

104TH CONGRESS
2D SESSION

S. 1610

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

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1996

Mr. BOND (for himself, Mr. NICKLES, Mr. DOLE, Mr. D'AMATO, Mr. MURKOWSKI, Mr. INHOFE, Mr. LOTT, Mr. GRAMM, and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on Finance

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 1996”.

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

1 the 1995 White House Conference on Small Busi-
 2 ness. Conference delegates recommended that Con-
 3 gress “should recognize the legitimacy of an inde-
 4 pendent contractor”. The Conference found that the
 5 current common law is “too subjective” and called
 6 upon the Congress to establish “realistic and con-
 7 sistent guidelines”.

8 (2) It is in the best interests of taxpayers and
 9 the Federal Government to have fair and objective
 10 rules for determining who is an employee and who
 11 is an independent contractor.

12 **SEC. 3. STANDARDS FOR DETERMINING WHETHER INDIVID-**
 13 **UALS ARE NOT EMPLOYEES.**

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

18 **“SEC. 3511. STANDARDS FOR DETERMINING WHETHER IN-**
 19 **DIVIDUALS ARE NOT EMPLOYEES.**

20 “(a) GENERAL RULE.—For purposes of this title,
 21 and notwithstanding any provision of this title to the con-
 22 trary, if the requirements of subsections (b), (c), and (d)
 23 are met with respect to any service performed by any indi-
 24 vidual, then with respect to such service—

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

3 “(2) the service recipient shall not be treated as
4 an employer,

5 “(3) the payor shall not be treated as an em-
6 ployer, and

7 “(4) compensation paid or received for such
8 service shall not be treated as paid or received with
9 respect to employment.

10 “(b) SERVICE PROVIDER REQUIREMENTS WITH RE-
11 GARD TO SERVICE RECIPIENT.—For the purposes of sub-
12 section (a), the requirements of this subsection are met
13 if the service provider, in connection with performing the
14 service—

15 “(1) has a significant investment in assets,
16 training, or both,

17 “(2) incurs significant unreimbursed expenses,

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

22 “(4) is paid primarily on a commissioned basis
23 or per unit basis, or

24 “(5) purchases products for resale.

1 “(c) ADDITIONAL SERVICE PROVIDER REQUIRE-
2 MENTS WITH REGARD TO OTHERS.—For the purposes of
3 subsection (a), the requirements of this subsection are met
4 if—

5 “(1) the service provider—

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

7 “(B) does not primarily provide the service
8 at the service recipient’s facilities,

9 “(C) pays a fair market rent for use of the
10 service recipient’s facilities, or

11 “(D) operates primarily from equipment
12 not supplied by the service recipient; or

13 “(2) the service provider—

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

16 “(B) in the year involved, or in the preced-
17 ing or subsequent year—

18 “(i) has performed a significant
19 amount of service for other persons,

20 “(ii) has offered to perform service for
21 other persons through—

22 “(I) advertising,

23 “(II) individual written or oral
24 solicitations,

1 “(III) listing with registries,
 2 agencies, brokers, and other persons
 3 in the business of providing referrals
 4 to other service recipients, or

5 “(IV) other similar activities, or

6 “(iii) provides service under a busi-
 7 ness name which is registered with (or for
 8 which a license has been obtained from) a
 9 State, a political subdivision of a State, or
 10 any agency or instrumentality of 1 or more
 11 States or political subdivisions.

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

20 “(e) SPECIAL RULES.—For purposes of this sec-
 21 tion—

22 “(1) FAILURE TO MEET REPORTING REQUIRE-
 23 MENTS.—If for any taxable year any service recipi-
 24 ent or payor fails to meet the applicable reporting
 25 requirements of sections 6041(a), 6041A(a), or 6051

1 with respect to a service provider, then, unless such
2 failure is due to reasonable cause and not willful ne-
3 glect, this section shall not apply in determining
4 whether such service provider shall not be treated as
5 an employee of such service recipient or payor for
6 such year.

7 “(2) RELATED ENTITIES.—If the service pro-
8 vider is performing services through an entity owned
9 in whole or in part by such service provider, then the
10 references to ‘service provider’ in subsections (b)
11 through (d) may include such entity, provided that
12 the written contract referred to in paragraph (1) of
13 subsection (d) may be with either the service pro-
14 vider or such entity and need not be with both.

15 “(f) DEFINITIONS.—For the purposes of this sec-
16 tion—

17 “(1) SERVICE PROVIDER.—The term ‘service
18 provider’ means any individual who performs service
19 for another person.

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

24 “(3) PAYOR.—Except as provided in paragraph
25 (5), the term ‘payor’ means the person who pays the

1 service provider for the performance of such service
 2 in the event that the service recipients do not pay
 3 the service provider.

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

7 “(A) the actual service performed by the
 8 service provider for the service recipients or for
 9 other persons for whom the service provider has
 10 performed similar service, or

11 “(B) the operation of the service provider’s
 12 trade or business.

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

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

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

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this Act shall apply to services performed before, on, or
 21 after the date of the enactment of this Act.

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