# SMALL BUSINESS EFFICIENCY ACT

# SEC. 206. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

(a) EMPLOYMENT TAXES.—Chapter 25 is amended by adding at the end the following new section:

# SEC. 3511. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

1. GENERAL RULES.—For purposes of the taxes, and other obligations, imposed by this subtitle—
	1. a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee, and
	2. the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.
2. SUCCESSOR EMPLOYER STATUS.—For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1)—
	1. a certified professional employer organization entering into a service contract with a customer with respect to a work site employee shall be treated as a successor employer and the customer shall be treated as a predecessor employer during the term of such service contract, and
	2. a customer whose service contract with a certified professional employer organization is terminated with respect to a work site employee shall be treated as a successor employer and the certified professional employer organization shall be treated as a predecessor employer.
3. LIABILITY OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION.—Solely for purposes of its liability for the taxes and other obligations imposed by this subtitle—
	1. a certified professional employer organization shall be treated as the employer of any individual (other than a work site employee or a person described in subsection (f)) who is performing services covered by a contract meeting the requirements of section 7705(e)(2), but only with respect to remuneration remitted by such organization to such individual, and
	2. the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.
4. TREATMENT OF CREDITS.—
	1. IN GENERAL.—For purposes of any credit specified in paragraph (2)—
		1. such credit with respect to a work site employee performing services for the customer applies to the customer, not the certified professional employer organization,
		2. the customer, and not the certified professional employer organization, shall take into account wages and employment taxes—
			1. paid by the certified professional employer organization with respect to the work site employee, and
			2. for which the certified professional employer organization receives payment from the customer, and
		3. the certified professional employer organization shall furnish the customer and the Secretary with any information necessary for the customer to claim such credit.
	2. CREDITS SPECIFIED.—A credit is specified in this paragraph if such credit is allowed under—
		1. section 41 (credit for increasing research activity),
		2. section 45A (Indian employment credit),
		3. section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips),
		4. section 45C (clinical testing expenses for certain drugs for rare diseases or conditions),
		5. section 45R (employee health insurance expenses of small employers),
		6. section 51 (work opportunity credit),
		7. section 1396 (empowerment zone employment credit), and
		8. any other section as provided by the Secretary.
5. SPECIAL RULE FOR RELATED PARTY.—This section shall not apply in the case of a customer which bears a relationship to a certified professional employer organization described in section 267(b) or 707(b). For purposes of the preceding sentence, such sections shall be applied by substituting ‘10 percent’ for ‘50 percent’.
6. SPECIAL RULE FOR CERTAIN INDIVIDUALS.—For purposes of the taxes imposed under this subtitle, an individual with net earnings from self-employment derived from the customer’s trade or business (including a partner in a partnership that is a customer) is not a work site employee with respect to remuneration paid by a certified professional employer organization.
7. REPORTING REQUIREMENTS AND OBLIGATIONS.—The Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with this title by certified professional employer organizations or persons that have been so certified.

Such rules shall include—

* 1. notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer,
	2. such information as the Secretary determines necessary for the customer to claim the credits identified in subsection (d) and the manner in which such information is to be provided, as prescribed by the Secretary, and
	3. such other information as the Secretary determines is essential to promote compliance with respect to the credits identified in subsection (d) and section 3302, and shall be designed in a manner which streamlines, to the extent possible, the application of requirements of this section and section 7705, the exchange of information between a certified professional employer organization and its customers, and the reporting and recordkeeping obligations of the certified professional employer organization.
1. REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.’’.

(b) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION DEFINED.—Chapter 79 is amended by adding at the end the following new section:

# ‘‘SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

1. 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).
2. 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.
3. BOND AND INDEPENDENT FINANCIAL REVIEW.—
	1. IN GENERAL.—An organization meets the requirements of this paragraph if such organization—
		1. meets the bond requirements of paragraph (2), and meets the independent financial review requirements of paragraph (3).
	2. BOND.—
		1. 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).
		2. 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—
			1. 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.

* 1. INDEPENDENT FINANCIAL REVIEW REQUIREMENTS.—A certified professional employer organization meets the requirements of this paragraph if such organization—
		1. 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
		2. 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.
	2. 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.
	3. 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.
	4. AUDIT DATE.—For purposes of paragraph (3)(A), the audit date shall be six months after the completion of the organization’s fiscal year.
1. 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.
2. 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—
		1. 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
		2. 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—
		1. assume responsibility for payment of wages to such individual, without regard to the receipt or adequacy of payment from the customer for such services,
		2. 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,
		3. 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,
		4. assume responsibility for recruiting, hiring, and firing workers in addition to the customer’s responsibility for recruiting, hiring, and firing workers,
		5. maintain employee records relating to such individual, and
		6. 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)).

1. 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).
2. 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.
3. REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.’’.

# CONFORMING AMENDMENTS.—

* 1. Section 3302 is amended by adding at the end the following new subsection:

(h) TREATMENT OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a certified professional employer organization (as defined in section 7705), or a customer of such organization, makes a contribution to the State’s unemployment fund with respect to wages paid to a work site employee, such certified professional employer organization shall be eligible for the credits available under this section with respect to such contribution.’’.

* 1. Section 3303(a) is amended—
		1. by striking the period at the end of paragraph (3) and inserting ‘‘; and’’ and by inserting after paragraph (3) the following new paragraph:

(4) if the taxpayer is a certified professional employer organization (as defined in section 7705) that is treated as the employer under section 3511, such certified professional employer organization is permitted to collect and remit, in accordance with paragraphs (1), (2), and (3), contributions during the taxable year to the State unemployment fund with respect to a work site employee.’’, and

* + 1. in the last sentence—
			1. by striking ‘‘paragraphs (1), (2), and (3)’’ and inserting ‘‘paragraphs (1),(2), (3), and (4)’’, and
			2. by striking ‘‘paragraph (1), (2), or (3)’’ and inserting ‘‘paragraph (1), (2),(3), or (4)’’.
1. Section 6053(c) is amended by adding at the end the following new paragraph:

(8) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of any report required by this subsection, in the case of a certified professional employer organization that is treated under section 3511 as the employer of a work site employee, the customer with respect to whom a work site employee performs services shall be the employer for purposes of reporting under this section and the certified professional employer organization shall furnish to the customer and the Secretary any information the Secretary prescribes as necessary to complete such reporting no later than such time as the Secretary shall prescribe.’’.

1. Section 6652 is amended by adding at the end the following new subsection:

(n) FAILURE TO MAKE REPORTS REQUIRED UNDER SECTIONS 3511, 6053(c)(8), AND 7705.—In the case of a failure to make a report required under section 3511, 6053(c)(8), or 7705 which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard the preceding sentence shall be applied by substituting ‘$100’ for ‘$50’.’’.

# CLERICAL AMENDMENTS.—

* 1. The table of sections for chapter 25 is amended by adding at the end the following new item: ‘‘Sec. 3511. Certified professional employer organizations.’’.
	2. The table of sections for chapter 79 is amended by inserting after the item relating to sec18 tion 7704 the following new item:

‘‘Sec. 7705. Certified professional employer organizations.’’.

(f) USER FEES.—Section 7528(b) is amended by adding at the end the following new paragraph:

‘‘(4) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—The fee charged under the program in connection with the certification by the Secretary of a professional employer organization under section 7705 shall be an annual fee not to exceed $1,000 per year.’’.

# EFFECTIVE DATES.—

* 1. IN GENERAL.—The amendments made by this section shall apply with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after the date of the enactment of this Act.
	2. CERTIFICATION PROGRAM.—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).
1. NO INFERENCE.—Nothing contained in this section or the amendments made by this section shall be construed to create any inference with respect to the determination of who is an employee or employer—
	1. for Federal tax purposes (other than the purposes set forth in the amendments made by this section), or
	2. for purposes of any other provision of law.