

Coalition to Promote Independent Entrepreneurs

ICCoalition.org · (202) 659-0878

April 16, 2014

The Honorable Dave Camp
Chairman, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Camp:

The undersigned organizations and entities represent thousands of companies that share the common characteristic of doing business with individuals who offer their services as legitimate independent contractors. These industries provide millions of Americans with opportunities to earn good incomes through their work as independent contractors. While we support the goal of enhancing the certainty for classifying individuals as employees or independent contractors, as we do many of the provisions of your tax reform proposal, we ask that you revisit the worker-classification safe-harbor provision contained in your recent proposal, which is estimated to result in a revenue loss of \$2.6 billion.

The principal reason for our opposition to this proposed new safe harbor is that it would require federal income-tax withholding on payments made to independent contractors. We believe this is a dangerous precedent. It would undermine a bedrock tax distinction between employees and independent contractors, under which employers withhold payroll taxes from wages paid to employees, but do not withhold such amounts from payments made to nonemployees. Moreover, for those industries in which a company does business with large numbers of independent contractors and makes large numbers of relatively small payments, a tax-withholding requirement would create an enormous administrative burden for the company in exchange for only *de minimis* amounts being remitted to the Internal Revenue Service. For independent contractors that operate on a narrow gross margin, the withholding of five percent from their gross fees could make some work unprofitable, create severe pressure on cash management and result in over-withholding.

In addition to the tax-withholding requirement, another condition of the proposed new safe harbor that we oppose is that the services performed by the service provider be “in the ordinary course of a trade or business of the service recipient.” We believe this requirement is problematic, as it would make a company that qualifies for this new safe harbor unable to satisfy the “ABC” test in many states, e.g., Massachusetts, which requires that services provided by an independent contractor be “outside the usual course of the business of the employer.”

Finally, we believe any new safe-harbor proposal should take into account the modern economy, in which growing numbers of entrepreneurial individuals seek to start their own service-based business out of their own homes, with minimal out-of-pocket expenses. Consequently, we believe a new safe harbor that requires an individual to incur significant

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unreimbursed expenses, which is only one of the twenty common-law factors the Internal Revenue Service currently considers, is not appropriate.

In our view, the current law governing the classification of individuals as employees or independent contractors for federal tax purposes is functioning well, and we see no need for any fundamental change in this area. Nonetheless, we support enhancing certainty in this area, provided that the fundamental tax distinctions between employees and independent contractors are not compromised. We are confident that you share our objectives of creating more opportunities for independent-contractor entrepreneurs and that you will work with us to address our concerns.

To that end, members of the Coalition to Promote Independent Entrepreneurs would welcome an opportunity to meet with you and your staff to discuss these concerns in greater detail.

Sincerely,

American Bakers Association
American Society of Travel Agents
American Trucking Associations
Associated Builders and Contractors
Direct Selling Association
Financial Services Institute, Inc.
Forest Resources Association, Inc.
International Franchise Association
International Warehouse Logistics Association
Market Research Association
Mystery Shopping Providers Association of North America
Newspaper Association of America
Private Care Association, Inc.
Snack Food Association