

NEW GIG Act of 2017 Summary of Provisions

The bill would create a safe harbor that would apply for both income and employment taxes. If the objective tests of the safe harbor are met, the following will occur:

- the service provider (worker) will be treated as an independent contractor, and not an employee;
- the service recipient (customer) will not be treated as the employer; and
- in cases where a third party (payor) facilitates the transactions and payments, as with internet platform companies, the payor will not be treated as the employer.

Objective tests – The safe harbor focus on three areas that are intended to demonstrate the independence of the service provider from the service recipient and/or the payor based on objective criteria, rather than a subjective facts-and-circumstances analysis:

- (1) the relationship between the parties (e.g., job-by-job arrangement, the service provider incurs his or her own business expenses, the service provider is not tied to a single service recipient);
- (2) the location of the services or the means by which the services are provided (e.g., the service provider has his or her own place of business, does not work exclusively at the service recipient's place of business, provides his or her own tools and supplies); and
- (3) a written contract with specific requirements (e.g., stating the independent-contractor relationship, acknowledging that the service provider is responsible for his or her own taxes, providing the service recipient's reporting and withholding obligations).

Safe harbor only – Given that the safe harbor is based on objective criteria, it may not apply in every case. However, the bill would preserve the common law rules for worker classification as well as the provisions under current law that treat real estate agents and direct sellers (including direct sellers of promotional products as clarified under the bill) as independent contractors.

Reporting rules – The amount paid to the service recipient under the safe-harbor would be reported to the IRS. For gig economy arrangements – three-party transactions – the payor would report payments over \$1,000 on IRS Form 1099-K (with the option of reporting amounts below that level). For traditional independent-contractor relationships, the service recipient would follow the existing reporting rules and file a Form 1099-MISC showing the amount paid to the service provider. The bill would update the reporting rules to require reporting of payments totaling \$1,000 or more in a year, up from \$600 under current law. To qualify for the safe-harbor, the bill would require the service recipient (or the payor in the gig-economy model) to withhold a limited amount of the payments made, which would be deposited with the IRS and treated like an estimated tax payment by the service provider.

Retroactive reclassification – The bill addresses cases where service providers or service recipients (or payors) mistakenly believe they qualify for the safe-harbor but fail to meet one or more of the requirements. Based on a good faith effort to comply with the requirements of the safe harbor, the bill would only allow the IRS to reclassify the service provider as an employee and the service recipient (or payor) as the employer on a prospective basis.

Tax Court jurisdiction – The bill would expand current law to allow either the service recipient or the service provider to petition the Tax Court to decide a worker-classification case.