

July 31, 2017

The Honorable Steve Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin:

On behalf of the undersigned employer organizations and the members we represent, including small and seasonal businesses we are writing to urge the Department to address the confusing and conflicting definitions of “seasonal worker” and “seasonal employee” that are included in the Patient Protection and Affordable Care Act (ACA) and its implementing regulations.

While our organizations share the Administration’s desire to ensure our health care system is the most effective in the world, we understand that the process of reforming current law will take time. In the interim, seasonal small businesses continue to struggle with determining their employer size and employer shared responsibility requirements due to the law’s varying definitions of “seasonal.”

When complying with the ACA, it is possible for the same worker to be a “seasonal worker” for the purpose of determining employer size, but not be considered a “seasonal employee” under an employer’s shared responsibility obligations. The various definitions of “seasonal” included in IRC §4980H are outlined below.

- When determining whether an employer is treated as a small business or a large business known as an applicable large employer (ALE), “**seasonal worker**” is defined as “a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor.” According to the regulation, employers may use a reasonable good faith interpretation to determine which employees are “seasonal workers.”
- The ACA’s “**seasonal worker exception**” is used for the purpose of determining ALE size. The regulation permits employers, after calculating their initial ALE size by including all hours of service performed by all employees (including seasonal workers), to examine the calculation to determine if seasonal workers put the employer over the 50 employee threshold for 120 days (4 calendar months) or less. This determination is made on an annual calendar year basis.
- Once an employer is determined to be an ALE for the calendar year, the employer must determine to whom coverage must be offered or pay a potential penalty. The employer can use a Monthly Measurement Method or

an optional Look-back Measurement Method. Under Treasury regulations, the term “**seasonal employee,**” for the purposes of determining an employee’s full-time status under the optional Look-back Measurement Method, is defined under the regulation as “an employee who is hired into a position for which the customary annual employment is six months or less.”

These various definitions create confusion for seasonal small businesses that struggle to comply with the law. As representatives of these businesses, the undersigned associations request a dialogue with you about possible approaches to simplifying these definitions to the extent allowed by regulation.

Sincerely,

National Organizations

American Farm Bureau Federation
American Horse Council
AmericanHort
Associated Builders and Contractors
Forest Resources Association
Golf Course Superintendents Association of America
Outdoor Amusement Business Association
National Association of Landscape Professionals
National Association of Theatre Owners
National Club Association
National Hispanic Landscape Alliance
National Onion Association
National Restaurant Association
National Retail Federation
Society of American Florists
The Society for Human Resource Management
United Fresh Produce Association
Western Growers Association

State Organizations

Alaska Cabaret, Hotel, Restaurant and Retailers Association
Associated Landscape Contractors of Colorado
Colorado Nursery & Greenhouse Association
Florida Nursery, Growers & Landscape Association
Georgia Fruit and Vegetable Growers Association
Georgia Restaurant Association
Idaho Nursery & Landscape Association
Iowa Restaurant Association
Illinois Landscape Contractors Association
Illinois Sign Association
Louisiana Nursery and Landscape Association
Massachusetts Restaurant Association

Nevada Restaurant Association
New Jersey Nursery & Landscape Association
New Mexico Restaurant Association
Oregon Association of Nurseries
Pennsylvania Landscape & Nursery Association
Rhode Island Hospitality Association
Virginia Nursery & Landscape Association
Wisconsin Association of Textile Services
Wisconsin Fabricare Institute
Wisconsin Green Industry Federation
Wisconsin Landscape Contractors Association
Wisconsin Nursery and Landscape Association
Yuma Fresh Vegetable Association

Cc: John A. Koskinen, Commissioner, Internal Revenue Service