

United States Senate Committee on Finance

For Immediate Release

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Grassley, Baucus Introduce Small Business Assistance Bill

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today introduced legislation to update and clarify the tax rules for small businesses that use outside organizations to pay wages and federal employment taxes.

“Small businesses create most jobs in America,” Grassley said. “More and more, they’re turning to outside organizations to help with increasingly complicated paperwork and tax compliance. Federal law is too ambiguous in its treatment of these outside groups and whether they can appropriately represent small businesses. This bill clears up the ambiguity. It will improve the efficiency of America’s small businesses. It will also help to ensure tax compliance.”

Baucus said, “America’s economy depends on small businesses, and small businesses depend on these professional employer organizations to keep their operations running right. It’s vital to entrepreneurs and employees alike that these outside groups provide consistent, quality service. Our bill will clarify just what quality and consistency small businesses should be able to expect.”

An increasing number of small and mid-sized businesses are using Professional Employer Organizations (PEOs) for comprehensive employment services. The PEOs assume responsibility for the management of human resources, employee benefits, payroll, and workers’ compensation, allowing their business clients to focus on their core competencies to maintain and grow their bottom line.

The Grassley-Baucus *Small Business Efficiency Act* would improve small businesses’ efficiency by eliminating any uncertainty about the ability of qualifying PEOs to assume liability for paying wages and collecting and remitting federal employment taxes.

Grassley and Baucus said the *Small Business Efficiency Act* would permit PEOs certified by the IRS to collect and remit the federal employment taxes of their business clients’ employees. The certification process would be voluntary and was designed with significant input from all stakeholders, including the Department of the Treasury and the IRS. To be certified by the IRS, the organization would have to meet financial and other standards and maintain ongoing certification by the IRS. The certified organization would be required to assume full and sole responsibility for the collection of federal employment taxes.

Grassley and Baucus said that in addition to the many benefits for business clients, the bill would benefit the government from improved employment regulatory compliance and tax administration. The IRS has stated that certified PEOs would facilitate tax administration by reducing the number of returns it processes and by reducing errors in calculating and paying employment taxes. The arrangement not only reduces the governmental burden of collecting

employment tax and unemployment compensation obligations, but it also assures consistent compliance with complex tax laws and timely and expedited payment of taxes.

A section-by-section summary of the bill follows.

THE SMALL BUSINESS EFFICIENCY ACT

Section-By-Section Description

Section 1. Short Title: The Small Business Efficiency Act

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.