[26 CFR 601.401] Employment Taxes
(Also: Sections 3102, 3111, 3301, 3403, 31.3102-1, 31.3111-4, 31.3301-1, 31.3403-1)

Rev. Proc. 2025-10

SECTION 1. PURPOSE

.01 The purpose of this revenue procedure is to provide updated guidance regarding the implementation of section 530 of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763, as amended (section 530) (addressing controversies involving whether individuals are employees for purposes of employment taxes).[1]This revenue procedure modifies and supersedes Revenue Procedure 85-18, 1985-1 CB 518.

.02 This revenue procedure clarifies the provisions of Rev. Proc. 85-18 with respect to the definition of employee, the section 530 requirement for the filing of required returns, and the reasonable basis safe harbor rules. This revenue procedure also amplifies the guidelines set forth in section 3.03 of Rev. Proc. 85-18 (interpreting the word “treat” for purposes of determining whether a taxpayer did not treat an individual as an employee for purposes of section 530(a)).

.03 This revenue procedure includes new provisions that reflect statutory changes made to section 530 since 1986 that added sections 530(d), (e), and (f).[2]

[1] The uncodified statutory language of section 530 is included as Attachment 1 of this revenue procedure. The statutory language of section 530 can also usually be found in the publisher’s notes following § 3401(a).
[2] Section 530(d) was added by the Tax Reform Act of 1986, Pub. L. No. 99-514, Title XVII, § 1706(a), 100

Section 530(d) is discussed in section 3.09. Section 530(f) is discussed in section 3.10. Section 530(e) is discussed throughout this revenue procedure.

.04 The provisions in Rev. Proc. 85-18 that explained how refunds, credits, abatements, and handling of claims applied to taxpayers who were under audit or otherwise involved in administrative or judicial processes with the Internal Revenue Service (IRS) at the time of enactment of section 530 are no longer applicable and have been omitted from this revenue procedure.

.05 Section 530 relief remains available at any stage in the administrative or judicial process if the requirements for relief are met.

SECTION 2. BACKGROUND

.01 Section 530 (entitled "Controversies Involving Whether Individuals are Employees for Purposes of Employment Taxes") was originally enacted as a temporary measure[3] to provide relief for taxpayers who were involved in employment status (worker classification) disputes with the IRS, and who faced large employment tax assessments as a result of the IRS's proposed reclassifications of workers. Section 530 was extended indefinitely by the Tax Equity and Fiscal Responsibility Act of 1982.[4] Section 530 is not part of the Internal Revenue Code (Code).

.02 Section 530 provides that a taxpayer will not be liable for federal employment

Stat. 2085. Section 530(e) was added by the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, Title I, § 1122(a), 110 Stat. 1755, 1766. Section 530(f) was added by the Pension Protection Act of 2006, Pub. L. No. 109-280, Title VIII, § 864(a), 120 Stat. 780, 1024.

[3] H.R. Rep. No. 95-1748, 95th Cong., 2nd Sess. 4 (1978), 1978-3 C.B. (Vol. 1) 629 at 632, notes that, in general, the bill was intended to provide an interim solution for controversies between the Internal Revenue Service and taxpayers.

[4] Pub. L. No. 97-248, Title II, § 269(c)(1), (2), 96 Stat. 324, 552.

taxes, with respect to an individual or class of workers if certain statutory requirements are met. Under section 530, the taxpayer, not the individual worker[5], is eligible for relief from the employment tax liability that would otherwise apply under subtitle C of the Code, and any related interest or penalties attributable to that employment tax liability. The taxes imposed by subtitle C include the Federal Insurance Contributions Act (FICA) taxes, the Railroad Retirement Tax Act (RRTA) taxes,[6] the Federal Unemployment Tax Act (FUTA) taxes, and the collection of income tax at source on wages (income tax withholding).

.03 Section 530(a) generally provides that if, for purposes of the employment taxes under subtitle C of the Code, a taxpayer did not treat an individual as an employee for any period, then the individual will be deemed not to be an employee for that period, unless the taxpayer had no reasonable basis for not treating the individual as an employee. For any period after December 31, 1978, the relief applies only if, pursuant to section 530(a)(1)(B), 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, pursuant to section 530(a)(3), the taxpayer has not treated any individual holding a substantially similar position as an employee for purposes of employment taxes for any period beginning after December 31, 1977.

[5] Section 530 relief does not extend to individual workers who remain liable for their personal employment taxes.
[6] For purposes of simplicity, discussion of the RRTA is not included in this revenue procedure. However, the same rules discussed in this revenue procedure apply for purposes of the RRTA.

.04 Section 530(a)(1)(A) provides that a taxpayer is entitled to relief if the taxpayer "did not treat an *individual* as an *employee*" for purposes of employment taxes (emphasis added). The legislative history demonstrates that section 530 applies exclusively to taxpayers involved in employment status controversies with the IRS. Specifically, the legislative history explains that the relief measure was for taxpayers that were "involved in employment tax status controversies" and explains that the legislation prevents the IRS from reclassifying certain individuals as employees whom the taxpayer has treated as independent contractors. S. Rep. No. 95-1263, at 210 (1978). Likewise, the Joint Committee on Taxation report on section 530 explains that "the Act provides relief from employment tax liability to certain taxpayers involved in employment tax *status* controversies with the Internal Revenue Service as a result of the Service's proposed reclassification of workers, whom taxpayers have considered as having independent contractor status." Staff of Joint Committee on Taxation, 95th Cong., General Explanation of the Revenue Act of 1978, at 301 (Comm. Print 1979) (emphasis added).

.05 Section 530 relief applies only if the taxpayer did not treat the individual as an employee for federal employment tax purposes for the period at issue and meets each of the following requirements for such period:

(1) The taxpayer filed all required federal tax returns, including information returns, on a basis that is consistent with the taxpayer's treatment of the individual as not being an employee (reporting consistency requirement);

(2) The taxpayer did not treat the individual or any individual holding a

substantially similar position as an employee (substantive consistency requirement); and

(3) The taxpayer had a reasonable basis for not treating the individual as an employee (reasonable basis requirement). A taxpayer shall be treated as having a reasonable basis if the taxpayer's treatment was in reasonable reliance on any of the following:

(a) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer (judicial precedent);

(b) a past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding substantially similar positions (prior audit);

(c) long-standing recognized practice of a significant segment of the industry in which that individual was engaged (industry practice); or

(d) If the taxpayer had some other reasonable basis for not treating the individual as an employee.

.06 Section 530(b) prohibits the Department of the Treasury from publishing regulations or revenue rulings “with respect to the employment status of any individual for purposes of the employment taxes.” This revenue procedure, like Rev. Proc. 85-18, does not violate that prohibition because it only provides guidance clarifying the application of section 530. Furthermore, this guidance is neither a regulation nor a revenue ruling that addresses the classification of any individual or category of worker.

SECTION 3. APPLICATION AND SCOPE OF SECTION 530

.01 Worker Classification Controversies. Section 530 applies only when a taxpayer did not treat an individual as an employee for employment tax purposes, and the IRS is proposing to reclassify the individual from a non-employee to an employee. Thus, section 530 relates solely to worker classification controversies involving the employment status of an individual as an employee or as an independent contractor (or other non-employee).

.02 Employee. For purposes of section 530, the term "employee"[7] includes:

(1) an officer of a corporation under §§ 3121(d)(1), 3306(i), or 3401(c)[8] of the Code;

(2) an individual, who under the common law rules, has the status of an employee under §§ 3121(d)(2) or 3306(i);

(3) agent-drivers, commission-drivers, full-time life insurance salespersons, home workers or traveling or city salespersons under §§ 3121(d)(3) (statutory employees) or 3306(i);

(4) an individual who performs services that are included under an

[7] Although the definition of "employment status" in section 530(c)(2) and the legislative history to section 530 suggests that the provision was meant to address controversies involving the status of individuals under the usual common law rules applicable in determining the employer-employee relationship as an employee or independent contractor, the IRS has long taken a broader view of the definition of employee with respect to whom the relief may potentially apply, both in published guidance and in litigation. Compare S. Rep. No. 95-1263, at 210 (1978), *and* Staff of Joint Committee on Taxation, 95th Cong., General Explanation of the Revenue Act of 1978, at 301 (Comm. Print 1979), with Rev. Rul. 82-83, 1982-1 CB 151.

[8] Contrary to the decision in *Joseph M. Grey Public Accountant, P.C. v. Commissioner*, 119 T.C. 121 (2002), it is the IRS's longstanding position that relief under section 530 with respect to corporate officers may be available if the requirements of section 530 are met.

agreement pursuant to Section 218 or Section 218A[9] of the Social Security Act (218 Agreement) under § 3121(d)(4) of the Code; and

(5) an officer, employee or elected official of a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of the foregoing under § 3401(c). [10]

.03 Treatment of an Individual as an Employee[11]. The IRS applies the following guidelines when determining whether there was "treatment" of an individual as an employee for a period within the meaning of section 530(a)(1):

(1) The withholding of income tax or FICA taxes from any payments made to an individual, whether or not the tax is paid to the IRS, indicates "treatment" of the individual as an employee.

(2) Except as provided in paragraphs (6) and (7) below, the filing of an original or amended employment tax return (including a Form 940 "Employer's Annual Federal Unemployment Tax Return," 941 "Employer's Quarterly Federal Tax Return," 943 "Employer's Annual Tax Return for Agricultural Employees," or 944 "Employer's ANNUAL Federal Tax Return"), with respect to an individual, whether or not tax was withheld from the payments made to the individual,

[9] Pursuant to the Tribal Social Security Fairness Act of 2018, Pub. L. No. 115-243, 132 Stat. 2894, federally recognized Indian Tribes may enter into 218A agreements extending voluntary Social Security coverage to Indian Tribal Council members, and § 3121(d)(4) of the Code includes within the definition of "employee" any individual who performs services that are included under a 218A agreement.
[10] The IRS interprets section 530(a) as allowing a state or local government to obtain section 530 relief for both FICA and federal income tax withholding purposes, provided that the requirements of section 530 are met. See Chief Counsel Memorandum 20203810.
[11] See section 3.08 for a discussion on the treatment of dual status workers.

indicates “treatment” of the individual as an employee.

(3) The filing of Schedule H (Form 1040), Household Employment Taxes, with respect to an individual, whether or not tax was withheld from the payments made to the individual, indicates “treatment” of the individual as an employee.

(4) The filing of a Form W-2 “Wage and Tax Statement” with respect to an individual, or the furnishing of a Form W-2 to an individual, whether or not tax was withheld from the payments made to the individual, indicates “treatment” of the individual as an employee.

(5) Contracting with a third party to perform acts required of employers with respect to an individual, whether or not tax is withheld or paid to the IRS or the third party otherwise satisfies the terms of the contract, indicates “treatment” of the individual as an employee.

(6) The filing of a delinquent or amended employment tax return for a particular tax period with respect to an individual as a result of IRS collection or examination activities or other compliance procedures, does not indicate “treatment” of the individual as an employee for that period. IRS correspondence that merely advises the taxpayer that no return has been filed and requests information from the taxpayer is not a compliance procedure. However, if the taxpayer takes any of the actions identified in section 3.03 with respect to those individuals in a later period (for example, the taxpayer withholds employment taxes or files employment tax returns with respect to those individuals for the periods following the period audited), those actions indicate “treatment” of the

individuals as employees for those later periods.

(7) A return prepared by the IRS under § 6020(b) for a period is not "treatment" of an individual as an employee for that period.

.04 Notice of Section 530 Relief. In accordance with section 530(e)(1), the IRS will provide written notice of the availability of section 530 treatment before or at the start of any employment tax audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer or when it appears that a determination concerning worker classification will be made.

.05 Consideration of Section 530 Relief. In accordance with section 530(e)(3), in any employment tax audit of a taxpayer relating to the employment status of any individual who performs services for the taxpayer, the IRS will first consider whether the taxpayer has satisfied the requirements of section 530 before analyzing whether the individuals are employees.[12]

.06 Payment Characterizations do not Qualify for Section 530 Relief. Based on the language of section 530(a)(1) and the legislative history of section 530, the IRS considers the relief to apply only to matters involving the status of an individual as an employee or non-employee and not to matters involving the proper characterization of payments to that individual. Specifically, section 530 does not apply to controversies

[12] Section 530(e)(3) provides that for purposes of the availability of the safe harbors in section 530(a) "[n]othing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer." The legislative history explains that section 530(e)(3) was added solely to reverse the IRS's prior position that a worker classification determination must be performed prior to consideration of whether a taxpayer is entitled to section 530 relief. H.R. Rep. No. 104-737, at 199-204 (1996) (Conf. Rep.). Thus, section 530(e)(3) does not act to extend relief to disputes involving whether a payment is wages or whether performance of services is employment.

concerning whether a particular type of payment made to an employee constitutes "wages" as defined under the FICA, FUTA, or income tax withholding provisions. Nor does section 530 apply to the issue of whether services performed by an employee constitute "employment" as defined under the FICA, FUTA, or income tax withholding provisions. Matters involving exceptions from "wages" and "employment" involve the proper characterization of payments made to employees, or services provided by employees, as defined under the FICA, FUTA, or income tax withholding provisions. Section 530 is not applicable to these matters because they do not involve an issue concerning whether the individual is an employee or non-employee. These matters involve the issue of whether the payment made to an employee is exempt from employment taxes under a particular provision of the Code (because the payment is not wages or the services are not employment).

Accordingly, in determining if section 530 applies, the IRS will first determine whether the matter involves the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment."

.07 Dual Status Workers. In unusual cases, an individual may perform services for a taxpayer that are completely separate and distinct from the services giving rise to the employment relationship, and the individual may be separately compensated for those services. For the services performed outside of the employment relationship to be completely separate and distinct from the services performed within the employment relationship, there must be no interrelation as to duties or remuneration in each

capacity.[13] In circumstances where an individual performs services for a taxpayer in separate and distinct capacities, the status of the individual as an employee or non-employee, and the application of section 530, will be considered separately with respect to each distinct relationship under which the separate services are provided.

.08 Treatment of Dual Status Workers. In the circumstances described in section 3.07, a taxpayer may have treated an individual as an employee in one distinct relationship but may assert that section 530 applies to another distinct relationship (referred to here as the "second relationship") because the individual was being compensated for performing other services separate from the services the individual performed as an employee. As in all cases, with respect to the second relationship, the IRS will first determine whether the matter involves the issue of the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment" (consistent with section 3.06) before analyzing whether the taxpayer is entitled to relief under section 530.

.09 Treatment of Certain Technical Personnel. Section 530(d) provides that section 530 does not apply in the case of an individual who, through an arrangement between the taxpayer and another person, provides services for the other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly

[13] See Rev. Rul. 58-505, 1958-2 CB 728 (finding that officers, President and Secretary, of a company were dual status workers because the services they performed as officers and as salesmen were not interrelated and that they were performing services in two separate and unrelated capacities; holding that these individuals were employees for federal employment tax purposes with respect to duties performed by them as officers of the company, but were not employees for such purposes with respect to their selling activities).

skilled worker engaged in a similar line of work. Thus, whether an individual retained by a taxpayer to provide technical services to a client is an employee of the taxpayer for purposes of liability for employment taxes will be determined under the usual common law rules without applying section 530.

.10 Treatment of Test Room Supervisors and Proctors. Section 530(f) provides that, for periods after December 31, 2006, section 530 relief may apply to services performed by an individual as a test proctor or room supervisor who assists in the administration of college entrance or placement examinations for a § 501(c) organization, exempt from tax under § 501(a) of the Code, regardless of whether the § 501(c) organization previously treated the individual, or an individual holding a substantially similar position, as an employee.

.11 Federal Agencies. Section 530 relief is not available to taxpayers that are federal agencies.

.12 Abatement and Refund. If a taxpayer is relieved of liability for employment taxes under section 530, the IRS will abate any assessed liability and refund any payment of the assessed tax related to the worker reclassification issue, including applicable penalties and interest for any tax periods for which the period of limitations has not expired.

SECTION 4. REPORTING CONSISTENCY REQUIREMENT

.01 To obtain section 530 relief, a taxpayer must satisfy the reporting consistency requirement in section 530(a)(1)(B). The reporting consistency requirement is intended to ensure that the taxpayer acted in good faith in treating the individuals as non-

employees. S. Rep. No. 95-1263, at 210 (1978).

.02 Reporting consistency requires a taxpayer to file all required federal tax returns with respect to an individual for the period, on a basis consistent with the good faith treatment of the individual by the taxpayer as a non-employee. Section 530(a)(1)(B). *See also* Rev. Rul. 81-224, 1981-2 CB 197. For example, if a taxpayer's position is that an individual was an independent contractor for a taxable period, the taxpayer must have filed all required Forms 1099 consistent with its position that the individual was an independent contractor for the period, reporting the payments for services for which the taxpayer is treated as a non-employee. All relevant returns will be considered in determining whether the taxpayer satisfies the requirement that all required returns be filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee.[14]

.03 Reporting consistency must be satisfied on a period-by-period basis. A taxpayer that filed information returns for one period but that did not file information returns for a prior or subsequent period may satisfy the reporting consistency requirement only for the period for which it filed information returns. For example, if a taxpayer whose position is that an individual was an independent contractor did not file Forms 1099-NEC "Nonemployee Compensation", in year 1, but did file Forms 1099-

[14] In no event will a return filed after the date on which the IRS first contacts the taxpayer concerning an examination of the period to which the return relates be considered as filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee. Additionally, section 530 relief is not available for any year and for any worker for whom the taxpayer did not file the required returns. See, e.g., *Bruecher Foundation Services, Inc. v. US* 383 Fed.Appx. 381 (5th Cir. 2010), holding that a taxpayer filing returns after assessment is not entitled to use Section 530 as a defense in a subsequent judicial proceeding.

NEC in year 2, the taxpayer is not entitled to section 530 relief in year 1 but may be entitled to section 530 relief for year 2 if it otherwise meets the requirements for section 530 relief for that year.

.04 Reporting consistency must be satisfied on an individual-by-individual basis. A taxpayer that filed information returns for some individuals but that did not file information returns for other individuals may satisfy the reporting consistency requirement only for the individuals for whom it filed information returns. For example, if a taxpayer whose position is that an individual was an independent contractor filed Forms 1099-NEC for individual workers A, B, and C in year 1, but did not file Forms 1099-NEC for individual workers D, E, and F in year 1, the taxpayer is not entitled to section 530 relief for individuals D, E, and F for year 1. The taxpayer may be entitled to section 530 relief for individual workers A, B, and C in year 1 if it otherwise meets the requirements for section 530 relief for that year. If the taxpayer files Forms 1099-NEC for all the individuals in year 2, the taxpayer may be entitled to section 530 relief for all the individuals in year 2 if it otherwise meets the requirements for section 530 relief for that year.

.05 A taxpayer will not fail the reporting consistency requirement if the taxpayer, in good faith, mistakenly files the wrong type of information return or, as long as the return demonstrates a good faith attempt to accurately report the amount paid, reports an inaccurate amount paid. Moreover, a taxpayer will not fail the reporting consistency requirement if the taxpayer was not required to file an information return because, for example, the taxpayer paid the individual less than the threshold amount required to file

a Form 1099.

SECTION 5. SUBSTANTIVE CONSISTENCY REQUIREMENT

.01 To obtain section 530 relief, a taxpayer must satisfy the substantive consistency requirement in section 530(a)(3). The substantive consistency requirement is intended to ensure that section 530 relief applies only to a taxpayer that has consistently treated all individuals holding substantially similar positions as non-employees. It prevents a taxpayer from changing its treatment of employees to non-employees to qualify for section 530 relief, including through reincorporation, reorganization, name change, or otherwise. H.R. Rept. 95-1748 (1978), reprinted in 1978-3 (Vol. 1) C.B. 629.

.02 Substantive consistency requires that a taxpayer or a predecessor not have treated an individual, or any individual holding a substantially similar position, as an employee for any period beginning after December 31, 1977. Pursuant to section 530(e)(6), the determination of whether an individual holds a position substantially similar to a position held by another individual includes consideration of the relationship between the taxpayer and the individual. Accordingly, a substantially similar position exists if the job functions, duties, and responsibilities are substantially similar and the control and supervision of those duties and responsibilities are substantially similar.

.03 In determining if a taxpayer has treated an individual, or any individual holding a substantially similar position, as an employee for purposes of the substantive consistency requirement, the IRS will apply the same guidelines as described in section 3.03.

.04 Treatment of an individual, or an individual holding a substantially similar position, as an employee in a period subsequent to the period under audit will not cause a taxpayer to fail the substantive consistency requirement for the period under audit or prior periods under audit.

.05 Entering into a Classification Settlement Program (CSP) or Voluntary Classification Settlement Program (VCSP) agreement with the IRS with respect to an individual will be considered treatment of the individual as an employee for substantive consistency purposes from the effective date of the agreement.

SECTION 6. REASONABLE BASIS REQUIREMENT

.01 To obtain section 530 relief with respect to an individual, a taxpayer must satisfy the reasonable basis requirement provided in sections 530(a)(1)(B) and (e). The reasonable basis requirement is intended to ensure that the taxpayer reasonably considered the worker classification status of the individual as an employee or non-employee prior to making the classification decision.

.02 Reasonable basis requires a taxpayer to demonstrate that it reasonably relied on one of the safe harbors in section 530(a)(2), or it had another reasonable basis for treating the individual as a non-employee, before it treated the individual as a non-employee for the period under audit.

.03 Section 530(a)(2) provides that for purposes of satisfying section 530(a)(1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the safe harbors listed in section

2.05(3)(a), (b), and (c). The IRS considers the following when determining whether there was reasonable reliance on a safe harbor:

(1) Judicial precedent or published rulings, whether or not relating to the particular industry or business in which the taxpayer is engaged, or technical advice, a letter ruling, or a determination letter issued to the taxpayer under audit.

(a) Reliance on judicial precedent or published rulings requires that the taxpayer reasonably relied upon the judicial precedent or published rulings at the time it began treating the individual as a non-employee for the tax period under audit.

(b) Thus, a taxpayer does not meet this safe harbor if the judicial precedent that the taxpayer relied on was issued after the tax period for which the taxpayer treated the individual as a non-employee.

(2) A past IRS audit that resulted in no assessment of employment taxes attributable to the employment status reclassification of individuals holding positions substantially similar to the position held by the individual.

(a) If a taxpayer is relying on the results of an audit that began before 1997, the audit does not have to have been an audit of whether the same individuals, or individuals holding substantially similar positions, should have been treated as employees of the taxpayer, so long as the prior audit did not result in an assessment of employment taxes attributable to the IRS's reclassification of the same individuals, or individuals holding substantially similar positions.

(b) If a taxpayer is relying on the results of an audit that began after 1996, the audit must have been an employment tax examination of the same individuals, or individuals holding substantially similar positions, that did not result in a reclassification of the same individuals or individuals holding substantially similar positions.

(c) A taxpayer does not meet this safe harbor if, in the conduct of the prior audit, a proposed assessment attributable to the IRS's reclassification of the individual was offset by other claims asserted by the taxpayer.

(d) A taxpayer does not meet this safe harbor if the relationship between the taxpayer and the individuals during the period under audit is different from that which existed at the time of the prior audit.

(e) A taxpayer does not meet this safe harbor if the prior audit began after 1996 and was only for purposes of determining a taxpayer's liability for failure to subject a reportable payment to backup withholding, as required by § 3406 of the Code and accompanying regulations, if the workers' underlying worker classification was not examined, since the imposition of backup withholding liabilities does not involve the reclassification of workers by the IRS.

(3) A long-standing recognized practice of a significant segment of the industry in which the individual was engaged.

(a) Reliance on industry practice requires that the taxpayer

reasonably relied upon the industry practice at the time it began treating the individual as a non-employee for the tax period under audit.

(b) An industry generally consists of businesses located in the same geographic or metropolitan area that compete for the same customers. However, if the area includes only one or a few businesses in the same industry, or if the business competes in regional or national markets, the geographic area may be expanded.

(c) 25 percent of the taxpayer's industry (determined by not taking into account the taxpayer) is deemed to be a significant segment of the industry. A lower percentage may be a significant segment, depending on the facts and circumstances.

(d) A practice that has existed for 10 years is deemed to be long-standing. A shorter period may be long-standing, depending on the facts and circumstances.

.04 A taxpayer that does not meet any of the three safe harbors enumerated in section 2.05(3)(a), (b), or (c), may still satisfy the reasonable basis requirement in section 2.05(3)(d) if the taxpayer can demonstrate by facts and circumstances that it relied on another reasonable basis for treating the individual as a non-employee.

.05 The legislative history of section 530 states that the reasonable basis requirement should be construed liberally in favor of the taxpayer. H.R. Rept. 95-1748 (1978), reprinted in 1978-3 (Vol. 1) C.B. 629, 633. Liberal construction of the reasonable basis requirement does not mean that the reporting consistency and

substantive consistency requirements for obtaining section 530 relief should be liberally construed. Rather, the Congressional direction to liberally construe the reasonable basis requirement means the facts that indicate whether the taxpayer reasonably relied on one of the safe harbors in section 530(a)(2) are to be viewed liberally in favor of the taxpayer. Failure to satisfy the reporting consistency or substantive consistency requirements for section 530 relief is not cured by the application of liberal construction of the reasonable basis requirement.

.06 Consistent with the legislative history of section 530, a taxpayer is not considered to have a reasonable basis for its treatment of individuals as non-employees if the facts and circumstances indicate negligence, intentional disregard of rules and regulations, or fraud. S. Rep. No. 95-1263, at 211 (1978).

.07 When considering whether a taxpayer had a reasonable basis to treat an individual as a non-employee for employment tax purposes, if the taxpayer cannot demonstrate reasonable reliance on any of the safe harbors listed in 2.05(3)(a), (b), and (c), then, if factually relevant, the IRS may consider and the taxpayer may raise facts demonstrating whether the taxpayer considered the individual as an employee for other purposes, including whether the taxpayer during the years under audit:

(1) claimed income tax deductions, or treated payments made to or on behalf of the individual as excludable from income, under provisions of the Code that are applicable only to employees, including under §§ 62(a)(2)(A), 105, 106, 117(d), 119, 127, 129, 132 (portions thereof), or 137 of the Code;

(2) claimed employer credits such as credits for paid sick and/or family

leave under sections 7001 and/or 7003 of the Families First Coronavirus Response Act or §§ 3131 through 3133 of the Code, the Employee Retention Credit under either § 2301 of the Coronavirus Aid, Relief, and Economic Security Act or § 3134 of the Code, or any other credits specified in future guidance that are calculated with respect to wages or compensation paid to an employee;

(3) complied with federal or state labor law including minimum wage and overtime pay rules with respect to the individual that are applicable to employees or treated workers as employees for purposes of state or non-tax federal laws;

(4) treated the individual as an employee for purposes of collectively bargained agreements entered into by the taxpayer;

(5) permitted participation of the individual in any qualified pension, profit-sharing, or stock bonus plan;

(6) permitted participation of the individual in any nonqualified deferred compensation plan if such participation is limited to employees of the taxpayer;

(7) provided state unemployment insurance or worker's compensation insurance coverage for such individual if the requirements for obtaining such state unemployment or worker's compensation insurance is that coverage is limited to individuals performing services for the taxpayer as common law employees under the common law rules or persons that would qualify as employees for federal employment tax purposes.

SECTION 7. BURDEN OF PROOF

.01 In accordance with section 530(e)(4), if a taxpayer establishes a prima facie

case that it had a reasonable basis for not treating an individual as an employee for 530 purposes -- in other words, it meets the reporting consistency requirement, the substantive consistency requirement, and one of the reasonable basis safe harbors enumerated in section 530(a)(2)(A), (B), and (C) -- and the taxpayer has fully cooperated with reasonable requests from the IRS, then the burden of proof with respect to that treatment will shift to the IRS.

.02 The shift in the burden of proof does not apply with respect to the reasonable basis requirement if the taxpayer relied on some other reasonable basis for treating the individual as a non-employee. *See* section 530(e)(4)(B); H.R. Rep. No. 104-737, at 203-04 (1996) (Conf. Rep.).

SECTION 8. STATUS OF INDIVIDUALS

.01 Section 530 does not change the status, liabilities, and rights of the individual whose classification is at issue. It does not convert individuals from employees to self-employed individuals.

.02 If a taxpayer receives section 530 relief for a class of workers, that taxpayer is relieved from having to withhold income tax and withhold and pay FICA taxes from payments made to members of that class of workers. However, if any individual member or members of that class of workers is otherwise determined to be an employee of the taxpayer, each such employee remains liable for their employee share of FICA tax pursuant to § 31.3102-1(d) of the Employment Tax regulations.[15]

[15] A worker or a firm can file a Form SS-8 to request a worker status determination under the common law

Employees who incorrectly paid the self-employment tax may file a claim for refund if the period of limitations has not expired; however, the amount of any refund may be offset by the amount of the employee's share of FICA tax as a result of the application of § 31.3102-1(d). If the period of limitations to claim a refund of self-employment tax has expired, § 6521 of the Code may authorize a credit against the employee share of FICA tax owed in the amount of self-employment tax that was erroneously paid.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 85-18, 1985-1 CB 518, is modified and superseded.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective when published in the Internal Revenue Bulletin.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Kelli Cacciotti of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Cacciotti at (202) 317-6798 (not a toll-free call).

rules for purposes of federal employment taxes and income tax withholding. For additional information on the Form SS-8, see www.irs.gov/forms-pubs/about-form-ss-8.

Attachment 1[16]

Section 530. Controversies Involving Whether Individuals are Employees for Purposes of Employment Taxes.

(a) Termination of certain employment tax liability.--

(1) In general.--If--

(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

(2) Statutory standards providing one method of satisfying the requirements of paragraph (1).--For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

(3) Consistency required in the case of prior tax treatment.--Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for

[16] Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763, as amended by P.L. 96-167, P.L. 96-541, P.L. 97-248, P.L. 99-514, P.L. 104-188, and P.L. 109-280.

any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

(4) Refund or credit of overpayment.--If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act [Nov. 6, 1978].

(b) Prohibition against regulations and rulings on employment status.--No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

(c) Definitions.--For purposes of this section--

(1) Employment tax.--The term “employment tax” means any tax imposed by subtitle C of the Internal Revenue Code of 1954.

(2) Employment status.--The term “employment status” means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

(d) Exception.--This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

(e) Special rules for application of section.--

(1) Notice of availability of section.--An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

(2) Rules relating to statutory standards.--For purposes of subsection (a)(2)--

(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for

purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof--

(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

(ii) a practice shall not fail to be treated as long standing merely because such practice began after 1978.

(3) Availability of safe harbors.--Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

(4) Burden of proof.--

(A) In general.--If--

(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

(B) Exception for other reasonable basis.--In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

(5) Preservation of prior period safe harbor.--If--

(A) an individual would (but for the treatment referred to in subparagraph (B)) be

deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

(6) Substantially similar position.--For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

(f) Treatment of test room supervisors and proctors who assist in the administration of college entrance and placement exams.--

(1) In general.--In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

(2) Applicability.--An individual is described in this paragraph if the individual--

(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes).