

115TH CONGRESS
1ST SESSION

H. R. 3396

To amend the Internal Revenue Code of 1986 to change the classification of employers and employees for services providers.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2017

Mr. PAULSEN 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 change the classification of employers and employees for services providers.

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. DETERMINATION OF WORKER CLASSIFICA-**
4 **TION.**

5 (a) IN GENERAL.—Chapter 79 of the Internal Rev-
6 enue code of 1986 is amended by adding at the end the
7 following new section:

8 **“SEC. 7706. DETERMINATION OF WORKER CLASSIFICATION.**

9 “(a) IN GENERAL.—For purposes of this title (and
10 notwithstanding any provision of this title not contained

1 in this section to the contrary), if the requirements of sub-
2 sections (b), (c), and (d) are met with respect to any serv-
3 ice performed by a service provider, then with respect to
4 such service—

5 “(1) the service provider shall not be treated as
6 an employee,

7 “(2) the service recipient shall not be treated as
8 an employer,

9 “(3) any payor shall not be treated as an em-
10 ployer, and

11 “(4) the compensation paid or received for such
12 service shall not be treated as paid or received with
13 respect to employment.

14 “(b) GENERAL SERVICE PROVIDER REQUIRE-
15 MENTS.—

16 “(1) IN GENERAL.—The requirements of this
17 subsection are met with respect to any service if the
18 service provider either—

19 “(A) meets the requirements of paragraph
20 (2) with respect to such service, or

21 “(B) in the case a service provider engaged
22 in the trade or business of selling (or soliciting
23 the sale of) goods or services, meets the re-
24 quirements of paragraph (3) with respect to
25 such service.

1 “(2) GENERAL REQUIREMENTS.—The require-
2 ments of this paragraph are met with respect to any
3 service if the service provider, in connection with
4 performing the service—

5 “(A) either—

6 “(i) incurs significant unreimbursed
7 expenses as it relates to total expense, or

8 “(ii) risks income fluctuations because
9 remuneration with respect to such service
10 is not related to the expenses incurred,

11 “(B) agrees to perform the service for a
12 particular amount of time, to achieve a specific
13 result, or to complete a specific task, and

14 “(C) at least one of the following:

15 “(i) has an significant unreimbursed
16 expenses as it relates to total expense in
17 assets or training,

18 “(ii) is not required to perform serv-
19 ices exclusively for the service recipient, or

20 “(iii) has not performed services for
21 the service recipient as an employee during
22 the 1-year period ending with the date of
23 the commencement of services under the
24 contract described in subsection (d).

1 “(3) ALTERNATIVE REQUIREMENTS WITH RE-
2 SPECT TO SALES PERSONS.—In the case of a service
3 provider engaged in the trade or business of selling
4 (or soliciting the sale of) goods or services, the re-
5 quirements of this paragraph are met with respect
6 to any service if—

7 “(A) the service provider is compensated
8 primarily on a commission basis, and

9 “(B) substantially all the compensation for
10 such service is directly related to sales of goods
11 or services rather than to the number of hours
12 worked to a certain level or limit of highly com-
13 pensated individuals.

14 “(c) PLACE OF BUSINESS OR OWN EQUIPMENT RE-
15 QUIREMENT.—The requirement of this subsection is met
16 with respect to any service if the service provider—

17 “(1) has a principal place of business, which
18 can be home or mobile-based, or,

19 “(2) provides the service primarily using equip-
20 ment for which the service provider bears the ulti-
21 mate financial responsibility.

22 “(d) WRITTEN CONTRACT REQUIREMENT.—The re-
23 quirements of this subsection are met with respect to any
24 service if such service is performed pursuant to a written

1 contract between the service provider and the service re-
2 cipient (or payor) which meets the following requirements:

3 “(1) The contract includes each of the fol-
4 lowing:

5 “(A) The service provider’s name and ad-
6 dress.

7 “(B) A statement that the service provider
8 will not be treated as an employee with respect
9 to the services provided pursuant to the con-
10 tract for purposes of this title.

11 “(C) A statement that the service recipient
12 (or the payor) will report to the Internal Rev-
13 enue Service the compensation payable pursu-
14 ant to the contract consistent with the require-
15 ments of this title.

16 “(D) A statement that the service provider
17 is responsible for payment of Federal, State,
18 and local taxes, including self-employment
19 taxes, on compensation payable pursuant to the
20 contract.

21 “(E) A statement that the contract is in-
22 tended to be considered a contract described in
23 this subsection.

24 “(2) The term of the contract does not exceed
25 1 year. The preceding sentence shall not prevent one

1 or more subsequent written renewals of the contract
2 from satisfying the requirements of this subsection
3 if the term of each such renewal does not exceed 1
4 year and if the information required under para-
5 graph (1)(A) is updated as needed in connection
6 with each such renewal.

7 “(3) The contract (or renewal) is signed by
8 both the service recipient (or payor) and the service
9 provider not later than the date on which the aggre-
10 gate payments made by the service recipient to the
11 service provider exceeds \$600 for the year covered
12 by the contract (or renewal).

13 “(e) REPORTING REQUIREMENTS.—If any service re-
14 cipient or payor fails to meet the applicable reporting re-
15 quirements of section 6041(a) or 6041A(a) for any taxable
16 year with respect to any service provider, this section shall
17 not apply for purposes of making any determination with
18 respect to the liability of such service recipient or payor
19 for any tax with respect to such service provider for such
20 period. For purposes of the preceding sentence, such re-
21 porting requirements shall be treated as met if the failure
22 to satisfy such requirements is due to reasonable cause
23 and not willful neglect.

24 “(f) EXCEPTION FOR SERVICES PROVIDED BY
25 OWNER.—This section shall not apply with respect to any

1 service provided by a service provider to a service recipient
2 if the service provider owns any interest in the service re-
3 cipient or any payor with respect to the service provided.
4 The preceding sentence shall not apply in the case of a
5 service recipient the stock of which is regularly traded on
6 an established securities market.

7 “(g) LIMITATION ON RECLASSIFICATION BY SEC-
8 RETARY.—For purposes of this title—

9 “(1) EFFECT OF RECLASSIFICATION ON SERV-
10 ICE RECIPIENTS AND PAYORS.—A determination by
11 the Secretary that a service recipient or a payor
12 should have treated a service provider as an em-
13 ployee shall be effective with respect to the service
14 recipient or payor no earlier than the notice date
15 if—

16 “(A) the service recipient or the payor en-
17 tered into a written contract with the service
18 provider which meets the requirements of sub-
19 section (d),

20 “(B) the service recipient or the payor sat-
21 isfied the applicable reporting requirements of
22 section (a) or 6041A(a) for all relevant taxable
23 years with respect to the service provider, and

24 “(C) the service recipient or the payor
25 demonstrates a reasonable basis for having de-

1 terminated that the service provider should not be
2 treated as an employee under this section and
3 that such determination was made in good
4 faith.

5 “(2) BURDEN OF PROOF.—

6 “(A) IN GENERAL.—If—

7 “(i) a taxpayer establishes a prima
8 facie case that it was reasonable not to
9 treat an individual as an employee for pur-
10 poses of this section, and

11 “(ii) the taxpayer has fully cooperated
12 with reasonable requests from the Sec-
13 retary of the Treasury or his delegate,

14 then the burden of proof with respect to such
15 treatment shall be on the Secretary.

16 “(B) EXCEPTION FOR OTHER REASONABLE
17 BASIS.—In the case of any issue involving
18 whether the taxpayer had a reasonable basis
19 not to treat an individual as an employee for
20 purposes of this section, subparagraph (A) shall
21 only apply for purposes of determining whether
22 the taxpayer meets the requirements of sub-
23 paragraph (A), (B), or (C) of subsection (a)(2).

24 “(3) EFFECT OF RECLASSIFICATION ON SERV-
25 ICE PROVIDERS.—A determination by the Secretary

1 that a service provider should have been treated as
2 an employee shall be effective with respect to the
3 service provider no earlier than the notice date if—

4 “(A) the service provider entered into a
5 written contract with the service recipient or
6 payor which meets the requirements of sub-
7 section (d),

8 “(B) the service recipient or payor satis-
9 fied the applicable reporting requirements of
10 sections 6012(a) and 6017 for all relevant tax-
11 able years with respect to the service provider,
12 or

13 “(C) the service recipient demonstrates a
14 basis for determining that the service provider
15 is not an employee under this section and that
16 such determination was made in good faith.

17 “(4) NOTICE DATE.—For purposes of this sub-
18 section, the term ‘notice date’ means the 30th day
19 after the earliest of—

20 “(A) the date on which the first letter of
21 proposed deficiency which allows the service
22 provider, the service recipient, or the payor an
23 opportunity for administrative review in the In-
24 ternal Revenue Service Office of Appeals is
25 sent,

1 “(B) the date on which a deficiency notice
2 under section 6212 is sent, or

3 “(C) the date on which a notice of deter-
4 mination under section 7436(b)(2) is sent.

5 “(5) NO RESTRICTION ON ADMINISTRATIVE OR
6 JUDICIAL REVIEW.—Nothing in this subsection shall
7 be construed as limiting any provision of law which
8 provides an opportunity for administrative or judi-
9 cial review of a determination by the Secretary.

10 “(h) DEFINITIONS.—For purposes of this section—

11 “(1) SERVICE PROVIDER.—

12 “(A) IN GENERAL.—The term ‘service pro-
13 vider’ means any qualified person who performs
14 service for another qualified person.

15 “(B) QUALIFIED PERSON.—The term
16 ‘qualified person’ means—

17 “(i) any natural person, or

18 “(ii) any entity.

19 “(2) SERVICE RECIPIENT.—The term ‘service
20 recipient’ means the person or entity for whom the
21 service provider performs such Service pursuant to a
22 written contract.

23 “(3) PAYOR.—The term ‘payor’ means any per-
24 son or entity who pays the service provider for per-
25 forming such service.

1 “(i) REGULATIONS.—Notwithstanding section 530(d)
2 of the Revenue Act of 1978, the Secretary may issue regu-
3 lations only to the extent that the Secretary determines
4 are necessary to carry out the provisions of this section.

5 “(j) RULE OF CONSTRUCTION.—No provision of this
6 section may be construed to expand the circumstances
7 under which a service provider may be treated as an em-
8 ployee or a service recipient may be treated as an em-
9 ployer.

10 “(k) APPLICATION IN ORDINARY COURSE OF TRADE
11 OR BUSINESS.—This section shall apply regardless of
12 whether such service is performed in the ordinary or re-
13 lated course of a trade or business of the service recipi-
14 ent.”.

15 (b) REPORTING.—Section 6041A of such Code is
16 amended by adding at the end the following new sub-
17 section:

18 “(g) SPECIAL RULES FOR CERTAIN PERSONS CLAS-
19 SIFIED AS NOT EMPLOYEES.—In the case of any service
20 recipient required to make a return under subsection (a)
21 with respect to compensation to which section 7706(a) ap-
22 plies—

23 “(1) such return shall include—

1 “(A) the aggregate amount of such com-
2 pensation paid to each person or entity whose
3 name is required to be included on such return,

4 “(B) the aggregate amount deducted and
5 withheld under section 3402(s) with respect to
6 such compensation, and

7 “(C) an indication of whether a copy of the
8 contract described in section 7706(d) is on file
9 with the service recipient or payor, and

10 “(2) the statement required to be furnished
11 under subsection (e) shall include the information
12 described in paragraph (1) with respect to the serv-
13 ice provider to whom such statement is furnished.

14 Terms used in this subsection which are also used in sec-
15 tion 7706 shall have the same meaning as when used in
16 such section.”.

17 (c) CLERICAL AMENDMENT.—The table of sections
18 for chapter 79 of such Code is amended by adding at the
19 end the following new item:

 “Sec. 7706. Determination of worker classification.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to services performed after Decem-
22 ber 31, 2016.

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