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## **Rev. Rul. 81-224**

### ISSUE.

Is a taxpayer who does not timely file Forms 1099 NEC, Statement for Recipients of Nonemployee Compensation, under the circumstances described below, entitled to the benefits of section 530 of the Revenue Act of 1978, Pub. L. 95-600, 1978 3 (Vol. 1) C.B. 119?

### FACTS.

During 1981, an Internal Revenue Service agent audited a taxpayer's Form 941, Employer's Quarterly Federal Tax Return, for a quarter during 1979. The agent raised the question whether certain individuals should have been treated as employees on that return, although the taxpayer had not done so. After the agent raised the question, the taxpayer filed Forms 1099 NEC with respect to the individuals for 1979.

### LAW AND ANALYSIS.

Section 530 of the Revenue Act of 1978, as amended by section 9(d) of Pub. L. 96-167, 1980 1 C.B. 483, 486, and by section 1(a) of Pub. L. 96-541, 1980 2 C.B. 596, provides that if, for purposes of the employment taxes under subtitle C of the Internal Revenue Code, a taxpayer did not treat an individual as an employee for any period ending before July 1, 1982, then the individual will be deemed not to be an employee for that period, unless that taxpayer had no reasonable basis for not treating the individual as an employee. For any period after December 31, 1978, and before July 1, 1982, the relief applies only if (1) all federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for the period are filed on a basis consistent with the taxpayer's treatment of the individual as not being an employee, and (2) the treatment is consistent with the treatment for periods beginning after December 31, 1977. See Rev. Proc. 81-43, page 11, this Bulletin.

Section 6041(a) of the Code requires the filing of information returns by all persons engaged in a trade or business and making payment in the course of such trade or business to another person of compensation of \$600 or more in a taxable year.

Section 1.6041-1(a) of the Income Tax Regulations provides that returns for compensation paid shall be made on Forms 1096, Annual Summary and Transmittal of U.S. Information Returns, and 1099 for each calendar year, except that the return with respect to certain payments of compensation to an employee by an employer shall be made on Form W 2, Wage and Tax Statement, and Form W 3, Transmittal of Income and Tax Statements.

Form 1099 has been divided into a series of forms, of which Form 1099 NEC is the form required for reporting compensation paid to nonemployees. Section 1.6041-6 of the regulations provides that returns made under section 6041 of the Code on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers.

Under section 6081(a) and the regulations thereunder, reasonable extensions of time for filing Forms 1096 and 1099 may be granted if requested on or before February 28.

**HOLDING.**

Under the circumstances described above, the taxpayer is not entitled to the relief provided by section 530 of the Revenue Act of 1978. Such relief will not be denied taxpayers who mistakenly but in good faith timely file Forms 1099 MISC, Statement for Recipients of Miscellaneous Income, in lieu of Forms 1099 NEC. Whether the individuals are employees for those periods for which no Forms 1099 were timely filed will be determined under the rules applicable in determining the employer-employee relationship. See sections 3121(d), 3306(i), and 3401(c) of the Code.