

109TH CONGRESS
1ST SESSION

S. 1782

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 SENATE OF THE UNITED STATES

SEPTEMBER 28, 2005

Mr. BROWNBACK 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 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 2005”.

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) CERTAIN SERVICES DEFINED.—For
7 purposes of paragraph (2), the terms ‘engineer-
8 ing’ and ‘architecture’ include—

9 “(i) the performance of professional
10 services described in section 1102(2) of
11 title 40, United States Code, and

12 “(ii) design-build and its various op-
13 tions, including financing, owning, and op-
14 eration.”.

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

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