

105TH CONGRESS
1ST SESSION

H. R. 1891

To amend the Internal Revenue Code of 1986 to codify the employer status of staffing firms with respect to their workers for purposes of employment taxes and for employee benefit purposes, to clarify and enhance the ability of such firms to sponsor retirement and other employee benefit plans, and to facilitate the nonabusive use of such firms' services by other businesses.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1997

Mr. PORTMAN (for himself and Mr. CARDIN) 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 codify the employer status of staffing firms with respect to their workers for purposes of employment taxes and for employee benefit purposes, to clarify and enhance the ability of such firms to sponsor retirement and other employee benefit plans, and to facilitate the nonabusive use of such firms' services by other businesses.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Staffing Firm Worker
3 Benefits Act of 1997”.

4 **SEC. 2. CODIFICATION OF EMPLOYER STATUS OF QUALI-**
5 **FIED STAFFING FIRM FOR EMPLOYMENT TAX**
6 **PURPOSES.**

7 (a) **INCOME TAX WITHHOLDING.**—Section 3401(d)
8 of the Internal Revenue Code is amended—

9 (1) in paragraph (1), by striking “and” at the
10 end;

11 (2) in paragraph (2), by striking the period and
12 inserting “, and”; and

13 (3) by adding at the end the following:

14 “(3) notwithstanding any provision in this sub-
15 title to the contrary, in the case of a qualified staff-
16 ing firm, described in section 7701(a)(47), paying
17 wages to an individual performing services for a cus-
18 tomer of such qualified staffing firm, the term ‘em-
19 ployer’ means such qualified staffing firm (and not
20 the customer).”.

21 (b) **FICA TAX.**—Section 3121 of the Internal Reve-
22 nue Code is amended by adding at the end the following:

23 “(z) **APPLICATION TO QUALIFIED STAFFING**
24 **FIRMS.**—In the case of a qualified staffing firm, described
25 in section 7701(a)(47), paying wages to an individual per-
26 forming services for a customer of such qualified staffing

1 firm, the term ‘employer’ means such qualified staffing
2 firm (and not the customer), notwithstanding any provi-
3 sion in this subtitle to the contrary.”.

4 (c) FUTA TAX.—Subsection (a) of section 3306 of
5 the Internal Revenue Code is amended by adding at the
6 end the following: “In the case of a qualified staffing firm,
7 described in section 7701(a)(47), paying wages to an indi-
8 vidual performing services for a customer of such qualified
9 staffing firm, the term ‘employer’ means such qualified
10 staffing firm (and not the customer), notwithstanding any
11 provision in this subtitle to the contrary.”.

12 (d) DEFINITION—Subsection (a) of section 7701 of
13 the Internal Revenue Code is amended by adding at the
14 end the following paragraph—

15 “(47) QUALIFIED STAFFING FIRM.—The term
16 ‘qualified staffing firm’ means any person that is engaged
17 in providing staffing services to a customer pursuant to
18 a service contract, and that with respect to a worker per-
19 forming services for the customer who is covered by the
20 contract—

21 “(A) Assumes responsibility for payment of
22 wages to the worker, without regard to the receipt
23 or adequacy of payment from the customer for such
24 services,

1 “(B) Assumes responsibility for reporting, with-
2 holding, and paying any applicable taxes under
3 Chapters 21, 23, and 24, with respect to the work-
4 er’s wages, without regard to the receipt of adequacy
5 of payment from the customer for such services,

6 “(C) Assumes responsibility for any worker
7 benefits that may be required by the service con-
8 tract, without regard to the receipt or adequacy of
9 payment from the customer for such services,

10 “(D) Assumes authority to hire, reassign, and
11 dismiss the worker and has the contractual right to
12 exercise this authority independent of the customer,

13 “(E) Maintains employee records relating to the
14 worker, and

15 “(F) Assumes responsibility for addressing the
16 worker’s complaints, claims, filings, or requests re-
17 lating to employment, except as otherwise provided
18 by applicable collective bargaining agreements, if
19 any, notwithstanding that some or all of the actions
20 described in this subparagraph may be shared by the
21 customer.”.

1 **SEC. 3. CODIFICATION OF EMPLOYER STATUS OF QUALI-**
2 **FIED STAFFING FIRM FOR PURPOSES OF**
3 **PROVIDING EMPLOYEE BENEFITS.**

4 Paragraph (20) of section 7701(a) of the Internal
5 Revenue Code is amended—

6 (1) by redesignating the text of such paragraph
7 as subparagraph (A);

8 (2) by adding the heading “(A) FULL-TIME
9 LIFE INSURANCE SALESMAN.—” at the start of new
10 subparagraph (A); and

11 (3) by adding at the end of paragraph (20) the
12 following:

13 “(B) INDIVIDUAL COVERED BY QUALIFIED
14 STAFFING FIRM CONTRACT.—For the purpose
15 of applying the provisions of section 79 with re-
16 spect to group-term insurance purchased for
17 employees, for the purpose of applying the pro-
18 visions of sections 104, 105, and 106 with re-
19 spect to accident and health insurance or acci-
20 dent and health plans, for the purpose of apply-
21 ing the provisions of this title with respect to
22 contributions to or under a trust which is a
23 part of a plan described in section 401(a)
24 (other than a defined benefit plan), or to or
25 under a plan described in section 403(a) (other
26 than a defined benefit plan), including for this

1 purpose elective contributions under section
2 401(k) and employee contributions and match-
3 ing contributions under section 401(m), with
4 respect to a tax-exempt status of a trust form-
5 ing a part of such plan, and with respect to the
6 tax-exempt status of a trust forming a part of
7 such plan, and with respect to distributions
8 under such a plan, or by a trust forming part
9 of such a plan, for the purpose of applying sec-
10 tion 125 with respect to cafeteria plans, for the
11 purpose of applying section 127 with respect to
12 educational assistance programs, for the pur-
13 pose of applying section 129 with respect to de-
14 pendent care assistance programs, for the pur-
15 pose of applying the provisions of section
16 414(n), and for the purpose of applying the
17 provisions listed in section 414(n)(3), with re-
18 spect to such other benefits, plans, or programs
19 as are described in section 414(n)(3), the term
20 ‘employee’ shall include, with respect to a quali-
21 fied staffing firm, any individual whose em-
22 ployer is considered to be the qualified staffing
23 firm for the purpose of Chapters 21, 23, and
24 24. For these purposes, a change in the employ-
25 ment relationship between an individual and a

1 qualified staffing firm or between the individual
2 and a customer or former customer of the
3 qualified staffing firm, as the cause may be,
4 whereby the individual becomes or ceases to be
5 an employee of the qualified staffing firm under
6 this subparagraph, shall be treated as the ter-
7 mination of employment and separation from
8 service by the individual from the employment
9 or service of the qualified staffing firm’s cus-
10 tomer or the qualified staffing firm, as the case
11 may be.”.

12 **SEC. 4. COVERAGE OF LEASED EMPLOYEES IN EMPLOY-**
13 **MENT BENEFIT PLANS.**

14 (a) APPLICATION OF REQUIREMENTS CONCERNING
15 CASH OR DEFERRED ARRANGEMENTS, MATCHING CON-
16 TRIBUTIONS, AND EMPLOYEE CONTRIBUTIONS TO
17 LEASED EMPLOYEES.—Section 414(n)(3)(B) is amended
18 by inserting “401(k), 401(m)” before “408(k)”.

19 (b) SPECIAL RULES FOR LEASING ORGANIZATION’S
20 PLAN.—Section 414(n) is amended—

21 (1) by renumbering paragraph (6) as paragraph

22 (7); and

23 (2) by inserting the following as paragraph (6):

24 “(6) LEASING ORGANIZATION’S PLAN.—

25 “(A) ELECTIVE DISAGGREGATION.—

1 “(i) GENERAL RULE.—A leasing orga-
2 nization that is a qualified staffing firm
3 may elect, for any year, to have a plan that
4 it sponsors and that is described in section
5 401(a) or 403(a) treated as maintained by
6 more than one employer for purposes of
7 applying sections 410(b) and 401(a)(4).
8 For these purposes, (I) all the employees
9 who perform services directly for a recipi-
10 ent and related persons and who would be
11 treated as leased employees of the recipient
12 but for the requirements of paragraph
13 (2)(B), shall be treated as employed by
14 that recipient, and (II) all employees who
15 do not meet the requirements of subclause
16 (I) shall be treated as employed by the
17 leasing organization. Such leasing organi-
18 zation may also elect, for any year, to have
19 a plan that is subject to section 105(h)(3)
20 and (4), or to section 125(c), tested on a
21 comparable basis under section 105(h)(3)
22 and (4), or under section 125(c), as the
23 case may be.

24 “(ii) SPECIAL RULES.—A leasing or-
25 ganization electing under this paragraph

1 (6)(A) may, under regulations prescribed
2 by the Secretary, elect in the alternative to
3 have subclause (I) of paragraph (6)(A)(i)
4 applied (I) to all employees who perform
5 services directly for the recipient and the
6 related persons, whether or not they would
7 be treated as leased employees of the recip-
8 ient, or (ii) only with respect to selected re-
9 cipients and related persons. Notwith-
10 standing the foregoing, in the event that a
11 five-percent owner (as defined in section
12 416(i)) of a recipient is covered by a plan
13 described in paragraph (6)(A)(i), then such
14 leasing organization shall be deemed to
15 have elected disaggregation in accordance
16 with subclause (ii) of this clause with re-
17 spect to such recipient and related persons.

18 “(iii) EFFECT OF DISQUALIFICA-
19 TION.—If the plan of a leasing organiza-
20 tion electing under this paragraph (6)(A)
21 fails to satisfy the requirements of section
22 410(b) or section 401(a)(4) with respect to
23 the person deemed to be the employer
24 under paragraph (6)(A), only that portion
25 of the plan that is treated under paragraph

1 (6)(A) as maintained by such person shall
2 be disqualified.

3 “(iv) TREATMENT OF RELATED PER-
4 SONS.—For purposes of this subparagraph
5 (A), the term “recipient” shall not include
6 any person that is a related person with
7 respect to the leasing organization.

8 “(B) HIGHLY COMPENSATED EMPLOY-
9 EES.—Whether or not the leasing organization
10 makes an election under subparagraph (A), sec-
11 tion 414(q) shall be applied to employees of a
12 leasing organization that is a qualified staffing
13 firm by treating the employees who perform
14 services for a recipient or related persons and
15 who would be leased employees of the recipient
16 but for the requirements of paragraph (2)(B)
17 as employed by, and receiving compensation
18 from, the recipient or the related person for
19 purposes of determining whether the employees
20 are highly compensated employees of the leasing
21 organization.”.

22 **SEC. 5. REVISIONS TO SAFE HARBOR PROVISION.**

23 (a) REVISIONS TO SAFE HARBOR PLAN REQUIRE-
24 MENTS.—Subparagraph (B) of section 414(n)(5) of the
25 Internal Revenue Code is amended to read as follows:

1 “(B) PLAN REQUIREMENTS.—A plan meets the re-
2 requirements of this subparagraph if—

3 “(i) such plan is a money purchase pension
4 plan or a profit-sharing plan, with a nonintegrated
5 employer contribution rate for each participant
6 which is at least 7.5 percent of that portion of the
7 participant’s compensation attributable to services
8 performed for the recipient, and which is not de-
9 pendent on the current or accumulated points of the
10 leasing organization or on whether the participant
11 makes an elective contribution or employee contribu-
12 tion to such plan.

13 “(ii) such plan provides for full and immediate
14 vesting,

15 “(iii) if the plan is a profit-sharing plan, such
16 plan meets the distribution requirements of section
17 401(k)(2)(B) with respect to all employer contribu-
18 tions, and

19 “(iv) each employee of the leasing organization
20 who performs services for the recipient immediately
21 participates in such plan.”.

22 (b) EXTENSION OF SAFE HARBOR RULE TO ADDI-
23 TIONAL EMPLOYEE BENEFITS.—Paragraph (5) of Section
24 414(n) of the Internal Revenue Code is amended by add-
25 ing at the end the following:

1 “(D) SPECIAL RULE FOR ADDITIONAL EM-
2 PLOYEE BENEFITS.—To the extent provided for in
3 regulations issued by the Secretary, in the case of a
4 requirement described in subparagraph (C) of para-
5 graph (3), this subsection shall not apply to any
6 leased employee with respect to service performed
7 for a recipient if—

8 “(i) such employee is covered by a plan for
9 an arrangement that is maintained by the leas-
10 ing organization and that meets such require-
11 ments as the Secretary shall prescribe in regu-
12 lations, and

13 “(ii) leased employees (determined without
14 regard to this paragraph) do not constitute
15 more than 20 percent of the recipient’s non-
16 highly compensated work force.”.

17 **SEC. 6. EFFECTIVE DATE.**

18 The amendments made by this Act shall take effect
19 on the date of the enactment of this Act. In the case of
20 a plan that covers employees of a qualified staffing firm
21 who are providing services for a customer pursuant to a
22 service contract and that was adopted and in effect before
23 the date of enactment of this Act, such amendments shall
24 not take effect until the first day of the first plan year
25 that begins after the date of enactment of this Act, and

- 1 the plan shall not be required to be amended to reflect
- 2 this Act until the end of such plan year.

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