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

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.—

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

(1) IN GENERAL.—Section 530(a) of the Rev enue Act of 1978, as amended by section 269(c)(1)
 of the Tax Equity and Fiscal Responsibility Act of
 1982, is amended by adding at the end the following
 new paragraph:
 "(5) ALLOWANCE OF RECLASSIFICATIONS.—
 Paragraph (1) shall not apply with respect to the

Paragraph (1) shall not apply with respect to the
treatment by a taxpayer of any individual for employment tax purposes for any period beginning
after a determination by the Secretary of the Treasury that the individual should be treated as an employee 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 Regula17 TIONS OR REVENUE RULINGS ON EMPLOYEE/INDE18 PENDENT CONTRACTOR STATUS.—

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

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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
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22	subsection, any individual who performs services for
22 23	a taxpayer may petition (either personally or

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 of this Act. 12 13 SEC. 4. COORDINATION, ENFORCEMENT, AND COMPLI-14 ANCE. 15 (a) ANNUAL REPORTS.—The Secretary of the Treasury and the Secretary of Labor shall each issue annual 16 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,

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

4 (4) the impact of such misclassification on the5 Federal tax system, and

6 (5)the number of worker aggregate 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.

As part of the annual report, the Secretary of the Treasury shall include information on the outcomes of the petitions filed under section 530(f) of the Revenue Act of
1978 and the Secretary of Labor shall include information
on the outcomes of the complaints and actions described
in subsection (b)(1)(A) and the investigations required in
subsection (b)(1)(B).

- 20 (b) Enforcement Activities.—
- 21 (1) DEPARTMENT OF LABOR.—

(A) WAGE AND HOUR ENFORCEMENT.—
The Secretary of Labor shall identify and track
complaints and enforcement actions involving
misclassification of independent contractors for

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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 WORKER MISCLASSIFICATIONS.—The Secretary 4 5 of Labor shall conduct investigations of indus-6 in which worker misclassification is tries 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.—

There is authorized such sums as are necessary for the Department of the Treasury and the Department of Labor to carry out the purposes of the provisions of, and amendments made by, this Act.

(3) INFORMATION SHARING.—The Secretary of
the Treasury and the Secretary of Labor shall exchange information on worker misclassification cases
and shall provide such information with relevant
State agencies. Upon receipt of such information,
the Secretary of the Treasury and the Secretary of

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

3 SEC. 5. NOTICE TO EMPLOYEES AND INDEPENDENT CON4 TRACTORS AND MAINTENANCE OF INFORMA5 TION REGARDING INDEPENDENT CONTRAC6 TORS.

7 (a) NOTICE OF RIGHT TO CHALLENGE CLASSIFICA8 TION.—The Secretary of Labor shall provide for the place9 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 within the scope of the employer's trade or business, at 16 17 the time of hire, of the Federal tax obligations of an independent contractor, the labor and employment law protec-18 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 REGARDING25 INDEPENDENT CONTRACTORS.—Each employer shall

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