

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

# H. R. 5537

To amend the Internal Revenue Code of 1986 to clarify the treatment of emergency service volunteers as independent contractors.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2010

Mr. WU 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 clarify the treatment of emergency service volunteers as independent contractors.

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 “Volunteer Firefighter  
5       Fairness Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds that—

8               (1) the number of volunteer firefighters in the  
9       United States has decreased from 880,000 in 1984

1 to 827,150 in 2008 according to the National Fire  
2 Protection Association;

3 (2) according to the National Fire Protection  
4 Association, volunteers comprise 72 percent of our  
5 Nation's fire and emergency service;

6 (3) the fire service is witnessing a reduced  
7 number of volunteers due to increasing emergency  
8 call volumes, the large time demands that accom-  
9 pany ongoing training, and the struggle to balance  
10 the career and family obligations of today's two-in-  
11 come families;

12 (4) to help recruit and retain volunteer fire-  
13 fighters, some State and local governments may  
14 offer paid expenses, reasonable benefits, a nominal  
15 payment, or any combination thereof;

16 (5) historically, fire departments used the Inter-  
17 nal Revenue Service's (IRS) Form 1099 to report  
18 these reasonable benefits and nominal payments for  
19 their volunteers;

20 (6) increasingly, many volunteer fire depart-  
21 ments are being instructed by local offices of the  
22 IRS that they must use the Form W-2 to report  
23 these nominal payments and reasonable benefits, in-  
24 stead of the Form 1099;

1           (7) the use of IRS Form 1099 for volunteer  
2 firefighters has been the long-standing practice of  
3 many volunteer fire departments because it accu-  
4 rately reflects the relationship between the volunteer  
5 firefighter and the volunteer fire department;

6           (8) by requiring the use of W-2 forms, the IRS  
7 is putting an onerous burden on fire departments  
8 and redefining the treatment of volunteer fire-  
9 fighters by Federal, State, and local regulations;

10          (9) because of this reason, IRS Form W-2s  
11 may greatly alter the historic role of volunteer re-  
12 sponders and the cost-saving benefits that they pro-  
13 vide to their local communities;

14          (10) a volunteer firefighter performing specific  
15 duties should not be considered as an employee, and  
16 the fire department for whom such services are per-  
17 formed should not be considered as an employer of  
18 their services; and

19          (11) fire departments should be allowed to fol-  
20 low their historic practice of issuing Form 1099s to  
21 their volunteers.

22 **SEC. 3. TREATMENT OF EMERGENCY SERVICE VOLUN-**  
23 **TEERS AS INDEPENDENT CONTRACTORS.**

24          (a) IN GENERAL.—Subsection (a) of section 3508 of  
25 the Internal Revenue Code of 1986 (relating to treatment

1 of real estate agents and direct sellers) is amended by  
 2 striking “or as a direct seller” and inserting “, as a direct  
 3 seller, or as a qualified emergency service volunteer”.

4 (b) QUALIFIED EMERGENCY SERVICE VOLUN-  
 5 TEER.—Subsection (b) of section 3508 of such Code is  
 6 amended by redesignating paragraph (3) as paragraph (4)  
 7 and by inserting after paragraph (2) the following new  
 8 paragraph:

9 “(3) QUALIFIED EMERGENCY SERVICE VOLUN-  
 10 TEER.—

11 “(A) IN GENERAL.—The term ‘qualified  
 12 emergency service volunteer’ means any bona  
 13 fide volunteer performing qualified services for  
 14 an eligible employer.

15 “(B) DEFINITIONS.—Terms used in sub-  
 16 paragraph (A) shall have the respective mean-  
 17 ings given such terms by paragraphs (1) and  
 18 (11)(B) and (C) of section 457(e).”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) The section heading for section 3508 of  
 21 such Code is amended by striking “**AND DIRECT**  
 22 **SELLERS**” and inserting “, **DIRECT SELLERS,**  
 23 **AND CERTAIN EMERGENCY SERVICE VOLUN-**  
 24 **TEERS**”.

1           (2) The item relating to section 3508 in the  
2 table of sections for chapter 25 of such Code is  
3 amended by striking “and direct sellers” and insert-  
4 ing “, direct sellers, and certain emergency service  
5 volunteers”.

6           (d) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to services performed after Decem-  
8 ber 31, 2010.

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