

106TH CONGRESS  
1ST SESSION

# H. R. 1525

To amend the Internal Revenue Code of 1986 to provide simplified criteria, in lieu of the common law rules, for determining whether an individual is an employee or an independent contractor and to limit retroactive employment tax reclassifications.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1999

Mr. KLECZKA (for himself, Mr. HOUGHTON, Mr. STARK, Mrs. JOHNSON of Connecticut, Mr. MATSUI, Mr. ENGLISH, Mr. LEVIN, Mr. WELLER, Mr. COYNE, Mr. FOLEY, Mr. McDERMOTT, Mr. LEWIS of Georgia, Mr. BOEHLERT, Mr. EVANS, Mr. KING, Mr. BARRETT of Wisconsin, Mr. QUINN, and Mr. FORBES) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide simplified criteria, in lieu of the common law rules, for determining whether an individual is an employee or an independent contractor and to limit retroactive employment tax reclassifications.

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 Con-  
5 tractor Clarification Act of 1999”.

1 **SEC. 2. DETERMINATION OF EMPLOYEE AND EMPLOYER**  
2 **STATUS.**

3 (a) IN GENERAL.—Subsection (c) of section 7701 of  
4 the Internal Revenue Code of 1986 is amended to read  
5 as follows:

6 “(c) EMPLOYEE AND EMPLOYER.—

7 “(1) IN GENERAL.—For purposes of this title,  
8 except as otherwise expressly provided in this title—

9 “(A) an individual (hereinafter in this sub-  
10 section referred to as the ‘service provider’) per-  
11 forming services for another person (hereinafter  
12 in this subsection referred to as the ‘service re-  
13 cipient’) shall be treated as an employee of the  
14 service recipient, and

15 “(B) the service recipient shall be treated  
16 as the employer of such service provider,  
17 unless the requirements of each of the subpara-  
18 graphs of paragraph (3) have been satisfied.

19 “(2) REPEAL OF COMMON LAW TESTS.—The  
20 rules of this subsection shall apply in lieu of any  
21 common law rules which would otherwise apply.

22 “(3) REQUIREMENTS.—

23 “(A) LACK OF CONTROL BY SERVICE RE-  
24 CIPIENT.—The requirements of this subpara-  
25 graph are met only if the service provider has  
26 the right, to the exclusion of the service recipi-

1 ent, to control and direct the manner of, and  
2 the means used in, the service provider’s per-  
3 formance of services for the service recipient.

4 “(B) AVAILABILITY OF SERVICE TO OTH-  
5 ERS.—The requirements of this subparagraph  
6 are met only if the service provider—

7 “(i) makes substantially similar serv-  
8 ices available to others, and

9 “(ii) is not precluded by the service  
10 recipient from soliciting business opportu-  
11 nities that involve providing substantially  
12 similar services for other persons during  
13 the period that the service provider is pro-  
14 viding services for the service recipient.

15 “(C) ENTREPRENEURIAL RISK.—The re-  
16 quirements of this subparagraph are met only  
17 if—

18 “(i) in the service provider’s overall  
19 business activities, the service provider has  
20 the potential to generate profit and bears  
21 risk of loss and the extent to which profit  
22 is generated or loss is sustained depends  
23 on the service provider’s efforts and deci-  
24 sions other than as to the amount of work  
25 performed, and

1           “(ii) in the event the service provider  
2           fails to perform the work in accordance  
3           with the service recipient’s requirements,  
4           the service provider is either subject to li-  
5           ability to the service recipient for damages  
6           arising from claims sounding in contract or  
7           would be subject to such liability but for a  
8           waiver by the service recipient.

9           “(4) PERSON.—For purposes of this subsection,  
10          the term ‘person’ includes any governmental unit  
11          (and any agency or instrumentality thereof).”

12          (b) REPEAL OF SECTION 530 OF REVENUE ACT OF  
13          1978.—Section 530 of the Revenue Act of 1978 is hereby  
14          repealed.

15          (c) CONFORMING AMENDMENTS.—

16                 (1) Paragraph (2) of section 3121(d) of such  
17                 Code is amended to read as follows:

18                         “(2) any individual who is treated as an em-  
19                         ployee under section 7701(c); or”.

20                 (2) Paragraph (2) of section 210(j) of the So-  
21                 cial Security Act is amended to read as follows:

22                         “(2) any individual who is treated as an em-  
23                         ployee under section 7701(c) of the Internal Rev-  
24                         enue Code of 1986; or”.

1           (3) Subsection (a) of section 7701 of such Code  
2 is amended by inserting after paragraph (33) the  
3 following new paragraph:

4           “(34) INCLUDES AND INCLUDING.—The terms  
5 ‘includes’ and ‘including’ when used in a definition  
6 contained in this title shall not be deemed to exclude  
7 other things otherwise within the meaning of the  
8 term defined.”

9           (d) EFFECTIVE DATE.—

10           (1) IN GENERAL.—Except as provided in para-  
11 graph (2), the amendments made by this section  
12 shall apply to services performed after December 31,  
13 2000.

14           (2) REPEAL OF LIMITATIONS ON REGULATIONS  
15 AND RULINGS.—The repeal made by subsection (b),  
16 insofar as it relates to section 530(b) of the Revenue  
17 Act of 1978, shall take effect on the date of the en-  
18 actment of this Act; except that regulations and  
19 Revenue Rulings permitted to be issued by reason of  
20 such repeal may not apply to services performed be-  
21 fore January 1, 2001.

22 **SEC. 3. LIMITATIONS ON RETROACTIVE EMPLOYMENT TAX**  
23 **RECLASSIFICATIONS.**

24           (a) GENERAL RULE.—Chapter 25 of the Internal  
25 Revenue Code of 1986 (relating to general provisions ap-

1 plicable to employment taxes) is amended by adding at  
2 the end the following new section:

3 **“SEC. 3511. LIMITATIONS ON RETROACTIVE EMPLOYMENT**  
4 **TAX RECLASSIFICATIONS.**

5 “(a) GENERAL RULE.—If—

6 “(1) for purposes of employment taxes, the tax-  
7 payer treats an individual as not being an employee  
8 for any period after December 31, 2000, and

9 “(2) for such period, the taxpayer meets—

10 “(A) the consistency requirements of sub-  
11 section (b),

12 “(B) the return filing requirements of sub-  
13 section (c), and

14 “(C) the safe harbor requirement of sub-  
15 section (d),

16 for purposes of applying this subtitle for such period, the  
17 individual shall be deemed not to be an employee of the  
18 taxpayer for such period. The preceding sentence shall  
19 cease to apply to periods beginning more than 60 days  
20 after the date that the Secretary notifies the taxpayer in  
21 writing of a final administrative determination that the  
22 taxpayer should treat such individual (or any individual  
23 holding a substantially similar position) as an employee.

24 “(b) CONSISTENCY REQUIREMENTS.—A taxpayer  
25 meets the consistency requirements of this subsection with

1 respect to any individual for any period if the taxpayer  
2 treats such individual (and all other individuals holding  
3 substantially similar positions) as not being an employee  
4 for purposes of the employment taxes for such period and  
5 all prior periods after December 31, 1978.

6       “(c) RETURN FILING REQUIREMENTS.—The tax-  
7 payer meets the return filing requirements of this sub-  
8 section with respect to any individual for any period if all  
9 Federal tax returns (including information returns) re-  
10 quired to be filed by the taxpayer for such period with  
11 respect to such individual are filed on a basis consistent  
12 with the taxpayer’s treatment of such individual as not  
13 being an employee.

14       “(d) SAFE HARBORS.—

15               “(1) IN GENERAL.—The taxpayer meets the  
16 safe harbor requirement of this subsection with re-  
17 spect to any individual for any period if the taxpayer  
18 establishes that its treatment of such individual as  
19 not being an employee for such period was—

20                       “(A) in reasonable reliance on a written  
21 determination (as defined in section  
22 6110(b)(1)) issued to the taxpayer that ad-  
23 dressed the employment status of the individual  
24 or an individual holding a substantially similar  
25 position with the taxpayer;

1           “(B) in reasonable reliance on a concluded  
2           Internal Revenue Service audit of the taxpayer  
3           in which the employment status of the indi-  
4           vidual or any individual holding a substantially  
5           similar position with the taxpayer was examined  
6           and the taxpayer was notified in writing that no  
7           change would be made to such individual’s em-  
8           ployment status; or

9           “(C) supported by substantial authority.

10          For purposes of subparagraph (C), the term ‘sub-  
11          stantial authority’ has the same meaning as when  
12          used in section 6662(d)(2)(B)(i); except that such  
13          term shall not include (i) any private letter ruling  
14          issued to a person other than the taxpayer, and (ii)  
15          any authority that does not address the employment  
16          status of individuals holding positions substantially  
17          similar to that of the individual.

18          “(2) SPECIAL RULES.—

19                 “(A) APPLICATION TO PRE-2001 DETER-  
20                 MINATIONS, ETC.—Paragraph (1) shall apply  
21                 without regard to whether the determination,  
22                 audit, or the authority referred to therein was  
23                 before January 1, 2001.

24                 “(B) SUBSEQUENT AUTHORITY.—The tax-  
25                 payer shall not be considered to meet the safe

1 harbor requirement of paragraph (1) with re-  
2 spect to any individual for any period if the  
3 treatment of such individual as not being an  
4 employee is inconsistent with any regulation,  
5 Revenue Ruling, Revenue Procedure, or other  
6 authority—

7 “(i) which is published by the Sec-  
8 retary at least 60 days before the begin-  
9 ning of such period and after the date of  
10 the determination, the conclusion of the  
11 audit, or the substantial authority referred  
12 to in paragraph (1), and

13 “(ii) which applies to the type of serv-  
14 ices performed by such individual or the  
15 industry or business in which such services  
16 are performed.

17 “(3) TRANSITIONAL RULE.—Except as provided  
18 in paragraph (2)(B), the taxpayer shall be consid-  
19 ered to meet the safe harbor requirement of para-  
20 graph (1) with respect to services performed by an  
21 individual during 2001 or 2002 if the taxpayer  
22 would be treated under section 530 of the Revenue  
23 Act of 1978 (as in effect on the day before the date  
24 of the enactment of this section) as having a reason-

1       able basis for not treating such individual as an em-  
2       ployee.

3       “(e) OTHER SPECIAL RULES.—

4               “(1) NOTICE.—An officer or employee of the  
5       Internal Revenue Service shall, before or at the com-  
6       mencement of any audit inquiry relating to the em-  
7       ployment status of one or more individuals who per-  
8       form services for the taxpayer, provide the taxpayer  
9       with a written notice of the provisions of this sec-  
10      tion.

11              “(2) AVAILABILITY OF SAFE HARBORS.—Noth-  
12      ing in this section shall be construed to provide that  
13      this section only applies where the individual in-  
14      volved is otherwise an employee of the taxpayer.

15      “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
16      poses of this section—

17              “(1) EMPLOYMENT TAX.—The term ‘employ-  
18      ment tax’ means any tax imposed by this subtitle.

19              “(2) EMPLOYMENT STATUS.—The term ‘em-  
20      ployment status’ means the status of an individual  
21      as an employee or as an independent contractor (or  
22      other individual who is not an employee).

23              “(3) TAXPAYER.—The term ‘taxpayer’ includes  
24      any person or entity (including a governmental enti-  
25      ty) which is (or would be but for this section) liable

1 for any employment tax. Such term includes any  
2 predecessor or successor to the taxpayer.

3 “(4) SUBSTANTIALLY SIMILAR POSITION.—The  
4 determination as to whether an individual holds a  
5 position substantially similar to a position held by  
6 another individual shall include consideration of the  
7 relationship between the taxpayer and such individ-  
8 uals.

9 “(g) REGULATIONS.—The Secretary shall prescribe  
10 such regulations as may be appropriate to carry out the  
11 purposes of this section.”

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

“Sec. 3511. Limitations on retroactive employment tax reclassi-  
fications.”

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to all periods beginning after De-  
17 cember 31, 2000.

18 **SEC. 4. STATUTE OF LIMITATIONS ON ASSESSMENT OF EM-**  
19 **PLOYMENT TAXES TO RUN BEGINNING ON**  
20 **DATE CERTAIN INFORMATION RETURNS**  
21 **FILED.**

22 (a) IN GENERAL.—Subsection (b) of section 6501 of  
23 the Internal Revenue Code of 1986 (relating to limitations

1 on assessment and collection) is amended by adding at the  
2 end the following new paragraph:

3           “(5) CERTAIN INFORMATION RETURNS TO  
4 BEGIN LIMITATION PERIODS ON EMPLOYMENT  
5 TAXES.—For purposes of this section, if—

6           “(A) a return is filed under section 6041  
7 or 6041A which specifies an amount of pay-  
8 ments made to any individual for services per-  
9 formed by such individual, and

10           “(B) such payments are not taken into ac-  
11 count in determining the taxes imposed by  
12 chapters 21 and 24,

13 then, notwithstanding the last sentence of subsection  
14 (a), such return shall be treated as the return re-  
15 ferred to in subsection (a) for purposes of deter-  
16 mining the period of limitations with respect to such  
17 taxes on such services.”

18           (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to payments made after December  
20 31, 2000.

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