

Practice Directive Number 1-37-3 (A)

Change of Classification

Effective 1 January 2004

INTRODUCTION

A change of classification means:

- A firm classified in a single classification unit being reclassified into a different single classification unit.
- A firm classified in one or more classification units having a further classification unit added to its account pursuant to *Assessment Policy 1-37-2 (Classification – Multiple)*.
- A firm classified in two or more classification units having at least one classification unit deleted from its account pursuant to *Assessment Policy 1-37-2*.
- A firm classified in two or more classification units having at least one of its classification units reclassified into a different classification unit.

CHANGE OF CLASSIFICATION

A determination that a firm is misclassified typically gives rise to the following three substantive decisions:

- A. What was the reason for the change of classification?
- B. What is the effective date of the change of classification?
- C. Does experience rating transfer with the change of classification?

A. REASON FOR CHANGE OF CLASSIFICATION

The three main categories for classification change are: misclassification due to a change in the firm's operation; misclassification without a change in the firm's operation; and misclassification due to the firm's "non-compliance with reporting requirements".

Although *Assessment Policy 1-37-3* does not define "non-compliance with reporting requirements", such non-compliance includes a breach of:

- (a) the reporting requirements under either the *Workers Compensation Act* or published policy, and

- (b) a firm's obligation "to provide timely,¹ complete and accurate information to the Board regarding changes in the firm's operations, and to act promptly² on information requests and information provided by the Board."

Therefore, all that need be established in determining whether a firm was non-compliant is a breach of the above: the firm's intent respecting the breach is irrelevant (although intent or lack thereof may be relevant in determining the effective date of change of classification).

The following principles are to be applied in determining the predominant reason for change of classification:

- (a) No one of the three reasons is paramount.
- (b) The three reasons are not mutually exclusive; and, therefore, on the facts of an individual case, two or more reasons may apply.
- (c) If the evidence that the predominant reason for change in classification is equally weighted between any two or more reasons, the reason that most favours a firm should be applied.

B. EFFECTIVE DATE OF THE CHANGE OF CLASSIFICATION

The effective date for a change in classification is determined in accordance with *Assessment Policy 1-37-3 3(a), (b), or (c)* and the following principles:

1. The purpose for the three year range in retroactivity for a Board error is remedial: that is, to undo the harm caused to the firm by the Board's error. Accordingly, the appropriate date for the change in classification is the date which, as far as practicable and within the three year limitation, places the firm in the same position it would have been in had the Board error not occurred.

A manager in either the Revenue Services Department or the Assessment Department must affirm a Board officer's findings of Board error and the appropriate date for the change in classification.

2. The purpose for the three year range in retroactivity for non-compliance is rehabilitative (as opposed to punitive or simple restitution); that is, to both undo any harm or injustice caused by a firm's non-compliance and to deter any future non-compliance. Therefore, the firm's intent is relevant in determining the effective date.

If, on a balance of probabilities, wilful intent or disregard on the part of a firm can not be established, the effective date will be the later of the date of the change of operation or January 1 of the previous year.

¹ Absent anomalous circumstances, 'timely' requires that the Board be apprised of a change within a reasonable period of time and in the same calendar year as the change.

² Absent anomalous circumstances, 'promptly' requires that the action be undertaken within a reasonable period of time and in the same calendar year as the request or direction.

If, however, wilful intent or disregard on the part of a firm is probable, a manager in either the Revenue Services Department or the Assessment Department must consider the following in determining intent and the effective date:

- (a) the nature and degree of the non-compliance,
- (b) the economic benefit to the firm of non-compliance, including any competitive advantage arising from delayed or avoided costs; and
- (c) the financial impact of the retroactive assessment on the firm.

C. TRANSFER OF EXPERIENCE WITH A CHANGE OF CLASSIFICATION

A change in classification may result in a transfer of experience. The following principles apply:

- 1 If there has been a distinct change in the firm's operations, the experience will not transfer.
- 2 If there has been an incremental or evolutionary change in the firm's operations, the experience may transfer.
- 3 If there has been no change in the firm's operations, the experience may transfer.
- 4 If there has been a change in the firm's operations and the firm has been non-compliant, then, absent wilful intent or disregard, the above principles will apply. However, a manager in either the Revenue Services Department or the Assessment Department may decide to transfer experience if the firm could benefit from a failure to transfer.