

the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.”

Pub. L. 110-343, div. B, title II, § 208(b), Oct. 3, 2008, 122 Stat. 3840, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108-357, set out as a note under section 469 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, § 6009(b)(2), July 22, 1998, 112 Stat. 812, provided that: “The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, § 964(b), Aug. 5, 1997, 111 Stat. 893, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100-203, title X, § 10211(c), Dec. 22, 1987, 101 Stat. 1330-405, as amended by Pub. L. 100-647, title II, § 2004(f)(2), Nov. 10, 1988, 102 Stat. 3602, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply—

“(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

“(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

“(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘existing partnership’ means any partnership if—

“(i) such partnership was a publicly traded partnership on December 17, 1987,

“(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

“(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

“(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

“(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership,

paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for ‘December 31, 1987’ the earlier of—

“(i) December 31, 1997, or

“(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B).”

§ 7705. Certified professional employer organizations

(a) In general

For purposes of this title, the term “certified professional employer organization” means a person who applies to be treated as a certified professional employer organization for purposes of section 3511 and has been certified by the Secretary as meeting the requirements of subsection (b).

(b) Certification requirements

A person meets the requirements of this subsection if such person—

(1) demonstrates that such person (and any owner, officer, and other persons as may be specified in regulations) meets such requirements as the Secretary shall establish, including requirements with respect to tax status, background, experience, business location, and annual financial audits,

(2) agrees that it will satisfy the bond and independent financial review requirements of subsection (c) on an ongoing basis,

(3) agrees that it will satisfy such reporting obligations as may be imposed by the Secretary,

(4) computes its taxable income using an accrual method of accounting unless the Secretary approves another method,

(5) agrees to verify on such periodic basis as the Secretary may prescribe that it continues to meet the requirements of this subsection, and

(6) agrees to notify the Secretary in writing within such time as the Secretary may prescribe of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided under this subsection.

(c) Bond and independent financial review

(1) In general

An organization meets the requirements of this paragraph if such organization—

(A) meets the bond requirements of paragraph (2), and

(B) meets the independent financial review requirements of paragraph (3).

(2) Bond

(A) In general

A certified professional employer organization meets the requirements of this paragraph if the organization has posted a bond for the payment of taxes under subtitle C (in a form acceptable to the Secretary) that is in an amount at least equal to the amount specified in subparagraph (B).

(B) Amount of bond

For the period April 1 of any calendar year through March 31 of the following calendar

year, the amount of the bond required is equal to the greater of—

- (i) 5 percent of the organization's liability under section 3511 for taxes imposed by subtitle C during the preceding calendar year (but not to exceed \$1,000,000), or
- (ii) \$50,000.

(3) Independent financial review requirements

A certified professional employer organization meets the requirements of this paragraph if such organization—

(A) has, as of the most recent audit date, caused to be prepared and provided to the Secretary (in such manner as the Secretary may prescribe) an opinion of an independent certified public accountant as to whether the certified professional employer organization's financial statements are presented fairly in accordance with generally accepted accounting principles, and

(B) provides to the Secretary an assertion regarding Federal employment tax payments and an examination level attestation on such assertion from an independent certified public accountant not later than the last day of the second month beginning after the end of each calendar quarter.

Such assertion shall state that the organization has withheld and made deposits of all taxes imposed by chapters 21, 22, and 24 in accordance with regulations imposed by the Secretary for such calendar quarter and such examination level attestation shall state that such assertion is fairly stated, in all material respects.

(4) Controlled group rules

For purposes of the requirements of paragraphs (2) and (3), all certified professional employer organizations that are members of a controlled group within the meaning of sections 414(b) and (c) shall be treated as a single organization.

(5) Failure to file assertion and attestation

If the certified professional employer organization fails to file the assertion and attestation required by paragraph (3) with respect to any calendar quarter, then the requirements of paragraph (3) with respect to such failure shall be treated as not satisfied for the period beginning on the due date for such attestation.

(6) Audit date

For purposes of paragraph (3)(A), the audit date shall be six months after the completion of the organization's fiscal year.

(d) Suspension and revocation authority

The Secretary may suspend or revoke a certification of any person under subsection (b) for purposes of section 3511 if the Secretary determines that such person is not satisfying the agreements or requirements of subsections (b) or (c), or fails to satisfy applicable accounting, reporting, payment, or deposit requirements.

(e) Work site employee

For purposes of this title—

(1) In general

The term "work site employee" means, with respect to a certified professional employer organization, an individual who—

(A) performs services for a customer pursuant to a contract which is between such customer and the certified professional employer organization and which meets the requirements of paragraph (2), and

(B) performs services at a work site meeting the requirements of paragraph (3).

(2) Service contract requirements

A contract meets the requirements of this paragraph with respect to an individual performing services for a customer if such contract is in writing and provides that the certified professional employer organization shall—

(A) assume responsibility for payment of wages to such individual, without regard to the receipt or adequacy of payment from the customer for such services,

(B) assume responsibility for reporting, withholding, and paying any applicable taxes under subtitle C, with respect to such individual's wages, without regard to the receipt or adequacy of payment from the customer for such services,

(C) assume responsibility for any employee benefits which the service contract may require the certified professional employer organization to provide, without regard to the receipt or adequacy of payment from the customer for such benefits,

(D) assume responsibility for recruiting, hiring, and firing workers in addition to the customer's responsibility for recruiting, hiring, and firing workers,

(E) maintain employee records relating to such individual, and

(F) agree to be treated as a certified professional employer organization for purposes of section 3511 with respect to such individual.

(3) Work site coverage requirement

The requirements of this paragraph are met with respect to an individual if at least 85 percent of the individuals performing services for the customer at the work site where such individual performs services are subject to 1 or more contracts with the certified professional employer organization which meet the requirements of paragraph (2) (but not taking into account those individuals who are excluded employees within the meaning of section 414(q)(5)).

(f) Public disclosure

The Secretary shall make available to the public the name and address of—

(1) each person certified as a professional employer organization under subsection (a), and

(2) each person whose certification as a professional employer organization is suspended or revoked under subsection (d).

(g) Determination of employment status

Except to the extent necessary for purposes of section 3511, nothing in this section shall be construed to affect the determination of who is an employee or employer for purposes of this title.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 113–295, div. B, title II, §206(b), Dec. 19, 2014, 128 Stat. 4067.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after Dec. 19, 2014, see section 206(g)(1) of Pub. L. 113–295, set out as an Effective Date of 2014 Amendment note under section 3302 of this title.

CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION CERTIFICATION PROGRAM

Pub. L. 113–295, div. B, title II, §206(g)(2), Dec. 19, 2014, 128 Stat. 4071, provided that: “The Secretary of the Treasury shall establish the certification program described in section 7705(b) of the Internal Revenue Code of 1986, as added by subsection (b), not later than 6 months before the effective date determined under paragraph (1) [see section 206(g)(1) of Pub. L. 113–295, set out as an Effective Date of 2014 Amendment note under section 3302 of this title].”

CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

Sec.	
7801.	Authority of Department of the Treasury.
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Editorial Notes

AMENDMENTS

2019—Pub. L. 116–25, title II, §2103(b), July 1, 2019, 133 Stat. 1011, added item 7812.

1998—Pub. L. 105–206, title I, §§1101(c)(2), 1102(e)(1), 1104(b)(2), July 22, 1998, 112 Stat. 697, 704, 710, added items 7802 to 7804 and struck out former items 7802 “Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate”, 7803 “Other personnel”, and 7804 “Effect of reorganization plans”.

1996—Pub. L. 104–168, title I, §101(b)(3), July 30, 1996, 110 Stat. 1456, added item 7802 and struck out former item 7802 “Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)”.

1988—Pub. L. 100–647, title VI, §6230(b), Nov. 10, 1988, 102 Stat. 3734, added item 7811.

1983—Pub. L. 97–473, title II, §202(c), Jan. 14, 1983, 96 Stat. 2610, added item for subchapter C.

1974—Pub. L. 93–406, title II, §1051(c), Sept. 2, 1974, 88 Stat. 951, substituted “Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Ex-

empt Organizations)” for “Commissioner of Internal Revenue” in item 7802.

1966—Pub. L. 89–719, title I, §112(c), Nov. 2, 1966, 80 Stat. 1146, added item 7810.

§ 7801. Authority of Department of the Treasury

(a) Powers and duties of Secretary

(1) In general

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

(2) Administration and enforcement of certain provisions by Attorney General

(A) In general

The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term “Secretary” or “Secretary of the Treasury” shall, when applied to those provisions, mean the Attorney General; and the term “internal revenue officer” shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

(i) Chapter 53.

(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

(B) Use of existing rulings and interpretations

Nothing in the Homeland Security Act of 2002 alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of such Act, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.

[(b) Repealed. Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1078]

(c) Functions of Department of Justice unaffected

Nothing in this section or section 301(f) of title 31 shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Pub. L. 86–368, §1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 88–426, title III, §305(39), Aug. 14, 1964, 78 Stat. 427; Pub. L. 94–455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §§2(f)(1), 5(b), Sept. 13, 1982, 96 Stat. 1059, 1068, 1078; Pub. L. 107–296, title XI, §1112(k), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 115–141, div. U, title IV, §401(a)(333), Mar. 23, 2018, 132 Stat. 1200.)

Editorial Notes

REFERENCES IN TEXT

The Homeland Security Act of 2002, referred to in subsec. (a)(2)(B), is Pub. L. 107–296, Nov. 25, 2002, 116

¹ Section numbers editorially supplied.