

104TH CONGRESS
1ST SESSION

H. R. 1972

To amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1995

Mr. CHRISTENSEN (for himself, Mr. ARMEY, Mr. DeLAY, Mr. BLILEY, Mr. HYDE, Mr. KASICH, Mr. LIVINGSTON, Mrs. MEYERS of Kansas, Mr. ROBERTS, Mr. WALKER, Mr. CRANE, Mr. THOMAS, Mr. BUNNING of Kentucky, Mr. McCRERY, Mr. HANCOCK, Mr. CAMP, Mr. RAMSTAD, Mr. ZIMMER, Mr. SAM JOHNSON of Texas, Ms. DUNN of Washington, Mr. PORTMAN, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Mr. BARTLETT of Maryland, Mr. BILIRAKIS, Mr. BLUTE, Mr. BREWSTER, Mr. BROWNBACK, Mr. BRYANT of Tennessee, Mr. BUNN of Oregon, Mr. BURR, Mr. CANADY of Florida, Mr. CHRYSLER, Mr. COBLE, Mr. COX of California, Mr. CRAMER, Mrs. CUBIN, Mr. CUNNINGHAM, Mr. DAVIS, Mr. DEAL of Georgia, Mr. DICKEY, Mr. DOOLITTLE, Mr. DORNAN, Mr. DREIER, Mr. EMERSON, Mr. EWING, Mr. FOX of Pennsylvania, Mr. GALLEGLY, Mr. GANSKE, Mr. GILCHREST, Mr. GUTKNECHT, Mr. HASTERT, Mr. HAYWORTH, Mr. HEINEMAN, Mr. HILLEARY, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. HUNTER, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. JONES, Mr. KIM, Mr. KINGSTON, Mr. LARGENT, Mr. LATHAM, Mr. LATOURETTE, Mr. LINDER, Mr. LONGLEY, Mr. LUCAS, Mr. McINTOSH, Mr. MARTINEZ, Mr. METCALF, Mr. MICA, Mr. MOORHEAD, Mrs. MYRICK, Mr. NEUMANN, Mr. NORWOOD, Mr. PORTER, Mr. RIGGS, Mr. ROHRABACHER, Mr. ROTH, Mr. SCARBOROUGH, Mr. SHADEGG, Mr. SMITH of Michigan, Mr. SMITH of New Jersey, Mr. SMITH of Texas, Mrs. SMITH of Washington, Mr. SOUDER, Mr. STOCKMAN, Mr. STUMP, Mr. TALENT, Mr. TIAHRT, Mr. TOWNS, Mr. UPTON, Mr. WALSH, Mr. WAMP, Mr. WATTS of Oklahoma, Mr. WELDON of Florida, Mr. WICKER, Mr. WOLF, and Mr. ZELIFF) 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 clarify the standards used for determining whether individuals are not employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Contrac-
5 tor Tax Simplification Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that:

8 (1) Simplifying the tax rules with respect to
9 independent contractors was the top vote-getter at
10 the 1995 White House Conference on Small Busi-
11 ness. Conference delegates recommended that Con-
12 gress “should recognize the legitimacy of an inde-
13 pendent contractor”. The Conference found that the
14 current common law is “too subjective” and called
15 upon the Congress to establish “realistic and con-
16 sistent guidelines”.

17 (2) It is in the best interests of taxpayers and
18 the Federal Government to have fair and objective
19 rules for determining who is an employee and who
20 is an independent contractor.

1 **SEC. 3. STANDARDS FOR DETERMINING WHETHER INDIVID-**
2 **UALS ARE NOT EMPLOYEES.**

3 (a) IN GENERAL.—Chapter 25 of the Internal Reve-
4 nue Code of 1986 (general provisions relating to employ-
5 ment taxes) is amended by adding after section 3510 the
6 following new section:

7 **“SEC. 3511. STANDARDS FOR DETERMINING WHETHER IN-**
8 **DIVIDUALS ARE NOT EMPLOYEES.**

9 “(a) GENERAL RULE.—For purposes of this subtitle,
10 and notwithstanding any provision of this subtitle to the
11 contrary, if the requirements of subsections (b), (c), and
12 (d) are met with respect to any service performed by any
13 individual, then with respect to such service—

14 “(1) the service provider shall not be treated as
15 an employee,

16 “(2) the service recipient shall not be treated as
17 an employer, and

18 “(3) the payor shall not be treated as an em-
19 ployer.

20 “(b) SERVICE PROVIDER REQUIREMENTS WITH RE-
21 GARD TO SERVICE RECIPIENT.—For the purposes of sub-
22 section (a), the requirements of this subsection are met
23 if the service provider, in connection with performing the
24 service—

25 “(1) has a significant investment in assets and/
26 or training,

1 “(2) incurs significant unreimbursed expenses,

2 “(3) agrees to perform the service for a particu-
3 lar amount of time or to complete a specific result
4 and is liable for damages for early termination with-
5 out cause,

6 “(4) is paid primarily on a commissioned basis,
7 or

8 “(5) purchases products for resale.

9 “(c) ADDITIONAL SERVICE PROVIDER REQUIRE-
10 MENTS WITH REGARD TO OTHERS.—For the purposes of
11 subsection (a), the requirements of this subsection are met
12 if—

13 “(1) the service provider—

14 “(A) has a principal place of business,

15 “(B) does not primarily provide the service
16 in the service recipient’s place of business, or

17 “(C) pays a fair market rent for use of the
18 service recipient’s place of business; or

19 “(2) the service provider—

20 “(A) is not required to perform service ex-
21 clusively for the service recipient, and

22 “(B) in the year involved, or in the preced-
23 ing or subsequent year—

24 “(i) has performed a significant
25 amount of service for other persons,

1 “(ii) has offered to perform service for
2 other persons through—

3 “(I) advertising,

4 “(II) individual written or oral
5 solicitations,

6 “(III) listing with registries,
7 agencies, brokers, and other persons
8 in the business of providing referrals
9 to other service recipients, or

10 “(IV) other similar activities, or

11 “(iii) provides service under a busi-
12 ness name which is registered with (or for
13 which a license has been obtained from) a
14 State, a political subdivision of a State, or
15 any agency or instrumentality of 1 or more
16 States or political subdivisions.

17 “(d) WRITTEN DOCUMENT REQUIREMENTS.—For
18 purposes of subsection (a), the requirements of this sub-
19 section are met if the services performed by the individual
20 are performed pursuant to a written contract between
21 such individual and the person for whom the services are
22 performed, or the payor, and such contract provides that
23 the individual will not be treated as an employee with re-
24 spect to such services for purposes of this subtitle.

1 “(e) SPECIAL RULES.—For purposes of this sec-
2 tion—

3 “(1) If for any taxable year any service recipi-
4 ent or payor fails to meet the applicable reporting
5 requirements of sections 6041(a), 6041A(a), or 6051
6 with respect to a service provider, then, unless such
7 failure is due to reasonable cause and not willful ne-
8 glect, this section shall not apply in determining
9 whether such service provider shall not be treated as
10 an employee of such service recipient or payor for
11 such year.

12 “(2) If the service provider is performing serv-
13 ices through an entity owned in whole or in part by
14 such service provider, then the references to ‘service
15 provider’ in subsections (b) through (d) may include
16 such entity, provided that the written contract re-
17 ferred to in paragraph (1) of subsection (d) may be
18 with either the service provider or such entity and
19 need not be with both.

20 “(f) DEFINITIONS.—For the purposes of this sec-
21 tion—

22 “(1) SERVICE PROVIDER.—The term ‘service
23 provider’ means any individual who performs service
24 for another person.

1 “(2) SERVICE RECIPIENT.—Except as provided
2 in paragraph (5), the term ‘service recipient’ means
3 the person for whom the service provider performs
4 such service.

5 “(3) PAYOR.—Except as provided in paragraph
6 (5), the term ‘payor’ means the person who pays the
7 service provider for the performance of such service
8 in the event that the service recipients do not pay
9 the service provider.

10 “(4) IN CONNECTION WITH PERFORMING THE
11 SERVICE.—The term ‘in connection with performing
12 the service’ means in connection or related to—

13 “(A) the actual service performed by the
14 service provider for the service recipients or for
15 other persons for whom the service provider has
16 performed similar service, or

17 “(B) the operation of the service provider’s
18 trade or business.

19 “(5) EXCEPTIONS.—The terms ‘service recipi-
20 ent’ and ‘payor’ do not include any entity which is
21 owned in whole or in part by the service provider.”

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for chapter 25 of such Code is amended by adding at the
24 end the following new item:

 “Sec. 3511. Standards for determining whether individuals are
 not employees.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this Act shall apply to services performed after December
3 31, 1995.

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