signed by the taxpayer or an authorized representative. A power of attorney does not authorize a taxpayer representative to sign a CSP agreement for the taxpayer unless the CSP agreement is specifically listed on the Form 2848, Power of Attorney and Declaration of Representative. See *IRM 4.23.6.15.3*, CSP Standard Closing Agreement.

4.23.6.6 (12-21-2017)

Eligible CSP Employment Tax Cases

- (1) CSP is available to taxpayers with an open employment tax examination in SB/SE, TE/GE, LB&I, and Appeals. As described in *IRM 4.23.6.7*, Cases Included in CSP, if a taxpayer has timely filed all required Forms 1099, and satisfies other requirements described herein, it is **mandatory** that the examiner present a CSP offer to a taxpayer. The taxpayer has the option to accept or reject the offer. Taxpayers that have not timely filed the required information returns are not entitled to participate in the CSP with respect to any years for which such returns were not timely filed. (See *IRM 4.23.6.6.1*, Forms 1099 Not Filed for All Years.)
- (2) The requirement to timely file required information returns is applied separately to each class of workers for each period. However, an inadvertent de minimis failure to timely file Forms 1099 should not affect the taxpayer's eligibility for CSP. Examiners need to carefully consider all

the facts in determining whether the failure to timely file Forms 1099 is an inadvertent de minimis failure. Factors to consider include, (but are not limited to):

- The taxpayer's reason for failing to file Forms 1099,
- The number of Forms 1099 not filed compared to the total number of Forms 1099 required to be filed for the workers in the class of workers being examined,
- The amount of compensation required to have been reported on the non-filed Forms 1099 compared to the total compensation paid to the workers in the class of workers being examined,
- Whether the Forms 1099 filed contain material errors such as significantly underreporting the amount paid to the workers in the class of workers being examined unless the taxpayer can demonstrate reasonable cause for failing to include the proper amounts paid to the workers on Forms 1099.

Note: If the taxpayer is not entitled to participate in the CSP, the IRS will follow traditional methods of seeking compliance. These taxpayers will be able to use the traditional administrative and judicial appeal processes.

4.23.6.6.1 (12-21-2017)

Forms 1099 Not Filed for All Years

- (1) Examiners may encounter situations where the taxpayer timely filed Forms 1099 for some years but not others. CSP is only available for years in which the taxpayer timely filed Forms 1099. The year in which the taxpayer did not timely file Forms 1099 should not be included in the CSP agreement.

Note: The dates used to prepare the CSP agreement for situations where the taxpayer is eligible for some years but not others will need to be modified from those explained in the exhibits. This must be done to ensure that the non-CSP year(s) are not included in the CSP agreement. Examiners can contact the Employment Tax Policy Analyst if assistance is needed to determine the correct dates.

- (2) Examiners should discuss these situations with their group manager to determine how to proceed. For additional guidance, examiners and group managers should contact the Employment Tax Policy Analyst responsible for CSP.

4.23.6.7 (12-21-2017)

Cases Included in the CSP

- (1) If the taxpayer has timely filed all required Forms 1099, it is **mandatory** that the examiner present a CSP offer, including the following situations:
 - **Form 940/941 Non-filers:** Taxpayers who have not filed a Form 940 or a Form 941 because of their treatment of the workers as non-employees are eligible for a CSP offer. Often, the non-filing of

the forms is consistent with the taxpayer's reasonable basis argument.

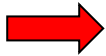
- **Statutory Employees:** If a taxpayer treated workers as independent contractors and the examiner determines the workers are statutory employees, as defined in IRC 3121(d)(3), the taxpayer is eligible for a CSP offer.
 - **Household Employees:** Household employers are often eligible for a CSP offer even if they have not filed Forms 1099, since a Form 1099 may not have been required (due to the payment being under \$600).
 - **Certain Government Employers:** The CSP program is available to federal, state, and local government employers, including state and local government employers whose employees are covered under a section 218 agreement. See IRM 4.90.9, Federal, State and Local Governments (FSLG) - Workpapers and Report Writing, for specific instructions on section 218 taxpayers and CSP offers.
 - **Corporate Officers:** If a taxpayer treated a corporate officer as an independent contractor and timely filed all required Forms 1099, the taxpayer is eligible for a CSP offer. See (7) "Wage Issues:" in *IRM 4.23.6.8, Cases Excluded from CSP* and see *IRM 4.23.6.9, CSP & Officer Compensation Procedures*, for additional guidance on addressing corporate officer compensation issues for CSP purposes.
 - **Railroad Employees:** If a railroad taxpayer treated workers as independent contractors and the examiner determines the workers are railroad employees, as defined in IRC 3231(b), the taxpayer is eligible for a CSP offer.
- (2) Use of full rates under IRC 3509(c) to compute the tax in worker classification adjustments **does not** exclude the taxpayer from a CSP offer.
 - (3) The assessment of penalties in worker classification adjustments, other than the fraud penalty, **does not** exclude the taxpayer from a CSP offer.

4.23.6.7.1 (01-08-2021)

CSP & Entity Change

- (1) If a taxpayer is no longer operating as a business, a CSP agreement is not available.
- (2) Where the taxpayer has merely changed the name or form of the business entity, CSP is available to the taxpayer and to the new entity. An example of a change in the form of the business entity is where the taxpayer previously operated the business as a sole proprietorship and converted the sole proprietorship into a corporation in a subsequent year to operate the business.
- (3) A CSP agreement will be prepared to include both the taxpayer and the new entity. **The examiner must contact Tax Exempt/Government Entities Division Counsel (TEGEDC) to prepare this type of CSP agreement.**

- (4) The examiner will prepare a memo to TEGEDC requesting approval to make a CSP offer to both business entities and explaining and/or identifying:
 - The facts,
 - The two business entities,
 - The year of the entity change, and
 - The CSP offer year.
- (5) If approved, TEGEDC will provide guidance on how to refer to the current and prior entity in the CSP agreement and provide it to the examiner for completion.



4.23.6.8 (12-21-2017)

Cases Excluded from CSP

- (1) **Other Issues:** CSP is not available for issues other than worker classification.
Note: See IRM 4.23.5.2.1, Classification of Employment Tax Issues, for guidance on what constitutes a worker classification issue.
- (2) **7436 Wage Issues:** CSP is not available for wage issues subject to IRC 7436. Wage issues subject to IRC 7436 generally arise in situations where a taxpayer treated a worker as an employee, but did not include all remuneration as wages and raises either a worker classification or a section 530 relief argument with respect to a wage issue. In cases involving IRC 7436 wage issues where a taxpayer claims the workers at issue perform **separate and distinct services** both as an employee and as an independent contractor and Forms W-2 and Forms 1099 have been issued, examiners should contact the CSP Policy Analyst or TEGEDC for assistance in determining whether a CSP offer is proper.
Note: See IRM 4.23.5.2, IRC 7436, for guidance on IRC 7436.
- (3) **Prior Closing Agreement:** A taxpayer that has previously entered into a closing agreement to resolve classification of the workers at issue in the year under examination is not eligible for CSP. The prior closing agreement provides the final resolution regarding treatment of these workers.
- (4) **CSP Non-Compliance:** A taxpayer that is not in compliance with the terms of an existing closing agreement relating to worker classification issues is not eligible for CSP. See *IRM 4.23.6.18.1*, CSP Non-Compliance Procedures, for CSP follow-up procedures.
- (5) **Prior Coverage:** The CSP program is not available if the misclassified workers are employed by a business that is owned, operated or controlled by a business, or the principals of a business, that previously entered into a closing agreement resolving the classification of the workers if the newer business was incorporated or established after the closing agreement was signed. Ownership for purposes of CSP will mean that at least 80% of the value of the new business is directly or indirectly owned or controlled by the business or the principals of the business that

previously entered into a closing agreement resolving the classification of workers.

Note: For TE/GE, "control" is determined by reference to the tax laws applicable to each market segment served by the separate Divisions in TE/GE. For example, control for EO purposes can be determined by the combined voting power a disqualified person has over an organization's governing body. Treas. Reg. 1.509(a)-4(j)(1).

- (6) **Three-Party Arrangements:** If the examination requires identifying the correct employer, the taxpayer is not eligible for a CSP offer unless this issue is agreed at the examination level. If the identity of the employer cannot be resolved at the examination level, any settlement of worker classification issues must occur through normal appeals procedures. Examples include cases in which the issue is whether the worker was employed by the taxpayer or by the worker's corporation as well as cases in which one business "leases" workers to another. Examiners should contact TEGEDC for assistance with determining whether a taxpayer is eligible for a CSP offer in a three-party arrangement situation.
- (7) **Information Returns Other Than Forms 1099:** Worker classification cases in which only information returns other than Forms 1099 were timely filed will not be included in CSP. Thus, for example, if only Schedules K-1 (Form 1120S) were filed treating the workers as non-employees, CSP does not apply.
- (8) **Corporate Officer Wage Issues:** Cases which involve only recharacterizing officer/shareholder distributions, constructive dividends, loans, or other payments not reported on Forms 1099, will not be included in CSP. This is most often seen in Form 1120 S-Corporations. Also, see *IRM 4.23.6.9, CSP & Officer Compensation Procedures*, for additional guidance on addressing corporate officer compensation issues for CSP purposes.
- (9) **Administrative or Judicial Proceeding:** If prior year employment tax returns are the subject of an ongoing administrative or judicial proceeding, the taxpayer will not be eligible for a CSP offer. If prior year returns are in litigation for the mis-classification issue, consult with the Department of Justice or TEGEDC attorney handling the case.
- (10) **Litigation:** A CSP offer should not be made in subsequent year examinations of taxpayers for which the worker classification issue has been resolved through litigation.
- (11) **Criminal Investigation (CI):** If an income tax or other related return is part of an on-going criminal investigation, the CSP offer should not be made without consulting the Special Agent assigned to the investigation.
 - a. **Fraud Cases:** Cases which have adjustments that include either the Civil Fraud or Criminal Fraud penalty will not be eligible for CSP.
 - b. Cases which have adjustments that reasonably have the potential to include either the Civil Fraud or Criminal Fraud penalty should be developed in full before any decision is made regarding CSP.
- (12) **Taxpayer No Longer in Business:** By their very nature, CSP agreements apply only to taxpayers still in existence. Therefore, if the taxpayer is no

longer in business, a CSP agreement cannot be offered to the taxpayer, as there can be no prospective treatment. However, see *IRM 4.23.6.7.1, CSP & Entity Change*, for procedures where there has only been a change in the name or form of the business (e.g., change from sole proprietorship to corporation).

4.23.6.9 (03-20-2012)

CSP & Officer Compensation Procedures

- (1) Cases which involve only recharacterizing officer/shareholder distributions, constructive dividends, loans or other payments not reported on Forms 1099 will not be included in CSP. See *IRM 4.23.6.8(8)*. However, reclassification cases, in which the officer was treated as an independent contractor **and** a Form 1099 was timely filed, **are** included in CSP. See *IRM 4.23.6.7, Cases Included in the CSP*, paragraph (1).
- (2) Examiners may encounter cases in which Forms 1099 were timely filed, but the officer also received additional payments such as distributions, loans, or personal expenses that the examiner determines to be additional compensation. CSP eligibility is determined based on the requirements of section 530. Therefore, even though the amount reported on Form 1099 was understated, these cases **are** eligible for CSP since a Form 1099 was timely filed.
- (3) The following examples illustrate the application of CSP to cases involving officer compensation issues:
 - **Example 1:** You are examining a taxpayer for 2019 where officer compensation of \$100,000 was reported on Form 1099-MISC for 2017, 2018, and 2019. You determine that the \$100,000 reported on Form 1099 is reasonable compensation for the officer's services. No other payments (distributions, loans, personal expenses) were made to the officer.
 - This scenario is the same as any other worker classification adjustment. A CSP agreement must be offered for 2019; 2017 and 2018 would not be examined. The tax would be computed on \$100,000 for 2019. IRC 3509(a) rates would apply unless you determined there was intentional disregard under IRC 3509(c). Use of full rates under IRC 3509(c) would not exclude the taxpayer from a CSP offer.
 - **Example 2:** You are examining a taxpayer for 2019. Officer compensation of \$10,000 was reported for each year on Forms 1099 for 2017, 2018, and 2019. The taxpayer also paid the officer \$90,000, which it characterized as distributions. You determine that reasonable compensation for the officer's services should be \$100,000 and that the \$90,000 of distributions should be recharacterized as wages.
 - Similar to Example 1, CSP would apply since the officer was treated as an independent contractor and Forms 1099-MISC were issued. A CSP agreement must be offered for 2019; 2017 and 2018 would not be examined (even for the additional compensation that

would make up a reasonable wage). The tax would be computed on \$100,000 for 2019. IRC 3509(a) rates would apply unless you determined there was intentional disregard under IRC 3509(c). Use of full rates under IRC 3509(c) would not exclude the taxpayer from a CSP offer.

- **Example 3:** You are examining a taxpayer where officer compensation of \$100,000 was reported on Form 1099 for 2019. Officer compensation reported on Forms 1099-MISC for 2017 and 2018 was only \$10,000. You determine that the \$100,000 reported on Form 1099 for 2019 is reasonable compensation for the officer's services, but the \$10,000 reported on Forms 1099 for 2017 and 2018 is not. The taxpayer paid an additional \$90,000 per year (which it characterized as distributions) to the officer in 2017 and 2018. No distributions were paid in 2019.
 - This situation would be handled similar to Example 1. A CSP agreement must be offered for 2019; 2017 and 2018 would not be examined even though a reasonable salary was not paid in those years. The tax would be computed on \$100,000 for 2019. IRC 3509(a) rates would apply unless you determined there was intentional disregard under IRC 3509(c). Use of full rates under IRC 3509(c) would not exclude the taxpayer from a CSP offer.
- **Example 4:** You are examining a taxpayer that reported officer compensation of \$100,000 on Form 1099 for 2019. No officer compensation was reported on Forms 1099-MISC for 2017 and 2018. The taxpayer paid \$125,000 (which it reported as a distribution on Schedule K-1) to the officer in 2017 and 2018. No distributions were paid in 2019. You determine that the \$100,000 reported on Form 1099 for 2019 is reasonable compensation for the officer's services. You determine that reasonable compensation for 2017 and 2018 is also \$100,000 for each year. (The \$25,000 difference between the total distribution and the amount recharacterized as wages remains a distribution.)
 - A CSP offer would apply for 2019, but would not apply for 2017 and 2018 since no Forms 1099-MISC were filed for those years. A CSP agreement would be offered for 2019 only. You would examine 2017 and 2018 for the wage issue. The CSP agreement for 2019 does not prevent 2017 and 2018 from being examined in this situation since no Forms 1099 were filed for those years and CSP is therefore not available. The tax would be computed on \$100,000 for 2017, 2018, and 2019. IRC 3509(a) rates would apply to 2019, and IRC 3509(a) rates would apply to 2017 and 2018, unless you determined there was intentional disregard under IRC 3509(c). Use of full rates under IRC 3509(c) would not exclude the taxpayer from a CSP offer.
- **Example 5:** You are examining a taxpayer that reported officer compensation of \$100,000 on Form 1099-MISC for 2019. The taxpayer reported officer compensation of \$10,000 on Forms W-2 for 2017 and 2018. Additional payments of \$125,000 per year were paid to the officer in 2017 and 2018 and were reported as

distributions on Schedule K-1. No distributions were paid in 2019. You determine that the \$100,000 reported on Form 1099-MISC for 2019 is reasonable compensation for the officer's services. You determine that reasonable compensation for 2017 and 2018 is also \$100,000 for each year.

- This situation would be similar to Example 4, but 2017 and 2018 would not be worker classification adjustments. A CSP offer would apply for 2019, but not for 2017 and 2018 since the officer was already treated as an employee for those years. A CSP agreement would be offered for 2019 only. You would examine 2017 and 2018 to re-characterize the distributions as wages. The CSP agreement for 2019 does not prevent 2017 and 2018 from being examined in this situation since those years do not involve worker reclassification. The 2019 tax would be computed on \$100,000. IRC 3509(a) rates would apply unless you determined there was intentional disregard under IRC 3509(c). Use of full rates under IRC 3509(c) would not exclude the taxpayer from a CSP offer. The tax would be computed on \$90,000 (\$100,000 reasonable compensation less \$10,000 already reported on Forms W-2) for 2017 and 2018. Since the adjustments for 2017 and 2018 are not worker classification adjustments, IRC 3509 would not apply and full rates would be used.

4.23.6.10 (12-21-2017)

Eligible for Section 530 Relief

- (1) If a taxpayer clearly meets the reporting and substantive consistency requirements and satisfies the reasonable basis test, the requirements of section 530 are fully met. As a result, no adjustment will be made and the taxpayer may continue treating workers within the class as non-employees.
- (2) However, a taxpayer may prefer to begin treating its workers as employees. In this case, the examiner should determine whether the workers are employees. If so, an agreement for prospective treatment will be made with the taxpayer. A taxpayer that enters into such an agreement may begin treating the workers as employees currently or at the beginning of the next year. By doing so, the taxpayer will **not** give up its section 530 relief for prior years.

4.23.6.11 (12-21-2017)

Not Eligible for Section 530 Relief

- (1) Where the taxpayer is not eligible for section 530 relief and it appears that the taxpayer may have erroneously treated a worker as a non-employee rather than an employee, the IRS examiner will gather the facts necessary to determine whether improper classification has occurred.
- (2) The examiner will then consult with the examination group manager before making a CSP offer to the taxpayer. After thoroughly reviewing the facts and circumstances of the case, the group manager will confirm the

taxpayer's eligibility for a CSP settlement offer. If an offer is made and accepted by the taxpayer, the parties will sign a CSP closing agreement using the applicable standard closing agreement. See *IRM 4.23.6.15.3*, CSP Standard Closing Agreement, paragraph (2), for a listing of the three available agreements.

Note: TE/GE EO group managers **are required** to consult with the EO CSP Coordinator before approval.

- (3) Section 530 relief is generally not applicable to Federal agency employers. However, if a Federal agency agrees to reclassify workers who were not treated as employees of the Federal agency for Federal employment tax purposes as part of the resolution of an audit of the Federal agency's employment tax returns, a CSP offer may be made to the Federal agency.

4.23.6.12 (10-30-2009)

Mandatory CSP Comment

- (1) In any case involving a determination that a worker was mis-classified, the examiner **must** comment on CSP. The examiner should fully explain in the workpapers:
 - Whether a CSP offer was considered,
 - Whether or not an offer was made,
 - What type of offer was made, if any, and
 - Why or why not.

4.23.6.13 (04-22-2014)

Effect on TE/GE Programs

- (1) CSP applies to worker classification issues that arise in examinations conducted by examiners in LB&I, SB/SE, and TE/GE. CSP does not alter the procedures that apply to the Employee Plans Compliance Resolution Program (EPCRS), as detailed in Rev. Proc. 2013-12. CSP also does not affect the TE/GE Voluntary Compliance Resolution (VCR) program, as detailed in Rev. Proc. 2013-12.

4.23.6.14 (04-22-2014)

Procedures for CSP

- (1) First, the examiner will analyze the extent to which a taxpayer meets the requirements for section 530 relief, which is critical to determining whether the taxpayer can continue current classification practices and the appropriate nature of the offer the taxpayer will receive under the CSP. The following subsections provide the procedures for CSP.

4.23.6.14.1 (04-22-2014)

CSP Settlement Offers

- (1) Under CSP, a series of graduated settlement offers are available:
 - a. **100% CSP Offer:** If the taxpayer meets the section 530 reporting consistency requirement but either clearly does not meet the section 530 substantive consistency requirement or clearly cannot meet the section 530 reasonable basis test, the offer will be a full employment tax adjustment for the most recent tax year under examination computed using IRC 3509(a), if applicable.
Note: See IRM 4.23.8.6, IRC Section 3509, for explanation of the reduced rates of IRC 3509.
 - b. **25% CSP Offer:** If the taxpayer meets the reporting consistency requirement and has a colorable argument that it meets the substantive consistency requirement and/or the reasonable basis test, the offer will be an adjustment of 25% for the most recent tax year under examination, computed using IRC 3509(a), if applicable.
 - c. **No Assessment CSP Offer (section 530 applied):** If a taxpayer clearly meets the reporting and substantive consistency requirements and satisfies the reasonable basis test, the requirements of section 530 are fully met. However, the taxpayer may wish to enter into an agreement. A taxpayer that enters into such an agreement may begin treating the workers as employees currently or at the beginning of the next year.
 - d. In each instance, the taxpayer will agree to classify its workers as employees prospectively, thus ensuring future compliance.
- (2) A taxpayer may qualify for more than one CSP offer if several classes of workers are at issue. For example, a taxpayer may receive a 25% CSP Offer for one class of workers and a 100% CSP Offer for another class. The same taxpayer may not have timely filed Forms 1099 for another class of workers, and therefore, may not qualify for any CSP offer for this class of workers. On yet another class, the taxpayer may satisfy all the requirements of section 530 and would therefore be permitted to continue to treat those workers as independent contractors.

4.23.6.14.2 (03-01-2003)

CSP Offer Acceptance is Voluntary

- (1) Taxpayer participation in the CSP is entirely voluntary. A taxpayer may accept a CSP settlement offer at any time during the examination process. A taxpayer's rejection of a CSP offer will in no way affect the outcome of the examination. Moreover, a taxpayer declining to accept a settlement offer under CSP will retain all rights to an administrative appeal that exist under the IRS current policies and procedures and all existing rights to judicial review.

4.23.6.14.3 (01-08-2021)

CSP Analysis

- (1) Before a settlement offer can be considered, section 530 must be evaluated separately for each class of worker. See IRM 4.23.5.3, Section 530 of the Revenue Act of 1978. An examination that includes the workers' activities and the degree of direction and control by the taxpayer must also be completed to determine whether the workers are employees. See IRM 4.23.5.4, Independent Contractor or Employee and subsequent sections. When the worker reclassification issue is reviewed in conjunction with section 530, there are a number of possible outcomes. The type of CSP offer is based on the results of the examination.
- (2) *Exhibit 4.23.6-1*, CSP Analysis Chart, summarizes the possible outcomes of an examination and the CSP offer applicable to each outcome. It can be used as a reference guide throughout this text.

4.23.6.14.4 (01-08-2021)

CSP Offer

- (1) Various CSP offers, or no offer, apply to worker classification adjustments:
 - No offer: See *IRM 4.23.6.14.4.1*.
 - Taxpayer's option: See *IRM 4.23.6.14.4.2*.
 - 100% offer: See *IRM 4.23.6.14.4.3*.
 - 25% offer: See *IRM 4.23.6.14.4.4*.
- (2) The CSP agreement will provide that the taxpayer begins to treat the workers correctly as employees and agrees to an employment tax adjustment.
- (3) An employment tax adjustment will be made for the latest audit year, computed using IRC 3509(a), if applicable. Full rates can be used if the examiner determines that there is intentional disregard under IRC 3509(c). All usual case processing procedures apply.

Note: The basis for determining intentional disregard must be developed and documented in the workpapers.
- (4) The taxpayer should begin treating the worker as an employee effective the first day of the quarter following the agreement date. For example: The CSP agreement is signed by the taxpayer and approved by the IRS on March 14, 2020. The quarter ends March 31, 2020. Therefore, the taxpayer should begin treating the workers as employees on April 1, 2020.
- (5) If a taxpayer is willing to agree but cannot comply until the second or third quarter, examiners should discuss this situation with their group managers.
- (6) The following subsections provides an overview and examples of the types of CSP offers available.

4.23.6.14.4.1 (01-08-2021)

No Offer

- (1) If an examiner concludes that the workers are independent contractors, no worker classification issue exists. A CSP offer is not appropriate and should not be made. Examiners should remember that engaging the services of an independent contractor is a legitimate business practice. Examiners should not recommend changing a worker's status or present a CSP offer simply because it might result in a clearer paper trail for follow-up or increase tax collected through withholding. See Item 3 in *Exhibit 4.23.6-1, CSP Analysis Chart*.
- (2) If the workers are determined to be employees and required Forms 1099 were not timely filed, the taxpayer has not met the requirements for section 530 relief and is also not eligible for a CSP offer. All open years may be examined in accordance with the examination cycle. See Item 2 in *Exhibit 4.23.6-1, CSP Analysis Chart*.

4.23.6.14.4.2 (01-08-2021)

Taxpayer Option

- (1) If the taxpayer clearly meets both the reporting and substantive consistency tests and clearly meets the reasonable basis test, the taxpayer is entitled to section 530 relief and **NO ADJUSTMENT SHOULD BE MADE**, nor should an examiner request any changes in the taxpayer's treatment of the workers for employment tax purposes. However, some taxpayers who are entitled to section 530 relief may prefer to treat workers who are employees under a common-law analysis as employees. If the taxpayer wishes to reclassify the workers, the examiner will make a CSP offer for prospective treatment. Since this reclassification of the workers is purely at the option of the taxpayer, the taxpayer may begin treating the workers as employees currently or at the beginning of the next year.

Example: A taxpayer was examined in 2007, a prior year, in which workers were holding the same positions and no employment tax adjustments were proposed. The taxpayer meets the reporting and substantive consistency tests. Relief provided under section 530 is therefore available. Such a taxpayer has a prior audit safe haven and no adjustment should be proposed. A CSP offer as described in Item 1 of *Exhibit 4.23.6-1, CSP Analysis Chart* would be appropriate if the taxpayer prefers to treat the workers as employees.

4.23.6.14.4.3 (01-08-2021)

100% Offer

- (1) If the taxpayer timely filed required Forms 1099 but clearly fails either the substantive consistency or reasonable basis test of section 530, a 100% CSP offer is appropriate. See Items 4, 5, 6, 7, and 9 in *Exhibit 4.23.6-1, CSP Analysis Chart*.
- (2) **Example 1:** You are examining a masonry construction company. Your examination reveals the company makes payments to two brick layers. You find that the two workers perform identical duties. The company timely filed a Form 1099 for one worker and a Form W-2 for the other.

Because the company has treated the similarly situated workers inconsistently, the company is not entitled to section 530 relief. However, a 100% CSP offer would be made regarding the worker who was not treated as an employee.

- (3) **Example 2:** You examine a painting company that engages the services of college students during the summer months to paint offices. The company timely filed all required Forms 1099. You ask the owner the reasoning for treating the painters as independent contractors. The owner replies that the students are given the option of being treated as either employees or independent contractors. As you discuss this further, you determine the taxpayer has not established a reasonable basis for treating the workers as independent contractors, therefore, the taxpayer has not met the requirements for section 530 relief. A 100% CSP offer would be appropriate because the taxpayer's reasonable basis argument is not even colorable. A 25% CSP Offer is **not** appropriate.
- (4) **Example 3:** You conclude the examination of a computer services firm. Forms 1099 were timely filed. You have determined that the workers are providing computer services under an arrangement as described in section 530(d). If appropriate, a 100% CSP offer would be made because the taxpayer is **not** entitled to relief under section 530.

4.23.6.14.4.4 (01-08-2021)

25% Offer

- (1) A 25% CSP Offer will be made if Forms 1099 were timely filed and one of the following apply:
- The taxpayer meets the reasonable basis test and has a colorable argument for the substantive consistency test,
 - The taxpayer meets the substantive consistency test and has a colorable argument for the reasonable basis test, or
 - The taxpayer has a colorable argument for both the substantive consistency test and the reasonable basis test.
- (2) If the taxpayer clearly fails either the substantive consistency test or the reasonable basis test, a 25% CSP Offer is **not** appropriate; a 100% CSP Offer should be made to the taxpayer.

4.23.6.14.5 (01-08-2021)

Evaluating the Reasonable Basis Argument

- (1) If the taxpayer timely filed required Forms 1099 and has a colorable argument for the substantive consistency test and reasonable basis test, it may be determined that the taxpayer is eligible for section 530 if litigated. In other words, the cases falling into the 25% CSP category are cases where there may be some flaws with the taxpayer's substantive consistency or reasonable basis argument, or with both arguments. The 25% CSP Offer in these circumstances includes prospective compliance and agreement to an employment tax adjustment equal to 25% of the latest audit year. See Items 8, 10, and 11 on the "CSP Analysis Chart" in

Exhibit 4.23.6-1. As described in IRM 4.23.6.14.4(4), the taxpayer should begin treating the worker as an employee effective the first day of the quarter following the agreement date.

Note: If the taxpayer clearly fails either test, the 100% CSP offer would be appropriate.

- (2) Cases in which no valid reasonable basis argument or substantive consistency argument is offered can be settled under Items 4, 5, 6, 7, or 9 in *Exhibit 4.23.6-1*.
- (3) Section 530(a)(2) provides three safe havens establishing a "reasonable basis" for not treating a worker as an employee. See IRM 4.23.5.3, Section 530 of the Revenue Act of 1978. "Reasonable basis" exists if the taxpayer reasonably relies on:
 - a. **Judicial Precedent:** Judicial precedent, published ruling, technical advice memorandum or private letter ruling with respect to the individual or specific taxpayer under examination. (See IRM 4.23.5.3.3.4, Safe Haven - Judicial Precedent or Published Ruling.) or
 - b. **Prior Audit:** Prior IRS audit of the taxpayer in which employment taxes were not assessed for amounts paid workers holding positions substantially similar to that held by the worker in question. Any IRS audit started before January 1, 1997 qualifies for the prior audit safe haven. For tax years examined beginning after December 31, 1996, the audit had to be an examination of employment tax returns where worker classification was an issue. (See IRM 4.23.5.3.3.5, Safe Haven—Prior Audit.) or
 - c. **Industry Practice:** Long-standing recognized practice of a significant segment of the industry in which the worker is engaged. (See IRM 4.23.5.3.3.6, Safe Haven - Industry Practice.)
- (4) In addition, section 530 provides that a taxpayer who fails to meet any of the above safe havens may demonstrate some other reasonable basis for not treating the worker as an employee.
- (5) The courts have addressed reasonable basis in several cases. The legislative history of section 530 also indicates that reasonable basis should be construed liberally in favor of the taxpayer. See H.R. Rep. No. 95-1748, 95th Cong., 2d Sess., 5 (1978), 1978-3 C.B. 633.
- (6) When reviewing the reasonable basis argument presented by a taxpayer, examiners should first determine if it is one of the safe havens described in section 530(a)(2). If it is, the taxpayer is entitled to section 530 relief (if the other section 530 requirements are met). No adjustment should be made, but an offer under Item 1 of *Exhibit 4.23.6-1* may be considered.
- (7) If the taxpayer's position does not clearly fall within one of the safe harbors of section 530(a)(2), examiners should consider whether the taxpayer has demonstrated some other reasonable basis. In cases where the taxpayer's position is without a reasonable basis, an offer under Items 4, 7, or 9 of the "CSP Analysis Chart," in *Exhibit 4.23.6-1*, should be made. A taxpayer is not eligible for section 530 relief if the taxpayer fails to satisfy the reasonable basis requirement of section 530. Examples of reasons that are not considered reasonable are:

- a. Classifying workers as independent contractors based on desire to pay workers less,
- b. A worker's request, or
- c. The lack of a valid Social Security Number.
 - **Example 1:** If a taxpayer does not meet any of the safe havens in section 530(a)(2) and claims that treating workers as independent contractors lowers labor costs as a reasonable basis, the taxpayer has not demonstrated a colorable reasonable basis argument and a 100% CSP Offer would be made.
 - **Example 2:** The owner of a lumber company explains that all businesses in the area treat "skidders" as independent contractors. In fact, the owner worked for two of the other local companies as an independent contractor in the prior year. The owner explained further that duties for work at the other two companies were identical to that of the workers in question. While the taxpayer's statements do not clearly meet the industry practice safe haven, there may be merit to the taxpayer's argument. You should explore the taxpayer's basis for an industry practice safe haven argument. If the taxpayer could substantiate the statements in a way that you find credible, the taxpayer would be entitled to section 530 relief. Alternatively, a 25% CSP Offer could be applicable based on consideration of all the facts.
 - **Example 3:** The taxpayer states that the advice of an accountant was followed when the business began treating workers as independent contractors. You determine that the accountant gave oral advice and can no longer remember what facts were provided. A 25% CSP Offer could be applicable based on consideration of all the facts.
 - **Example 4:** You examine a painting company that engages the services of college students during the summer months to paint offices. The company timely filed all required Forms 1099. You ask the owner the reasoning for treating the painters as independent contractors. The owner replies that previously as a working student, the owner was given an option of being treated as either an employee or an independent contractor. Moreover the owner's discussions with other business owners at the local building trade meetings and shows indicate some other businesses handle treatment the same way. The taxpayer could not provide specifics, but indicated there were numerous business owners at the meeting and the owner only spoke to a few of them. You determine the taxpayer's argument may have merit, however, your research indicates that the local painting industry almost always treats painters as employees. A 25% CSP Offer could be applicable based on consideration of all the facts.

- (8) If the taxpayer presents a reasonable basis argument that has some merit, the examiner should verify any facts upon which it is based. In determining if a position has merit, examiners should consider any rationale that is genuine. The objective of the CSP is to recognize a

taxpayer's potential reasonable basis argument and efficiently resolve the contention with a settlement. Common arguments which may fall in this category include prior state determinations. Industry practice arguments will also be presented frequently. This applies to cases where the taxpayer does not clearly meet the industry practice safe haven. For additional information on the industry safe haven, see IRM 4.23.5.3.3.6, Safe Haven - Industry Practice.

- (9) The settlement offer for taxpayers who have a colorable reasonable basis argument requires prospective treatment of the workers as employees and an employment tax adjustment of 25% of the employment taxes for the latest audit year. The 25% will be determined by computing the proposed adjustment for Federal Insurance Contributions Act (FICA) and Federal Income Tax Withholding (FITW) with respect to the workers at issue for the entire year, using IRC 3509(a), if applicable, and multiplying it by .25. Note that the tax for the Federal Unemployment Tax Act (FUTA) is still computed at 100%. The adjustment will be made for the quarter ending December 31.

4.23.6.14.6 (12-21-2017)

Making the CSP Offer

- (1) Once the group manager approves the CSP Settlement Memorandum, examiners will make the settlement offer to the taxpayer, allowing 30 days for acceptance. See *IRM 4.23.6.15.1*, CSP Settlement Memorandum.
- (2) Examiners should remember that the settlement offer is optional for the taxpayer. The examiner should explain the normal audit and appeals process, including the policy to expand examinations to include other open years.
- (3) If the examination is expanded to other open years, the taxpayer may not be entitled to the same, if any, CSP offer. For example, an examiner may discover that in a prior year the taxpayer may not have timely filed required Forms 1099, and therefore, would not be eligible for a CSP offer for the prior year.
Note: If the audit is expanded to other years and the taxpayer subsequently accepts the CSP offer, the tax adjustment will be computed and assessed on the payments made to the class of workers in the most current year opened for the examination.
- (4) The taxpayer retains the right to an administrative appeal. The taxpayer should be advised that if the CSP offer is not accepted at the examination level, the CSP offer will remain available throughout the appeal process.

4.23.6.14.7 (04-21-1999)

More Than One Offer

- (1) It is possible that the taxpayer will qualify for several CSP offers because several classes of workers may be at issue. In other words, the taxpayer may qualify for one offer on a particular class of workers and for a different offer relative to another class of workers. The same taxpayer

would not qualify for any CSP offer on an additional class of workers if required Forms 1099 were not timely filed for such class.

4.23.6.14.8 (03-20-2012)

CSP Offer Accepted

- (1) If a taxpayer accepts the offer, the standard closing agreement will be completed in accordance with procedures in *IRM 4.23.6.15.3*, CSP Standard Closing Agreement. This document **must be prepared without any modification of the terms.** (However, see *IRM 4.23.6.7.1*, CSP & Entity Change, for CSP offers in situations where the type of business entity has changed.) The authorized group manager will execute the agreement on behalf of the Commissioner.

4.23.6.14.9 (12-21-2017)

CSP Offer Rejected or not Applicable

- (1) If a taxpayer rejects the offer or the taxpayer does not qualify for CSP, normal examination procedures should be followed, the audit completed and an unagreed Employment Tax Examiner's Report (ETER) prepared (if appropriate). This may result in expanding the examination to include all other open tax years in accordance with the examination cycle.
- (2) Since the CSP is intended to provide greater consistency in resolving worker classification cases, it is critical that examiners remain consistent in initiating the prior and subsequent years examinations when a CSP offer is not involved.
- (3) A taxpayer who rejects the CSP offer when it is initially proposed may reconsider the offer and accept it later in the examination. The CSP offer will remain open even if later year returns have been examined. If the audit is expanded to other years and the taxpayer subsequently accepts the CSP offer, the tax adjustment will be computed and assessed on the payments made to the class of workers in the most current year opened for the examination. The CSP offer will not apply to years in which the taxpayer has not complied with reporting requirements.

4.23.6.14.10 (12-21-2017)

Calculation of CSP Tax Due and Procedures

- (1) **100% CSP Offer:** Follow regular tax calculation procedures using Form 4668 for a single year calculation adjusting all four quarters of the CSP year. If there are other periods open, close no-change with a disposal code of "01" unless other issues have been developed and adjusted. In this situation, the disposal code for the other, non-CSP years will depend on whether or not the taxpayer signs the ETER for the other issues.
- (2) **25% CSP Offer:**
 - a. First, calculate tax for each of the 4 quarters using Form 4668. The CSP adjustment will then be computed by multiplying the total tax

(plus penalty, if applicable) by 25%. Attach a cover sheet to Form 4668 showing the calculation of the tax and penalties due.

Note: The ETER will generate a calculation of tax and penalty and the Form 5344 codes on the cover sheet, 25% Classification Settlement Program Worksheet.

- b. Examiners should note clearly on top of the Form 4668: "25% CSP Offer Applies — Do Not Process." This will alert Shared Administrative Assistants and tax examiners that the cover sheet 25% calculation should be used in lieu of Form 4668 items for adjustment purposes.
 - c. For the year examined, the first three quarters of Form 941 will be closed with the "No Change with Adjustment" Disposal Code "01" for LB&I and SB/SE, and "Regulatory/Revenue Protection" Closing Code "01" for TE/GE. This is correct unless other issues have been developed and adjusted. In that situation, the disposal code for the other quarters will depend on whether or not the taxpayer signs the ETER for the other issues.
- (3) In cases involving other returns, such as Form 943, Employer's Annual Tax Return for Agricultural Employees, or Form 944, Employer's ANNUAL Federal Tax Return, examiners should follow the same procedures outlined above for the Form 941. Where appropriate, references to Form 941 should be replaced with the correct form number and the corresponding Master File Tax (MFT) Code.
 - (4) **Federal Unemployment Tax Act (FUTA):** FUTA tax is included in the CSP offer and is calculated at 100% of the full year for **both** 100% and 25% cases; FUTA is not subject to any reduction.
 - (5) **Household Employment Taxes:** May be reported on the Form 1040 using Schedule H. Examiners will need to follow updated procedures for assessing these taxes on the Form 1040. As noted above, form references and MFTs could change. See IRM 4.23.10.10.5, Household Employment Taxes, for more information.

4.23.6.14.11 (04-22-2014)

Information Returns

- (1) A 100% CSP Offer or 25% CSP Offer satisfies the employment tax liabilities for the periods included in the CSP agreement.
- (2) Examiners will not solicit Form(s) W-2 or W-3 for any accepted CSP offer. Therefore, the section located at the bottom of Form 4668 regarding filing Form W-2/W-2c should be noted "N/A."

4.23.6.14.12 (04-21-1999)

Statute Considerations

- (1) Usual guidelines regarding the statute of limitations apply to CSP. If a statute is imminent and procedures require an extension, the taxpayer should sign the consent to extend the statute before a CSP agreement is executed.

4.23.6.14.13 (03-01-2003)**Full Payment**

- (1) Examiners should make every effort to collect the balance due at the time the CSP agreement is executed. If the taxpayer is unable to make full payment, the examiner should follow Accounts Receivable Dollar Inventory (ARDI) procedures to ensure the taxpayer makes payment arrangements.

4.23.6.15 (04-22-2014)**CSP Agreement Case Closing Procedures**

- (1) Generally, regular closing procedures apply. However, closures involving a CSP agreement will require the following additions or changes.

4.23.6.15.1 (10-30-2009)**CSP Settlement Memorandum**

- (1) Each case file in which a CSP settlement offer is made must contain a memorandum explaining it. The settlement memorandum is required whether or not the offer was accepted. The settlement memorandum documents the examiners determination and will be used by the group manager, the CSP review teams, a follow-up examiner, and Appeals if the case is not agreed.
- (2) The settlement memorandum should contain the following:
 - The facts and the law relative to the taxpayer's claim of entitlement to section 530 relief,
 - The strengths and weaknesses in the taxpayer's position,
 - The examiner's determination on the type of CSP offer to be made (100% or 25%), and
 - The merits of the taxpayer's position justifying the type of CSP offer being recommended.
- (3) The CSP Settlement Memorandum is prepared by the examiner and submitted to the examiner's group manager for approval before a CSP offer is made to the taxpayer. TE/GE EO group managers are **required** to consult with the EO CSP Coordinator before approval.
- (4) The settlement memorandum is not part of the ETER and should not be provided to the taxpayer.

4.23.6.15.2 (10-30-2009)**CSP Examination Reports**

- (1) Form 3198, Special Handling Notice for Examination Case Processing, or Form 3198-A, TE/GE Special Handling Notice. Note in the "Other" section the appropriate offer:
 - a. CSP Offer: 25% adjustment,
 - b. CSP Offer: 100% adjustment, or

- c. CSP Offer :No adjustment (Section 530 applied).
- (2) Form 5344, Examination Closing Record, or Form 5599, TE/GE Examined Closing Record. The Disposal Code "01" , "No Change with Adjustment, for LB&I, GE, and SB/SE," or Disposal Code "01" , "Regulatory/Revenue Protection for TE," will be used for any periods that have been examined but accepted as filed as a result of a CSP offer.
 - (3) The quarters in which the adjustments are made will be closed using Disposal Code "03" , Agreed, for LB&I, SB/SE, and TE/GE. Generally, when the 25% CSP Offer is applied, the adjustment will be made on the 4th quarter Form 941 and the most current examination year for Form 940. For the 100% CSP Offer, examiners should follow all usual case processing procedures, adjusting all four quarters of the CSP year. If there are other periods open, they would be closed no-change with a disposal code of "01" , unless other issues were developed and adjusted requiring a higher priority disposal code for the period.
 - (4) Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436): When using the 100% CSP Offer, examiners will follow the usual procedures for completing the Form 2504-T. However, the adjustment summary will need to be entered manually when the adjustment includes a 25% CSP Offer.
 - (5) Form 4666, Summary of Employment Tax Examination: When examiners are using the 100% CSP Offer, they will follow the usual procedures for completing the Form 4666. However, the adjustment summary will need to be entered manually when the adjustment includes a 25% CSP Offer.
 - (6) Form 4667, Examination Changes - Federal Unemployment Tax: All CSP offers will include a single year 100% adjustment for FUTA. Usual processing procedures apply. For TE/GE, FUTA taxes are not applicable to eligible organizations and governmental entities.
 - (7) Form 4668, Employment Tax Examination Changes Report: For the 100% CSP Offer, usual processing procedures apply. For the 25% CSP Offer, attach a cover sheet to Form 4668 showing the 25% calculation of tax due. See *IRM 4.23.6.14.10*, Calculation of CSP Tax Due and Procedures.
 - (8) Attach a list of reclassified workers with their Social Security Numbers to the Form 4668. Separate the workers by class if more than one class of worker is involved.

4.23.6.15.3 (12-21-2017)

CSP Standard Closing Agreement

- (1) One of three standard closing agreements must be used for CSP, based on which of the following situations applies:
 - a. Form 14490, Closing Agreement on Final Determination Covering Specific Matters for Taxpayers Entitled to Section 530 Relief. To be used when taxpayers qualify for section 530 relief but choose to treat the workers as employees prospectively.
 - b. Form 14491, Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification. To be used when

- taxpayers do not qualify for section 530 relief, are currently treating the workers as non-employees, and are eligible for a CSP offer.
- c. Form 14492, Closing Agreement on Final Determination Covering Specific Matters Regarding the Classification of Workers Currently Treated as Employees. To be used when taxpayers do not qualify for section 530 relief, are currently treating workers as employees, and are eligible for a CSP offer.
- (2) No changes will be made to any of the terms and conditions of the agreement. Examiners will insert certain taxpayer and return information when preparing the standard closing agreement, which may be found at the Product Catalog Information at <http://publish.no.irs.gov/catlg.html>. See the Exhibits at the end of this section for additional instructions.
 - (3) Prepare each standard closing agreement in triplicate and secure the taxpayer's signature on all three copies of the agreement. (See paragraph (5) for information on fax submissions.) After the agreements are signed by the approving official, examiners will provide one copy to the taxpayer using Letter 5155, CSP Transmittal. The second copy will be forwarded to the Employment Tax - Workload Selection and Delivery (ET-WSD) Unit with the required attachments. See *IRM 4.23.6.17*, Monitoring CSP Agreements. The final copy will be retained in the case file.
Note: For TE/GE, follow your Division's local monitoring procedures.
 - (4) Examiners should exercise caution if authorized representatives wish to execute the closing agreements for the taxpayer. If the authorization form, Form 2848, Power of Attorney and Declaration of Representative, only authorizes the representative with respect to the tax years under examination, the examiner must obtain the **taxpayer's** signature on the CSP agreement to avoid any confusion with respect to future compliance. If the Form 2848 contains appropriate language, then the representative's signature is acceptable. Language authorizing the representative to represent the taxpayer "with respect to employment tax issues arising in [years under examination] and all related specific items affecting other taxable periods" would be appropriate.
 - (5) Effective November 19, 2015, pursuant to a memo from the Deputy Commissioner for Services and Enforcement entitled Revision of Policy for Use of Fax in Taxpayer Submissions, the Policy for Use of Fax (fax policy) has been revised to eliminate the dollar ceiling for acceptance of consents to assess additional tax (various Forms 2504, Form 870, and others) and taxpayer closing agreements (e.g., Form 906 or Classification Settlement Program (CSP) agreements) received by fax. In all cases, the examiner must document that:
 - Taxpayer contact has been made, and
 - The case history documents the date of contact and the desire of the taxpayer to submit the document by fax.

4.23.6.15.4 (12-21-2017)

Examination Referrals to Employee Plans (EP) and Exempt Organizations (EO)

- (1) EP and EO examiners will follow manual procedures contained in IRM 4.23.2.2.3.1, Referrals to Employee Plans and Exempt Organizations, for EP and EO referrals. If a CSP agreement is entered into and the case meets the referral criteria, examiners should provide the following information in addition to the referral Form 4632, Employee Plans Referral, and Form 4632–A, Employee Plans Referral Checksheet:
- A copy of the CSP agreement(s).
 - Name and EIN of qualified plan.
 - Name and TIN of reclassified employees. (Where the number of reclassified employees is too large to provide this information, include the class of workers and number of workers reclassified in each.)

4.23.6.16 (10-30-2009)

CSP Quality Control

- (1) The CSP includes safeguards to ensure the program is implemented and executed consistently and in accordance with program guidelines. There are three layers of quality control built into the program:
- a. The first safeguard is inherent in the structure of the program. The standard closing agreement provides a uniform settlement offer that was reviewed and approved by the Headquarters Office. Modifications are not permitted. However, see *IRM 4.23.6.7.1, CSP & Entity Change*, for procedures where there has only been a change in the name or form of the business (e.g., change from sole proprietorship to corporation).
 - b. Employment Tax Policy has an analyst assigned as the program leader for the CSP.
 - c. Compliance group manager review and approval of all settlement offers is required. This will ensure a high level of managerial involvement. The authorized compliance group manager has the expertise and the familiarity with other open cases to assure the accuracy and consistency of determinations.

4.23.6.17 (01-08-2021)

Monitoring CSP Agreements

- (1) CSP monitoring and follow-up activities for SB/SE are centralized in the ET - WSD for agreements secured in SB/SE and Appeals. These CSP agreements and related documents should be sent to:
- Internal Revenue Service
 Stop 5702A / Employment Tax
 CSP Follow-up
 7940 Kentucky Dr
 Florence, KY 41042
- (2) Place each CSP Agreement in a separate folder. Include all documents required for monitoring. The following documentation must be sent to ET

- WSD upon final closure of any case that contains an agreed CSP agreement:

- Copy of the CSP agreement,
 - Complete copy of the ETER,
 - Copy of the CSP memorandum,
 - Copy of the lead sheets and workpapers for the worker classification and section 530 issues, and
 - Copy of the activity record showing contact information.
- (3) TE/GE will monitor its own agreements. Fully executed TE/GE CSP Agreements should be sent to the TE/GE Classification & Case Assignment mailbox at "*Manager EO Classification" or eoclass@irs.gov. The subject line of the email should state "TE/GE CSP Agreement" . Additional information can be found in IRM 4.70.6, TE/GE Examinations, Classification and Case Assignment (C&CA) Procedures.

4.23.6.18 (04-22-2014)

CSP Compliance Follow-up

- (1) The ET - WSD Unit is responsible for monitoring SB/SE CSP agreements and for performing an annual follow-up to assess taxpayer compliance with the CSP agreements secured by SB/SE, LB&I, and Appeals.
- (2) When a case in Appeals results in a CSP settlement, a copy of the Appeals Case Memo, CSP agreement, and Appeals Report are sent to the ET - WSD for filing and follow up procedures.
- (3) The Chief, Employment Tax Examination, will oversee the SB/SE program for review and follow-up activities and will coordinate with other functions. Each function within TE/GE with employment tax responsibility (FSL/ET, EO, and Indian Tribal Governments (ITG)) will oversee its own program through their respective TE/GE Program Manager.
- (4) In ITG, the CSP Coordinator (along with their manager) is responsible for the operation of the CSP, etc. Also, the CSP Coordinator and the ITG classifier each keep a copy of the CSP Agreement. The CSP Coordinator keeps a copy of the original agreement, along with a copy of the Memorandum and Report. The classifier is the person responsible for initiating an examination if it appears that the taxpayer is not treating the individuals as employees per the signed agreement.

4.23.6.18.1 (12-21-2017)

CSP Non-Compliance Procedures

- (1) If it appears from internal research that the taxpayer is not following the provisions of the CSP agreement, the ET - WSD Unit will prepare a memorandum to the field stating that it appears the taxpayer is not complying with the provisions of the agreement and that follow-up actions are necessary. With the memo, the ET - WSD office will send a copy of the CSP agreement, a copy of the examination reports, and a copy of the CSP Settlement Memorandum to the field.

- (2) When conducting a CSP follow-up exam, examiners should:
- a. Determine whether the taxpayer is in compliance.
 - b. Determine why the taxpayer is not in compliance with the CSP agreement.
 - c. Determine whether the right to direct and control the workers under the common law factors has materially changed.

4.23.6.18.1.1 (12-21-2017)

Right to Direct and Control Materially Changed

- (1) If the right to direct and control the workers under the common law factors has materially changed, the examiner must address this as a worker classification exam and follow all appropriate procedures including consideration of whether the taxpayer is entitled to Section 530 relief, whether the reduced rates under IRC 3509 are applicable, and whether the taxpayer is entitled to a new CSP offer.

4.23.6.18.1.2 (12-21-2017)

Right to Direct and Control Not Materially Changed

- (1) If the right to direct and control the workers under the common law factors has not materially changed, the examiner should **still** treat this as a worker classification exam and follow all appropriate procedures including consideration of whether the taxpayer is entitled to Section 530 relief and whether the reduced rates under IRC 3509 are applicable. **However**, since the taxpayer previously entered into a final and binding CSP agreement under IRC 7121, the examiner's position should be that:
- a. **The taxpayer is not entitled to section 530 relief.** By executing the prior CSP agreement, the taxpayer has treated the individual worker as an employee and therefore fails the substantive consistency requirement of Section 530 (a)(1)(A); by executing the prior CSP agreement, the taxpayer also fails the reasonable basis for not treating an individual as an employee provided in Section 530(a)(2).
 - b. **The taxpayer is not entitled to the reduced rates under IRC 3509.** By failing to comply with the CSP agreement, the taxpayer has engaged in intentional disregard. See IRC 3509(c).
 - c. Adjustments should be made to all open years under the regular statute of limitations ending after the date of worker conversion under CSP agreement.
 - d. All applicable penalties should be considered.
 - e. Form 2504-T, should be used to secure an agreement, as this is a worker classification adjustment. Tax Court has jurisdiction over this issue under IRC 7436.

4.23.6.19 (12-21-2017)

Voluntary Classification Settlement Program (VCSP)

- (1) The Voluntary Classification Settlement Program (VCSP) is a voluntary program that provides an opportunity for taxpayers to reclassify their workers as employees for employment tax purposes for future tax periods with partial relief from federal employment taxes. To participate in this voluntary program, the taxpayer must meet certain eligibility requirements, apply to participate in VCSP by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.
- (2) The VCSP allows eligible taxpayers who are not under examination to obtain relief similar to that currently available through the Classification Settlement Program for taxpayers under examination.
- (3) Examiners should be familiar with VCSP to address any questions taxpayers or authorized representatives might have about the program. See IRM 4.23.20, Employment Tax - Voluntary Classification Settlement Program (VCSP) Procedures, for additional information on the VCSP process.
- (4) If an examiner is auditing a taxpayer who has a VCSP agreement that covers a specific class of worker, the worker classification issue for that class of worker is closed and cannot be examined unless the taxpayer is not in compliance with the VCSP agreement. Like the CSP, the VCSP is a final settlement of the issue.

4.23.6.19.1 (12-21-2017)

Monitoring VCSP Agreements

- (1) VCSP monitoring and follow-up activities will be centralized in ET - WSD for agreements secured in SB/SE for SB/SE or LB&I taxpayers; TE/GE will monitor any agreements secured for taxpayers within their BOD.
- (2) VCSP agreement monitoring and follow-up will be based on the procedures in *IRM 4.23.6.18.1*, CSP Non-Compliance Procedures.

Exhibit 4.23.6-1

CSP Analysis Chart

Item	Were Required Forms 1099 Timely Filed?	Does TP Meet the Substantive consistency Test?	Does TP Meet the Reasonable Basis Test?	Is TP Entitled to Section 530 Relief?	Are Workers Employees?	Type of CSP Offer
1.	Yes	Yes	Yes	Yes	Yes ¹	TP Option
2.	Yes or No	Yes or No	Yes or No	No ²	No	None
3.	No	Yes or No	Yes or No	No	Yes	None

Item	Were Required Forms 1099 Timely Filed?	Does TP Meet the Substantive consistency Test?	Does TP Meet the Reasonable Basis Test?	Is TP Entitled to Section 530 Relief?	Are Workers Employees?	Type of CSP Offer
4.	Yes	No	No	No	Yes	100% CSP Offer
5.	Yes	No	Yes	No	Yes	100% CSP Offer
6.	Yes	No	Colorable ³	No	Yes	100% CSP Offer
7.	Yes	Yes	No	No	Yes	100% CSP Offer
8.	Yes	Yes	Colorable ³	No	Yes	25% CSP Offer
9.	Yes	Colorable ³	No	No	Yes	100% CSP Offer
10.	Yes	Colorable ³	Yes	No	Yes	25% CSP Offer
11.	Yes	Colorable ³	Colorable ³	No	Yes	25% CSP Offer

- a. Generally, the examiner would not make a determination on worker status if the TP is entitled to section 530 relief. However, the taxpayer may state that the belief that the workers are employees and request a CSP agreement.
- b. At least one of the tests in the previous three columns is "No" .
- c. "Colorable" means the TP's argument has some merit but not sufficient enough to fully meet the test.

Exhibit 4.23.6-2

General Information

The most current CSP agreements, as listed below, are located in the forms repository at: <http://www.publish.no.irs.gov/catlg.html>:

- a. Form 14490, Closing Agreement on Final Determination Covering Specific Matters for Taxpayers Entitled to Section 530 Relief . To be used when taxpayers qualify for relief under section 530 relief but choose to treat the workers as employees prospectively.
- b. Form 14491, Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification. To be used when taxpayers do not qualify for section 530 relief, are currently treating the workers as non-employees, and are eligible for a CSP offer.
- c. Form 14492, Closing Agreement on Final Determination Covering Specific Matters Regarding the Classification of Workers Currently Treated as Employees. To be used when taxpayers do not qualify for section 530 relief, are currently treating workers as employees, and are eligible for a CSP offer.

Exhibit 4.23.6-3

General Instructions – To Be Used for All CSP Agreements

- All CSP forms are now in fillable Portable Document Format (PDF). Spaces for taxpayer information that is to be inserted by the examiner appear at the top of the first page of each agreement. The information the examiner enters in these fillable boxes will appear in the correct place on each form when completed.
- **CAUTION:** The CSP agreement is an agreement between the taxpayer and the IRS in settlement of all issues covered by the agreement. It binds both the taxpayer and the IRS for prospective treatment of workers. It is imperative that all information that is inserted into the agreement by an examiner be correct.
- **CAUTION:** The period, type of tax, audit adjustments, and penalties are input in a separate place from the general taxpayer information that is inserted in the fillable spaces at the top of each form. The table for the audit information is in the body of the CSP agreement. The examiner must manually insert the audit results in the spaces provided for this information.
- Enter each date in the format "mmmm dd, yyyy" (i.e., January 1, 2020).
NOTE: "mmmm" means to write out the month, e.g., "January" .
- Draw a diagonal line through any space at the bottom of a page to avoid any unintended insertions by the parties to the agreement.
- Print three copies of the standard closing agreement and secure original signatures on **all three original copies** of the agreement.
- When all three originals of the agreement are signed by the taxpayer or the taxpayer's representative and the approving official:
 - Provide one copy to the taxpayer using Letter 5155, CSP Agreement Transmittal
 - Forward one copy to ET-WSD with copies of the Employment Tax Examiner's Report, the activity record, and all workpapers supporting the worker classification determination and the taxpayer's eligibility for CSP
 - Retain the third copy in the case file.

Exhibit 4.23.6-4

Instructions for Completing Form 14490, Closing Agreement on Final Determination Covering Specific Matters for Taxpayers Entitled to Section 530 Relief

Form 14490 is used when taxpayers qualify for relief under Section 530 but choose to treat the workers as employees prospectively.

Insert the following information in the numbered boxes available at the top of Form 14490:

- a. Taxpayer name
- b. Employer Identification Number
- c. Taxpayer address
- d. City
- e. State
- f. Zip code
- g. Type of workers being reclassified: Insert the job title(s) of the class or classes of workers being reclassified under the agreement. (For example, painters, framers, nurses, doctors, etc.) Multiple classes of workers may be included on a single CSP, or separate CSP agreements can be prepared for each class of workers.
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter the first day of the offer year. The "offer year" is generally the latest calendar year open for audit. For example, if you are examining calendar years 2017, 2018, and 2019, and you have determined that the taxpayer has filed all required Forms 1099, your "offer year" is 2019. In this case, the beginning date of the offer year is January 1, 2019.
- i. Ending date of CSP offer (mmmm dd yyyy): Enter the ending date of the offer year. The "offer year" is generally the latest calendar year open for audit. For example, if the "offer year" is 2019, the ending date of the "offer year" is December 31, 2019.
- j.
 - 10a: Beginning date of entire tax period under examination. Enter the beginning date of the earliest tax period open for examination. For example, for an examination covering 2018 and 2019, input January 1, 2018 as the beginning date.
 - 10b: Ending date of entire tax period under examination. Enter the ending date of the latest tax period open for examination. For example, for an examination covering 2018 and 2019, input December 31, 2019 as the ending date.
- k. Date **prior to** first date of worker conversion: This date will be the date prior to the date entered in Box 13. For Form 14490, complete Box 13 prior to completing Box 11 to arrive at the correct date.
- l. Beginning date of first period for which the statute is still open: ("Statute still open" includes statutes open under extension (Form SS-10, Consent to Extend the Time to Assess Employment Taxes.) Enter January 1, 20XX for the oldest year for which the statute of limitations is still open, even if that period is not open for examination. This clause is intended to cover all periods open by statute whether or not an examination is open in those periods.

- m. First day of the tax period in which taxpayer agrees to begin treating workers as employees: When a taxpayer that has protection under section 530 decides to reclassify the workers, that taxpayer can choose the date on which it will begin treating the workers as employees. In this case, you should complete Box 13 before you complete Box 11 because the date in Box 13 will always be the day after the date entered in Box 11, or the date the taxpayer is to begin treating workers as employees.

Exhibit 4.23.6-5

Example – Form 14490, Closing Agreement on Final Determination Covering Specific Matters for Taxpayers Entitled to Section 530 Relief

FACTS: You are examining ABC Company, located at 1234 Main Street, Anytown, Anystate, 00000, EIN XX-1111111 for calendar years 2018 and 2019. You concluded the examination on June 15, 2020 and determined that ABC Company met all the requirements for section 530 relief. ABC Company requested a CSP agreement to convert its roofers to employees prospectively beginning January 1, 2021. ABC Company has always filed its employment tax returns timely. The following illustrates the information to enter in the appropriate boxes and how the information will appear on Form 14490.

- a. Taxpayer name: Enter "ABC Company"
- b. Employer Identification Number: Enter "XX-1111111"
- c. Taxpayer address: Enter "1234 Main Street"
- d. City: Enter "Anytown"
- e. State: Enter "Anystate"
- f. Zip code: Enter "00000"
- g. Type of workers being reclassified: Enter "Roofers"
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter "January 1, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the "offer year" , the latest calendar year open for audit.
- i. Ending date of CSP offer (mmmm dd yyyy): Enter "December 31, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the "offer year" , the latest calendar year open for audit.
- j.
 - 10a. Beginning date of entire tax period under examination: Enter "January 1, 2018" .
 - 10b. Ending date of entire tax period under examination. Enter "December 31, 2019" .
- k. Date **prior to** first date of worker conversion. Enter "December 31, 2020" . The taxpayer elected to treat the workers as employees beginning January 1, 2021. Therefore the date prior to the first date of worker conversion is December 31, 2020.
- l. Beginning date of first period for which statute is still open: Enter "January 1, 2017" . When the CSP agreement is prepared on June 15, 2020, the oldest year for which the statute of limitations is still open is 2010 (normal statute for Forms 941 expires on April 15, 2021; for Form 940, the normal statute expires on January 31, 2021), even though that period is not open for

examination. This clause is intended to cover all periods open by statute, whether or not an examination is open in those periods.

- m. First day of the tax period in which taxpayer agrees to begin treating workers as employees: Enter "January 1, 2021" . This is the date the taxpayer elected to begin treating workers as employees.

Form 14490 (May 2013)	Department of the Treasury – Internal Revenue Service Closing Agreement On Final Determination Covering Specific Matters for Taxpayers Entitled to Section 530 Relief
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Under section 7121 of the Internal Revenue Code ("IRC"), **ABC Company (Box 1), 1234 Main Street (Box 3), Anytown (Box 4), Anystate (Box 5), 00000 (Box 6), XX-111111 (Box 2)**, ("taxpayer"), and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS, there is a dispute between the parties as to whether certain workers classified by taxpayer as **Roofers (Box 7)** (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA), or Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the **Roofers (Box 7)** as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its **Roofers (Box 7)** for all applicable periods from **January 1, 2019 (Box 8)**, through **December 31, 2019 (Box 9)**, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all **Roofers (Box 7)** engaged by the taxpayer on or after **January 1, 2017 (Box 12)**.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

(1) During the period **January 1, 2018 (Box 10a)** through **December 31, 2019 (Box 10b)**, the taxpayer shall be given relief pursuant to section 530 of Revenue Act of 1978 and no additional federal employment taxes are due for these periods with respect to such **Roofers (Box 7)**.

(2) The Internal Revenue Service will not disturb taxpayer's classification of such **Roofers (Box 7)** for federal employment tax purposes for any period from **January 1, 2017 (Box 12)** through **September 30, 2020 (Box 11)**.

(3) Beginning **January 1, 2021 (Box 13)**, and for all periods thereafter, **Roofers (Box 7)** and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

This agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts;

(2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

TaxpayerABC Company (Box 1)

Taxpayer Name

By _____ | **Date Signed**

Title

Taxpayer's Representative

By _____ | **Date Signed**

Commissioner of Internal Revenue

By _____ | **Date Signed**

Title

Exhibit 4.23.6-6

Instructions for Completing Form 14491, Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification

Form 14491 is used when taxpayers do not qualify for relief under section 530, are currently treating the workers as independent contractors, and are eligible for a CSP offer.

Note: If the CSP agreement does not include all open years because the taxpayer failed to file Forms 1099 for some years, do not use these instructions to determine the dates entered in the CSP agreement. See *IRM 4.23.6.6.1, Forms 1099 Not Filed for All Years*.

Insert the following information in the numbered boxes available at the top of Form 14491:

- a. Taxpayer name
- b. Employer Identification Number
- c. Taxpayer address
- d. City
- e. State
- f. Zip code
- g. Type of workers being reclassified: Insert the job title(s) of the class or classes of workers being reclassified under the agreement. (For example, painters, framers, nurses, doctors, etc.) Multiple classes of workers may be included on a single CSP, or separate CSP agreements can be prepared for each class of workers.
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter the first day of the offer year. The "offer year" is generally the latest calendar year open for audit. For example, if you are examining calendar years 2017, 2018, and 2019, and you have determined that the taxpayer has filed all required Forms 1099, your

- offer year is 2019. If the offer year is 2019, the beginning date of the offer year is January 1, 2019.
- i. Ending date of CSP offer (mmmm dd yyyy): Enter the ending date of the offer year. The "offer year" is generally the latest calendar year open for audit. For example, if the offer year is 2019, the ending date of the offer year is December 31, 2019.
 - j. Date **prior to** first date of worker conversion: The change in the treatment of workers must begin on the first day of the next quarter after the agreement is signed. Therefore, the date entered in Box 11 is the last day of the quarter in which the CSP agreement is signed.
 - k. Beginning date of first period for which statute is still open: ("Statute still open" includes statutes open under extension (Form SS-10, Consent to Extend the Time to Assess Employment Taxes.) Enter January 1, 20XX for the oldest year for which the statute of limitations is still open, even if that period is not open for examination. This clause is intended to cover all periods open by statute whether or not an examination is open in those periods.
 - l. First day of the tax period in which taxpayer agrees to begin treating workers as employees: The change in the treatment of workers must begin on the first day of the next quarter after the agreement is signed. This date will always be the day after the date entered in Box 10.

Enter the following information in the body of the CSP agreement for the type of tax and amount to be assessed:

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
<p>January 1, 20XX – December 31, 20XX Enter the calendar year for which the adjustment is being made. This will generally be the offer year (see instructions for Boxes 8 and 9 above). The dates may be entered as shown above or using the numerical dates 1/1/20XX – 12/31/20XX.</p>	<p>FICA and Income Tax Withholding The term "FICA" may be used since the acronym is identified in the CSP agreement. Acronyms such as "FITW," "FIT," or "ITW," should not be used for "Income Tax Withholding" since they are not identified in the CSP agreement.</p>	<p>TAX Enter the total amount of tax being assessed for FICA and income tax withholding (computed using IRC 3509(a) rates or full rates, as applicable.) This amount should match the amount on Form 4668 applicable to the specific worker classification adjustment to which this CSP agreement applies unless the 25% CSP Offer is applicable.</p>	<p>PENALTIES Enter the amount of any penalties being assessed. This amount should match the amount on Form 4668 applicable to the specific worker classification adjustment to which this CSP agreement applies unless the 25% CSP Offer is applicable. If no penalties are being assessed, \$ 0 must be entered.</p>

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
<p>January 1, 20XX – December 31, 20XX Enter the calendar year for which the adjustment is being made. This will generally be the offer year (see instructions for Boxes 8 and 9 above). The dates may be entered as shown above or using the numerical dates 1/1/20XX – 12/31/20XX.</p>	<p>FUTA The term "FUTA" may be used since the acronym is identified in the CSP agreement</p>	<p>TAX Enter the total amount of tax being assessed for FUTA. This amount should match the amount on Form 4667 applicable to the specific worker classification adjustment to which this CSP agreement.</p>	<p>PENALTIES Enter the amount of any penalties being assessed. This amount should match the amount on Form 4667 applicable to the specific worker classification adjustment to which this CSP agreement. If no penalties are being assessed, \$ 0 must be entered.</p>

Exhibit 4.23.6-7

Example – Form 14491, Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification

FACTS: You are examining ABC Company, located at 1234 Main Street, Anytown, Anystate, 00000, EIN XX-1111111 for calendar years 2018 and 2019. ABC Company treated roofers as independent contractors and timely filed all required Forms 1099. You determined that ABC Company is not entitled to section 530 relief. You also determined that the roofers should be treated as employees. On August 15, 2020, you proposed an adjustment and offered ABC Company a CSP agreement for the 2019 calendar year. ABC Company agreed to the adjustment and will sign a CSP agreement on that date. Your tax adjustment is \$10,000 for FICA and income tax withholding and \$1,000 for FUTA. No penalties were proposed. The following illustrates the information to enter in the appropriate boxes and how the information will appear on Form 14491.

- a. Taxpayer name: Enter "ABC Company"
- b. Employer Identification Number: Enter "XX-1111111"
- c. Taxpayer address: Enter "1234 Main Street"
- d. City: Enter "Anytown"
- e. State: Enter "Anystate"
- f. Zip code: Enter "00000"
- g. Type of workers being reclassified: Enter "Roofers"
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter "January 1, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the "offer year" , the latest calendar year open for audit.

- i. Ending date of CSP offer (mmmm dd yyyy): Enter "December 31, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the "offer year" , the latest calendar year open for audit.
- j. Date **prior to** first date of worker conversion: Enter "September 30, 2020" . Since the CSP agreement was signed in the third quarter of 2020, the last day of the quarter is September 30, 2020.
- k. Beginning date of first period for which statute is still open: Enter "January 1, 2017" . When the CSP agreement is prepared on August 15, 2020, the oldest year for which the statute of limitations is still open is 2017 (normal statute for Forms 941 expires on April 15, 2021; for Form 940, the normal statute expires on January 31, 2021), even though that period is not open for examination. This clause is intended to cover all periods open by statute whether or not an examination is open in those periods.
- l. First day of the tax period in which taxpayer agrees to begin treating workers as employees: Enter "October 1, 2020" . Since the CSP agreement was signed in the third quarter of 2020, the first day of the next quarter after the agreement is signed is October 1, 2020. This date will always be the day after the date entered in Box 10.

Enter the following information in the body of the CSP agreement for the type of tax and amount to be assessed:

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
		TAX	PENALTY
January 1, 2019 – December 31, 2019	FICA and Income Tax Withholding	\$10,000	- \$0 -
January 1, 2019 – December 31, 2019	FUTA	\$1,000	- \$0 -

Form 14491 (May 2013)	Department of the Treasury – Internal Revenue Service Closing Agreement On Final Determination Covering Specific Matters Regarding Worker Classification
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Under section 7121 of the Internal Revenue Code ("IRC"), **ABC Company (Box 1), 1234 Main Street (Box 3), Anytown (Box 4), Anystate (Box 5), 00000 (Box 6), XX-111111 (Box 2)**, ("taxpayer"), and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS, there is a dispute between the parties as to whether certain workers classified by taxpayer as **Roofers (Box 7)** (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA), or Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the **Roofers (Box 7)** as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its **Roofers (Box 7)** for all applicable periods from **January 1, 2019 (Box 8)**, through **December 31, 2019 (Box 9)**, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all **Roofers (Box 7)** engaged by the taxpayer on or after **January 1, 2017 (Box 11)**.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

(1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its **Roofers (Box 7)**:

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
		TAX	PENALTY
January 1, 2019 – December 31, 2019	FICA and Income Tax Withholding	\$10,000	- \$0 -
January 1, 2019 – December 31, 2019	FUTA	\$1,000	- \$0 -

(2) The Internal Revenue Service will not disturb taxpayer's classification of such **Roofers (Box 7)** for federal employment tax purposes for any period from **January 1, 2017 (Box 11)** through **September 30, 2020 (Box 10)**.

(3) Beginning **October 1, 2020 (Box 12)**, and for all periods thereafter, **Roofers (Box 7)** and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

Closing Agreement with ABC Company (Box 1)

(4) The taxpayer waives any right it may have to claim relief under section 530 of the Revenue Act of 1978.

(5) IRC Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax.

This agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts.

(2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.	
TaxpayerABC Company (Box 1)	
Taxpayer Name	
By	Date Signed
Title	
Taxpayer Representative	
By	Date Signed
Commissioner of Internal Revenue	
By	Date Signed
Title	

Exhibit 4.23.6-8**Instructions for Completing Form 14492, Closing Agreement On Final Determination Covering Specific Matters Regarding The Classification Of Workers Currently Treated As Employees**

Form 14492 is used when taxpayers who do not qualify for section 530 relief are currently treating workers as employees and are eligible for a CSP offer.

Note: If the CSP agreement does not include all open years because the taxpayer failed to file Forms 1099 for some years, do not use these instructions to determine the dates entered in the CSP agreement. See *IRM 4.23.6.6.1, Forms 1099 Not Filed for All Years*.

Insert the following information in the numbered boxes available at the top of Form 14491:

- a. Taxpayer name
- b. Employer Identification Number
- c. Taxpayer address
- d. City
- e. State
- f. Zip code
- g. Type of workers being reclassified: Insert the job title(s) of the class or classes of workers being reclassified under the agreement: (For example, painters, framers, nurses, doctors, etc.) Multiple classes of workers may be included on a single CSP, or separate CSP agreements can be prepared for each class of workers.
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter the first day of the offer year: The "offer year" is generally the latest calendar year open for audit. For example, if you are examining calendar years 2017, 2018, and 2019, and you have determined that the taxpayer has filed all required Forms 1099, your offer year is 2019. If the offer year is 2019, the beginning date of the offer year is January 1, 2019.
- i. Ending date of CSP offer (mmmm dd yyyy): Enter the ending date of the offer year: The "offer year" is generally the latest calendar year open for audit. For

example, if the offer year is 2019, the ending date of the offer year is December 31, 2019.

- j. Beginning date of first period for which statute is still open: ("Statute still open" includes statutes open under extension (Form SS-10, Consent to Extend the Time to Assess Employment Taxes.) Enter January 1, 20XX for the oldest year for which the statute of limitations is still open, even if that period is not open for examination. This clause is intended to cover all periods open by statute whether or not an examination is open in those periods.
- k. Date taxpayer began treating workers as employees (mmmm dd, yyyy): Enter the date the taxpayer had already changed the treatment of the workers from independent contractors to employees.
- l. Date prior to the date taxpayer began treating workers as employees (mmmm dd, yyyy): Enter the date prior to the date the taxpayer had already changed the treatment of the workers from independent contractors to employees.

Enter the following information in the body of the CSP agreement for the type of tax and amount to be assessed:

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
<p>January 1, 20XX – December 31, 20XX Enter the calendar year for which the adjustment is being made. This will generally be the offer year (see instructions for Boxes 8 and 9 above). The dates may be entered as shown above or using the numerical dates 1/1/20XX – 12/31/20XX.</p>	<p>FICA and Income Tax Withholding The term "FICA" may be used since the acronym is identified in the CSP agreement. Acronyms such as "FITW," "FIT," or "ITW," should not be used for "Income Tax Withholding" since they are not identified in the CSP agreement.</p>	<p>TAX Enter the total amount of tax being assessed for FICA and income tax withholding (computed using IRC 3509(a) rates or full rates, as applicable.) This amount should match the amount on Form 4668 applicable to the specific worker classification adjustment to which this CSP agreement applies unless the 25% CSP Offer is applicable.</p>	<p>PENALTIES Enter the amount of any penalties being assessed. This amount should match the amount on Form 4668 applicable to the specific worker classification adjustment to which this CSP agreement applies, unless the 25% CSP Offer is applicable. If no penalties are being assessed, \$ 0 must be entered</p>

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
<p>January 1, 20XX – December 31, 20XX Enter the calendar year for which the adjustment is being made. This will generally be the offer year (see instructions for Boxes 8 and 9 above). The dates may be entered as shown above or using the numerical dates 1/1/20XX – 12/31/20XX.</p>	<p>FUTA The term "FUTA" may be used since the acronym is identified in the CSP agreement.</p>	<p>TAX Enter the total amount of tax being assessed for FUTA. This amount should match the amount on Form 4667 applicable to the specific worker classification adjustment to which this CSP agreement.</p>	<p>PENALTIES Enter the amount of any penalties being assessed. This amount should match the amount on Form 4667 applicable to the specific worker classification adjustment to which this CSP agreement. If no penalties are being assessed, \$ 0 must be entered.</p>

Exhibit 4.23.6-9

Example – Form 14492, Closing Agreement On Final Determination Covering Specific Matters Regarding The Classification Of Workers Currently Treated As Employees

FACTS: You are examining ABC Company, located at 1234 Main Street, Anytown, Anystate, 00000, EIN XX-1111111 for calendar years 2018 and 2019. ABC Company treated workers as independent contractors in 2018 and 2019 but began treating the roofers as employees on January 1, 2020. ABC Company has correctly provided all required Forms 1099 to its roofers in 2018 and 2019. On August 15, 2020, you proposed an adjustment and offered ABC Company a CSP agreement for the 2019 calendar year. ABC Company agreed to the adjustment and will sign a CSP agreement on that date. Your tax adjustment is \$10,000 for FICA and income tax withholding and \$1,000 for FUTA. No penalties were proposed. The following illustrates the information to enter in the appropriate boxes and how the information will appear on Form 14492.

- a. Taxpayer name: Enter "ABC Company"
- b. Employer Identification Number: Enter "XX-1111111"
- c. Taxpayer address: Enter "1234 Main Street"
- d. City: Enter "Anytown"
- e. State: Enter "Anystate"
- f. Zip code: Enter "00000"
- g. Type of workers being reclassified: Enter "Roofers"
- h. Beginning date of CSP offer (mmmm dd yyyy): Enter "January 1, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the

- "offer year" , the latest calendar year open for audit.
- i. Ending date of CSP offer (mmmm dd yyyy): Enter "December 31, 2019" . Since both 2018 and 2019 are open for examination, calendar year 2019 is the "offer year" , the latest calendar year open for audit.
 - j. Beginning date of first period for which statute is still open: Enter " January 1, 2017" . When the CSP agreement is prepared on August 15, 2020, the oldest year for which the statute of limitations is still open is 2017 (normal statute for Forms 941 expires on April 15, 2021; for Form 940, the normal statute expires on January 31, 2021), even though that period is not open for examination. This clause is intended to cover all periods open by statute whether or not an examination is open in those periods.
 - k. Date taxpayer began treating workers as employees: Enter "January 1, 2020" .
 - l. Date prior to the date taxpayer began treating workers as employees: Enter "December 31, 2019" . This date will always be the day before the date in Box 11.

Enter the following information in the body of the CSP agreement for the type of tax and amount to be assessed:

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED	
		TAX	PENALTY
January 1, 2019 – December 31, 2019	FICA and Income Tax Withholding	\$10,000	- \$0 -
January 1, 2019 – December 31, 2019	FUTA	\$1,000	- \$0 -

Form 14492 (May 2013)	Department of the Treasury – Internal Revenue Service Closing Agreement On Final Determination Covering Specific Matters Regarding The Classification Of Workers Currently Treated As Employees
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Under section 7121 of the Internal Revenue Code ("IRC"), **ABC Company (Box 1), 1234 Main Street (Box 3), Anytown (Box 4), Anystate (Box 5), 00000 (Box 6), XX-111111 (Box 2)**, ("taxpayer"), and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS, there is a dispute between the parties as to whether certain workers classified by taxpayer as **Roofers (Box 7)** (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA), or Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer commenced treating the workers as employees on **January 1, 2020 (Box 11)**.

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its **Roofers (Box 7)** for all applicable periods from **January 1, 2019 (Box 8)**, through **December 31, 2019 (Box 9)**, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all **Roofers (Box 7)** engaged by the taxpayer on or after **January 1, 2017 (Box 10)**.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

(1)) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its **Roofers (Box 7)**:

PERIOD		TYPE OF TAX	AMOUNT TO BE ASSESSED
January 1, 2019 – December 31, 2019	FICA and Income Tax Withholding	\$10,000	- \$0 -
January 1, 2019 – December 31, 2019	FUTA	\$1,000	- \$0 -

(2) The Internal Revenue Service will not disturb taxpayer's classification of such **Roofers (Box 7)** for federal employment tax purposes for any period from **January 1, 2017 (Box 10)** through **December 31, 2019 (Box 12)**.

(3) Beginning **January 1, 2020 (Box 11)**, and for all periods thereafter, **Roofers (Box 7)** and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

(4) The taxpayer waives any right it may have to claim relief under section 530 of the Revenue Act of 1978.

(5) I.R.C. Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax.

This agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts;

(2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

TaxpayerABC Company (Box 1)

Taxpayer Name

By	Date Signed
Title	
Taxpayer's Representative	
By	Date Signed
Commissioner of Internal Revenue	
By	Date Signed
Title	

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Page Last Reviewed or Updated: 07-Jan-2021