

115TH CONGRESS
1ST SESSION

S. 1549

To amend the Internal Revenue Code of 1986 to provide a safe harbor for determinations of worker classification, to require increased reporting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2017

Mr. THUNE 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 provide a safe harbor for determinations of worker classification, to require increased reporting, 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 “New Economy Works
5 to Guarantee Independence and Growth Act of 2017” or
6 the “NEW GIG Act of 2017”.

1 **SEC. 2. DETERMINATION OF WORKER CLASSIFICATION.**

2 (a) IN GENERAL.—Chapter 79 of the Internal Rev-
 3 enue Code of 1986 is amended by adding at the end the
 4 following new section:

5 **“SEC. 7706. DETERMINATION OF WORKER CLASSIFICATION.**

6 “(a) IN GENERAL.—For purposes of this title (and
 7 notwithstanding any provision of this title not contained
 8 in this section to the contrary), if the requirements of sub-
 9 sections (b), (c), and (d) are met with respect to any serv-
 10 ice performed by a service provider, then with respect to
 11 such service—

12 “(1) the service provider shall not be treated as
 13 an employee,

14 “(2) the service recipient shall not be treated as
 15 an employer,

16 “(3) any payor shall not be treated as an em-
 17 ployer, and

18 “(4) the compensation paid or received for such
 19 service shall not be treated as paid or received with
 20 respect to employment.

21 “(b) GENERAL SERVICE PROVIDER REQUIRE-
 22 MENTS.—

23 “(1) IN GENERAL.—The requirements of this
 24 subsection are met with respect to any service if the
 25 service provider either—

1 “(A) meets the requirements of paragraph
2 (2) with respect to such service, or

3 “(B) in the case of a service provider en-
4 gaged in the trade or business of selling (or so-
5 liciting the sale of) goods or services, meets the
6 requirements of paragraph (3) with respect to
7 such service.

8 “(2) GENERAL REQUIREMENTS.—

9 “(A) IN GENERAL.—The requirements of
10 this paragraph are met with respect to any
11 service if the service provider, in connection
12 with performing the service—

13 “(i) incurs expenses—

14 “(I) which are deductible under
15 section 162, and

16 “(II) a significant portion of
17 which are not reimbursed,

18 “(ii) agrees to perform the service for
19 a particular amount of time, to achieve a
20 specific result, or to complete a specific
21 task, and

22 “(iii) satisfies not less than one of the
23 factors described in subparagraph (B).

24 “(B) FACTORS.—The factors described in
25 this subparagraph are the following:

1 “(i) The service provider has a signifi-
2 cant investment in assets or training which
3 are applicable to the service performed.

4 “(ii) The service provider is not re-
5 quired to perform services exclusively for
6 the service recipient or payor.

7 “(iii) The service provider has not
8 been treated as an employee by the service
9 recipient or payor during the 1-year period
10 ending with the date of the commencement
11 of services under the contract described in
12 subsection (d).

13 “(iv) The service provider is not com-
14 pensated on a basis which is tied primarily
15 to the number of hours actually worked.

16 “(3) ALTERNATIVE REQUIREMENTS WITH RE-
17 SPECT TO SALES PERSONS.—In the case of a service
18 provider engaged in the trade or business of selling
19 (or soliciting the sale of) goods or services, the re-
20 quirements of this paragraph are met with respect
21 to any service provided in the ordinary course of
22 such trade or business if—

23 “(A) the service provider is compensated
24 primarily on a commission basis, and

1 “(B) substantially all the compensation for
2 such service is directly related to sales of goods
3 or services rather than to the number of hours
4 worked.

5 “(c) PLACE OF BUSINESS OR OWN EQUIPMENT RE-
6 QUIREMENT.—The requirement of this subsection is met
7 with respect to any service if the service provider—

8 “(1) has a principal place of business,

9 “(2) does not provide the service primarily in
10 the service recipient’s place of business,

11 “(3) pays a fair market rent for use of the serv-
12 ice recipient’s place of business, or

13 “(4) provides the service primarily using equip-
14 ment supplied by the service provider.

15 “(d) WRITTEN CONTRACT REQUIREMENT.—The re-
16 quirements of this subsection are met with respect to any
17 service if such service is performed pursuant to a written
18 contract between the service provider and the service re-
19 cipient (or payor) which meets the following requirements:

20 “(1) The contract includes each of the fol-
21 lowing:

22 “(A) The service provider’s name, taxpayer
23 identification number, and address.

24 “(B) A statement that the service provider
25 will not be treated as an employee with respect

1 to the services provided pursuant to the con-
2 tract for purposes of this title.

3 “(C) A statement that the service recipient
4 (or the payor) will withhold upon and report to
5 the Internal Revenue Service the compensation
6 payable pursuant to the contract consistent
7 with the requirements of this title.

8 “(D) A statement that the service provider
9 is responsible for payment of Federal, State,
10 and local taxes, including self-employment
11 taxes, on compensation payable pursuant to the
12 contract.

13 “(E) A statement that the contract is in-
14 tended to be considered a contract described in
15 this subsection.

16 “(2) The term of the contract does not exceed
17 2 years. The preceding sentence shall not prevent
18 one or more subsequent written renewals of the con-
19 tract from satisfying the requirements of this sub-
20 section if the term of each such renewal does not ex-
21 ceed 2 years and if the information required under
22 paragraph (1)(A) is updated in connection with each
23 such renewal.

24 “(3) The contract (or renewal) is signed (which
25 may include signatures in electronic form) by both

1 the service recipient (or payor) and the service pro-
 2 vider not later than the date on which the aggregate
 3 payments made by the service recipient (or payor) to
 4 the service provider exceeds \$1,000 for the year cov-
 5 ered by the contract (or renewal).

6 “(e) REPORTING REQUIREMENTS.—

7 “(1) IN GENERAL.—For purposes of making
 8 any determination with respect to the liability of a
 9 service recipient or payor for any tax during any
 10 taxable year with respect to a service provider, the
 11 application of this section shall be conditioned on ei-
 12 ther the service recipient or the payor satisfying the
 13 reporting requirements applicable to such service re-
 14 cipient or payor under section 6041(a), 6041A(a), or
 15 6050W with respect to such service provider for
 16 such period.

17 “(2) REASONABLE CAUSE.—For purposes of
 18 paragraph (1), such reporting requirements shall be
 19 treated as met if the failure to satisfy such require-
 20 ments is due to reasonable cause and not willful ne-
 21 glect.

22 “(f) EXCEPTION FOR SERVICES PROVIDED BY
 23 OWNER.—This section shall not apply with respect to any
 24 service provided by a service provider to a service recipient
 25 if the service provider owns any interest in the service re-

1 cipient or any payor with respect to the service provided.
 2 The preceding sentence shall not apply in the case of a
 3 service recipient the stock of which is regularly traded on
 4 an established securities market.

5 “(g) EXCEPTION FOR PERSONAL SERVICES.—

6 “(1) IN GENERAL.—This section shall not apply
 7 with respect to any service provided for the personal
 8 purposes of the service recipient.

9 “(2) LIMITATION.—Paragraph (1) shall not
 10 apply in the case of any services provided to a serv-
 11 ice recipient who is not the payor.

12 “(h) LIMITATION ON RECLASSIFICATION BY SEC-
 13 RETARY.—For purposes of this title—

14 “(1) EFFECT OF RECLASSIFICATION ON SERV-
 15 ICE RECIPIENTS AND PAYORS.—A determination by
 16 the Secretary that a service recipient or a payor
 17 should have treated a service provider as an em-
 18 ployee shall be effective with respect to the service
 19 recipient or payor no earlier than the notice date
 20 if—

21 “(A) the service recipient or the payor en-
 22 tered into a written contract with the service
 23 provider which meets the requirements of sub-
 24 section (d),

1 “(B) the service recipient or the payor sat-
2 isfied the applicable reporting requirements of
3 section 6041(a), 6041A(a), or 6050W for all
4 relevant taxable years with respect to the serv-
5 ice provider,

6 “(C) the service recipient or the payor col-
7 lected and paid over all applicable taxes im-
8 posed under subtitle C for all relevant taxable
9 years with respect to the service provider, and

10 “(D) the service recipient or the payor
11 demonstrates a reasonable basis for having de-
12 termined that the service provider should not be
13 treated as an employee under this section and
14 that such determination was made in good
15 faith.

16 “(2) EFFECT OF RECLASSIFICATION ON SERV-
17 ICE PROVIDERS.—A determination by the Secretary
18 that a service provider should have been treated as
19 an employee shall be effective with respect to the
20 service provider no earlier than the notice date if—

21 “(A) the service provider entered into a
22 written contract with the service recipient or
23 payor which meets the requirements of sub-
24 section (d),

1 “(B) the service provider satisfied the ap-
2 plicable reporting requirements of sections
3 6012(a) and 6017 for all relevant taxable years
4 with respect to the service recipient or payor,
5 and

6 “(C) the service provider demonstrates a
7 reasonable basis for determining that the serv-
8 ice provider is not an employee under this sec-
9 tion and that such determination was made in
10 good faith.

11 “(3) NOTICE DATE.—For purposes of this sub-
12 section, the term ‘notice date’ means the 30th day
13 after the earliest of—

14 “(A) the date on which the first letter of
15 proposed deficiency which allows the service
16 provider, the service recipient, or the payor an
17 opportunity for administrative review in the In-
18 ternal Revenue Service Office of Appeals is
19 sent,

20 “(B) the date on which a deficiency notice
21 under section 6212 is sent, or

22 “(C) the date on which a notice of deter-
23 mination under section 7436(b)(2) is sent.

24 “(4) REASONABLE CAUSE EXCEPTION.—The re-
25 quirements of paragraphs (1)(B) and (2)(B) shall be

1 treated as met if the failure to satisfy such require-
 2 ments is due to reasonable cause and not willful ne-
 3 glect.

4 “(5) NO RESTRICTION ON ADMINISTRATIVE OR
 5 JUDICIAL REVIEW.—Nothing in this subsection shall
 6 be construed as limiting any provision of law which
 7 provides an opportunity for administrative or judi-
 8 cial review of a determination by the Secretary.

9 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
 10 tion shall be construed as—

11 “(1) limiting the ability or right of a service
 12 provider, service recipient, or payor to apply any
 13 other provision of this title, section 530 of the Rev-
 14 enue Act of 1978, or any common law rules for de-
 15 termining whether an individual is an employee, or

16 “(2) establishing a prerequisite for the applica-
 17 tion of any provision of law described in paragraph
 18 (1).

19 “(j) DEFINITIONS.—For purposes of this section—

20 “(1) SERVICE PROVIDER.—

21 “(A) IN GENERAL.—The term ‘service pro-
 22 vider’ means any qualified person who performs
 23 service for another person.

24 “(B) QUALIFIED PERSON.—The term
 25 ‘qualified person’ means—

1 “(i) any natural person, or

2 “(ii) any entity if any of the services
3 referred to in subparagraph (A) are per-
4 formed by one or more natural persons
5 who directly own interests in such entity.

6 “(2) SERVICE RECIPIENT.—The term ‘service
7 recipient’ means the person for whom the service
8 provider performs such service.

9 “(3) PAYOR.—The term ‘payor’ means—

10 “(A) any person, including the service re-
11 cipient, who pays the service provider for per-
12 forming such service, or

13 “(B) any third party settlement organiza-
14 tion, as defined in section 6050W(b)(3).

15 “(k) REGULATIONS.—Notwithstanding section
16 530(d) of the Revenue Act of 1978, the Secretary shall
17 issue such regulations as the Secretary determines are
18 necessary to carry out the purposes of this section.”.

19 (b) WITHHOLDING BY PAYOR IN CASE OF CERTAIN
20 PERSONS CLASSIFIED AS NOT EMPLOYEES.—Section
21 3402 of the Internal Revenue Code of 1986 is amended
22 by redesignating subsection (s) as subsection (t) and in-
23 serting after subsection (r) the following new subsection:

1 “(s) EXTENSION OF WITHHOLDING TO PAYMENTS
 2 TO CERTAIN PERSONS CLASSIFIED AS NOT EMPLOY-
 3 EES.—

4 “(1) IN GENERAL.—For purposes of this chap-
 5 ter and so much of subtitle F as relates to this chap-
 6 ter, compensation paid pursuant to a contract de-
 7 scribed in section 7706(d) shall be treated as if it
 8 were a payment of wages by an employer to an em-
 9 ployee.

10 “(2) AMOUNT WITHHELD.—Except as otherwise
 11 provided under subsection (i), the amount to be de-
 12 ducted and withheld pursuant to paragraph (1) with
 13 respect to compensation paid pursuant to any such
 14 contract during any calendar year shall be an
 15 amount equal to 5 percent of so much of the amount
 16 of such compensation as does not exceed \$20,000.”.

17 (c) DIRECT SELLERS OF PROMOTIONAL PROD-
 18 UCTS.—Subsection (b) of section 3508 is amended—

19 (1) in paragraph (2)(A)—

20 (A) in clause (ii), by striking “or” at the
 21 end;

22 (B) in clause (iii), by adding “or” at the
 23 end; and

24 (C) by inserting after clause (iii) the fol-
 25 lowing new clause:

1 “(iv) is engaged in the trade or busi-
 2 ness of selling, or soliciting the sale of,
 3 promotional products from other than a
 4 permanent retail establishment,”;

5 (2) by redesignating paragraph (3) as para-
 6 graph (4); and

7 (3) by inserting after paragraph (2) the fol-
 8 lowing new paragraph:

9 “(3) PROMOTIONAL PRODUCT.—For purposes
 10 of paragraph (2)(A)(iv), the term ‘promotional prod-
 11 uct’ means a tangible item with permanently marked
 12 promotional words, symbols, or art of the pur-
 13 chaser.”.

14 (d) REPORTING.—

15 (1) INFORMATION AT SOURCE.—Section 6041
 16 of the Internal Revenue Code of 1986 is amended—

17 (A) in subsection (a)—

18 (i) in the heading, by striking “\$600”
 19 and inserting “\$1,000”; and

20 (ii) by striking “\$600 or more in any
 21 taxable year” and inserting “\$1,000 or
 22 more in any taxable year”; and

23 (B) by adding at the end the following new
 24 subsection:

1 “(h) SPECIAL RULES FOR CERTAIN PERSONS CLAS-
2 SIFIED AS NOT EMPLOYEES.—

3 “(1) IN GENERAL.—In the case of any service
4 recipient or payor required to make a return under
5 subsection (a) with respect to compensation to which
6 section 7706(a) applies—

7 “(A) such return shall include—

8 “(i) the aggregate amount of such
9 compensation paid to each person whose
10 name is required to be included on such re-
11 turn,

12 “(ii) the aggregate amount deducted
13 and withheld under section 3402(s) with
14 respect to such compensation, and

15 “(iii) an indication of whether a copy
16 of the contract described in section
17 7706(d) is on file with the service recipient
18 or payor, and

19 “(B) the statement required to be fur-
20 nished under subsection (d) shall include the in-
21 formation described in subparagraph (A) with
22 respect to the service provider to whom such
23 statement is furnished.

24 “(2) DEFINITIONS.—Terms used in this sub-
25 section which are also used in section 7706 shall

1 have the same meaning as when used in such sec-
 2 tion.”.

3 (2) RETURNS REGARDING PAYMENTS OF REMU-
 4 NERATION FOR SERVICES AND DIRECT SALES.—Sec-
 5 tion 6041A of such Code is amended—

6 (A) in paragraph (2) of subsection (a), by
 7 striking “\$600” and inserting “\$1,000”; and

8 (B) by adding at the end the following new
 9 subsection:

10 “(g) SPECIAL RULES FOR CERTAIN PERSONS CLAS-
 11 SIFIED AS NOT EMPLOYEES.—Rules similar to the rules
 12 of subsection (h) of section 6041 shall apply for purposes
 13 of this section.”.

14 (3) RETURNS RELATING TO PAYMENTS MADE
 15 IN SETTLEMENT OF PAYMENT CARD AND THIRD
 16 PARTY NETWORK TRANSACTIONS.—Section 6050W
 17 of such Code is amended—

18 (A) in subsection (d), by amending para-
 19 graph (3) to read as follows:

20 “(3) THIRD PARTY NETWORK.—

21 “(A) IN GENERAL.—The term ‘third party
 22 payment network’ means any agreement or ar-
 23 rangement—

24 “(i) which involves the establishment
 25 of accounts with a central organization or

1 marketplace platform by a substantial
2 number of persons who—

3 “(I) are unrelated to such organi-
4 zation or platform,

5 “(II) provide goods or services,
6 and

7 “(III) have agreed to settle
8 transactions for the provision of such
9 goods or services pursuant to such
10 agreement or arrangement,

11 “(ii) which provides for standards and
12 mechanisms for settling such transactions,
13 and

14 “(iii) which guarantees persons pro-
15 viding goods or services pursuant to such
16 agreement or arrangement that such per-
17 sons will be paid for providing such goods
18 or services.

19 “(B) EXCEPTION.—The term ‘third party
20 payment network’ shall not include any agree-
21 ment or arrangement which provides for the
22 issuance of payment cards.

23 “(C) MARKETPLACE PLATFORM.—For pur-
24 poses of subparagraph (A), the term ‘market-
25 place platform’ means any person who—

1 “(i) operates a digital website or mo-
 2 bile application that facilitates the provi-
 3 sion of goods or services by providers to re-
 4 cipients,

5 “(ii) enters into an agreement with
 6 each provider stating that such provider
 7 will not be treated as an employee with re-
 8 spect to such goods or services,

9 “(iii) provides standards and mecha-
 10 nisms for settling such facilitated trans-
 11 actions, and

12 “(iv) guarantees each provider of
 13 goods or services pursuant to such agree-
 14 ment that the provider will be paid for
 15 such facilitated transaction.”;

16 (B) by amending subsection (e) to read as
 17 follows:

18 “(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY
 19 THIRD PARTY SETTLEMENT ORGANIZATIONS.—

20 “(1) IN GENERAL.—A third party settlement
 21 organization shall be required to report any informa-
 22 tion under subsection (a) with respect to third party
 23 network transactions of any participating payee only
 24 if the amount which would otherwise be reported

1 under subsection (a)(2) with respect to such trans-
 2 actions exceeds \$1,000.

3 “(2) ELECTION TO REPORT.—Notwithstanding
 4 paragraph (1), a third party settlement organization
 5 may elect to report any information under sub-
 6 section (a) with respect to third party network
 7 transactions of any participating payee for which the
 8 amount reported under subsection (a)(2) with re-
 9 spect to such transactions is equal to or less than
 10 \$1,000.”; and

11 (C) in subsection (f)—

12 (i) in paragraph (1), by striking
 13 “and” at the end;

14 (ii) in paragraph (2), by striking the
 15 period at the end and inserting “, and”;
 16 and

17 (iii) by inserting after paragraph (2)
 18 the following new paragraph:

19 “(3) the amount, if any, withheld pursuant to
 20 section 3402(s).”.

21 (e) PROCEEDINGS FOR DETERMINATION OF EMPLOY-
 22 MENT STATUS.—Paragraph (1) of section 7436(b) of the
 23 Internal Revenue Code of 1986 is amended to read as fol-
 24 lows:

1 “(1) PETITIONER.—A pleading may be filed
2 under this section only by—

3 “(A) the person for whom the services are
4 performed, or

5 “(B) any service provider (as defined in
6 section 7706(j)(1)) which the Secretary has de-
7 termined should have been treated as an em-
8 ployee.”.

9 (f) CLERICAL AMENDMENT.—The table of sections
10 for chapter 79 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following new item:

 “Sec. 7706. Determination of worker classification.”.

12 (g) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to services performed after Decem-
14 ber 31, 2017 (and to payments made for such services
15 after such date).

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