

116TH CONGRESS
1ST SESSION

S. 700

To amend the Internal Revenue Code of 1986 to provide a safe harbor for determinations of worker classification, to require increased reporting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2019

Mr. THUNE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a safe harbor for determinations of worker classification, to require increased reporting, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “New Economy Works
5 to Guarantee Independence and Growth Act of 2019” or
6 the “NEW GIG Act of 2019”.

1 **SEC. 2. DETERMINATION OF WORKER CLASSIFICATION.**

2 (a) IN GENERAL.—Chapter 79 of the Internal Rev-
 3 enue Code of 1986 is amended by adding at the end the
 4 following new section:

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

6 “(a) IN GENERAL.—For purposes of this title (and
 7 notwithstanding any provision of this title not contained
 8 in this section to the contrary), if the requirements of sub-
 9 sections (b), (c), and (d) are met with respect to any serv-
 10 ice performed by a service provider, then with respect to
 11 such service—

12 “(1) the service provider shall not be treated as
 13 an employee,

14 “(2) the service recipient shall not be treated as
 15 an employer,

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

18 “(4) the compensation paid or received for such
 19 service shall not be treated as paid or received with
 20 respect to employment.

21 “(b) GENERAL SERVICE PROVIDER REQUIRE-
 22 MENTS.—

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

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

3 “(B) in the case of a service provider en-
4 gaged in the trade or business of selling (or so-
5 liciting the sale of) goods or services, meets the
6 requirements of paragraph (3) with respect to
7 such service.

8 “(2) GENERAL REQUIREMENTS.—

9 “(A) IN GENERAL.—The requirements of
10 this paragraph are met with respect to any
11 service if the service provider, in connection
12 with performing the service—

13 “(i) incurs expenses—

14 “(I) which are deductible under
15 section 162, and

16 “(II) a significant portion of
17 which are not reimbursed,

18 “(ii) agrees to perform the service for
19 a particular amount of time, to achieve a
20 specific result, or to complete a specific
21 task, and

22 “(iii) satisfies not less than one of the
23 factors described in subparagraph (B).

24 “(B) FACTORS.—The factors described in
25 this subparagraph are the following:

1 “(i) The service provider has a signifi-
2 cant investment in assets or training which
3 are applicable to the service performed.

4 “(ii) The service provider is not re-
5 quired to perform services exclusively for
6 the service recipient or payor.

7 “(iii) The service provider has not
8 been treated as an employee by the service
9 recipient or payor for substantially the
10 same services during the 1-year period
11 ending with the date of the commencement
12 of services under the contract described in
13 subsection (d).

14 “(iv) The service provider is not com-
15 pensated on a basis which is tied primarily
16 to the number of hours actually worked.

17 “(3) ALTERNATIVE REQUIREMENTS WITH RE-
18 SPECT TO SALES PERSONS.—In the case of a service
19 provider engaged in the trade or business of selling
20 (or soliciting the sale of) goods or services, the re-
21 quirements of this paragraph are met with respect
22 to any service provided in the ordinary course of
23 such trade or business if—

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

1 “(B) substantially all the compensation for
2 such service is directly related to sales of goods
3 or services rather than to the number of hours
4 worked.

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

8 “(1) has a principal place of business,

9 “(2) does not provide the service primarily in
10 the service recipient’s place of business,

11 “(3) pays a fair market rent for use of the serv-
12 ice recipient’s or payor’s place of business, or

13 “(4) provides the service primarily using equip-
14 ment supplied by the service provider.

15 “(d) WRITTEN CONTRACT REQUIREMENT.—The re-
16 quirements of this subsection are met with respect to any
17 service if such service is performed pursuant to a written
18 contract between the service provider and the service re-
19 cipient or payor, whichever is applicable, which meets the
20 following requirements:

21 “(1) The contract includes each of the fol-
22 lowing:

23 “(A) The service provider’s name, taxpayer
24 identification number, and address.

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

5 “(C) A statement that the service recipient
6 or payor will withhold upon and report to the
7 Internal Revenue Service the compensation pay-
8 able pursuant to the contract consistent with
9 the requirements of this title.

10 “(D) A statement that the service provider
11 is responsible for payment of Federal, State,
12 and local taxes, including self-employment
13 taxes, on compensation payable pursuant to the
14 contract.

15 “(E) A statement that the contract is in-
16 tended to be considered a contract described in
17 this subsection.

18 The contract shall not fail to meet the requirements
19 of this paragraph merely because the information
20 described in subparagraph (A) is collected at the
21 time payment is made for the services and not in ad-
22 vance, or because the contract provides that an
23 agent of the service recipient or payor will fulfill any
24 of the responsibilities of the service recipient or
25 payor described in the preceding subparagraphs.

1 “(2) The term of the contract does not exceed
2 2 years. The preceding sentence shall not prevent
3 one or more subsequent written renewals of the con-
4 tract from satisfying the requirements of this sub-
5 section if the term of each such renewal does not ex-
6 ceed 2 years and if the information required under
7 paragraph (1)(A) is updated in connection with each
8 such renewal.

9 “(3) The contract (or renewal) is signed (which
10 may include signatures in electronic form) by the
11 service recipient or payor and the service provider
12 not later than the date on which the aggregate pay-
13 ments made by the service recipient or payor to the
14 service provider exceeds \$1,000 for the year covered
15 by the contract (or renewal).

16 “(e) REPORTING REQUIREMENTS.—

17 “(1) IN GENERAL.—For purposes of making
18 any determination with respect to the liability of a
19 service recipient or payor for any tax during any
20 taxable year with respect to a service provider, the
21 application of this section shall be conditioned on ei-
22 ther the service recipient or the payor satisfying the
23 reporting requirements applicable to such service re-
24 cipient or payor under section 6041(a), 6041A(a), or

1 6050W with respect to such service provider for
2 such period.

3 “(2) REASONABLE CAUSE.—For purposes of
4 paragraph (1), such reporting requirements shall be
5 treated as met if the failure to satisfy such require-
6 ments is due to reasonable cause and not willful ne-
7 glect.

8 “(f) EXCEPTION FOR SERVICES PROVIDED BY
9 OWNER.—This section shall not apply with respect to any
10 service provided by a service provider to a service recipient
11 or payor if the service provider owns any interest in the
12 service recipient or the payor with respect to the service
13 provided. The preceding sentence shall not apply in the
14 case of a service recipient or payor the stock of which is
15 regularly traded on an established securities market.

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

18 “(1) EFFECT OF RECLASSIFICATION ON SERV-
19 ICE RECIPIENTS AND PAYORS.—A determination by
20 the Secretary that a service recipient or a payor
21 should have treated a service provider as an em-
22 ployee shall be effective with respect to the service
23 recipient or payor no earlier than the notice date
24 if—

1 “(A) the service recipient or the payor en-
2 tered into a written contract with the service
3 provider which meets the requirements of sub-
4 section (d),

5 “(B) the service recipient or the payor sat-
6 isfied the applicable reporting requirements of
7 section 6041(a), 6041A(a), or 6050W for all
8 relevant taxable years with respect to the serv-
9 ice provider,

10 “(C) the service recipient or the payor col-
11 lected and paid over all applicable taxes im-
12 posed under subtitle C for all relevant taxable
13 years with respect to the service provider, and

14 “(D) the service recipient or the payor
15 demonstrates a reasonable basis for having de-
16 termined that the service provider should not be
17 treated as an employee under this section and
18 that such determination was made in good
19 faith.

20 “(2) EFFECT OF RECLASSIFICATION ON SERV-
21 ICE PROVIDERS.—A determination by the Secretary
22 that a service provider should have been treated as
23 an employee shall be effective with respect to the
24 service provider no earlier than the notice date if—

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

5 “(B) the service provider satisfied the ap-
6 plicable reporting requirements of sections
7 6012(a) and 6017 for all relevant taxable years
8 with respect to the service recipient or the
9 payor, and

10 “(C) the service provider demonstrates a
11 reasonable basis for determining that the serv-
12 ice provider is not an employee under this sec-
13 tion and that such determination was made in
14 good faith.

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

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

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

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

3 “(4) REASONABLE CAUSE EXCEPTION.—The re-
4 quirements of paragraphs (1)(B), (1)(C), and (2)(B)
5 shall be treated as met if the failure to satisfy such
6 requirements is due to reasonable cause and not
7 willful neglect.

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

13 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion shall be construed as—

15 “(1) limiting the ability or right of a service
16 provider, service recipient, or payor to apply any
17 other provision of this title, section 530 of the Rev-
18 enue Act of 1978, or any common law rules for de-
19 termining whether an individual is an employee, or

20 “(2) establishing a prerequisite for the applica-
21 tion of any provision of law described in paragraph
22 (1).

23 “(i) DEFINITIONS.—For purposes of this section—

24 “(1) SERVICE PROVIDER.—

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

4 “(B) QUALIFIED PERSON.—The term
5 ‘qualified person’ means—

6 “(i) any natural person, or

7 “(ii) any entity if any of the services
8 referred to in subparagraph (A) are per-
9 formed by one or more natural persons
10 who directly own interests in such entity.

11 “(2) SERVICE RECIPIENT.—The term ‘service
12 recipient’ means the person for whom the service
13 provider performs such service.

14 “(3) PAYOR.—The term ‘payor’ means—

15 “(A) any person, including the service re-
16 cipient, who pays the service provider for per-
17 forming such service, or

18 “(B) any marketplace platform, as defined
19 in section 6050W(d)(3)(C).

20 “(j) REGULATIONS.—Notwithstanding section 530(d)
21 of the Revenue Act of 1978, the Secretary shall issue such
22 regulations as the Secretary determines are necessary to
23 carry out the purposes of this section.”.

24 (b) VOLUNTARY WITHHOLDING AGREEMENTS AND
25 WORKER CLASSIFICATION.—Section 3402(p) of the Inter-

1 nal Revenue Code of 1986 is amended by adding at the
2 end the following new paragraph:

3 “(4) WORKER CLASSIFICATION.—Agreements
4 under paragraph (3) shall not be taken into account
5 in determining whether any party to such agreement
6 is an employee or an employer for purposes of this
7 title.”.

8 (c) WITHHOLDING BY PAYOR IN CASE OF CERTAIN
9 PERSONS CLASSIFIED AS NOT EMPLOYEES.—Section
10 3402 of the Internal Revenue Code of 1986 is amended
11 by adding at the end the following new subsection:

12 “(u) EXTENSION OF WITHHOLDING TO PAYMENTS
13 TO CERTAIN PERSONS CLASSIFIED AS NOT EMPLOY-
14 EES.—

15 “(1) IN GENERAL.—For purposes of this chap-
16 ter and so much of subtitle F as relates to this chap-
17 ter, compensation paid pursuant to a contract de-
18 scribed in section 7706(d) shall be treated as if it
19 were a payment of wages by an employer to an em-
20 ployee.

21 “(2) AMOUNT WITHHELD.—Except as otherwise
22 provided under subsection (i), the amount to be de-
23 ducted and withheld pursuant to paragraph (1) with
24 respect to compensation paid pursuant to any such
25 contract during any calendar year shall be an

1 amount equal to 5 percent of so much of the amount
2 of such compensation as does not exceed \$20,000.”.

3 (d) DIRECT SELLERS OF PROMOTIONAL PROD-
4 UCTS.—Subsection (b) of section 3508 of the Internal
5 Revenue Code of 1986 is amended—

6 (1) in paragraph (2)(A)—

7 (A) in clause (ii), by striking “or” at the
8 end;

9 (B) in clause (iii), by adding “or” at the
10 end; and

11 (C) by inserting after clause (iii) the fol-
12 lowing new clause:

13 “(iv) is engaged in the trade or busi-
14 ness of selling, or soliciting the sale of,
15 promotional products from other than a
16 permanent retail establishment,”;

17 (2) by redesignating paragraph (3) as para-
18 graph (4); and

19 (3) by inserting after paragraph (2) the fol-
20 lowing new paragraph:

21 “(3) PROMOTIONAL PRODUCT.—For purposes
22 of paragraph (2)(A)(iv), the term ‘promotional prod-
23 uct’ means a tangible item with permanently marked
24 promotional words, symbols, or art of the pur-
25 chaser.”.

1 (e) REPORTING.—

2 (1) INFORMATION AT SOURCE.—Section 6041
3 of the Internal Revenue Code of 1986 is amended—

4 (A) in subsection (a)—

5 (i) in the heading, by striking “\$600”
6 and inserting “\$1,000”; and

7 (ii) by striking “\$600 or more in any
8 taxable year” and inserting “\$1,000 or
9 more in any taxable year”; and

10 (B) by adding at the end the following new
11 subsection:

12 “(h) SPECIAL RULES FOR CERTAIN PERSONS CLAS-
13 SIFIED AS NOT EMPLOYEES.—

14 “(1) IN GENERAL.—In the case of any service
15 recipient or payor required to make a return under
16 subsection (a) with respect to compensation to which
17 section 7706(a) applies—

18 “(A) such return shall include—

19 “(i) the aggregate amount of such
20 compensation paid to each person whose
21 name is required to be included on such re-
22 turn,

23 “(ii) the aggregate amount deducted
24 and withheld under section 3402(s) with
25 respect to such compensation, and

1 “(iii) an indication of whether a copy
2 of the contract described in section
3 7706(d) is on file with the service recipient
4 or payor, and

5 “(B) the statement required to be fur-
6 nished under subsection (d) shall include the in-
7 formation described in subparagraph (A) with
8 respect to the service provider to whom such
9 statement is furnished.

10 “(2) DEFINITIONS.—Terms used in this sub-
11 section which are also used in section 7706 shall
12 have the same meaning as when used in such sec-
13 tion.”.

14 (2) RETURNS REGARDING PAYMENTS OF REMU-
15 NERATION FOR SERVICES AND DIRECT SALES.—Sec-
16 tion 6041A of such Code is amended—

17 (A) in paragraph (2) of subsection (a), by
18 striking “\$600” and inserting “\$1,000”; and

19 (B) by adding at the end the following new
20 subsection:

21 “(g) SPECIAL RULES FOR CERTAIN PERSONS CLAS-
22 SIFIED AS NOT EMPLOYEES.—Rules similar to the rules
23 of subsection (h) of section 6041 shall apply for purposes
24 of this section.”.

1 (3) RETURNS RELATING TO PAYMENTS MADE
2 IN SETTLEMENT OF PAYMENT CARD AND THIRD
3 PARTY NETWORK TRANSACTIONS.—Section 6050W
4 of such Code is amended—

5 (A) in subsection (d), by amending para-
6 graph (3) to read as follows:

7 “(3) THIRD PARTY PAYMENT NETWORK.—

8 “(A) IN GENERAL.—The term ‘third party
9 payment network’ means any agreement or ar-
10 rangement—

11 “(i) which involves the establishment
12 of accounts with a central organization or
13 marketplace platform by a substantial
14 number of persons who—

15 “(I) are unrelated to such organi-
16 zation or platform,

17 “(II) provide goods or services,
18 and

19 “(III) have agreed to settle
20 transactions for the provision of such
21 goods or services pursuant to such
22 agreement or arrangement,

23 “(ii) which provides for standards and
24 mechanisms for settling such transactions,
25 and

1 “(iii) which guarantees persons pro-
2 viding goods or services pursuant to such
3 agreement or arrangement that such per-
4 sons will be paid for providing such goods
5 or services.

6 “(B) EXCEPTION.—The term ‘third party
7 payment network’ shall not include any agree-
8 ment or arrangement which provides for the
9 issuance of payment cards.

10 “(C) MARKETPLACE PLATFORM.—For pur-
11 poses of subparagraph (A), the term ‘market-
12 place platform’ means any person who—

13 “(i) operates a digital website, mobile
14 application, or similar system that facili-
15 tates the provision of goods or services by
16 providers to recipients,

17 “(ii) enters into an agreement with
18 each provider stating that such provider
19 will not be treated as an employee with re-
20 spect to such goods or services,

21 “(iii) provides standards and mecha-
22 nisms for settling such facilitated trans-
23 actions, and

24 “(iv) guarantees each provider of
25 goods or services pursuant to such agree-

1 ment that the provider will be paid for
2 such facilitated transaction.”;

3 (B) by amending subsection (e) to read as
4 follows:

5 “(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY
6 THIRD PARTY SETTLEMENT ORGANIZATIONS.—

7 “(1) IN GENERAL.—A third party settlement
8 organization shall be required to report any informa-
9 tion under subsection (a) with respect to third party
10 network transactions of any participating payee only
11 if the amount which would otherwise be reported
12 under subsection (a)(2) with respect to such trans-
13 actions exceeds \$1,000.

14 “(2) EXCEPTION.—

15 “(A) MARKETPLACE PLATFORMS.—In the
16 case of a third party settlement organization
17 which is a marketplace platform (as defined in
18 subsection (d)(3)(C)) through which substan-
19 tially all the participating payees are primarily
20 engaged in the sale of goods, such marketplace
21 platform shall be required to report any infor-
22 mation under subsection (a) with respect to
23 third party network transactions of such payee
24 only if—

1 “(i) the amount which would other-
2 wise be reported under subsection (a)(2)
3 with respect to such transaction exceeds
4 \$5,000, or

5 “(ii) the aggregate number of trans-
6 actions exceeds 50.

7 “(B) OTHER THIRD PARTY SETTLEMENT
8 ORGANIZATIONS.—In the case of a third party
9 settlement organization other than a market-
10 place platform—

11 “(i) the rules of subparagraph (A)
12 shall apply in the case of information re-
13 quired to be reported, or which would oth-
14 erwise be reported, under subsection (a) to
15 any participating payee who is primarily
16 engaged in the sale of goods, and

17 “(ii) the determination of whether a
18 participating payee is primarily engaged in
19 the sale of goods may be made separately
20 for each participating payee.

21 “(3) ELECTION TO REPORT.—Notwithstanding
22 paragraphs (1) and (2), a third party settlement or-
23 ganization may elect to report any information
24 under subsection (a) with respect to third party net-
25 work transactions of any participating payee without

1 regard to the amount reported under subsection
2 (a)(2) with respect to such transactions or the ag-
3 gregate number of such transactions.”; and

4 (C) in subsection (f)—

5 (i) in paragraph (1), by striking
6 “and” at the end;

7 (ii) in paragraph (2), by striking the
8 period at the end and inserting “, and”;
9 and

10 (iii) by inserting after paragraph (2)
11 the following new paragraph:

12 “(3) the amount, if any, withheld pursuant to
13 section 3402(s).”.

14 (f) PROCEEDINGS FOR DETERMINATION OF EMPLOY-
15 MENT STATUS.—Paragraph (1) of section 7436(b) of the
16 Internal Revenue Code of 1986 is amended to read as fol-
17 lows:

18 “(1) PETITIONER.—A pleading may be filed
19 under this section only by—

20 “(A) the person for whom the services are
21 performed, including the service recipient or the
22 payor, or

23 “(B) any service provider which the Sec-
24 retary has determined should have been treated
25 as an employee.

1 All terms used in this paragraph which are also used
2 in section 7706 have the meanings given such terms
3 in section 7706(i).”.

4 (g) CLERICAL AMENDMENT.—The table of sections
5 for chapter 79 of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following new item:

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

7 (h) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-
9 graphs (2), (3), and (4), the amendments made by
10 this section shall apply to services performed after
11 December 31, 2019 (and to payments made for such
12 services after such date).

13 (2) GRACE PERIOD TO BEGIN WITHHOLDING.—

14 A contract shall not be treated as failing to meet the
15 requirements of section 7706(d)(1)(C) of the Inter-
16 nal Revenue Code of 1986 (as added by this sec-
17 tion), and a service recipient or payor shall not be
18 treated as failing to meet any such requirement,
19 with respect to compensation paid to a service pro-
20 vider before the date that is 180 days after the date
21 of the enactment of this Act.

22 (3) REPORTING.—Except as provided in para-
23 graph (4), the amendments made by subsection (e)
24 shall apply to returns the due date for which is after

1 the date which is 2 years after the date of the enact-
2 ment of this Act.

3 (4) EXCEPTION FOR DE MINIMIS PAYMENTS BY
4 THIRD PARTY SETTLEMENT ORGANIZATIONS.—The
5 amendment made by subsection (e)(3)(B) shall apply
6 to payments made after December 31, 2019.

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