

109TH CONGRESS
2D SESSION

S. 3583

To amend the Internal Revenue Code of 1986 to regulate payroll tax deposit agents.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2006

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to regulate payroll tax deposit agents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGULATION OF PAYROLL TAX DEPOSIT**
4 **AGENTS.**

5 (a) IN GENERAL.—Chapter 77 of the Internal Rev-
6 enue Code of 1986 (relating to miscellaneous provisions)
7 is amended by adding at the end the following new section:

8 **“SEC. 7529. PAYROLL TAX DEPOSIT AGENTS.**

9 **“(a) REGISTRATION.—**

1 “(1) IN GENERAL.—The Secretary shall estab-
2 lish a system to require the initial registration and
3 the annual renewal of the registration of persons
4 seeking to act as payroll tax deposit agents author-
5 ized to make Federal employment tax deposits on
6 behalf of employer taxpayers. Such system shall
7 also—

8 “(A) establish a registration and renewal
9 fee for each payroll tax deposit agent in an
10 amount not to exceed \$100,

11 “(B) provide the payroll tax deposit agent
12 the option of either submitting a bond as speci-
13 fied in subsection (b) or submitting to an an-
14 nual audit as specified in subsection (c),

15 “(C) require such disclosures as are speci-
16 fied in subsection (d),

17 “(D) require that such agent ensure the
18 direct notification of the employer by any Fed-
19 eral employment tax authority (and State em-
20 ployment tax authority if such agent contracts
21 to make State employment tax deposits for the
22 employer) regarding the nonpayment of such
23 employment taxes, and

24 “(E) provide penalties for unregistered
25 persons acting as payroll tax deposit agents

1 with respect to Federal tax deposits in an
2 amount not to exceed \$10,000 for each 90 days
3 of noncompliance.

4 “(2) DEFINITION OF PAYROLL TAX DEPOSIT
5 AGENT.—For purposes of this section, the term
6 ‘payroll tax deposit agent’ means any person which
7 provides payroll processing or tax filing and deposit
8 services to 1 or more employers (other than an em-
9 ployer acting on its own behalf) if such person has
10 the contractual authority to access such employer’s
11 funds for the purpose of making employment tax de-
12 posits. Such term shall not include any person which
13 only transfers such funds (regardless if such person
14 has the authority to determine the amount of such
15 transfer) and does not have the authority to im-
16 pound such funds for such purpose.

17 “(3) EMPLOYMENT TAX.—For purposes of this
18 section, the term ‘employment tax’ includes unem-
19 ployment insurance contributions.

20 “(b) BONDING.—

21 “(1) IN GENERAL.—If a payroll tax deposit
22 agent elects to submit a bond under subsection
23 (a)(1)(B), the amount of such bond shall be not less
24 than \$50,000 nor more than \$500,000, and shall be

1 determined with respect to each payroll tax deposit
2 agent under regulations prescribed by the Secretary.

3 “(2) SURETY.—Any bond or security furnished
4 pursuant to this section shall be in such form and
5 with such surety or sureties as may be prescribed by
6 regulations issued pursuant to section 7101.

7 “(c) ANNUAL AUDITS.—If a payroll tax deposit agent
8 elects to submit to an annual audit under subsection
9 (b)(1)(B), such audit shall be performed by an inde-
10 pendent third party and shall be based on such audit prin-
11 ciples as the Secretary determines necessary, including the
12 following:

13 “(1) The escrow account of the payroll tax de-
14 posit agent in which such agent holds its employers’
15 taxes is balanced each year to the total of the quar-
16 terly reconciliation statements.

17 “(2) The escrow account funds of the payroll
18 tax deposit agent are not commingled with such
19 agent’s operating funds.

20 “(3) No evidence that the payroll tax deposit
21 agent used any of the funds in such agent’s escrow
22 account to pay such agent’s own operating costs.

23 “(4) Receipt evidence that such agent paid the
24 required employment taxes on behalf of the employ-

1 ers to the proper government employment tax au-
2 thority.

3 “(d) DISCLOSURE.—The Secretary shall require pay-
4 roll tax deposit agents to disclose to each potential and
5 existing client prior to or at the time of contracting for
6 payroll services—

7 “(1) the client’s continuing liability for payment
8 of all Federal and State employment taxes notwith-
9 standing any contractual relationship with a payroll
10 tax deposit agent,

11 “(2) the mechanisms available to the client to
12 verify the amount and date of payment of all tax de-
13 posits made by the payroll tax deposit agent on be-
14 half of such client, including the Internet address,
15 postal address, and telephone number of each Fed-
16 eral and State employment tax authority related to
17 such deposits, and

18 “(3) such other information that the Secretary
19 determines is necessary or appropriate to assist em-
20 ployers in the selection and use of payroll tax de-
21 posit agents.

22 “(e) TAX DEPOSITS AND RETURNS.—Only persons
23 registered under this section may—

24 “(1) make Federal tax deposits on behalf of an
25 employer,

1 “(2) sign and file Federal employment tax re-
2 turns on behalf of a taxpayer, and

3 “(3) have access to confidential tax information
4 relating to such employer.

5 “(f) REGULATIONS.—The Secretary shall prescribe
6 such regulations as may be necessary to carry out the pro-
7 visions of this section.”.

8 (b) PAYROLL TAX DEPOSIT AGENTS SUBJECT TO
9 PENALTY FOR FAILURE TO COLLECT AND PAY OVER
10 TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.—

11 (1) IN GENERAL.—Section 6672(a) of the In-
12 ternal Revenue Code of 1986 is amended by insert-
13 ing “, including any payroll tax deposit agent (as de-
14 fined in section 7529(a)(2)),” after “Any person”.

15 (2) CONSTRUCTION.—The amendment made by
16 paragraph (1) shall not be construed to create any
17 inference with respect to the interpretation of sec-
18 tion 6672 of the Internal Revenue Code of 1986 as
19 such section was in effect on the day before the date
20 of the enactment of this Act.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for such chapter 77 is amended by adding at the end the
23 following new item:

“Sec. 7529. Payroll tax deposit agents.”.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall take effect on the date of the enactment of this
4 Act.

5 (2) PENALTY.—The amendments made by sub-
6 section (b) shall apply to failures occurring after the
7 date of the enactment of this Act.

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