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## **Internal Revenue Manual 4.23.5.3.3.5 (11-22-2017)**

### **Safe Haven—Prior Audit**

1. To qualify for the prior audit safe haven, a taxpayer must show that it reasonably relied on a prior IRS audit of the taxpayer in which there was no assessment attributable to the taxpayer's treatment, for employment tax purposes, of individuals holding positions substantially similar to the position held by the individual whose treatment is at issue. See section 530(a)(2)(B).
2. For examinations that began after December 31, 1996, the prior IRS audit must have included an examination for employment tax purposes of the status of the individual involved or any individual holding a position substantially similar to the position held by the individual involved.
3. For examinations that began before January 1, 1997, the prior IRS audit does not have to have been an audit for employment tax purposes as long as the audit entailed no assessment attributable to the business's treatment, for employment tax purposes, of workers holding positions substantially similar to the position held by the workers whose treatment is at issue. The business need only show that, at the time of the earlier examination, it was treating the same type of workers as those at issue in the present audit as other than employees, and that the treatment went unchallenged or was sustained by the IRS.
4. A taxpayer does not meet this test if, in the conduct of a prior examination, an assessment attributable to the taxpayer's treatment of the worker was offset by other claims asserted by the taxpayer. Nor can the taxpayer rely on a prior audit if the current working relationship between the taxpayer and the workers is significantly different from their working relationship at the time of the audit.
5. The audit must have included an examination of the taxpayer's books and records.
  - A. Inquiry or correspondence from a Campus or an SS-8 unit is not treated as a past examination.
  - B. Applications for status determination, such as an application for recognition for exemption from income tax as an exempt organization or an application for a determination letter for an employee benefit plan made on Form 5300, Application for Determination for Employee Benefit Plan, or Form 5309, Application for Determination of Employee Stock Ownership Plan, do not constitute an examination.
  - C. An examination of an employee benefit plan or consideration of Form 5500, Annual Return/Report of Employee Benefit Plan, generally does not constitute an

examination because the plan is not the taxpayer that employs the workers. However, an examination of the taxpayer's pension plan that leads to an examination of the taxpayer's books (i.e., such as payroll records to determine whether coverage requirements have been met) may create a safe haven for the taxpayer.

6. The prior examination safe haven is limited to past examinations conducted on the taxpayer itself. Therefore, a taxpayer is not entitled to relief based upon a prior examination of any of its workers. Nor would a subsidiary corporation usually be entitled to relief based upon a prior examination of its separately filing parent corporation.

7. If a previously examined taxpayer begins conducting a new line of business, that taxpayer is not entitled to relief based upon the examination of the original line of business. However, if there has only been a change of form and the successor entity is in the same line of business, the taxpayer could qualify for section 530 relief based on other reasonable basis.