

108TH CONGRESS
1ST SESSION

H. R. 2814

To amend the Internal Revenue Code of 1986 to clarify that qualified personal service corporations may continue to use the cash method of accounting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2003

Mr. NUSSLE 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 that qualified personal service corporations may continue to use the cash method of accounting, 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 “Qualified Personal
5 Service Corporations Clarification Act of 2003”.

1 **SEC. 2. MODIFICATIONS TO DETERMINATION OF WHETHER**
2 **CORPORATION IS A QUALIFIED PERSONAL**
3 **SERVICE CORPORATION.**

4 (a) STOCK HELD BY CERTAIN FORMER EMPLOYEES
5 TAKEN INTO ACCOUNT.—Subparagraph (B) of section
6 448(d)(2) of the Internal Revenue Code of 1986 (defining
7 qualified personal service corporation) is amended by
8 striking “or” at the end of clause (iii), by striking the pe-
9 riod at the end of clause (iv) and inserting a comma, and
10 by inserting after clause (iv) the following new clauses:

11 “(v) former employees of such cor-
12 poration who performed the services re-
13 ferred to in subparagraph (A) and who are
14 holding such stock by reason of their
15 former employment with such corporation,
16 or

17 “(vi) former employees of such cor-
18 poration who performed the services re-
19 ferred to in subparagraph (A) and who are
20 holding such stock by reason of their cur-
21 rent or former employment with any con-
22 trolled entity (as defined in paragraph
23 (4)(B)).”

24 (b) OTHER MODIFICATIONS.—Paragraph (4) of sec-
25 tion 448(d) of such Code is amended to read as follows:

26 “(4) SPECIAL RULES FOR PARAGRAPH (2).—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (2)—

3 “(i) community property laws shall be
4 disregarded,

5 “(ii) stock held by a plan described in
6 section 401(a) which is exempt from tax
7 under section 501(a) shall be treated as
8 held by an employee described in para-
9 graph (2)(B)(i), and

10 “(iii) at the election of the common
11 parent of an affiliated group (within the
12 meaning of section 1504(a)), all members
13 of such group may be treated as 1 tax-
14 payer for purposes of paragraph (2)(B) if
15 80 percent or more of the activities of such
16 group involve the performance of services
17 in the fields described in paragraph (2)(A).

18 “(B) CONTROLLED ENTITY.—For purposes
19 of paragraph (2)(B)(vi), the term ‘controlled
20 entity’ means, with respect to a corporation—

21 “(i) any corporation at least 50 per-
22 cent (by value) of the outstanding stock of
23 which is owned (directly or indirectly as
24 determined under section 318) by such
25 corporation, and

1 “(ii) any partnership at least 50 per-
2 cent of the capital interest or profits inter-
3 est in which is owned (directly or indirectly
4 as determined under section 318) by such
5 corporation.

6 “(C) NEW CORPORATIONS.—A corporation
7 shall be treated as a qualified personal service
8 corporation for each taxable year preceding the
9 first taxable year for which the corporation has
10 gross receipts if the corporation is a qualified
11 personal service corporation for such first tax-
12 able year.

13 “(D) CERTAIN STOCK NOT TAKEN INTO
14 ACCOUNT.—

15 “(i) IN GENERAL.—The determination
16 of whether an employee-owned corporation
17 is a qualified personal service corporation
18 shall be made without regard to stock in
19 such corporation which is held by employ-
20 ees of unaffiliated controlled entities. The
21 preceding sentence shall not apply to em-
22 ployees described in clause (v) or (vi) of
23 paragraph (2)(B).

24 “(ii) EMPLOYEE-OWNED CORPORA-
25 TION.—For purposes of clause (i), the

1 term ‘employee-owned corporation’ means
2 any corporation at least 50 percent of the
3 value of the outstanding stock of which is
4 owned (directly or indirectly) by employees
5 described in paragraph (2)(B) (without re-
6 gard to this subparagraph) of such cor-
7 poration.

8 “(iii) UNAFFILIATED CONTROLLED
9 ENTITY.—For purposes of clause (i), the
10 term ‘unaffiliated controlled entity’ means,
11 with respect to an employee-owned cor-
12 poration—

13 “(I) any corporation at least 50
14 percent (by value) of the outstanding
15 stock of which is owned (directly or
16 indirectly as determined under section
17 318) by members of an affiliated
18 group (within the meaning of section
19 1504(a)) which includes such em-
20 ployee-owned corporation, and

21 “(II) any partnership at least 50
22 percent of the capital interest or prof-
23 its interest in which is owned (directly
24 or indirectly as determined under sec-

1 tion 318) by members of such affili-
2 ated group.

3 Such term shall not include any corpora-
4 tion which is permitted to file a consoli-
5 dated return with such affiliated group.

6 “(E) ENGINEERING DEFINED.—For pur-
7 poses of paragraph (2), the term ‘engineering’
8 includes—

9 “(i) professional services or activities
10 of an engineering nature, as defined by
11 State law, if applicable, which are required
12 to be performed or approved by a person
13 licensed, registered, or certified to provide
14 such services;

15 “(ii) professional services or activities
16 of an engineering nature that are associ-
17 ated with research, planning, development,
18 design, construction, repair, or alteration
19 of real property; and

20 “(iii) such other professional services
21 or activities of an engineering nature, or
22 incidental services, which members of the
23 engineering profession (and individuals in
24 their employ) may logically or justifiably
25 perform, including studies, investigations,

1 surveying, mapping, tests, evaluations, con-
2 sultations, comprehensive planning, pro-
3 gram management, conceptual design,
4 plans and specifications, value engineering,
5 construction phase services, design-build,
6 design-build-finance, design-build-operate-
7 maintain, design-build-finance-operate-
8 maintain, soils engineering, drawing re-
9 views, preparation of operating and main-
10 tenance manuals, and other related serv-
11 ices.

12 Professional services and activities referred to
13 in clause (i), (ii), or (iii) shall be considered en-
14 gineering without regard to the procurement
15 method, delivery method, owner, or service re-
16 cipient.”

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years ending after the
19 date of the enactment of this Act.

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