



Voluntary Classification Settlement Program (VCSP) Frequently Asked Questions

Q1. What is the Voluntary Classification Settlement Program (VCSP)?

A1. The VCSP is a program developed by the IRS that allows taxpayers to voluntarily reclassify their workers as employees for future tax periods for employment tax purposes. Under the VCSP, a taxpayer will pay 10 percent of the amount of employment taxes that would have been due on compensation paid to the workers being reclassified for the most recent tax year, calculated under the reduced rates of section 3509(a) of the Internal Revenue Code. In addition, the taxpayer will not be liable for any interest and penalties on the payment under the VCSP and will not be audited for employment tax purposes for prior years with respect to the worker classification of the workers. Taxpayers may apply for the VCSP using [Form 8952, Application for Voluntary Classification Settlement Program](#). For more information on the VCSP, see [Announcement 2012-45](#).

Q2. Do all workers have to be reclassified as employees?

A2. No. The VCSP permits taxpayers to reclassify some or all of their workers. However, once a taxpayer chooses to reclassify some of its workers as employees, all workers in the same class as those workers must be treated as employees for employment tax purposes.

Example: ABC Company is a construction firm that currently contracts with its drywall installers, electricians and plumbers to perform services at housing construction sites. ABC Company determines it wants to voluntarily reclassify its drywall installers as employees. ABC Company submits an application, is accepted into the VCSP and enters into a closing agreement with the IRS to reclassify its drywall installers as employees for future periods. Once the VCSP closing agreement is executed, ABC Company must treat all drywall installers as employees for employment tax purposes.

Q3. Which taxpayers are eligible for the VCSP?

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A3. Taxpayers who want to voluntarily change the classification of their workers going forward and who meet certain requirements are eligible for the VCSP. Specifically, a taxpayer must be treating the workers to be reclassified as independent contractors or other nonemployees; additionally, the taxpayer must have consistently treated the workers as nonemployees, including having filed any required Forms 1099, consistent with the nonemployee treatment, for the previous three years with respect to the workers to be reclassified. The taxpayer cannot be currently under employment tax audit by the IRS. A taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is considered to be under employment tax audit for purposes of the VCSP if any member of the affiliated group is under employment tax audit. The taxpayer also cannot be under audit by the Department of Labor or any state agency regarding the classification of workers.

Q4. Are exempt organizations eligible for the VCSP?

A4. Yes, exempt organizations are eligible if all eligibility requirements are met.

Q5. Are government entities eligible for the VCSP?

A5. Yes, government entities are eligible if all eligibility requirements are met.

Q6. Is the VCSP available to state and local government agencies for workers covered under a Section 218 agreement?

A6. No, the VCSP is not available to state and local government employers for workers covered under a Section 218 agreement. However, the VCSP is available to state and local government employers for workers not provided Social Security coverage under a section 218 agreement.

Q7. Can a taxpayer who is not currently under audit but who was previously audited be eligible for the VCSP?

A7. A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the workers may be eligible for the VCSP if the taxpayer has complied with the results of the IRS or Department of Labor audit and is not currently contesting the classification in court.

Q8. How does a taxpayer take part in the VCSP?

A8. In order to participate in the VCSP, an eligible taxpayer must complete and submit an application, using Form 8952, Application for Voluntary Classification Settlement Program. The application should be filed at least 60 days from the date the taxpayer wants to begin treating its workers as employees.

Q9. Should payment be submitted with the application?

A9. No, taxpayers should not submit payment with the VCSP application.

Q10. What happens once the VCSP application has been submitted?

A10. Once submitted, the IRS will review the application and verify the taxpayer's eligibility. The IRS will then contact the taxpayer (or the taxpayers authorized representative if an executed Power of Attorney Form 2848, is included with the

application) to enter into the VCSP closing agreement with the IRS.

Q11. When does the taxpayer pay the amount due under the VCSP?

A11. Taxpayers must make full and complete payment of any amount due under the VCSP when they return the signed VCSP closing agreement to the IRS.

Q12. What are the results of participating in the VCSP?

A12. A taxpayer who participates in the VCSP agrees to treat the class or classes of workers as employees for future tax periods for employment tax purposes and will not be subject to an employment tax audit with respect to the worker classification of the class or classes of workers for prior years. The taxpayer will pay 10 percent of the employment tax liability, calculated at the reduced rates of IRC section 3509(a), that would have been due on compensation paid to the workers being reclassified for the most recent tax year if those workers were classified as employees for that year, with no liability for any interest or penalties.

Q13. Will I be contacted if my application is rejected?

A13. Yes, if you are not eligible, the IRS will contact you to inform you that your VCSP application has not been accepted.

Q14. If my application is rejected, can I apply again at a later point in time?

A14. Yes, if your VCSP application has been rejected because you are not eligible, you may reapply.

Q15. How is the amount of the VCSP payment calculated?

A15. Payment under the VCSP is 10 percent of the amount of employment taxes calculated under the reduced rates of section 3509(a) of the Internal Revenue Code for the compensation paid for the most recent tax year to the workers being reclassified under the VCSP. Under section 3509(a), the effective tax rate for compensation up to the social security wage base is generally 10.68 percent. The effective rate for the compensation above the social security wage base is 3.24 percent.

The amount due under the VCSP is calculated based on compensation paid in the most recently closed tax year, determined at the time the VCSP application is being filed. Accordingly, for example, the 10.68 percent effective rate applies for the VCSP applications submitted in 2020 since the most recently closed tax year is 2019. The rate of 3.24 percent applies to compensation above the social security wage base. These effective rates constitute the sum of the rates as calculated under section 3509(a), and are made up of the following:

Description	3509(a) Percentage for compensation up to the social security wage base	3509(a) Percentage for compensation paid above the social security wage base

Description	3509(a) Percentage for compensation up to the social security wage base	3509(a) Percentage for compensation paid above the social security wage base
Federal Income Tax Withholding	1.5	1.5
Employee Social Security Tax	1.24	0
Employer Social Security Tax	6.2	0
Employee Medicare Tax	.29	.29
Employer Medicare Tax	1.45	1.45
Totals	10.68	3.24

Under the VCSP, the taxpayer then pays 10 percent of the amount calculated under section 3509(a).

Example 1: In 2019 you paid \$1,500,000 to workers that are the subject of the VCSP. All of the workers identified in the VCSP application were compensated at or below the social security wage base (e.g., under \$132,900 for 2019). You submit the VCSP application on October 1, 2020, and you want the beginning date of the quarter for which you want to treat the class or classes of workers as employees to be 1/01/2021. You look to amounts paid to the workers in 2019 for purposes of calculating the VCSP amount, since 2019 is the most recently completed tax year at the time the application is being filed. Under section 3509(a), the employment taxes applicable to \$1,500,000 would be \$160,200 (10.68 percent of \$1,500,000). Under the VCSP, your payment would be 10 percent of \$160,200, or \$16,020.

Example 2: The facts are the same as in the example above, except that some of the workers identified in the VCSP application were compensated above the social security wage base in the amount of \$250,000. Under section 3509(a), the

employment taxes applicable to \$1,250,000 would be \$133,500 (10.68 percent of \$1,250,000) and the employment taxes applicable to the remaining \$250,000 would be \$8,100 (3.24 percent of \$250,000). Under the VCSP, your payment would be 10 percent of \$141,600 (\$133,500 plus \$8,100), or \$14,160.

Q16. I was just contacted by the IRS for information based on one of my workers filing an IRS SS-8 determination letter request. Can I still apply for the VCSP?

A16. Yes. The SS-8 determination process is not an audit, and, therefore, does not prevent you from being eligible for the VCSP.

Q17. Will the IRS share information about VCSP applicants with the Department of Labor?

A17. No, the IRS will not share information about VCSP applicants with the Department of Labor.

Q18. Will the IRS share information about VCSP applications with state agencies?

A18. No, the IRS will not share information about VCSP applications with state agencies.

Q19. To be eligible under the VCSP, you must have filed all required Forms 1099 for the previous 3 years for the workers you want to reclassify. If I filed Forms 1099 late, am I still eligible for the VCSP?

A19. The IRS will consider you eligible for the VCSP if you filed the required Forms 1099 within 6 months of their due date (including extensions), assuming you meet the other eligibility requirements. Taxpayers who have not previously filed required Forms 1099 or who filed them more than 6 months after their due date (including extensions) are not eligible for the VCSP.

Q20. If I apply for the VCSP and my application is rejected, will I open myself up to an audit?

A20. No, rejection of a VCSP application will not automatically trigger initiation of a Federal audit. You could be audited for another reason, but not as a result of filing Form 8952.

Q21. By signing the VCSP closing agreement am I admitting any liability or wrong doing for past periods?

A21. No, the VCSP concerns future years only. The IRS is not making any determination with regard to prior years and you are not making any representation as to the workers' proper status for prior years for federal employment tax purposes.

Q22. If my parent or subsidiary or another member of my consolidated group is under IRS audit, can I still participate in the VCSP?

A22. No, an employment tax audit of one of the members of an affiliated group is treated as an employment tax audit of the applicant for purposes of the VCSP.

Q23. If I sign a VCSP closing agreement will I be opening myself to an audit in the future?

A23. Executing a VCSP closing agreement will not increase your chances of being audited in the future. However, the IRS will periodically review the Form(s) 1099 and Form(s) W-2 that you file and may contact you if our VCSP review indicates that you have not complied with the terms of your Agreement.

Q24. If I am currently in IRS Appeals contesting the results of an employment tax examination, am I considered to be under employment tax examination for purposes of the VCSP?

A24. Yes, for purposes of the VCSP you will be considered to be under employment tax audit if you are contesting the results of the audit in IRS Appeals.

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