

**Taxpayer Responsibility, Accountability, and Consistency Act of 2009  
(Introduced in House)**

**HR 3408 IH**

111th CONGRESS  
1st Session  
H. R. 3408

To amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 30, 2009

Mr. MCDERMOTT (for himself, Mr. NEAL of Massachusetts, and Mr. TIERNEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Taxpayer Responsibility, Accountability, and Consistency Act of 2009'.

SEC. 2. INFORMATION REPORTING FOR PAYMENTS TO CORPORATIONS.

(a) In General- Section 6041 of the Internal Revenue Code of 1986 (relating to information at source) is amended by adding at the end the following new subsection:

`(h) Payments to Corporations-

`(1) IN GENERAL- Notwithstanding any regulations prescribed by the Secretary before the date of the enactment of this subsection, subsection (a) shall apply to payments made to a corporation.

`(2) EXCEPTION- Paragraph (1) shall not apply to payments made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of the foregoing.'

(b) Effective Date- The amendment made by this section shall apply to payments made more than 1 year after the date of the enactment of this Act.

SEC. 3. DETERMINATION OF ELIGIBILITY FOR SAFE HARBOR TREATMENT OF INDIVIDUALS AS NON-EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES.

(a) In General- Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding at the end the following new section:

SEC. 3511. SAFE HARBOR.

(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. This paragraph shall not apply with respect to an individual for any periods beginning after the date of notice of a determination that such individual should be treated as an employee of the taxpayer.

(2) STATUTORY STANDARDS FOR SATISFYING THE REQUIREMENTS OF PARAGRAPH (1)- For purposes of paragraph (1), a taxpayer shall be treated as having a reasonable basis for not treating an individual as an employee only if--

(A) the taxpayer's treatment of such individual was in reasonable reliance on--

(i) a written determination issued to the taxpayer addressing the employment status of such individual or another individual holding a substantially similar position with the taxpayer, or

(ii) a concluded examination (for employment tax purposes) of whether such individual (or another individual holding a substantially similar position) should be treated as an employee of the taxpayer, with respect to which there was no determination that such individual (or another individual holding a substantially similar position) should be treated as an employee, and

(B) the taxpayer (or a predecessor) has not treated any other individual holding a substantially similar position as an employee for purposes of employment taxes for any period beginning after December 31, 1977.

(b) Definitions- For purposes of this section--

(1) EMPLOYMENT TAX- The term 'employment tax' means any tax imposed by this subtitle.

(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).

(c) 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 examination 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), with respect to any period beginning after the date of the enactment of this paragraph, a taxpayer may not rely on an examination commenced, or a written determination issued, if--

(A) the controlling facts and circumstances that formed the basis of a determination of employment status have changed or were misrepresented by the taxpayer, or

`(B) the Secretary subsequently issues contrary guidance relating to the determination of employment status that has bearing on the facts and circumstances that formed the basis of a determination of employment status.

`(3) 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 be made by the Secretary in a manner consistent with the Fair Labor Standards Act of 1938.

`(d) Burden of Proof- A taxpayer must establish entitlement to relief under this section by a preponderance of the evidence.

`(e) Petitions for Review of Status-

`(1) IN GENERAL- Under procedures established by the Secretary not later than 1 year after the date of the enactment of this section, any individual who performs services for a taxpayer may petition (either personally or through a designated representative or attorney) for a determination of the individual's status for employment tax purposes.

`(2) ADMINISTRATIVE PROCEDURES- The procedures established under paragraph (1) shall provide for--

`(A) a determination of status not later than 90 days after the filing of the petition with respect to employment in any industry (such as the construction industry) in which employment is transient, casual, or seasonal, and

`(B) an administrative appeal of any determination that an individual is not an employee of the taxpayer.

`(3) DUTY TO SEEK SERVICE PROVIDER INFORMATION- In the case of a request by a taxpayer for a determination of an individual's status for employment tax purposes, the Secretary shall, to the extent practicable-

`(A) seek to obtain from such individual information relating to the individual's performance of services for the taxpayer, and

`(B) provide written notice to the individual detailing any written determination of the individual's status for employment tax purposes.

`(f) Results of Misclassification Determinations- In any case in which the Secretary determines that a taxpayer has misclassified an individual as not an employee for employment tax purposes, the Secretary shall inform the Secretary of Labor about such misclassification and notify the individual of any eligibility for the refund of self-employment taxes under chapter 2.

`(g) Regulations- The Secretary shall, not later than 1 year after the date of the enactment of this section, prescribe such regulations as may be necessary and appropriate to carry out the purposes of this section.'

(b) Conforming Amendments-

(1) Paragraph (2) of section 7436(a) of such Code is amended by striking 'section 530 of the Revenue Act of 1978' and inserting 'section 3511'.

(2) The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

'Sec. 3511. Safe harbor.'

(c) Termination of Section 530 of the Revenue Act of 1978- Section 530 of the Revenue Act of 1978 shall not apply to services rendered more than 1 year after the date of the enactment of this Act.

(d) Effective Date- The amendments made by this section shall apply to services rendered more than 1 year after the date of the enactment of this Act.

#### SEC. 4. ANNUAL REPORTS ON WORKER MISCLASSIFICATION.

The Secretary of the Treasury shall issue an annual report on worker misclassification. Such report shall include the following:

- (1) Information on the number and type of enforcement actions against, and examinations of, employers who have misclassified workers.
- (2) Relief obtained as a result of such actions against, and examinations of, employers who have misclassified workers.
- (3) An overall estimate of the number of employers misclassifying workers, the number of workers affected, and the industries involved.
- (4) The impact of such misclassification on the Federal tax system.
- (5) Information on the outcomes of the petitions filed under section 3511(e) of the Internal Revenue Code of 1986.

#### SEC. 5. INCREASE IN INFORMATION RETURN PENALTIES.

##### (a) Failure To File Correct Information Returns-

(1) IN GENERAL- Section 6721(a)(1) of the Internal Revenue Code of 1986 is amended--

- (A) by striking `\$50` and inserting `\$250`, and
- (B) by striking `\$250,000` and inserting `\$3,000,000`.

(2) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD-

(A) CORRECTION WITHIN 30 DAYS- Section 6721(b)(1) of such Code is amended--

- (i) by striking `\$15` and inserting `\$50`,
- (ii) by striking `\$50` and inserting `\$250`, and
- (iii) by striking `\$75,000` and inserting `\$500,000`.

(B) FAILURES CORRECTED ON OR BEFORE AUGUST 1- Section 6721(b)(2) of such Code is amended--

- (i) by striking `\$30` and inserting `\$100`,
- (ii) by striking `\$50` and inserting `\$250`, and
- (iii) by striking `\$150,000` and inserting `\$1,500,000`.

(3) LOWER LIMITATION FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN \$5,000,000- Section 6721(d)(1) of such Code is amended--

(A) in subparagraph (A)--

- (i) by striking `\$100,000` and inserting `\$1,000,000`, and

(ii) by striking ` \$250,000' and inserting ` \$3,000,000',

(B) in subparagraph (B)--

(i) by striking ` \$25,000' and inserting ` \$175,000', and

(ii) by striking ` \$75,000' and inserting ` \$500,000', and

(C) in subparagraph (C)--

(i) by striking ` \$50,000' and inserting ` \$500,000', and

(ii) by striking ` \$150,000' and inserting ` \$1,500,000'.

(4) PENALTY IN CASE OF INTENTIONAL DISREGARD- Section 6721(e) of such Code is amended--

(A) by striking ` \$100' in paragraph (2) and inserting ` \$500', and

(B) by striking ` \$250,000' in paragraph (3)(A) and inserting ` \$3,000,000'.

(b) Failure To Furnish Correct Payee Statements-

(1) IN GENERAL- Section 6722(a) of such Code is amended--

(A) by striking ` \$50' and inserting ` \$250', and

(B) by striking ` \$100,000' and inserting ` \$1,000,000'.

(2) PENALTY IN CASE OF INTENTIONAL DISREGARD- Section 6722(c) of such Code is amended--

(A) by striking ` \$100' in paragraph (1) and inserting ` \$500', and

(B) by striking ` \$100,000' in paragraph (2)(A) and inserting ` \$1,000,000'.

(c) Failure To Comply With Other Information Reporting Requirements- Section 6723 of such Code is amended--

(1) by striking ` \$50' and inserting ` \$250', and

(2) by striking ` \$100,000' and inserting ` \$1,000,000'.

(d) Effective Date- The amendments made by this section shall apply with respect to information returns required to be filed after December 31, 2009.