

113TH CONGRESS
1ST SESSION

S. 900

To amend the Internal Revenue Code of 1986 to regulate payroll tax deposit agents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2013

Ms. MIKULSKI 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 regulate payroll tax deposit agents, 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 “Small Business Payroll
5 Protection Act of 2013”.

6 **SEC. 2. REGULATION OF PAYROLL TAX DEPOSIT AGENTS.**

7 (a) IN GENERAL.—Chapter 77 of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following new section:

1 **“SEC. 7529. PAYROLL TAX DEPOSIT AGENTS.**

2 “(a) REGISTRATION.—

3 “(1) IN GENERAL.—The Secretary shall estab-
4 lish a system to require the initial registration and
5 the annual renewal of the registration of persons
6 seeking to act as payroll tax deposit agents author-
7 ized to make Federal employment tax deposits on
8 behalf of employer taxpayers. Such system shall
9 also—

10 “(A) establish a registration and renewal
11 fee for each payroll tax deposit agent in an
12 amount not to exceed \$100,

13 “(B) provide the payroll tax deposit agent
14 the option of either submitting a bond as speci-
15 fied in subsection (b) or submitting to a quar-
16 terly certification as specified in subsection (c),

17 “(C) require such disclosures as are speci-
18 fied in subsection (d), and

19 “(D) provide penalties for unregistered
20 persons acting as payroll tax deposit agents
21 with respect to Federal tax deposits and for
22 payroll tax deposit agents who fail to furnish
23 such disclosures as are specified in subsection
24 (d), in an amount not to exceed \$10,000 for
25 each 90 days of noncompliance.

1 “(2) DEFINITION OF PAYROLL TAX DEPOSIT
 2 AGENT.—For purposes of this section, the term
 3 ‘payroll tax deposit agent’ means any person which
 4 provides payroll processing or tax filing and deposit
 5 services to 1 or more employers (other than an em-
 6 ployer acting on its own behalf) if such person has
 7 the contractual authority to access such employer’s
 8 funds for the purpose of making employment tax de-
 9 posits. Such term shall not include any person which
 10 only transfers such funds to the appropriate govern-
 11 ment authority (regardless if such person has the
 12 authority to determine the amount of such transfer)
 13 and does not otherwise have the authority to access
 14 such funds.

15 “(3) EMPLOYMENT TAX.—For purposes of this
 16 section, the term ‘employment tax’ includes unem-
 17 ployment insurance contributions.

18 “(b) BONDING.—

19 “(1) IN GENERAL.—If a payroll tax deposit
 20 agent elects to submit a bond under subsection
 21 (a)(1)(B), the amount of such bond shall be not less
 22 than \$50,000 nor more than \$500,000, and shall be
 23 determined with respect to each payroll tax deposit
 24 agent under regulations prescribed by the Secretary.

1 “(2) SURETY.—Any bond or security furnished
2 pursuant to this section shall be in such form and
3 with such surety or sureties as may be prescribed by
4 regulations issued pursuant to section 7101.

5 “(3) EVIDENCE OF BOND.—Evidence of such
6 bond shall be filed with the Secretary with the initial
7 registration and each annual renewal of the registra-
8 tion of persons licensed to act as payroll tax deposit
9 agents.

10 “(c) QUARTERLY CERTIFICATIONS.—If a payroll tax
11 deposit agent elects to submit to a quarterly certification
12 under subsection (a)(1)(B), such certification shall be per-
13 formed by an independent third party who is qualified to
14 perform such certifications under targeted criteria estab-
15 lished by the Secretary, at the direction of the Secretary,
16 and shall be based on the following narrowly targeted prin-
17 ciples—

18 “(1) that the escrow account of the payroll tax
19 deposit agent in which such agent holds its employ-
20 ers’ taxes is balanced to the total of quarterly rec-
21 onciliation statements (i.e., Internal Revenue Service
22 Forms 941 and State equivalents), and any liabil-
23 ities collected but not yet deposited with the respec-
24 tive government authority,

1 “(2) that the escrow account funds of the pay-
2 roll tax deposit agent are not commingled with such
3 agent’s operating funds,

4 “(3) that there is no evidence that the payroll
5 tax deposit agent used any of the funds in such
6 agent’s escrow account to pay such agent’s operating
7 costs, and

8 “(4) that there is adequate receipt evidence
9 that such agent paid the required employment taxes
10 on behalf of the employers to the proper government
11 employment tax authority.

12 A copy of each completed quarterly certification report
13 shall be filed quarterly with the Secretary and no payroll
14 tax deposit agent shall obtain its annual renewal of the
15 registration of persons licensed to act as payroll tax de-
16 posit agents unless all such copies have been filed.

17 “(d) DISCLOSURE.—The Secretary shall require pay-
18 roll tax deposit agents to disclose to each client prior to
19 or at the time of contracting for payroll services, and to
20 each existing client at least quarterly—

21 “(1) the client’s continuing liability for payment
22 of all Federal and State employment taxes notwith-
23 standing any contractual relationship with a payroll
24 tax deposit agent,

1 “(2) the mechanisms available to the client to
2 verify the amount and date of payment of all tax de-
3 posits made by the payroll tax deposit agent on be-
4 half of such client, including the Internet address
5 and telephone number of each Federal and State
6 employment tax authority related to such deposits,
7 and

8 “(3) such other information that the Secretary
9 determines is necessary or appropriate to assist em-
10 ployers in the selection and use of payroll tax de-
11 posit agents.

12 “(e) TAX DEPOSITS AND RETURNS.—Only persons
13 registered under this section may—

14 “(1) make Federal tax deposits on behalf of an
15 employer,

16 “(2) sign and file Federal employment tax re-
17 turns on behalf of a taxpayer, and

18 “(3) have access to confidential tax information
19 relating to such employer.

20 “(f) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary to carry out the pro-
22 visions of this section.”.

23 (b) QUARTERLY CERTIFICATION CRITERIA.—In es-
24 tablishing the criteria for the quarterly certification re-
25 quired under section 7529(c) of the Internal Revenue

1 Code of 1986, as added by subsection (a), the Secretary
 2 of the Treasury shall ensure, to the extent practicable,
 3 that the burden of the certification process on the payroll
 4 tax deposit agent is minimized.

5 (c) PAYROLL TAX DEPOSIT AGENTS SUBJECT TO
 6 PENALTY FOR FAILURE TO COLLECT AND PAY OVER
 7 TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.—

8 (1) IN GENERAL.—Section 6672(a) of the In-
 9 ternal Revenue Code of 1986 is amended by insert-
 10 ing “, including any payroll tax deposit agent (as de-
 11 fined in section 7529(a)(2)) who has assumed the
 12 obligation to pay over any tax by contract with a
 13 taxpayer (but only to the extent that such payroll
 14 tax deposit agent has received irrevocable payment
 15 of funds for the corresponding tax liabilities from
 16 such taxpayer),” after “imposed by this title”.

17 (2) PENALTY NOT SUBJECT TO DISCHARGE IN
 18 BANKRUPTCY.—Section 6672(a) is further amended
 19 by adding at the end the following new sentence:
 20 “Notwithstanding any other provision of law, no
 21 penalty imposed under this section may be dis-
 22 charged in bankruptcy.”.

23 (3) CONFORMING AMENDMENT.—Section
 24 6672(b)(1) of the Internal Revenue Code of 1986 is

1 amended by striking the word “taxpayer” and in-
 2 serting the word “person” each time it appears.

3 (4) CONSTRUCTION.—The amendment made by
 4 paragraph (1) shall not be construed to create any
 5 inference with respect to the interpretation of sec-
 6 tion 6672 of the Internal Revenue Code of 1986 as
 7 such section was in effect on the day before the date
 8 of the enactment of this Act.

9 (d) CLERICAL AMENDMENT.—The table of sections
 10 for such chapter 77 is amended by adding at the end the
 11 following new item:

“Sec. 7529. Payroll tax deposit agents.”.

12 (e) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-
 14 graph (2), the amendments made by this section
 15 shall take effect on the date of the enactment of this
 16 Act.

17 (2) PENALTY.—The amendments made by sub-
 18 section (c) shall apply to failures occurring after the
 19 date of the enactment of this Act.

20 **SEC. 3. VERIFICATION OF ADDRESS CHANGE.**

21 (a) IN GENERAL.—Chapter 25 of the Internal Rev-
 22 enue Code of 1986 is amended by adding at the end the
 23 following new section:

1 **“SEC. 3511. VERIFICATION OF ADDRESS CHANGE.**

2 “The Secretary shall issue a notice of confirmation
3 of any address change relating to an employer making tax
4 payments under this subtitle, and such notice shall be sent
5 to both the employer’s former and new address.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for such chapter 25 is amended by adding at the end the
8 following new item:

“Sec. 3511. Verification of address change.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date that is 180 days
11 after the date of the enactment of this Act.

12 **SEC. 4. OFFER-IN-COMPROMISE REQUESTS BY VICTIMS OF**
13 **FRAUD.**

14 Section 7122(d)(3) of the Internal Revenue Code of
15 1986 is amended—

16 (1) in subparagraph (B)(ii), by striking “and”
17 at the end,

18 (2) in subparagraph (C), by striking the period
19 at the end and inserting “, and”, and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(D) an officer of employee of the Internal
23 Revenue Service shall give special consideration

- 1 to an offer-in-compromise from a taxpayer who
- 2 has been the victim of fraud.”.

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