



Side-by-Side Comparison of S. 1549 and H.R. 3396

	S. 1549 <ul style="list-style-type: none"> • Introduced on July 13, 2017, by Senate Finance Committee Member John Thune (R-SD). • <i>The New Economy Works to Guarantee Independence and Growth Act of 2017, or the NEW GIG Act of 2017</i> 	H.R. 3396 <ul style="list-style-type: none"> • Introduced on July 25, 2017, by House Ways and Means Committee Member Erik Paulsen (R-MN).
Definitions of Key Terms	As used in the proposed new safe-harbor: <ul style="list-style-type: none"> • The term “service provider” means any natural person, or entity if any of the services are performed by one or more natural persons who directly own interests in such entity, who performs service for another person. • The term “service recipient” means the person for whom the service provider performs such service. • The term “payor” means any person, including the service recipient, who pays the service provider for performing such service, or any third party settlement organization, as defined in Internal Revenue Code section 6050W(b)(3). 	As used in the proposed new safe-harbor: <ul style="list-style-type: none"> • The term “service provider” means any natural person or entity who performs service for another natural person or entity. • The term “service recipient” means the person or entity for whom the service provider performs such Service pursuant to a written contract. • The term “payor” means any person or entity who pays the service provider for performing such service.
Proposed New Safe Harbor	<ul style="list-style-type: none"> • The proposed new safe harbor would be contained in a new provision added to the Internal Revenue Code, as section 7706. • The proposed new safe harbor would apply with respect to a relationship meeting an (i) “ABC” test, and (ii) information-reporting requirement, each of which is discussed below. 	<ul style="list-style-type: none"> • The proposed new safe harbor would be contained in a new provision added to the Internal Revenue Code, as section 7706. • The proposed new safe harbor would apply with respect to a relationship meeting an (i) “ABC” test, and (ii) information-reporting requirement, each of which is discussed below.

<p>“A” Factor – General Alternative #1</p>	<p>The service provider, in connection with performing the service—</p> <p>(1) incurs expenses—</p> <ul style="list-style-type: none"> • which are deductible under Internal Revenue Code section 162, <u>and</u> • a significant portion of which are not reimbursed, <u>and</u> <p>(2) agrees:</p> <ul style="list-style-type: none"> • to perform the service for a particular amount of time, • to achieve a specific result, <u>or</u> • to complete a specific task, <u>and</u> <p>(3) satisfies <u>at least one</u> of the following factors:</p> <ul style="list-style-type: none"> • has a significant investment in assets or training which are applicable to the service performed, • is not required to perform services exclusively for the service recipient or payor, • has not been treated as an employee by the service recipient or payor during the 1-year period ending with the date of the commencement of services under the contract described in the “C” factor, discussed below, <u>or</u> • is not compensated on a basis which is tied primarily to the number of hours actually worked. 	<p>The service provider, in connection with performing the service—</p> <p>(1) satisfies either of the following two conditions:</p> <ul style="list-style-type: none"> • incurs significant unreimbursed expenses as it relates to total expense, <u>or</u> • risks income fluctuations because remuneration with respect to such service is not related to the expenses incurred, <p>(2) agrees:</p> <ul style="list-style-type: none"> • to perform the service for a particular amount of time, • to achieve a specific result, <u>or</u> • to complete a specific task, <u>and</u> <p>(3) satisfies <u>at least one</u> of the following:</p> <ul style="list-style-type: none"> • has significant unreimbursed expenses as it relates to total expense in assets or training, • is not required to perform services exclusively for the service recipient, <u>or</u> • has not performed services for the service recipient as an employee during the 1-year period ending with the date of the commencement of services under the contract described in the “C” factor, described below.
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<p>“A” Factor – Sales Alternative #2</p>	<p>In the case of a service provider engaged in the trade or business of selling (or soliciting the sale of) goods or services, the requirements are met with respect to any service provided in the ordinary course of such trade or business if—</p> <ul style="list-style-type: none"> • the service provider is compensated primarily on a commission basis, <u>and</u> • substantially all the compensation for such service is directly related to sales of goods or services rather than to the number of hours worked. 	<p>In the case of a service provider engaged in the trade or business of selling (or soliciting the sale of) goods or services, the requirements are met with respect to any service:</p> <ul style="list-style-type: none"> • the service provider is compensated primarily on a commission basis, <u>and</u> • substantially all the compensation for such service is directly related to sales of goods or services rather than to the number of hours worked to a certain level or limit of highly compensated individuals.
<p>“B” Factor</p>	<p>The service provider satisfies <u>at least one</u> of the following factors:</p> <ul style="list-style-type: none"> • has a principal place of business, • does not provide the service primarily in the service recipient’s place of business, • pays a fair market rent for use of the service recipient’s place of business, <u>or</u> • provides the service primarily using equipment supplied by the service provider. 	<p>The service provider satisfies <u>at least one</u> of the following factors:</p> <ul style="list-style-type: none"> • has a principal place of business, which can be home or mobile-based, or • provides the service primarily using equipment for which the service provider bears the ultimate financial responsibility.
<p>“C” Factor</p>	<p>The service is performed pursuant to a written contract between the service provider and the service recipient (or payor) that is signed before the aggregate payments to the service provider by the service recipient (or payor) exceeds \$1,000 for the year covered by the contract (or its renewal), which meets the following requirements:</p> <p>(1) The contract includes each of the following:</p> <ul style="list-style-type: none"> (A) The service provider’s name, taxpayer identification number, and address. (B) A statement that the service provider will not be treated as an employee with respect to the services provided pursuant to the 	<p>The service is performed pursuant to a written contract between the service provider and the service recipient (or payor) that is signed before the aggregate payments to the service provider by the service recipient (or payor) exceed \$600 for the year covered by the contract (or its renewal), which meets the following requirements:</p> <p>(1) The contract includes each of the following:</p> <ul style="list-style-type: none"> (A) The service provider’s name and address. (B) A statement that the service provider will not be treated as an employee with respect to the services provided pursuant to the contract for

	<p>contract for purposes of the Internal Revenue Code.</p> <p>(C) A statement that the service recipient (or the payor) will withhold upon and report to the Internal Revenue Service the compensation payable pursuant to the contract consistent with the requirements of the Internal Revenue Code [<i>See below Tax Withholding</i>].</p> <p>(D) A statement that the service provider is responsible for payment of Federal, State, and local taxes, including self-employment taxes, on compensation payable pursuant to the contract.</p> <p>(E) (E) A statement that the contract is intended to be considered a contract described Internal Revenue Code section 7706(d).</p>	<p>purposes of the Internal Revenue Code.</p> <p>(C) A statement that the service recipient (or the payor) will report to the Internal Revenue Service the compensation payable pursuant to the contract consistent with the requirements of the Internal Revenue Code.</p> <p>(D) A statement that the service provider is responsible for payment of Federal, State, and local taxes, including self-employment taxes, on compensation payable pursuant to the contract.</p> <p>(E) A statement that the contract is intended to be considered a contract described in Internal Revenue Code section 7706(d).</p>
	<p>(2) The term of the contract does not exceed 2 years, but the contract can be renewed for renewal terms of up to 2 years, provided that the service provider's name, taxpayer identification number, and address are updated in connection with each such renewal.</p>	<p>(2) The term of the contract cannot exceed 1 year, but the contract can be renewed for renewal terms of up to 1 year, provided that the service provider's name and address is updated as needed in connection with each such renewal.</p>
<p>Tax Withholding on Payments to an Independent Contractor</p>	<p>Internal Revenue Code section 3402 would be amended by creating a new subsection (s) providing that: For purposes of this chapter [Collection of Income Tax at Source on Wages] and so much of subtitle F as relates to this chapter, compensation paid pursuant to a contract described in section 7706(d) shall be treated as if it were a payment of wages by an employer to an employee. Except as otherwise provided under subsection (i) [authorizes Treasury to issue regulations to increase withholding in cases where an employee requests the change], the amount to be deducted and withheld with respect to compensation paid pursuant to any such contract during any calendar year shall be an amount equal to 5 percent of the first \$20,000.</p>	

<p>General Requirements of the Proposed New Safe Harbor</p>	<ul style="list-style-type: none"> • A service recipient or payor could not claim the benefit of the proposed new safe harbor with respect to a service provider unless the payor or the service recipient complies with information reporting requirements applicable to such service recipient or payor under Internal Revenue Code section 6041(a) [Forms 1099-MISC], 6041A(a) [Form 1099-MISC], or 6050W [Form 1099-K] with respect to the service provider for the period, (subject to a “reasonable cause” defense). • The proposed new safe harbor would not apply with respect to any service provided by a service provider to a service recipient if the service provider owns any interest in the service recipient (unless publicly traded) or any payor with respect to the service provided. • The proposed new safe harbor would not apply with respect to any service provided for the personal purposes of the service recipient, unless the service recipient is not the payor. 	<ul style="list-style-type: none"> • A service recipient or payor could not claim the benefit of the proposed new safe harbor with respect to a service provider unless the service recipient or payor met the applicable reporting requirements of Internal Revenue Code section 6041(a) or 6041A(a) [Forms 1099-MISC] for the taxable year with respect to the service provider (subject to a “reasonable cause” defense). • The proposed new safe harbor would not apply with respect to any service provided by a service provider to a service recipient if the service provider owns any interest in the service recipient (unless publicly traded) or any payor with respect to the service provided.
<p>Other Features of New Code section 7706</p>	<p>The bill would protect a <u>service recipient</u> and <u>payor</u> against a retroactive reclassification, if:</p> <p>(A) the service recipient or the payor entered into a written contract with the service provider which meets the requirements of the “C” factor,</p> <p>(B) the service recipient or the payor satisfied the applicable reporting requirements of Internal Revenue Code section 6041(a), 6041A(a), or 6050W for all relevant taxable years with respect to the service provider payor (subject to a “reasonable cause” defense),</p> <p>(C) the service recipient or the payor collected and paid over all applicable taxes imposed under subtitle C [federal employment taxes] for all relevant taxable years with respect to the service provider, <u>and</u></p>	<p>The bill would protect a <u>service recipient or a payor</u> against a retroactive reclassification if:</p> <p>(A) the service recipient or the payor entered into a written contract with the service provider which meets the requirements of the “C” factor,</p> <p>(B) the service recipient or the payor satisfied the applicable reporting requirements of section (a) or 6041A(a) [Forms 1099-MISC] for all relevant taxable years with respect to the service provider, <u>and</u></p> <p>(C) the service recipient or the payor demonstrates a reasonable basis for having determined that the service provider should not be treated as an employee under the proposed new safe harbor and that</p>

	<p>(D) the service recipient or the payor demonstrates a reasonable basis for having determined that the service provider should not be treated as an employee under Internal Revenue Code section 7706 and that such determination was made in good faith.</p>	<p>such determination was made in good faith.</p>
	<p>The bill would protect a <u>service provider</u> against a retroactive reclassification, if:</p> <p>(A) the service provider entered into a written contract with the service recipient or payor which meets the requirements of factor “C”,</p> <p>(B) the service provider satisfied the applicable reporting requirements of Internal Revenue Code sections 6012(a) and 6017 for all relevant taxable years with respect to the service recipient or payor (subject to a “reasonable cause” defense), <u>and</u></p> <p>(C) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee under Internal Revenue Code section 7706 and that such determination was made in good faith.</p>	<p>The bill would protect a <u>service provider</u> against a retroactive reclassification, if:</p> <p>(A) the service provider entered into a written contract with the service recipient or payor which meets the requirements of the “C” factor,</p> <p>(B) the service recipient or payor satisfied the applicable reporting requirements of Internal Revenue Code sections 6012(a) and 6017 for all relevant taxable years with respect to the service provider, <u>or</u></p> <p>(C) the service recipient demonstrates a basis for determining that the service provider is not an employee under the proposed new safe harbor and that such determination was made in good faith.</p>
	<ul style="list-style-type: none"> • Proposed new Internal Revenue Code section 7706(g) shall not be construed as limiting any provision of law 	<ul style="list-style-type: none"> • The burden of proof with respect to whether a taxpayer meets the requirements of the “A” factor – General Alternative #1 of the proposed new safe harbor would be shifted to the Secretary if: <ul style="list-style-type: none"> (i) the taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of the proposed new safe harbor, <u>and</u> (ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate. • Proposed new Internal Revenue Code section 7706(g) shall not be

	<p>which provides an opportunity for administrative or judicial review of a determination by the Secretary.</p> <ul style="list-style-type: none"> • The bill expressly authorizes the issuance of Treasury regulations “necessary to carry out the purposes of” new Code section 7706. • The bill shall not be construed as (i) limiting the ability or right of a service provider, service recipient, or payor to apply any other provision of the Internal Revenue Code, section 530 of the Revenue Act of 1978, or any common law rules for determining whether an individual is an employee, or (ii) establishing a prerequisite for the application of any such provision of law. 	<p>construed as limiting any provision of law which provides an opportunity for administrative or judicial review of a determination by the Secretary.</p> <ul style="list-style-type: none"> • The bill expressly authorizes the issuance of Treasury regulations “necessary to carry out the purposes of” new Code section 7706. • No provision of this new Internal Revenue Code section 7706 may be construed to expand the circumstances under which a service provider may be treated as an employee or a service recipient may be treated as an employer. • The new safe harbor would apply regardless of whether such service is performed in the ordinary or related course of a trade or business of the service recipient.
New Information Reporting	Internal Revenue Code section 6041(a) would be amended to increase the Form 1099-MISC reporting threshold from \$600 to \$1,000.	
	<p>New Internal Revenue Code section 6041(h) would be added to provide for the creation of an information return for independent contractors covered by new Code section 7706, which will include:</p> <ul style="list-style-type: none"> • the aggregate amount of such compensation paid to each person whose name is required to be included on such return, • the aggregate amount deducted and withheld under Internal Revenue Code section 3402(s) with respect to such compensation, and • (iii) an indication of whether a copy of the contract described in factor “C” is on file with the service recipient or payor. 	<p>With respect to compensation to which section 7706(a) applies, the Form 1099 return would need to include—</p> <ul style="list-style-type: none"> • the aggregate amount of such compensation paid to each person or entity whose name is required to be included on such return, • the aggregate amount deducted and withheld under Internal Revenue Code section 3402(s) with respect to such compensation, and • an indication of whether a copy of the contract described in the “C” factor is on file with the service recipient or payor.
	Internal Revenue Code section 6050W would be amended to include within the term “third party payment network” a	

	<p>marketplace platform, defined to mean any person who:</p> <ul style="list-style-type: none"> (i) operates a digital website or mobile application that facilitates the provision of goods or services by providers to recipients, (ii) enters into an agreement with each provider stating that such provider will not be treated as an employee with respect to such goods or services, (iii) provides standards and mechanisms for settling such facilitated transactions, and (iv) guarantees each provider of goods or services pursuant to such agreement that the provider will be paid for such facilitated transaction. <p>Internal Revenue Code section 6050W would be amended:</p> <ul style="list-style-type: none"> • to reduce the <i>de minimis</i> exception from (i) transactions exceeding \$20,000 and an aggregate number of transactions of more than 200, to transactions exceeding \$1,000 (regardless of the aggregate number of transactions) – but permitting the reporting of lesser amounts; and • to require the Form 1099-K to include the amount withheld pursuant to Code section 3402(s). 	
<p>Expanded Standing to Contest Worker-Status Determinations in U.S. Tax Court</p>	<p>Internal Revenue Code section 7436 currently defines a taxpayer with standing to litigate worker-status disputes in the U.S. Tax Court as “the person for whom the services are performed.” The bill would expand the provision to also grant standing to “any service provider which the Secretary has determined should have been treated as an employee.”</p>	
<p>Direct Sellers</p>	<p>The bill would expand the definition of “direct seller,” as used in Internal Revenue Code section 3508, to include any person engaged in the trade or business of selling, or soliciting the sale of, “promotional products” from other than a permanent retail establishment. The term “promotional product” would be defined to mean a tangible item with permanently marked promotional words, symbols, or art of the purchaser.</p>	

	<ul style="list-style-type: none"> • Internal Revenue Code section 6041A, governing the Form 1099-MISC information reporting requirements, would be amended by: <ul style="list-style-type: none"> ○ increasing the reporting threshold from \$600 to \$1,000; and ○ adding a new provision stating that —Rules similar to the rules of new Code section 6041(h) [concerning independent contractors covered by new Code section 7706, discussed above] shall apply for purposes of this section. 	
Effective Date	Services performed after December 31, 2017.	Services performed after December 31, 2016.