

105TH CONGRESS
2D SESSION

H. R. 3722

To amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1998

Mr. CHRISTENSEN (for himself, Mr. BARTLETT of Maryland, Mr. BEREUTER, Mr. BURR of North Carolina, Mrs. CUBIN, Mr. DOOLITTLE, Ms. DUNN, Mrs. EMERSON, Mr. ENSIGN, Mr. GANSKE, Mr. HOEKSTRA, Mr. ISTOOK, Mr. MANZULLO, Mrs. MYRICK, Ms. PRYCE of Ohio, Mr. RAMSTAD, Mr. SESSIONS, Mr. SENSENBRENNER, Mr. SHADEGG, Mr. SISISKY, Mr. TALENT, Mr. THOMAS, Mr. TRAFICANT, and Mr. WOLF) 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 clarify the standards used for determining whether individuals are not employees.

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 Contrac-
5 tor Tax Simplification Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that:

1 (1) Simplifying the tax rules with respect to
2 independent contractors was the top vote-getter at
3 the 1995 White House Conference on Small Busi-
4 ness. Conference delegates recommended that Con-
5 gress “should recognize the legitimacy of an inde-
6 pendent contractor”. The Conference found that the
7 current common law is “too subjective” and called
8 upon the Congress to establish “realistic and con-
9 sistent guidelines”.

10 (2) It is in the best interests of taxpayers and
11 the Federal Government to have fair and objective
12 rules for determining who is an employee and who
13 is an independent contractor.

14 **SEC. 3. STANDARDS FOR DETERMINING WHETHER INDIVID-**
15 **UALS ARE NOT EMPLOYEES.**

16 (a) IN GENERAL.—Chapter 25 of the Internal Reve-
17 nue Code of 1986 (general provisions relating to employ-
18 ment taxes) is amended by adding after section 3510 the
19 following new section:

20 **“SEC. 3511. STANDARDS FOR DETERMINING WHETHER IN-**
21 **DIVIDUALS ARE NOT EMPLOYEES.**

22 “(a) GENERAL RULE.—For purposes of this subtitle,
23 and notwithstanding any provision of this subtitle to the
24 contrary, if the requirements of subsections (b), (c), and

1 (d) are met with respect to any service performed by any
2 individual, then with respect to such service—

3 “(1) the service provider shall not be treated as
4 an employee,

5 “(2) the service recipient shall not be treated as
6 an employer, and

7 “(3) the payor shall not be treated as an em-
8 ployer.

9 “(b) SERVICE PROVIDER REQUIREMENTS WITH RE-
10 GARD TO SERVICE RECIPIENT.—For the purposes of sub-
11 section (a), the requirements of this subsection are met
12 if the service provider, in connection with performing the
13 service—

14 “(1) has a significant investment in assets and/
15 or training,

16 “(2) incurs significant unreimbursed expenses,

17 “(3) agrees to perform the service for a particu-
18 lar amount of time or to complete a specific result
19 and is liable for damages for early termination with-
20 out cause,

21 “(4) is paid primarily on a commissioned basis,
22 or

23 “(5) purchases products for resale.

24 “(c) ADDITIONAL SERVICE PROVIDER REQUIRE-
25 MENTS WITH REGARD TO OTHERS.—For the purposes of

1 subsection (a), the requirements of this subsection are met
2 if—

3 “(1) the service provider—

4 “(A) has a principal place of business,

5 “(B) does not primarily provide the service
6 in the service recipient’s place of business, or

7 “(C) pays a fair market rent for use of the
8 service recipient’s place of business; or

9 “(2) the service provider—

10 “(A) is not required to perform service ex-
11 clusively for the service recipient, and

12 “(B) in the year involved, or in the preced-
13 ing or subsequent year—

14 “(i) has performed a significant
15 amount of service for other persons,

16 “(ii) has offered to perform service for
17 other persons through—

18 “(I) advertising,

19 “(II) individual written or oral
20 solicitations,

21 “(III) listing with registries,
22 agencies, brokers, and other persons
23 in the business of providing referrals
24 to other service recipients, or

25 “(IV) other similar activities, or

1 “(iii) provides service under a busi-
2 ness name which is registered with (or for
3 which a license has been obtained from) a
4 State, a political subdivision of a State, or
5 any agency or instrumentality of 1 or more
6 States or political subdivisions.

7 “(d) WRITTEN DOCUMENT REQUIREMENTS.—For
8 purposes of subsection (a), the requirements of this sub-
9 section are met if the services performed by the individual
10 are performed pursuant to a written contract between
11 such individual and the person for whom the services are
12 performed, or the payor, and such contract provides that
13 the individual will not be treated as an employee with re-
14 spect to such services for purposes of this subtitle.

15 “(e) SPECIAL RULES.—For purposes of this sec-
16 tion—

17 “(1) If for any taxable year any service recipi-
18 ent or payor fails to meet the applicable reporting
19 requirements of sections 6041(a), 6041A(a), or 6051
20 with respect to a service provider, then, unless such
21 failure is due to reasonable cause and not willful ne-
22 glect, this section shall not apply in determining
23 whether such service provider shall not be treated as
24 an employee of such service recipient or payor for
25 such year.

1 “(2) If the service provider is performing serv-
2 ices through an entity owned in whole or in part by
3 such service provider, then the references to ‘service
4 provider’ in subsections (b) through (d) may include
5 such entity, provided that the written contract re-
6 ferred to in paragraph (1) of subsection (d) may be
7 with either the service provider or such entity and
8 need not be with both.

9 “(f) DEFINITIONS.—For the purposes of this sec-
10 tion—

11 “(1) SERVICE PROVIDER.—The term ‘service
12 provider’ means any individual who performs service
13 for another person.

14 “(2) SERVICE RECIPIENT.—Except as provided
15 in paragraph (5), the term ‘service recipient’ means
16 the person for whom the service provider performs
17 such service.

18 “(3) PAYOR.—Except as provided in paragraph
19 (5), the term ‘payor’ means the person who pays the
20 service provider for the performance of such service
21 in the event that the service recipients do not pay
22 the service provider.

23 “(4) IN CONNECTION WITH PERFORMING THE
24 SERVICE.—The term ‘in connection with performing
25 the service’ means in connection or related to—

1 “(A) the actual service performed by the
2 service provider for the service recipients or for
3 other persons for whom the service provider has
4 performed similar service, or

5 “(B) the operation of the service provider’s
6 trade or business.

7 “(5) EXCEPTIONS.—The terms ‘service recipi-
8 ent’ and ‘payor’ do not include any entity which is
9 owned in whole or in part by the service provider.”
10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter 25 of such Code is amended by adding at the
12 end the following new item:

 “Sec. 3511. Standards for determining whether individuals are
 not employees.”

13 (c) EFFECTIVE DATE.—The amendments made by
14 this Act shall apply to services performed after December
15 31, 1998.

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