

“(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 pre-

scribe 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 attesta-

tion 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.)

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].”

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<sup>1</sup> Section numbers editorially supplied.