

105TH CONGRESS
2D SESSION

H. R. 4622

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

SEPTEMBER 24, 1998

Ms. DUNN 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 1998”.

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-

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

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

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

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

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

19 “(a) GENERAL RULE.—For purposes of this subtitle,
20 and notwithstanding any provision of this subtitle to the
21 contrary, if the requirements of subsections (b), (c), and
22 (d) are met with respect to any service performed by any
23 individual, then with respect to such service—

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

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

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

5 “(b) SERVICE PROVIDER REQUIREMENTS WITH RE-
6 GARD TO SERVICE RECIPIENT.—For the purposes of sub-
7 section (a), the requirements of this subsection are met
8 if the service provider, in connection with performing the
9 service—

10 “(1) has a significant investment in assets and/
11 or training,

12 “(2) incurs significant unreimbursed expenses,

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

17 “(4) is paid primarily on a commissioned basis,
18 or

19 “(5) purchases products for resale.

20 “(c) ADDITIONAL SERVICE PROVIDER REQUIRE-
21 MENTS WITH REGARD TO OTHERS.—For the purposes of
22 subsection (a), the requirements of this subsection are met
23 if—

24 “(1) the service provider—

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

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

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

5 “(2) the service provider—

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

8 “(B) in the year involved, or in the preced-
9 ing or subsequent year—

10 “(i) has performed a significant
11 amount of service for other persons,

12 “(ii) has offered to perform service for
13 other persons through—

14 “(I) advertising,

15 “(II) individual written or oral
16 solicitations,

17 “(III) listing with registries,
18 agencies, brokers, and other persons
19 in the business of providing referrals
20 to other service recipients, or

21 “(IV) other similar activities, or

22 “(iii) provides service under a busi-
23 ness name which is registered with (or for
24 which a license has been obtained from) a
25 State, a political subdivision of a State, or

1 any agency or instrumentality of 1 or more
2 States or political subdivisions.

3 “(d) WRITTEN DOCUMENT REQUIREMENTS.—For
4 purposes of subsection (a), the requirements of this sub-
5 section are met if the services performed by the individual
6 are performed pursuant to a written contract between
7 such individual and the person for whom the services are
8 performed, or the payor, and such contract provides that
9 the individual will not be treated as an employee with re-
10 spect to such services for purposes of this subtitle.

11 “(e) SPECIAL RULES.—For purposes of this sec-
12 tion—

13 “(1) If for any taxable year any service recipi-
14 ent or payor fails to meet the applicable reporting
15 requirements of sections 6041(a), 6041A(a), or 6051
16 with respect to a service provider, then, unless such
17 failure is due to reasonable cause and not willful ne-
18 glect, this section shall not apply in determining
19 whether such service provider shall not be treated as
20 an employee of such service recipient or payor for
21 such year.

22 “(2) If the service provider is performing serv-
23 ices through an entity owned in whole or in part by
24 such service provider, then the references to ‘service
25 provider’ in subsections (b) through (d) may include

1 such entity, provided that the written contract re-
2 ferred to in paragraph (1) of subsection (d) may be
3 with either the service provider or such entity and
4 need not be with both.

5 “(f) DEFINITIONS.—For the purposes of this sec-
6 tion—

7 “(1) SERVICE PROVIDER.—The term ‘service
8 provider’ means any individual who performs service
9 for another person.

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

14 “(3) PAYOR.—Except as provided in paragraph
15 (5), the term ‘payor’ means the person who pays the
16 service provider for the performance of such service
17 in the event that the service recipients do not pay
18 the service provider.

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

22 “(A) the actual service performed by the
23 service provider for the service recipients or for
24 other persons for whom the service provider has
25 performed similar service, or

