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### New IRS Worker Classification Settlement Program.

30 September 2011

On September 21, 2011, the IRS announced a new program called the Voluntary Classification Settlement Program ("VCSP") that allows employers to correct worker classification errors and pay significantly reduced penalties, without having to go through an examination or complicated administrative procedures. Any business, including a tax-exempt organization or government entity, that has been treating workers as independent contractors or other nonemployees may prospectively elect to treat those workers as employees, so long as the employer: consistently treated the workers as nonemployees; filed all required Forms 1099 for the workers for the previous three years; is not under audit by the IRS, or by the Department of Labor (DOL) or a state government agency with respect to the classification of the workers; and has complied with the results of any prior IRS or DOL audit concerning the classification of the workers.

An employer who participates in the VCSP program must agree to prospectively treat the workers in question as employees, and to pay 10 percent of the employment tax liability that would have been due on the workers' compensation for the most recent tax year. The employer will not be liable for any interest or penalties on that tax liability, and will not be subject to an employment tax audit with respect to the classification of the workers for prior years. An employer participating in the VCSP must agree, however, to extend by three years the period of limitations on assessment of employment taxes for the first three calendar years beginning after the date as of which the workers are treated as employees.

For more information contact any of the attorneys in the **DTC Labor and Employment Practice Group** at 603.778.0686.

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