

THE SMALL BUSINESS EFFICIENCY ACT OF 2011

Section-By-Section Description

Section 1. Short Title: The Small Business Efficiency Act of 2011

Section 2. No Inference Language: The legislation is narrowly drafted to provide expressly that except for the payment of employment taxes as provided in the bill, there is no inference regarding the determination of who is a common law employer under Federal tax laws or who is an employer under other provisions of the law.

Section 3. Certified Organizations: Creates a voluntary certification program for Professional Employer Organizations (CPEOs) by establishing basic requirements which must be met in order to be certified by the Internal Revenue Service (IRS).

Section 3(a) describes the responsibility of the CPEO with respect to the covered workers performing services at its business client's worksite, with the CPEO being treated as the employer of those covered workers for employment tax purposes. This section provides that after certification, a CPEO assumes the responsibility and liability for payment of wages and collection of Federal employment taxes for covered workers. This section also provides that a CPEO and its clients will be treated as "successor" employers for employment tax purposes with no additional taxes owed simply because a client engages or disengages a CPEO. Finally, the section imposes rules that prevent abuse.

Section 3(b) describes certification requirements which a PEO must demonstrate to the IRS by written application. As established by the Secretary of the Treasury, these could include requirements with respect to tax status, background, experience, business location, and annual financial audits, as well as verification of the continuing accuracy of representations and information on a periodic basis. In addition, this section requires CPEOs to obtain financial reviews from independent CPAs and to post a bond for the payment of employment taxes. A worksite employee is a worker who performs services at the CPEO's business client worksite if the worker and at least 85% of the individuals working at the worksite are covered by a written service contract that provides the CPEO will (1) assume responsibility for payment, reporting and withholding of wages, employment taxes and employee benefits, without regard to the adequacy of payment by the client business. The service contract would also be required to expressly provide that the CPEO assumes shared responsibility with the business client for firing the worker or hiring or recruiting any new worker and for maintaining employee records.

Section 3(c) provides conforming amendments with respect to certain credits and reporting rules.

Section 3(d) makes certain clerical amendments.

Section 3(e) creates regulatory authority to develop appropriate reporting and recordkeeping rules.

Section 3(f) authorizes the creation of a CPEO certification user fee not to exceed \$500.

Section 3(g) provides that the provisions of the Act will take effect on January 1 of the first calendar year beginning more than 12 months after the date of enactment. This section further requires the Secretary of the Treasury to establish the certification program not later than 6 months following the effective date.

FOR MORE INFORMATION, CONTACT THOM STOHLER, DIRECTOR, FEDERAL AFFAIRS, THE NATIONAL ASSOCIATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS (NAPEO) 703-739-8167