

H.R. 5460
Independent Contractor Tax Act of 1979
(As amended by the Subcommittee on
Select Revenue Measures through
November 26, 1979)

I. Classification

A. Safe-Harbor Tests

1. Hours

Worker must control number and substantially all scheduling of hours.

2. Place of Business; Assets; or Sales

Worker must meet one of three tests:

a. Place of Business

Worker must have a principal place of business which is not in worker's personal residence and not provided by service-recipient.

Place of business test may be satisfied if portion of worker's principal residence is used exclusively on a regular basis as worker's principal place of business.

b. Assets

More than one-third of value of service must be attributable to capital furnished by worker. Vehicle for transporting the worker (and any tools, samples, or similar items) and any asset which is leased from, or the financing of which is assisted by, the service-recipient (or any person related to the service-recipient) is not to be taken into account.

c. Sales

Worker is an insurance agent, a real estate agent, or engaged in direct sales of consumer products in the home, and is compensated solely on a basis related to sales or rental volume.

3. Income fluctuation

Worker must risk income fluctuation because all remuneration (whether or not paid in cash) is directly related to sales or other output (but not piecework) rather than to the number of hours worked.

4. Written Contract and Notice

Worker must perform service under written contract with service-recipient, and contract must include, or be accompanied by, notice designed to ensure that worker understands his or her responsibilities.

5. Information Returns

Service-recipient must file required returns on timely basis. Waiver allowed only for failure due to reasonable cause and not willful neglect.

B. Special rules

1. Statutory Employees

Safe-harbor tests shall not apply to any individuals listed in subparagraphs (A), (B), (C), or (D) of Code sec. 3121(d)(3) (i.e., certain agent-drivers, commission-drivers, full-time life insurance salesmen, home workers, and traveling or city salesmen) whether they are common law employees or statutory employees.

2. No Inference

Relationships failing the safe-harbor test will be classified under common law rules, as if the safe-harbor test were not enacted.

3. Other Laws

Qualification as an independent contractor under the safe-harbor test for purposes of Federal employment taxes and withholding shall create no inference with respect to other laws.

II. Information Returns for Payments to Independent Contractors

A. Filing Requirement

1. General Rule

Information returns must be filed with respect to aggregate calendar year remuneration of \$600 or more paid in the course of a trade or business for services performed by an independent contractor.

2. Direct Sales

Information returns are required for aggregate calendar year sales of \$3,000 or more of consumer products to a direct seller for resale in the home on a buy-sell or commission-deposit basis.

3. Copy to Worker

Person filing information returns must provide individual named in return with written statement of information on return.

B. Penalties

1. First Failure to File

Penalty of \$50 per unfiled return or per unprovided statement (\$25,000 maximum).

2. Second Failure to File

Penalty equal to additional tax liability due for year, if deductions were denied for unreported compensation (or if cost of goods sold were treated as zero), but only when this penalty is greater than \$50 per return penalty.

III. 10-Percent Withholding on Payments to Independent Contractors

A. Withholding Requirement

1. General Rule

Person paying independent contractor for services in the course of the person's trade or business must withhold 10 percent of the remuneration.

2. Exceptions

Withholding is not required if--

- a. Service-recipient has reason to believe that the independent contractor will perform similar services for 5 or more unrelated service-recipients.

Service recipient may rely on individual's certification that he or she had 5 or more service-recipients in preceding calendar year, or that individual will perform similar services for 5 or more service recipients during the calendar year;

- b. Individual certifies that withholding would be excessive; or
- c. Transaction is a buy-sell or commission deposit direct sale and supplier provides no remuneration to the individual (other than a volume sales bonus).

B. Penalties

1. General Rule

Failure to withhold is subject to nonabatable penalty equal to 5 percent of the remuneration from which taxes should have been withheld.

IRS may impose either the present law 100 percent of liability penalty or the new 5 percent of remuneration penalty, but not both, with respect to the same failure to withhold.

2. Exceptions

Penalty waived if failure to withhold was reasonable and information returns filed.

Failure to withhold is deemed reasonable if it was reasonable to assume that

- a. no FICA tax had to be withheld, or
- b. either that no income tax was required to be withheld, or the only amount required to be withheld was 10 percent of an independent contractor payment.

IV. Treatment of Certain Traveling or City Salesmen as Employees for Purposes of Income Tax Withholding

Traveling or city salesman (described in Code sec. 3121(d) (3)(D)) will be treated as employees for purposes of Federal income tax withholding. That is, they will be subject to graduated-rate withholding.