



April 4, 2024

RE: SF 4862 (Oumou Verbeten) Federal safe harbor

Chair Rest and Members of the Minnesota Senate Taxes Committee,

The Minnesota Chamber of Commerce represents over 6,300 businesses of all sizes and industries employing over 500,000 employees in Minnesota. We advocate for public policies to strengthen Minnesota's business climate and to help grow Minnesota's economy.

We are opposed to this bill as it removes a long standing and important safe harbor provided both federally and followed at the state level for businesses that have acted reasonably and in good faith regarding their classification of workers. The Minnesota Chamber shares the goal of preventing misclassification of workers and believe repeat or willful misclassification should be thoroughly investigated and punished because it negatively impacts workers and honest employers alike. However, our members do not want additional complexity and confusion with the enactment of different treatment at the federal and state level for the same worker especially in an area where clear and consistent guidance from regulators is often lacking.

As a recent Office of the Legislator Auditor's (OLA) report found the determination of a worker's proper status can be challenging due to varying tests within state agencies and the subjective nature of the criteria. This can result in a worker being classified as an employee for one state program and classified as another for another program. Due to the confusion related to classification of workers and the subjective nature of the tests, a safe harbor against retroactive employment payroll tax assessments was created federally and Minnesota has followed this long standing safe harbor. To meet this safe harbor, businesses must meet three requirements of 1) reporting consistency of filing of tax forms; 2) substantive consistency which means must consistently treat workers as independent contractors and 3) acting in a reasonable basis by either following a past court case; a past audit of the taxpayer or a *long-standing* recognized industry practice.

The OLA report acknowledges that some employers may genuinely mistakenly misclassify employees. For businesses that have also acted reasonably and in good faith by relying on a past audit, a court case or long standing industry practice we recommend keeping this safe harbor in place.

Sincerely,

Beth Kadoun

Beth Kadoun
Vice President of Tax and Fiscal Policy
Minnesota Chamber of Commerce