

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5719

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## AN ACT

To amend the Internal Revenue Code of 1986 to conform return preparer penalty standards, delay implementation of withholding taxes on government contractors, enhance taxpayer protections, assist low-income taxpayers, and for other purposes.

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, ETC.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Taxpayer Assistance and Simplification Act of 2008”.

4 (b) AMENDMENT OF 1986 CODE.—Except as other-  
5 wise expressly provided, whenever in this Act an amend-  
6 ment or repeal is expressed in terms of an amendment  
7 to, or repeal of, a section or other provision, the reference  
8 shall be considered to be made to a section or other provi-  
9 sion of the Internal Revenue Code of 1986.

10 (c) TABLE OF CONTENTS.—The table of contents of  
11 this Act is as follows:

- Sec. 1. Short title, etc.
- Sec. 2. Modification of penalty on understatement of taxpayer’s liability by tax return preparer.
- Sec. 3. Removal of cellular telephones (or similar telecommunications equipment) from listed property.
- Sec. 4. Delay of application of withholding requirement on certain governmental payments for goods and services.
- Sec. 5. Elderly and disabled individuals receiving in-home care under certain government programs not subject to employment tax provisions.
- Sec. 6. Referrals to low income taxpayer clinics permitted.
- Sec. 7. Programs for the benefit of low-income taxpayers.
- Sec. 8. EITC outreach.
- Sec. 9. Prohibition on IRS debt indicators for predatory refund anticipation loans.
- Sec. 10. Study on delivery of tax refunds.
- Sec. 11. Extension of time for return of property for wrongful levy.
- Sec. 12. Individuals held harmless on wrongful levy, etc., on individual retirement plan.
- Sec. 13. Taxpayer notification of suspected identity theft.
- Sec. 14. Repeal of authority to enter into private debt collection contracts.
- Sec. 15. Clarification of IRS unclaimed refund authority.
- Sec. 16. Prohibition on misuse of Department of the Treasury names and symbols.
- Sec. 17. Substantiation of amounts paid or distributed out of health savings account.
- Sec. 18. Certain domestically controlled foreign persons performing services under contract with United States Government treated as American employers.
- Sec. 19. Time for payment of corporate estimated tax.
- Sec. 20. GAO study on health savings accounts.

1 **SEC. 2. MODIFICATION OF PENALTY ON UNDERSTATEMENT**  
2 **OF TAXPAYER'S LIABILITY BY TAX RETURN**  
3 **PREPARER.**

4 (a) IN GENERAL.—Subsection (a) of section 6694  
5 (relating to understatement due to unreasonable positions)  
6 is amended to read as follows:

7 “(a) UNDERSTATEMENT DUE TO UNREASONABLE  
8 POSITIONS.—

9 “(1) IN GENERAL.—If a tax return preparer—

10 “(A) prepares any return or claim of re-  
11 fund with respect to which any part of an un-  
12 derstatement of liability is due to a position de-  
13 scribed in paragraph (2), and

14 “(B) knew (or reasonably should have  
15 known) of the position,

16 such tax return preparer shall pay a penalty with re-  
17 spect to each such return or claim in an amount  
18 equal to the greater of \$1,000 or 50 percent of the  
19 income derived (or to be derived) by the tax return  
20 preparer with respect to the return or claim.

21 “(2) UNREASONABLE POSITION.—

22 “(A) IN GENERAL.—Except as otherwise  
23 provided in this paragraph, a position is de-  
24 scribed in this paragraph unless there is or was  
25 substantial authority for the position.

1           “(B) DISCLOSED POSITIONS.—If the posi-  
2           tion was disclosed as provided in section  
3           6662(d)(2)(B)(ii)(I) and is not a position to  
4           which subparagraph (C) applies, the position is  
5           described in this paragraph unless there is a  
6           reasonable basis for the position.

7           “(C) TAX SHELTERS AND REPORTABLE  
8           TRANSACTIONS.—If the position is with respect  
9           to a tax shelter (as defined in section  
10          6662(d)(2)(C)(ii)) or a reportable transaction  
11          to which section 6662A applies, the position is  
12          described in this paragraph unless it is reason-  
13          able to believe that the position would more  
14          likely than not be sustained on its merits.

15          “(3) REASONABLE CAUSE EXCEPTION.—No  
16          penalty shall be imposed under this subsection if it  
17          is shown that there is reasonable cause for the un-  
18          derstatement and the tax return preparer acted in  
19          good faith.”.

20          (b) EFFECTIVE DATE.—The amendment made by  
21          this section shall apply—

22                 (1) in the case of a position described in sub-  
23                 paragraph (A) or (B) of section 6694(a)(2) of the  
24                 Internal Revenue Code of 1986 (as amended by this

1 section), to returns prepared after May 25, 2007,  
2 and

3 (2) in the case of a position described in sub-  
4 paragraph (C) of such section (as amended by this  
5 section), to returns prepared for taxable years end-  
6 ing after the date of the enactment of this Act.

7 **SEC. 3. REMOVAL OF CELLULAR TELEPHONES (OR SIMILAR**  
8 **TELECOMMUNICATIONS EQUIPMENT) FROM**  
9 **LISTED PROPERTY.**

10 (a) IN GENERAL.—Subparagraph (A) of section  
11 280F(d)(4) (defining listed property) is amended by in-  
12 serting “and” at the end of clause (iv), by striking clause  
13 (v), and by redesignating clause (vi) as clause (v).

14 (b) EFFECTIVE DATE.—The amendment made by  
15 subsection (a) shall apply to taxable years beginning after  
16 December 31, 2008.

17 **SEC. 4. DELAY OF APPLICATION OF WITHHOLDING RE-**  
18 **QUIREMENT ON CERTAIN GOVERNMENTAL**  
19 **PAYMENTS FOR GOODS AND SERVICES.**

20 (a) IN GENERAL.—Subsection (b) of section 511 of  
21 the Tax Increase Prevention and Reconciliation Act of  
22 2005 is amended by striking “December 31, 2010” and  
23 inserting “December 31, 2011”.

24 (b) REPORT TO CONGRESS.—Not later than 6  
25 months after the date of the enactment of this Act, the

1 Secretary of the Treasury shall submit to the Committee  
2 on Ways and Means of the House of Representatives and  
3 the Committee on Finance of the Senate a report with  
4 respect to the withholding requirements of section 3402(t)  
5 of the Internal Revenue Code of 1986, including a detailed  
6 analysis of—

7 (1) the problems, if any, which are anticipated  
8 in administering and complying with such require-  
9 ments,

10 (2) the burdens, if any, that such requirements  
11 will place on governments and businesses (taking  
12 into account such mechanisms as may be necessary  
13 to administer such requirements), and

14 (3) the application of such requirements to  
15 small expenditures for services and goods by govern-  
16 ments.

17 **SEC. 5. ELDERLY AND DISABLED INDIVIDUALS RECEIVING**  
18 **IN-HOME CARE UNDER CERTAIN GOVERN-**  
19 **MENT PROGRAMS NOT SUBJECT TO EMPLOY-**  
20 **MENT TAX PROVISIONS.**

21 (a) IN GENERAL.—Chapter 25 (relating to general  
22 provisions relating to employment taxes) is amended by  
23 adding at the end the following new section:

1 **“SEC. 3511. ELDERLY AND DISABLED INDIVIDUALS RECEIV-**  
2 **ING IN-HOME CARE UNDER CERTAIN GOV-**  
3 **ERNMENT PROGRAMS.**

4 “(a) IN GENERAL.—In the case of amounts paid  
5 under a home care service program to a home care service  
6 provider by the fiscal administrator of such program—

7 “(1) the home care service recipient shall not be  
8 liable for the payment of any taxes imposed under  
9 this subtitle with respect to amounts paid for the  
10 provision of services under such program, and

11 “(2) the fiscal administrator shall be so liable.

12 “(b) DEFINITIONS.—For purposes of this section—

13 “(1) HOME CARE SERVICE PROGRAM.—The  
14 term ‘home care service program’ means a State or  
15 local government program—

16 “(A) any portion of which is funded with  
17 Federal funds, and

18 “(B) under which domestic services are  
19 provided to elderly or disabled individuals in  
20 their homes.

21 Such term shall not include any program to the ex-  
22 tent home care service recipients make payments to  
23 the home care service providers for such in-home do-  
24 mestic services.

25 “(2) HOME CARE SERVICE PROVIDER.—The  
26 term ‘home care service provider’ means any indi-

1       vidual who provides domestic services to a home care  
2       service recipient under a home care service program.

3           “(3) HOME CARE SERVICE RECIPIENT.—The  
4       term ‘home care service recipient’ means any indi-  
5       vidual receiving domestic services under a home care  
6       service program.

7           “(4) FISCAL ADMINISTRATOR.—The term ‘fiscal  
8       administrator’ means any person or governmental  
9       entity who pays amounts under a home care service  
10      program to home care service providers for the pro-  
11      vision of domestic services under such program.

12          “(c) RETURNS BY FISCAL ADMINISTRATOR.—For  
13      purposes of this section—

14           “(1) IN GENERAL.—Returns relating to taxes  
15      imposed or amounts required to be withheld under  
16      this subtitle shall be made under the identifying  
17      number of the fiscal administrator.

18           “(2) IDENTIFICATION OF SERVICE RECIPI-  
19      ENT.—The fiscal administrator shall, to the extent  
20      required under regulations prescribed by the Sec-  
21      retary, make a return setting forth—

22           “(A) the name, address, and identifying  
23      number of each home care service recipient for  
24      whom amounts are paid by such fiscal adminis-

1           trator under the home care services program,  
2           and

3                   “(B) such other information as the Sec-  
4           retary may require.

5           “(d) REGULATIONS.—The Secretary may prescribe  
6 such regulations or other guidance as may be necessary  
7 to carry out the purposes of this section, including requir-  
8 ing deposits of any tax imposed under this subtitle.”.

9           (b) SERVICE RECIPIENT IDENTIFICATION RETURN  
10 TREATED AS INFORMATION RETURN.—Paragraph (3) of  
11 section 6724(d) is amended by striking “and” at the end  
12 of subparagraph (C)(ii), by striking the period at the end  
13 of subparagraph (D)(ii) and inserting “, and”, and by  
14 adding at the end the following new subparagraph:

15                   “(E) any requirement under section  
16                   3511(c)(2).”.

17           (c) CLERICAL AMENDMENT.—The table of sections  
18 for chapter 25 is amended by adding at the end the fol-  
19 lowing new item:

          “Sec. 3511. Elderly and disabled individuals receiving in-home care under cer-  
          tain government programs.”.

20           (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to amounts paid after December  
22 31, 2008.

1 **SEC. 6. REFERRALS TO LOW INCOME TAXPAYER CLINICS**  
2 **PERMITTED.**

3 (a) **IN GENERAL.**—Subsection (c) of section 7526 of  
4 the Internal Revenue Code of 1986 is amended by adding  
5 at the end the following new paragraph:

6 “(6) **TREASURY EMPLOYEES PERMITTED TO**  
7 **REFER TAXPAYERS TO QUALIFIED LOW-INCOME TAX-**  
8 **PAYER CLINICS.**—Notwithstanding any other provi-  
9 sion of law, officers and employees of the Depart-  
10 ment of the Treasury may refer taxpayers for advice  
11 and assistance to qualified low-income taxpayer clin-  
12 ics receiving funding under this section.”.

13 (b) **EFFECTIVE DATE.**—The amendment made by  
14 this section shall apply to referrals made after the date  
15 of the enactment of this Act.

16 **SEC. 7. PROGRAMS FOR THE BENEFIT OF LOW-INCOME**  
17 **TAXPAYERS.**

18 (a) **VOLUNTEER INCOME TAX ASSISTANCE PRO-**  
19 **GRAMS.**—Chapter 77 (relating to miscellaneous provi-  
20 sions) is amended by inserting after section 7526 the fol-  
21 lowing new section:

22 **“SEC. 7526A. VOLUNTEER INCOME TAX ASSISTANCE PRO-**  
23 **GRAMS.**

24 “(a) **IN GENERAL.**—The Secretary may, subject to  
25 the availability of appropriated funds, make grants to pro-

1 vide matching funds for the development, expansion, or  
2 continuation of volunteer income tax assistance programs.

3 “(b) VOLUNTEER INCOME TAX ASSISTANCE PRO-  
4 GRAM.—For purposes of this section, the term ‘volunteer  
5 income tax assistance program’ means a program—

6 “(1) which does not charge taxpayers for its re-  
7 turn preparation services,

8 “(2) which operates programs to assist low and  
9 moderate-income (as determined by the Secretary)  
10 taxpayers in preparing and filing their Federal in-  
11 come tax returns, and

12 “(3) in which all of the volunteers who assist in  
13 the preparation of Federal income tax returns meet  
14 the requirements prescribed by the Secretary.

15 “(c) SPECIAL RULES AND LIMITATIONS.—

16 “(1) AGGREGATE LIMITATION.—Unless other-  
17 wise provided by specific appropriation, the Sec-  
18 retary shall not allocate more than \$10,000,000 per  
19 year (exclusive of costs of administering the pro-  
20 gram) to grants under this section.

21 “(2) OTHER APPLICABLE RULES.—Rules simi-  
22 lar to the rules under paragraphs (2) through (6) of  
23 section 7526(c) shall apply with respect to the  
24 awarding of grants to volunteer income tax assist-  
25 ance programs.”.

1 (b) INCREASE IN AUTHORIZED GRANTS FOR LOW-IN-  
2 COME TAXPAYER CLINICS.—Paragraph (1) of section  
3 7526(c) (relating to aggregate limitation) is amended by  
4 striking “\$6,000,000” and inserting “\$10,000,000”.

5 (c) CLERICAL AMENDMENTS.—

6 (1) Section 7526(c)(5) is amended by inserting  
7 “qualified” before “low-income”.

8 (2) The table of sections for chapter 77 is  
9 amended by inserting after the item relating to sec-  
10 tion 7526 the following new item:

“Sec. 7526A. Volunteer income tax assistance programs.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect on the date of the enactment  
13 of this Act.

14 **SEC. 8. EITC OUTREACH.**

15 (a) IN GENERAL.—Section 32 (relating to earned in-  
16 come) is amended by adding at the end the following new  
17 subsection:

18 “(n) NOTIFICATION OF POTENTIAL ELIGIBILITY FOR  
19 CREDIT AND REFUND.—

20 “(1) IN GENERAL.—To the extent possible and  
21 on an annual basis, the Secretary shall provide to  
22 each taxpayer who—

23 “(A) for any preceding taxable year for  
24 which credit or refund is not precluded by sec-  
25 tion 6511, and



1 practices of such person involve refund anticipa-  
2 tion loans and related charges and fees that are  
3 predatory.

4 “(B) REFUND ANTICIPATION LOAN.—For  
5 purposes of this paragraph, the term ‘refund  
6 anticipation loan’ means a loan of money or of  
7 any other thing of value to a taxpayer secured  
8 by the taxpayer’s anticipated receipt of a Fed-  
9 eral tax refund.

10 “(C) IRS DEBT INDICATOR.—For purposes  
11 of this paragraph, the term ‘debt indicator’  
12 means a notification provided through a tax re-  
13 turn’s acknowledgment file that a refund will be  
14 offset to repay debts for delinquent Federal or  
15 State taxes, student loans, child support, or  
16 other Federal agency debt.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall take effect on the date of the enactment  
19 of this Act.

20 **SEC. 10. STUDY ON DELIVERY OF TAX REFUNDS.**

21 (a) IN GENERAL.—The Secretary of the Treasury, in  
22 consultation with the National Taxpayer Advocate, shall  
23 conduct a study on the feasibility of delivering tax refunds  
24 on debit cards, prepaid cards, and other electronic means

1 to assist individuals that do not have access to financial  
2 accounts or institutions.

3 (b) REPORT.—Not later than 1 year after the date  
4 of the enactment of this Act, the Secretary of the Treasury  
5 shall submit a report to Congress containing the results  
6 of the study conducted under subsection (a).

7 **SEC. 11. EXTENSION OF TIME FOR RETURN OF PROPERTY**  
8 **FOR WRONGFUL LEVY.**

9 (a) EXTENSION OF TIME FOR RETURN OF PROPERTY  
10 SUBJECT TO LEVY.—Subsection (b) of section 6343 (re-  
11 lating to return of property) is amended by striking “9  
12 months” and inserting “2 years”.

13 (b) PERIOD OF LIMITATION ON SUITS.—Subsection  
14 (c) of section 6532 (relating to suits by persons other than  
15 taxpayers) is amended—

16 (1) in paragraph (1) by striking “9 months”  
17 and inserting “2 years”, and

18 (2) in paragraph (2) by striking “9-month” and  
19 inserting “2-year”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to—

22 (1) levies made after the date of the enactment  
23 of this Act, and

24 (2) levies made on or before such date if the 9-  
25 month period has not expired under section 6343(b)

1 of the Internal Revenue Code of 1986 (without re-  
2 gard to this section) as of such date.

3 **SEC. 12. INDIVIDUALS HELD HARMLESS ON WRONGFUL**  
4 **LEVY, ETC., ON INDIVIDUAL RETIREMENT**  
5 **PLAN.**

6 (a) IN GENERAL.—Section 6343 (relating to author-  
7 ity to release levy and return property) is amended by add-  
8 ing at the end the following new subsection:

9 “(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL  
10 LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

11 “(1) IN GENERAL.—If the Secretary determines  
12 that an individual retirement plan has been levied  
13 upon in a case to which subsection (b) or (d)(2)(A)  
14 applies, an amount equal to the sum of—

15 “(A) the amount of money returned by the  
16 Secretary on account of such levy, and

17 “(B) interest paid under subsection (c) on  
18 such amount of money,

19 may be deposited into such individual retirement  
20 plan or any other individual retirement plan (other  
21 than an endowment contract) to which a rollover  
22 from the plan levied upon is permitted. An amount  
23 may not be deposited into a Roth IRA under the  
24 preceding sentence unless the individual retirement

1 plan levied upon was a Roth IRA at the time of such  
2 levy.

3 “(2) TREATMENT AS ROLLOVER.—If amounts  
4 are deposited into an individual retirement plan  
5 under paragraph (1) not later than the 60th day  
6 after the date on which the individual receives the  
7 amounts under paragraph (1)—

8 “(A) such deposit shall be treated as a  
9 rollover described in section 408(d)(3)(A)(i),

10 “(B) to the extent the deposit includes in-  
11 terest paid under subsection (c), such interest  
12 shall not be includible in gross income, and

13 “(C) such deposit shall not be taken into  
14 account under section 408(d)(3)(B).

15 For purposes of subparagraph (B), an amount shall  
16 be treated as interest only to the extent that the  
17 amount deposited exceeds the amount of the levy.

18 “(3) REFUND, ETC., OF INCOME TAX ON  
19 LEVY.—If any amount is includible in gross income  
20 for a taxable year by reason of a levy referred to in  
21 paragraph (1) and any portion of such amount is  
22 treated as a rollover under paragraph (2), any tax  
23 imposed by chapter 1 on such portion shall not be  
24 assessed, and if assessed shall be abated, and if col-  
25 lected shall be credited or refunded as an overpay-

1 ment made on the due date for filing the return of  
2 tax for such taxable year.

3 “(4) INTEREST.—Notwithstanding subsection  
4 (d), interest shall be allowed under subsection (c) in  
5 a case in which the Secretary makes a determination  
6 described in subsection (d)(2)(A) with respect to a  
7 levy upon an individual retirement plan.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to amounts paid under subsections  
10 (b), (c), and (d)(2)(A) of section 6343 of the Internal Rev-  
11 enue Code of 1986 after the date of the enactment of this  
12 Act.

13 **SEC. 13. TAXPAYER NOTIFICATION OF SUSPECTED IDEN-**  
14 **TITY THEFT.**

15 (a) IN GENERAL.—Chapter 77 (relating to miscella-  
16 neous provisions) is amended by adding at the end the  
17 following new section:

18 **“SEC. 7529. NOTIFICATION OF SUSPECTED IDENTITY**  
19 **THEFT.**

20 “If, in the course of an investigation under the inter-  
21 nal revenue laws, the Secretary determines that there was  
22 or may have been an unauthorized use of the identity of  
23 the taxpayer or a dependent of the taxpayer, the Secretary  
24 shall, to the extent permitted by law—



1           (4) The table of sections for subchapter A of  
2 chapter 64 is amended by striking the item relating  
3 to section 6306.

4           (5) The table of sections for subchapter B of  
5 chapter 76 is amended by striking the item relating  
6 to section 7433A.

7           (c) EFFECTIVE DATE.—

8           (1) IN GENERAL.—Except as otherwise pro-  
9 vided in this subsection, the amendments made by  
10 this section shall take effect on the date of the en-  
11 actment of this Act.

12           (2) EXCEPTION FOR EXISTING CONTRACTS,  
13 ETC.—The amendments made by this section shall  
14 not apply to any contract which was entered into be-  
15 fore March 1, 2008, and is not renewed or extended  
16 on or after such date.

17           (3) UNAUTHORIZED CONTRACTS AND EXTEN-  
18 SIONS TREATED AS VOID.—Any qualified tax collec-  
19 tion contract (as defined in section 6306 of the In-  
20 ternal Revenue Code of 1986, as in effect before its  
21 repeal) which is entered into on or after March 1,  
22 2008, and any extension or renewal on or after such  
23 date of any qualified tax collection contract (as so  
24 defined), shall be void.

1 **SEC. 15. CLARIFICATION OF IRS UNCLAIMED REFUND AU-**  
2 **THORITY.**

3 Paragraph (1) of section 6103(m) (relating to tax re-  
4 funds) is amended by inserting “, and through any other  
5 means of mass communication,” after “media”.

6 **SEC. 16. PROHIBITION ON MISUSE OF DEPARTMENT OF**  
7 **THE TREASURY NAMES AND SYMBOLS.**

8 (a) IN GENERAL.—Subsection (a) of section 333 of  
9 title 31, United States Code, is amended by inserting  
10 “Internet domain address,” after “solicitation,” both  
11 places it appears.

12 (b) PENALTY FOR MISUSE BY ELECTRONIC  
13 MEANS.—Subsections (c)(2) and (d)(1) of section 333 of  
14 such Code are each amended by inserting “or any other  
15 mass communications by electronic means,” after “tele-  
16 cast,”.

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply with respect to violations occurring  
19 after the date of the enactment of this Act.

20 **SEC. 17. SUBSTANTIATION OF AMOUNTS PAID OR DISTRIB-**  
21 **UTED OUT OF HEALTH SAVINGS ACCOUNT.**

22 (a) IN GENERAL.—Paragraph (1) of section 223(f)  
23 (relating to amounts used for qualified medical expenses)  
24 is amended by inserting “(and, in the case of amounts  
25 paid or distributed after December 31, 2010, substan-  
26 tiated in a manner similar to the substantiation required

1 for flexible spending arrangements as related to account  
2 beneficiary substantiation requirements)” after “account  
3 beneficiary”.

4 (b) REPORTS.—Subsection (h) of section 223 (relat-  
5 ing to reports) is amended—

6 (1) by redesignating paragraphs (1) and (2) as  
7 subparagraphs (A) and (B), respectively,

8 (2) by moving the text of subparagraphs (A)  
9 and (B) (as so redesignated) and the last sentence  
10 2 ems to the right,

11 (3) by striking “(h) REPORTS.—The Secretary  
12 may require—” and inserting the following:

13 “(h) REPORTS.—

14 “(1) IN GENERAL.—The Secretary may re-  
15 quire—”, and

16 (4) by adding at the end the following new  
17 paragraph:

18 “(2) RELATING TO SUBSTANTIATION.—Not  
19 later than January 15 of each calendar year after  
20 2011, the trustee of a health savings account shall  
21 make a report regarding such account to the Sec-  
22 retary and the account beneficiary setting forth—

23 “(A) the name, address, and identifying  
24 number of the account beneficiary, and

1           “(B) the amount paid or distributed out of  
2           such account for the preceding calendar year  
3           not substantiated in accordance with subsection  
4           (f)(1).”.

5           (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply with respect to amounts paid or  
7 distributed out of health savings accounts after December  
8 31, 2010.

9 **SEC. 18. CERTAIN DOMESTICALLY CONTROLLED FOREIGN**  
10 **PERSONS PERFORMING SERVICES UNDER**  
11 **CONTRACT WITH UNITED STATES GOVERN-**  
12 **MENT TREATED AS AMERICAN EMPLOYERS.**

13           (a) FICA TAXES.—Section 3121 (relating to defini-  
14 tions) is amended by adding at the end the following new  
15 subsection:

16           “(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS  
17 AMERICAN EMPLOYERS.—

18           “(1) IN GENERAL.—If any employee of a for-  
19 eign person is performing services in connection with  
20 a contract between the United States Government  
21 (or any instrumentality thereof) and any member of  
22 any domestically controlled group of entities which  
23 includes such foreign person, such foreign person  
24 shall be treated for purposes of this chapter as an

1 American employer with respect to such services per-  
2 formed by such employee.

3 “(2) DOMESTICALLY CONTROLLED GROUP OF  
4 ENTITIES.—For purposes of this subsection—

5 “(A) IN GENERAL.—The term ‘domesti-  
6 cally controlled group of entities’ means a con-  
7 trolled group of entities the common parent of  
8 which is a domestic corporation.

9 “(B) CONTROLLED GROUP OF ENTITIES.—  
10 The term ‘controlled group of entities’ means a  
11 controlled group of corporations as defined in  
12 section 1563(a)(1), except that—

13 “(i) ‘more than 50 percent’ shall be  
14 substituted for ‘at least 80 percent’ each  
15 place it appears therein, and

16 “(ii) the determination shall be made  
17 without regard to subsections (a)(4) and  
18 (b)(2) of section 1563.

19 A partnership or any other entity (other than a  
20 corporation) shall be treated as a member of a  
21 controlled group of entities if such entity is con-  
22 trolled (within the meaning of section  
23 954(d)(3)) by members of such group (includ-  
24 ing any entity treated as a member of such  
25 group by reason of this sentence).

1           “(3) LIABILITY OF COMMON PARENT.—In the  
2 case of a foreign person who is a member of any do-  
3 mestically controlled group of entities, the common  
4 parent of such group shall be jointly and severally  
5 liable for any tax under this chapter for which such  
6 foreign person is liable by reason of this subsection,  
7 and for any penalty imposed on such person by this  
8 title with respect to any failure to pay such tax or  
9 to file any return or statement with respect to such  
10 tax or wages subject to such tax. No deduction shall  
11 be allowed under this title for any liability imposed  
12 by the preceding sentence.

13           “(4) COORDINATION.—Paragraph (1) shall not  
14 apply to any services which are covered by an agree-  
15 ment under subsection (l).

16           “(5) CROSS REFERENCE.—For relief from taxes  
17 in cases covered by certain international agreements,  
18 see sections 3101(c) and 3111(c).”.

19           (b) SOCIAL SECURITY BENEFITS.—Subsection (e) of  
20 section 210 of the Social Security Act (42 U.S.C. 410(e))  
21 is amended—

22           (1) by striking “(e) The term” and inserting  
23 “(e)(1) The term”,

24           (2) by redesignating clauses (1) through (6) as  
25 clauses (A) through (F), respectively, and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(2)(A) If any employee of a foreign person is per-  
4 forming services in connection with a contract between the  
5 United States Government (or any instrumentality there-  
6 of) and any member of any domestically controlled group  
7 of entities which includes such foreign person, such foreign  
8 person shall be treated as an American employer with re-  
9 spect to such services performed by such employee.

10          “(B) For purposes of this paragraph—

11           “(i) The term ‘domestically controlled group of  
12 entities’ means a controlled group of entities the  
13 common parent of which is a domestic corporation.

14           “(ii) The term ‘controlled group of entities’  
15 means a controlled group of corporations as defined  
16 in section 1563(a)(1) of the Internal Revenue Code  
17 of 1986, except that—

18           “(I) ‘more than 50 percent’ shall be sub-  
19 stituted for ‘at least 80 percent’ each place it  
20 appears therein, and

21           “(II) the determination shall be made  
22 without regard to subsections (a)(4) and (b)(2)  
23 of section 1563 of such Code.

24          A partnership or any other entity (other than a cor-  
25 poration) shall be treated as a member of a con-

1 trolled group of entities if such entity is controlled  
2 (within the meaning of section 954(d)(3) of such  
3 Code) by members of such group (including any en-  
4 tity treated as a member of such group by reason of  
5 this sentence).”.

6 (c) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to services performed after the  
8 date of the enactment of this Act.

9 **SEC. 19. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
10 **TAX.**

11 The percentage under subparagraph (C) of section  
12 401(1) of the Tax Increase Prevention and Reconciliation  
13 Act of 2005 in effect on the date of the enactment of this  
14 Act is increased by 0.25 percentage points.

15 **SEC. 20 GAO STUDY ON HEALTH SAVINGS ACCOUNTS.**

16 (a) IN GENERAL.—The Comptroller General of the  
17 United States shall conduct a study of the use of distribu-  
18 tions from health savings accounts.

19 (b) SUBMISSION OF REPORT.—Not later than 1 year  
20 after the date of the enactment of this Act, the Comp-  
21 troller General shall submit a report on the findings of  
22 the study conducted under subsection (a) and shall include  
23 therein recommendations (if any) relating to such find-  
24 ings. The report shall be submitted to the Committee on

- 1 Ways and Means of the House of Representatives and the
- 2 Committee on Finance of the Senate.

Passed the House of Representatives April 15, 2008.

Attest:

*Clerk.*



110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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# H. R. 5719

## AN ACT

To amend the Internal Revenue Code of 1986 to conform return preparer penalty standards, delay implementation of withholding taxes on government contractors, enhance taxpayer protections, assist low-income taxpayers, and for other purposes.