

STATEMENT OF SENATOR BOB DOLE

BEFORE THE SUBCOMMITTEE ON TAXATION

AND DEBT MANAGEMENT

September 17, 1979

MR. CHAIRMAN, ONE OF THE BILLS BEFORE THE SUBCOMMITTEE TODAY IS S. 736, THE EMPLOYMENT TAX ACT OF 1979. THE LEGISLATION ADDRESSES A VERY IMPORTANT ISSUE. IF ENACTED IT WILL BRING SOME CERTAINTY INTO A VERY CONTROVERSIAL AREA OF THE TAX LAW.

INDEPENDENT CONTRACTORS ARE DISTINGUISHED FROM EMPLOYERS FOR TAX PURPOSES BY THE COMMON LAW. THE COMMON LAW RULES AND THE APPLICATION OF THESE RULES BY THE COURTS HAVE PRODUCED DECISIONS AND GUIDELINES THAT UNTIL A FEW YEARS AGO WERE WIDELY UNDERSTOOD AND ACCEPTED. HOWEVER, IN THE EARLY 1970'S, THE INTERNAL REVENUE SERVICE LAUNCHED AN AGGRESSIVE AUDIT CAMPAIGN OF EMPLOYMENT TAXES. THE PROBLEM OF INCREASED AUDITS AND THE RETROACTIVE TAX ASSESSMENTS WHICH WERE ISSUED BY THE IRS, BROUGHT A NUMBER OF COMPLAINTS FROM MANY TAXPAYERS, INCLUDING DIRECT SELLERS, INSURANCE SALESPERSONS, REALTORS, LOGGERS, TRUCKERS, AND MANY MORE.

MR. CHAIRMAN, I NEED NOT REMIND MEMBERS OF THE FINANCE COMMITTEE THAT THE DISTINCTION BETWEEN THE INDEPENDENT CONTRACTORS AND AN EMPLOYEE IS IMPORTANT BECAUSE EMPLOYERS DO NOT HAVE TO WITHHOLD ON WAGES OF INDEPENDENT CONTRACTORS, NOR PAY SOCIAL SECURITY OR EMPLOYMENT TAXES. IF THE INTERNAL REVENUE SERVICE DECIDES TO CHALLENGE THE EMPLOYMENT STATUS

- 2 -

AND PREVAILS, THE EMPLOYER BECOMES LIABLE FOR EMPLOYMENT TAXES WHICH HAVE NOT BEEN WITHHELD OR PAID TO THE TREASURY. IT IS A VERY SERIOUS PROBLEM.

BECAUSE THE INTERNAL REVENUE SERVICE HAD CHANGED THE RULES OF THE GAME, IN ITS OPINION OF TAX TREATMENT OF INDEPENDENT CONTRACTORS, THE 1978 REVENUE ACT CONTAINED A PROVISION WHICH I SPONSORED TO ALLOW EMPLOYERS TO CONTINUE TO TREAT INDIVIDUALS AS INDEPENDENT CONTRACTORS AS LONG AS THERE WAS A REASONABLE BASIS FOR TREATING THEM AS INDEPENDENT CONTRACTORS IN THE PAST. SECTION 530 OF THE REVENUE ACT HAS TEMPORARILY SOLVED THE PROBLEM. TO DEMONSTRATE MY COMMITMENT TO FIND THE RIGHT SOLUTION, I HAVE INTRODUCED S. 736.

THE BILL SETS FORTH FIVE REQUIREMENTS THAT, IF SATISFIED, WOULD RESULT IN A WORKER BEING TREATED AS AN INDEPENDENT CONTRACTOR. I BELIEVE IT IS A SOUND PROPOSAL. IT MEANS LEGITIMATE BUSINESSMEN AND WORKERS WILL BE ABLE TO CONDUCT THEIR AFFAIRS WITHOUT UNDUE RESTRICTIONS OR WITHOUT HARASSMENT. I AM CONCERNED, AS ANY SENATOR WHO SITS ON THIS COMMITTEE, ABOUT TAX COMPLIANCE. HOWEVER, I DO NOT BELIEVE WE SHOULD ENACT MEASURES THAT WOULD ELIMINATE THE STATUS OF THE INDEPENDENT CONTRACTORS.

THE RELIEF PROVIDED IN THE 1978 TAX BILL EXPIRES AT THE END OF THIS YEAR. IF WE CANNOT SATISFACTORILY RESOLVE THIS ISSUE, I BELIEVE THAT SECTION 530 SHOULD BE IMMEDIATELY EXTENDED SO THAT CONGRESS WILL HAVE THE TIME TO RESOLVE THE ISSUE.

MR. CHAIRMAN, I APPRECIATE YOUR SCHEDULING THIS HEARING.