



*Employers Do Not Always Follow
Internal Revenue Service
Worker Determination Rulings*

June 14, 2013

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This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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2 = Risk Circumvention of Agency Regulation or Statute

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HIGHLIGHTS

EMPLOYERS DO NOT ALWAYS FOLLOW INTERNAL REVENUE SERVICE WORKER DETERMINATION RULINGS

Highlights

Final Report issued on June 14, 2013

Highlights of Reference Number: 2013-30-058 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

The IRS estimates that employers misclassify millions of workers as independent contractors instead of employees, thus avoiding the payment of employment taxes. This problem adversely affects employees because the employer's share of taxes is not paid and the employee's share is not withheld. The Determination of Worker Status Program (referred to as the SS-8 Program) allows either a business or a worker to request a determination letter from the IRS regarding a worker's Federal employment tax status as an employee or independent contractor.

WHY TIGTA DID THE AUDIT

This audit is part of TIGTA's Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives. The overall objectives were to evaluate whether the IRS's Determination of Worker Status Program (the SS-8 Program) is effectively processing worker determination requests and whether the subsequent rulings are being followed.

WHAT TIGTA FOUND

The SS-8 Program has faced a growing inventory of cases, longer processing times, and limited employer adherence to SS-8 Program determination rulings. In response to these issues, the SS-8 Program implemented new prescreening techniques that have the potential to reduce the time required to process cases while improving the quality of the inventory.

TIGTA analyzed 5,325 closed Calendar Year 2009 worker determination rulings in which

the individual was ruled an employee. Results showed that not all employers are complying with the determination rulings. However, some of these employers may qualify for relief from employment taxes if their business qualifies under Section 530 of the Revenue Act of 1978. Section 530 provides for relief from employment taxes related to the proper classification of workers if certain requirements are met. The IRS should determine the reasons for employer noncompliance and develop a strategy to increase compliance with the worker determinations.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Commissioner, Small Business/Self-Employed Division:

- 1) incorporate documentation in the Internal Revenue Manual describing the features of the new prescreening techniques,
- 2) update performance goals for case processing times,
- 3) evaluate the new prescreening techniques, including the impact on staffing, and
- 4) assess SS-8 Program changes needed to increase employer compliance with determination rulings.

The IRS agreed with all four recommendations. It plans to update the Internal Revenue Manual to include the prescreening process and related procedures, including a process to monitor efficiency. The IRS developed a measurement for the new prescreening process and plans to monitor over-age cases weekly. It plans to evaluate the new prescreening techniques during normal headquarter reviews, which are conducted annually. Finally, the IRS plans to form a team to assess potential avenues to improve employer compliance with SS-8 Program determination rulings.