

110TH CONGRESS
1ST SESSION

S. 2044

To provide procedures for the proper classification of employees and independent contractors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

Mr. OBAMA (for himself, Mr. DURBIN, Mr. KENNEDY, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide procedures for the proper classification of employees and independent contractors, 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 “Independent Con-
5 tractor Proper Classification Act of 2007”.

6 **SEC. 2. REFORMATION OF SAFE HARBOR TO CLOSE ITS USE**

7 **AS A TAX LOOPHOLE.**

8 (a) ALLOWANCE OF PROSPECTIVE RECLASSIFICA-
9 TIONS.—

1 (1) IN GENERAL.—Section 530(a) of the Rev-
2 enue Act of 1978, as amended by section 269(c)(1)
3 of the Tax Equity and Fiscal Responsibility Act of
4 1982, is amended by adding at the end the following
5 new paragraph:

6 “(5) ALLOWANCE OF RECLASSIFICATIONS.—
7 Paragraph (1) shall not apply with respect to the
8 treatment by a taxpayer of any individual for em-
9 ployment tax purposes for any period beginning
10 after a determination by the Secretary of the Treas-
11 ury that the individual should be treated as an em-
12 ployee of the taxpayer.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall apply to determinations
15 made after the date of the enactment of this Act.

16 (b) ELIMINATION OF BAN ON IRS ISSUING REGULA-
17 TIONS OR REVENUE RULINGS ON EMPLOYEE/INDE-
18 PENDENT CONTRACTOR STATUS.—

19 (1) IN GENERAL.—Section 530 of the Revenue
20 Act of 1978, as amended by section 269(c)(2) of the
21 Tax Equity and Fiscal Responsibility Act of 1982,
22 section 1706(a) of the Tax Reform Act of 1986, sec-
23 tion 1122(a) of the Small Business Job Protection
24 Act of 1996, and section 864(a) of the Pension Pro-
25 tection Act of 2006, is amended by striking sub-

1 section (b) and by redesignating subsections (c), (d),
2 (e), and (f) as subsections (b), (c), (d), and (e), re-
3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall take effect on the date of the
6 enactment of this Act.

7 (c) ELIMINATION OF ABILITY OF EMPLOYERS TO
8 RELY ON INDUSTRY PRACTICE AS A BASIS FOR CLAIMING
9 SAFE HARBOR.—

10 (1) IN GENERAL.—Section 530(a)(2) of the
11 Revenue Act of 1978 is amended—

12 (A) by striking the semicolon at the end of
13 subparagraph (A) and inserting “; or”,

14 (B) by striking the semicolon at the end of
15 subparagraph (B) and inserting a period, and

16 (C) by striking subparagraph (C).

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 530(d)(2) of the Revenue Act
19 of 1978, as redesignated by subsection (b)(1),
20 is amended—

21 (i) by striking the comma at the end
22 of subparagraph (A) and inserting a pe-
23 riod,

24 (ii) by striking subparagraphs (B) and
25 (C), and

1 (iii) by striking “subsection (a)(2)” in
2 the matter preceding subparagraph (A)
3 and all that follows through “a taxpayer”
4 and inserting “subsection (a)(2), a tax-
5 payer”.

6 (B) Section 530(d)(4)(B) of such Act (as
7 so redesignated) is amended by striking “sub-
8 paragraph (A), (B), or (C)” and inserting “sub-
9 paragraph (A) or (B)”.

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply to periods beginning
12 after the date which is 60 days after the date of the
13 enactment of this Act.

14 **SEC. 3. REVIEW OF CLASSIFICATION STATUS.**

15 (a) IN GENERAL.—Section 530 of the Revenue Act
16 of 1978, as amended by section 2(b)(1), is amended by
17 adding at the end the following new subsections:

18 “(f) PETITIONS FOR REVIEW OF STATUS.—

19 “(1) IN GENERAL.—Under procedures estab-
20 lished by the Secretary of the Treasury not later
21 than 90 days after the date of the enactment of this
22 subsection, any individual who performs services for
23 a taxpayer may petition (either personally or
24 through a designated representative or attorney) for

1 a determination of the individual's status for em-
2 ployment tax purposes.

3 “(2) ADMINISTRATIVE PROCEDURES.—The pro-
4 cedures established under paragraph (1) shall pro-
5 vide for—

6 “(A) a determination of status not later
7 than 90 days after the filing of the petition
8 with respect to employment in any industry
9 (such as the construction industry) in which
10 employment is transient, casual, or seasonal,

11 “(B) an administrative appeal of any de-
12 termination that an individual is not an em-
13 ployee of the taxpayer,

14 “(C) the award of expenses, including ex-
15 pert witness fees and reasonable attorneys' fees
16 for the individual against the taxpayer in any
17 case in which the individual achieves reclassi-
18 fication, and

19 “(D) the assessment of such expenses
20 against the taxpayer by the Secretary of the
21 Treasury on behalf of such individual.

22 “(3) PROHIBITION AGAINST RETALIATION.—

23 “(A) IN GENERAL.—No taxpayer may dis-
24 charge an individual, refuse to contract with an
25 individual, or otherwise discriminate against an

1 individual with respect to compensation, terms,
2 conditions, or privileges of the services provided
3 by the individual because the individual (or any
4 designated representative or attorney on behalf
5 of such individual) filed a petition under para-
6 graph (1).

7 “(B) ENFORCEMENT ACTION.—An indi-
8 vidual who alleges discharge or other discrimi-
9 nation by any taxpayer in violation of subpara-
10 graph (A) may seek relief under the procedures
11 and remedies established under section 42121
12 of title 49, United States Code.

13 “(C) RIGHTS RETAINED BY INDIVIDUAL.—
14 Nothing in this paragraph shall be deemed to
15 diminish the rights, privileges, or remedies of
16 any individual under any Federal or State law,
17 or under any collective bargaining agreement.

18 “(g) RESULTS OF MISCLASSIFICATION DETERMINA-
19 TIONS.—In any case in which the Secretary of the Treas-
20 ury determines that a taxpayer has misclassified an indi-
21 vidual as not an employee for employment tax purposes,
22 the Secretary of the Treasury shall—

23 “(1) if necessary, perform an employment tax
24 audit of such taxpayer,

1 “(2) inform the Department of Labor about
2 such misclassification,

3 “(3) notify the individual of any eligibility for
4 the refund of self-employment taxes under chapter 2
5 of the Internal Revenue Code of 1986, and

6 “(4) apply the provisions of section 3509 of the
7 Internal Revenue Code of 1986 and direct the tax-
8 payer to take affirmative action to abate the viola-
9 tion.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall take effect on the date of the enactment
12 of this Act.

13 **SEC. 4. COORDINATION, ENFORCEMENT, AND COMPLI-**
14 **ANCE.**

15 (a) ANNUAL REPORTS.—The Secretary of the Treas-
16 ury and the Secretary of Labor shall each issue annual
17 reports on worker misclassification, including—

18 (1) information on the number and type of en-
19 forcement actions against, and audits of, employers
20 who have misclassified workers,

21 (2) relief obtained as a result of such actions
22 against, and audits of, employers who have
23 misclassified workers,

1 (3) an overall estimate of the number of em-
2 ployers misclassifying workers, the number of work-
3 ers affected, and the industries involved,

4 (4) the impact of such misclassification on the
5 Federal tax system, and

6 (5) the aggregate number of worker
7 misclassification cases with respect to which each
8 Secretary has provided information to the other Sec-
9 retary and the outcome of actions taken, if any, by
10 each Secretary in each worker misclassification case
11 with respect to which the Secretary has received
12 such information.

13 As part of the annual report, the Secretary of the Treas-
14 ury shall include information on the outcomes of the peti-
15 tions filed under section 530(f) of the Revenue Act of
16 1978 and the Secretary of Labor shall include information
17 on the outcomes of the complaints and actions described
18 in subsection (b)(1)(A) and the investigations required in
19 subsection (b)(1)(B).

20 (b) ENFORCEMENT ACTIVITIES.—

21 (1) DEPARTMENT OF LABOR.—

22 (A) WAGE AND HOUR ENFORCEMENT.—

23 The Secretary of Labor shall identify and track
24 complaints and enforcement actions involving
25 misclassification of independent contractors for

1 the purposes of the laws enforced by the Wage
2 and Hour Division of the Department of Labor.

3 (B) INVESTIGATIONS OF INDUSTRIES WITH
4 WORKER MISCLASSIFICATIONS.—The Secretary
5 of Labor shall conduct investigations of indus-
6 tries in which worker misclassification is
7 present as determined by information (other
8 than return information (as defined in section
9 6103(b)(2)) received from the Secretary of the
10 Treasury and any other relevant information,
11 including reports from other Federal agencies
12 and State workforce, labor, and revenue agen-
13 cies.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—
15 There is authorized such sums as are necessary for
16 the Department of the Treasury and the Depart-
17 ment of Labor to carry out the purposes of the pro-
18 visions of, and amendments made by, this Act.

19 (3) INFORMATION SHARING.—The Secretary of
20 the Treasury and the Secretary of Labor shall ex-
21 change information on worker misclassification cases
22 and shall provide such information with relevant
23 State agencies. Upon receipt of such information,
24 the Secretary of the Treasury and the Secretary of

1 Labor shall determine whether further investigation
2 is warranted in each case.

3 **SEC. 5. NOTICE TO EMPLOYEES AND INDEPENDENT CON-**
4 **TRACTORS AND MAINTENANCE OF INFORMA-**
5 **TION REGARDING INDEPENDENT CONTRAC-**
6 **TORS.**

7 (a) NOTICE OF RIGHT TO CHALLENGE CLASSIFICA-
8 TION.—The Secretary of Labor shall provide for the place-
9 ment of information on any poster required under the Fair
10 Labor Standards Act informing workers of their right to
11 seek a status determination from the Internal Revenue
12 Service.

13 (b) EMPLOYER NOTICES TO INDEPENDENT CON-
14 TRACTORS.—Each employer shall notify any individual
15 who is hired by the employer as an independent contractor
16 within the scope of the employer's trade or business, at
17 the time of hire, of the Federal tax obligations of an inde-
18 pendent contractor, the labor and employment law protec-
19 tions that do not apply to independent contractors, and
20 the right of such independent contractor to seek a status
21 determination from the Internal Revenue Service. The
22 Secretary of the Treasury and the Secretary of Labor shall
23 develop model materials for providing such notice.

24 (c) MAINTENANCE OF INFORMATION REGARDING
25 INDEPENDENT CONTRACTORS.—Each employer shall

1 maintain for 3 years a list of the independent contractors
2 retained by the employer, including name, address, Social
3 Security number and Federal tax identification number,
4 and shall make the records available for inspection during
5 investigations.

○