

104TH CONGRESS
1ST SESSION

H. R. 510

To amend the Internal Revenue Code of 1986 and the Revenue Act of 1978 to revise the procedures applicable to the determination of employment status.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 1995

Mr. LANTOS (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 and the Revenue Act of 1978 to revise the procedures applicable to the determination of employment status.

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 “Misclassification of
5 Employees Act”.

1 **SEC. 2. PROCEDURES APPLICABLE TO DETERMINATIONS**
2 **OF EMPLOYMENT STATUS.**

3 (a) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
4 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
5 ON COMMON LAW RULES.—

6 (1) IN GENERAL.—Section 3509 of the Internal
7 Revenue Code of 1986 (relating to determination of
8 employer’s liability for certain employment taxes) is
9 amended by adding at the end the following new
10 subsection:

11 “(e) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
12 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
13 ON COMMON LAW RULES.—

14 “(1) IN GENERAL.—For purposes of determin-
15 ing the liability of any taxpayer for employment
16 taxes with respect to any individual for any period,
17 such individual shall be deemed not to have been an
18 employee of the taxpayer for such period if—

19 “(A) the taxpayer did not treat such indi-
20 vidual as an employee for purposes of the em-
21 ployment taxes for such period,

22 “(B) the taxpayer’s treatment of such indi-
23 vidual as not being an employee was based on
24 a reasonable good faith misapplication of the
25 common law rules used for determining the em-
26 ployer-employee relationship,

1 “(C) all Federal tax returns (including in-
2 formation returns) required to be filed by the
3 taxpayer with respect to such individual for
4 such period were filed on a basis consistent with
5 the taxpayer’s treatment of such individual as
6 not being an employee,

7 “(D) the taxpayer (and any predecessor)
8 did not treat any other individual holding a
9 substantially similar position as an employee for
10 purposes of the employment taxes for any pe-
11 riod beginning after December 31, 1977, and

12 “(E) the taxpayer enters into a closing
13 agreement under section 7121 with the Sec-
14 retary (in the time and manner determined by
15 the Secretary) agreeing to treat such individual,
16 and any other individual holding a substantially
17 similar position, as employees and to file all
18 Federal employment tax returns with respect to
19 such individuals on a basis consistent with the
20 taxpayer’s treatment of such individuals as em-
21 ployees.

22 “(2) DEFINITIONS AND SPECIAL RULES.—

23 “(A) EMPLOYMENT TAX.—For purposes of
24 this subsection, the term ‘employment tax’
25 means any tax imposed by subtitle C, including

1 any interest, penalty, or additional amount with
2 respect to such tax.

3 “(B) NO REFUND OR CREDIT OF OVERPAY-
4 MENT.—No refund or credit of any overpay-
5 ment of an employment tax resulting from the
6 application of paragraph (1) shall be allowed,
7 notwithstanding that the period for filing a
8 claim for refund or credit of such overpayment
9 is not barred on the effective date of this sub-
10 section.

11 “(3) TERMINATION.—This subsection shall not
12 apply if the closing agreement referred to in para-
13 graph (1)(E) is entered into more than 1 year after
14 the date of the enactment of this subsection.”

15 (2) MONITORING OF CLOSING AGREEMENT RE-
16 QUIRED.—The Secretary of the Treasury or his dele-
17 gate shall monitor compliance with each closing
18 agreement referred to in section 3509(e)(1)(E) of
19 the Internal Revenue Code of 1986 (as added by
20 this section) for not less than 5 years after the date
21 such agreement is entered into. Such monitoring
22 shall include not only monitoring the payments made
23 to the individuals specified in the agreement but also
24 the aggregate wages paid to employees and the ag-

1 gregate payments to independent contractors for
2 services.

3 (b) MODIFICATIONS TO SAFE HARBOR FOR CLASSI-
4 FICATIONS OF INDIVIDUALS AS NONEMPLOYEES.—

5 (1) REQUIREMENT OF REASONABLE BASIS.—

6 Paragraph (1) of section 530(a) of the Revenue Act
7 of 1978 (relating to controversies involving whether
8 individuals are employees for purposes of the em-
9 ployment taxes) is amended by striking “unless the
10 taxpayer had no reasonable basis” and inserting the
11 following: “if the taxpayer had a reasonable basis”.

12 (2) ONLY RECENT EMPLOYMENT TAX AUDIT IS
13 REASONABLE BASIS.—Paragraph (2) of section
14 530(a) of the Revenue Act of 1978 is amended—

15 (A) by striking the paragraph caption and
16 inserting the following: “REASONABLE BASIS
17 FOR NOT TREATING INDIVIDUAL AS EM-
18 PLOYEE.—”,

19 (B) in the matter preceding subparagraph

20 (A)—

21 (i) by striking “in any case”, and

22 (ii) by inserting “only” before “if the
23 taxpayer’s”, and

24 (C) by striking subparagraph (B) and in-
25 serting the following new subparagraph:

1 “(B)(i) an Internal Revenue Service audit
2 of the taxpayer—

3 “(I) was conducted solely for employ-
4 ment tax purposes not more than 3 years
5 before such period, and

6 “(II) included an examination for em-
7 ployment tax purposes of individuals hold-
8 ing positions substantially similar to the
9 positions held by the individual involved,

10 “(ii) upon completion of such audit the
11 taxpayer was notified in writing by the Internal
12 Revenue Service that the treatment for employ-
13 ment tax purposes of the individuals referred to
14 in clause (i)(II) was correct, and

15 “(iii) such notification is not revoked be-
16 fore such period; or”.

17 (c) TERMINATION OF TREATMENT OF CERTAIN
18 TECHNICAL PERSONNEL.—Section 530 of the Revenue
19 Act of 1978 is amended by striking subsection (d).

20 (d) AUTHORITY FOR REGULATIONS AND RULINGS ON
21 EMPLOYMENT STATUS.—Section 530 of the Revenue Act
22 of 1978 is amended by striking subsection (b) and by re-
23 designating subsection (c) as subsection (b).

24 (e) PAYORS TO NOTIFY SERVICE PROVIDERS OF
25 CONSEQUENCES OF EMPLOYMENT STATUS.—

1 (1) Section 6041 of such Code (relating to in-
2 formation at source) is amended by redesignating
3 subsection (e) as subsection (f) and by inserting
4 after subsection (d) the following new subsection:

5 “(e) ADDITIONAL INFORMATION REQUIRED TO BE
6 INCLUDED ON STATEMENTS COVERING PAYMENTS FOR
7 SERVICES.—In the case of a statement required under
8 subsection (d) with respect to any payment for services,
9 such statement shall be treated as not satisfying the re-
10 quirements of subsection (d) unless such statement in-
11 cludes the following information:

12 “(1) The payor is treating the payee as not
13 being an employee and the payee may be liable for
14 self-employment tax.

15 “(2) If the payee believes that she should prop-
16 erly be treated as an employee, an explanation of the
17 procedure for obtaining Internal Revenue Service re-
18 view of her status.

19 “(3) The payee will not be eligible for any em-
20 ployee fringe benefits and may lose protections or
21 benefits under Federal laws relating to fair labor
22 standards, occupational health and safety, civil
23 rights, unemployment insurance, and worker’s com-
24 pensation.

1 “(4) An explanation of tax benefits to the self-
2 employed such as retirement plans and deduction for
3 a portion of the cost of health insurance.”

4 (2) Section 6041A of such Code (relating to re-
5 turns regarding payments of remuneration for serv-
6 ices and direct sales) is amended by redesignating
7 subsection (f) as subsection (g) and by inserting
8 after subsection (e) the following new subsection:

9 “(f) ADDITIONAL INFORMATION REQUIRED TO BE
10 INCLUDED ON STATEMENTS.—In the case of a statement
11 required under subsection (e), such statement shall be
12 treated as not satisfying the requirements of subsection
13 (e) unless such statement includes the information speci-
14 fied in paragraphs (1) through (4) of section 6041(e).”

15 (f) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall take effect beginning on the date which is 120
19 days after the date of the enactment of this Act.

20 (2) MODIFICATIONS TO SAFE HARBOR; TERMI-
21 NATION OF TREATMENT OF TECHNICAL PERSON-
22 NEL.—The amendments made by subsections (b)
23 and (c) shall apply to periods ending on or after the
24 date which is 120 days after the date of the enact-
25 ment of this Act.

1 **SEC. 3. CLASSIFICATION OF INDIVIDUALS AS EMPLOYEES**
2 **FOR PURPOSES OF UNEMPLOYMENT COM-**
3 **PENSATION PROGRAM.**

4 (a) UNIFORM FEDERAL AND STATE DEFINITION OF
5 EMPLOYEE.—Subsection (a) of section 3304 of the Inter-
6 nal Revenue Code of 1986 (relating to requirements for
7 approval of State unemployment compensation laws) is
8 amended by striking “and” at the end of paragraph (17),
9 by redesignating paragraph (18) as paragraph (19), and
10 by inserting after paragraph (17) the following new para-
11 graph:

12 “(18) the determination of whether an individ-
13 ual is an employee of another person shall be made
14 in accordance with section 3306(i); and”.

15 (b) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall take effect on the 180th day after the date of
19 the enactment of this Act.

20 (2) SPECIAL RULE.—In the case of any State
21 the legislature of which has not been in session for
22 at least 30 calendar days (whether or not successive)
23 between the date of the enactment of this Act and
24 such 180th day, the amendments made by this sec-
25 tion shall take effect 30 calendar days after the 1st

- 1 day on which such legislature is in session on or
- 2 after such 180th day.

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