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Internal Revenue Manual 4.23.5.3.3.2 (08-31-2012)

Consistency Requirement—Substantive Consistency

1. The taxpayer (or a predecessor) must not have treated the worker, or any worker holding a substantially similar position, as an employee for any period after 1977. Rev. Proc. 85-18, section 3.03, provides guidelines for determining whether a taxpayer treated an individual as an employee for a period of time.
2. The determination of whether workers hold substantially similar positions requires consideration of the relationship between the taxpayer and those individuals, including the degree of supervision and control. Differences in managerial responsibilities and differences in reporting requirements should be taken into account, along with differences in job duties, the contractual relationship, and the provision of employee benefits.
3. The determination of what is substantially similar work is based on analysis of the facts. The day-to-day services that workers perform and the method by which they perform those services are relevant in determining whether workers, treated as independent contractors, hold substantially similar positions to workers treated as employees.