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December 8, 2011

The Honorable
Senate Office Building
Washington, DC 20510

Dear Senator :

On behalf of the membership of the National Association of Professional Employer Organizations (NAPEO), I am writing to ask that you cosponsor and support S. 1908, The Small Business Efficiency Act, as introduced by Senators Bill Nelson (D-FL) and Charles Grassley (R-IA).

Professional employer organizations (PEOs) help small- and medium-sized businesses with human resources, compensation, and employee benefits issues through a co-employment arrangement. Through economies of scale, PEOs improve compliance with federal and state tax and benefits laws and often provide retirement and health benefits that were not available to the workers prior to the PEO arrangement. PEOs also collect employment taxes from their clients and remit the taxes to the federal government under the PEO's Employer Identification Number (EIN). This facilitates tax administration by reducing the number of returns processed and by reducing errors in calculating employment taxes.

While the PEO arrangement is beneficial for both small business and the IRS, there is no definition of PEOs in the federal tax code. The problems caused by this lack of legal clarity have been highlighted by the Treasury Inspector General for Tax Administration (TIGTA) in a report (2011-40-103) released this past September on the efforts to implement the Small Business Health Care Tax Credit. One of the findings of the report is that small businesses using PEOs were "unnecessarily" falling into an IRS compliance program designed to identify and audit employers who are not paying their employment taxes, when in fact their PEOs were handling the tax issues correctly. TIGTA called this "a waste of IRS resources" and "an increased burden on those affected taxpayers," the small businesses that use PEOs. In 2007, TIGTA issued a similar report (2007-30-169), which in part faulted the lack of law or IRS regulations governing the use of PEOs.

S. 1908 would address many of the concerns raised by TIGTA and provide clarity on the use of PEOs to remit federal employment taxes. This legislation would create a voluntary certification program for PEOs within the IRS. To become IRS-certified, a PEO would have to meet financial standards (including bonding and independent financial audit requirements) and satisfy reporting obligations and other appropriate standards set by the IRS. Once certified, a PEO would take on sole liability for the collection of federal employment taxes for worksite employees performing services for their PEO clients. Small- and medium-sized business clients that contract with certified PEOs would be assured that they would not be liable for employment taxes when the PEO has accepted that responsibility.

NAPEO members strongly support S. 1908. It will not only improve tax compliance, but will also provide needed certainty for small business, allowing that sector to better focus on growth and job creation. Enactment of this legislation would result in improved compliance with federal tax law, grant legal status within the IRS for PEOs, and create a safe harbor from IRS enforcement on the payment of employment taxes for small businesses that use certified PEOs.

For these reasons, we ask that you cosponsor and support S. 1908, the Small Business Efficiency Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur L. Geiger", is written in black ink.

Arthur L. Geiger
Chairman, NAPEO Board of Directors

NAPEO is the national trade association for and voice of the PEO industry, representing more than 300 members and 85 percent of the industry's \$81 billion in revenues. NAPEO members range in size from start-ups to large publicly held companies.