

COMPARATIVE DESCRIPTION OF THE PROVISIONS OF
H.R. 6300, H.R. 5829, H.R. 6311, and H.R. 5867

RELATING TO

EXPANDED INFORMATION REPORTING REQUIREMENTS
FOR PAYMENTS TO NONEMPLOYEES,
INCREASED PENALTIES FOR FAILURE TO
REPORT CERTAIN INFORMATION, AND WITHHOLDING

Prepared in Connection with a Hearing

Before the

Committee on Ways and Means

on

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Prepared by the Staff

of the

Joint Committee on Taxation

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INTRODUCTION

The Committee on Ways and Means has scheduled a hearing on May 18, 1982, on H.R. 6300, "The Tax Compliance Act of 1982," and related legislative proposals.^{1/} This document compares the expanded information reporting requirements for payments to nonemployees, the increased penalties for failure to report certain information, and the withholding provisions contained in the following four bills:

(1) H.R. 6300, "The Tax Compliance Act of 1982," introduced by Mr. Rostenkowski.

(2) H.R. 5829, "The Taxpayer Compliance Improvement Act of 1982," introduced by Mr. Conable. This bill is comparable to S. 2198.^{2/}

(3) H.R. 6311, "The Independent Contractor Tax Classification and Compliance Act of 1982," introduced by Messrs. Gephardt, Conable, Heftel, and Hance. The bill is comparable to S. 2369.^{3/}

(4) H.R. 5867, "The Independent Contractor Tax Act of 1982," introduced by Mr. Guarini. This bill is similar to H.R. 5460 (Mr. Rostenkowski, et al.), 96th Cong., which was reported favorably by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means.^{4/}

1/

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a hearing pamphlet that compares the provisions of H.R. 6300 with the provisions of H.R. 5829. See, "Comparative Description of H.R. 6300 (The Tax Compliance Act of 1982) and H.R. 5829 (The Taxpayer Compliance Improvement Act of 1982)" (JCS-13-82).

2/

S. 2198, introduced by Senators Dole, Grassley, Chafee, Domenici, Danforth, and Stafford, was the subject of a hearing, on March 22, 1982, before the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance. See Joint Committee staff pamphlet, "Background on Federal Income Tax Compliance and Description of S. 2198 (Taxpayer Compliance Improvement Act of 1982)" (JCS-6-82).

3/

S. 2369, introduced by Senators Dole, Danforth, Boren, Wallop, Symms, Roth, Johnston, Kassebaum, Laxalt, and Durenberger was the subject of a hearing, on April 26, 1982, before the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance. See Joint Committee staff pamphlet, "Background on Classification of Employees and Independent Contractors for Tax Purposes and Description of S. 2369" (JCS-11-82).

4/

See, WMCP: 96-44, December 13, 1979.

H.R. 5867 and H.R. 6311 contain other provisions relating to the classification of individuals as employees or independent contractors. These provisions will be the subject of a hearing on June 11, 1982, before the Subcommittee on Select Revenue Measures of the Committee on Ways and Means.

I. INFORMATION REPORTING REQUIREMENTS

- A. Payments to Nonemployees (sec. 203 of H.R. 6300, sec. 3(a) of H.R. 6311, and sec. 3(a) of H.R. 5867)

Present law

Present law generally requires persons who are engaged in a trade or business to file information returns with respect to payments to other persons, in the course of such trade or business, aggregating \$600 or more in the taxable year. This reporting obligation, subject to various exceptions, applies to payments of salaries, wages, commissions, fees, other forms of compensation for services, and other fixed or determinable gains, profits, or income. These information returns generally must contain the name, address, and identification number of the recipient of the payment, and the aggregate amount paid. Persons subject to this reporting requirement must provide the recipient of the payments with a statement showing the payor's name, address, and identification number, and the aggregate amount paid.

Treasury regulations do not impose these reporting requirements on payments made to corporations. Furthermore, there are no specific reporting requirements relating to direct sales of consumer products.

H.R. 6300 (Mr. Rostenkowski)

H.R. 6300 would provide a separate reporting requirement for payments to persons who are not employees. Under the bill, a person engaged in a trade or business who pays amounts in the course of that trade or business to any person (payee) for services performed would have to file with the Internal Revenue Service an information return reporting such payments (and the name, address, and identification number of the payee) if the payments during the calendar year were \$600 or more. Also, the payee would have to be furnished with a statement setting forth the name, address, and identification number of the person making the return, and the aggregate amount of the payments. These reporting requirements would be applicable to payments made by corporations and governmental units and payments made to corporations as well as to individuals.

H.R. 5829 (Mr. Conable)

No provision.

H.R. 6311 (Messrs. Gephardt, Conable, Heftel and Hance)

H.R. 6311 is generally the same as H.R. 6300. However, the reporting requirement would apply to payments of remuneration by "service-recipients." A "service-recipient" would be a person for whom services are performed.

H.R. 5867 (Mr. Guarini)

H.R. 5867 is generally the same as H.R. 6300. However, the reporting requirement would apply to payments of remuneration to any individual for services performed by such individual as an independent contractor (i.e., a person who meets the "safe-harbor" requirements set forth in the bill or who is not an employee under common law). Furthermore, these requirements would not apply to payments made to corporations.

B. Returns Regarding Certain Direct Sales (sec. 203 of H.R. 6300, sec. 3 of H.R. 6311, and sec. 3 of H.R. 5867)

Present law

Present law does not contain specific information reporting requirements with respect to the sale of consumer products for resale.

H.R. 6300 (Mr. Rostenkowski)

H.R. 6300 would provide a new information reporting requirement for certain direct sellers. The new requirement would apply if a person, in the course of a trade or business, sells products aggregating \$600 or more in value to any buyer engaged in selling such products on a direct-sale basis or selling such products to other persons so engaged. In general, the person making the sale would have to file an information return setting forth the aggregate amount of the sales to the buyer and the name, address and identification number of the buyer. The buyer would be furnished with a statement setting forth the name, address and identification number of the seller, and the aggregate amount of sales to the buyer.

A resale of products would be on a direct-sale basis, and, thus, subject to the bill's new information reporting requirements, if the resale is on a buy-sell basis, a deposit-commission basis, or similar basis specified in Treasury regulations, and in a home or otherwise than in a permanent retail establishment. A transaction would be on a buy-sell basis if the seller is entitled to retain part or all of the difference between the price at which he purchases the product and the price at which he sells the product as his remuneration for the transaction. A transaction would be on a deposit-commission basis if the seller is entitled to retain part or all of the deposit paid by the customer in connection with the transaction as his remuneration for the transaction.

H.R. 5829 (Mr. Conable)

No provision.

H.R. 6311 (Messrs. Gephardt, Conable, Heftel and Hance)

Similar to H.R. 6300 except that the reporting threshold would be direct sales of \$5,000 or more. Furthermore, direct sellers could elect to be subject to an alternative requirement.

In lieu of reporting sales of consumer products for resale, a direct seller could elect to be subject, instead, to the bill's reporting requirements for payments of remuneration for services. However, if a direct seller made the election, then the threshold for such reporting would be payments aggregating \$50 or more in the calendar year (rather than the generally applicable threshold of \$600 or more). Moreover, direct sellers who elected to report payments of remuneration aggregating \$50 or more also would be required to file a return setting forth the name and identification number of each buyer with respect to whom they had aggregate sales of \$1,500 or more. The seller also would have to furnish each such buyer with a statement showing the name, address, and identification number of the person making the return.

H.R. 5867 (Mr. Guarini)

Similar to H.R. 6300 except that the reporting threshold would be direct sales of \$3,000 or more. Furthermore, the requirement would apply only to persons who sell consumer products to individuals for resale by such individuals in the home on a buy-sell basis or a deposit-commission basis (i.e., the Treasury would not be given specific authority to specify that other types, if any, of direct-sale arrangements could be subject to the reporting requirements).

II. PENALTIES

(Sec. 211 of H.R. 6300, sec. 124(a) of
H.R. 5829, sec. 3(b) of H.R. 6311, and sec. 3(b) of H.R. 5867)

Present law

Present law imposes a penalty on any person who fails to file, on the date prescribed (with extensions), information returns, including returns relating to certain information at source involving payments of \$600 or more, payments of dividends aggregating \$10 or more, payments of patronage dividends aggregating \$10 or more, payments of interest aggregating \$10 or more, payments of certain fishing boat operators, income tax withheld, or payments of wages in the form of group-term life insurance. The penalty is \$10 for each such failure but the total for all such failures during a calendar year cannot exceed \$25,000. The penalty is not imposed if the failure is due to reasonable cause and not due to willful neglect.

H.R. 6300 (Mr. Rostenkowski)

H.R. 6300 would increase the penalty for failure to file information returns generally (including payments to nonemployees) to \$50 per failure, the total amount for all such penalties for any calendar year not to exceed \$50,000. The bill would provide a new penalty for failures due to intentional disregard of the filing requirements. In such circumstances, the penalty would not be less than 10 percent of the aggregate amount of the payments not properly reported.

H.R. 5829 (Mr. Conable)

The provision is generally the same as H.R. 6300.

H.R. 6311 (Messrs. Gephardt, Conable, Heftel and Hance)

Basic penalty

The bill would add a new penalty for noncompliance with the requirements for filing information returns or furnishing statements regarding payments for services or direct sales. The new penalty would be imposed if a person (1) failed to make a required return regarding payments made to another person for services rendered by such other person or regarding direct sales to another person; (2) failed to furnish a statement to such other person regarding such return; or (3) failed to include on any return or statement the entire amount required to be included.

For each failure with respect to an information return or statement regarding payments for services, the penalty would be one percent per month while the failure continued (but not to exceed five percent) of the amount required to be included on the return or statement but not so included. In the case of each failure regarding information returns and statements on direct sales, the penalty would be one-fifth of one percent per month, but not to exceed one percent of the amount not included. The minimum penalty for either type of case (payments for services or direct sales) would be \$50. This penalty would not apply if the failure in either type of case was due to reasonable cause and not due to willful neglect.

Penalty surcharge

In addition to the basic penalty described above, the bill would impose a penalty surcharge in the case of multiple violations.

A surcharge of 100 percent of the basic penalty amount would be imposed if the number of failures to file an information return or furnish a statement for a calendar year represented over 10 but not over 20 percent of the total number of returns and statements required to be made by such person for that year. The surcharge would be 200 percent of the basic penalty if the number of such failures was more than 20 percent of the number of returns and statements required. However, no surcharge would apply if the number of such failures for any calendar year was 10 or less, or if the percentage of failures for such year was 10 percent or less.

H.R. 5867 (Mr. Guarini)

Under H.R. 5867, the penalty for failures to file information returns or to provide statements to recipients would be \$50 per failure, with a maximum aggregate penalty of \$25,000. In addition, in the case of a recurrence of a failure to file, a penalty equal to the additional tax liability due for the year, if deductions were denied for unreported compensation (or if the cost of goods sold were treated as zero), would be imposed if this penalty would exceed the \$50 per return penalty. These penalties would be excused if the failure to file an information return was due to reasonable cause and not to willful neglect.

III. WITHHOLDING PROVISIONS

(Sec. 213 of H.R. 6300, sec. 124(c) of H.R. 5829, sec. 3(c) of H.R. 6311, and sec. 4 of H.R. 5867)

Present law

Present law does not impose any withholding requirements on payments made by payors to independent contractors. Present law does impose a penalty of \$5 per failure on any person who is required by regulations to include his taxpayer identification number (TIN) in any return, statement or document, to furnish his TIN to another person, or to include in any return or statement made with respect to another person the TIN of such other person, and who fails to comply with such requirement at the time prescribed. However, the failure to comply with these requirements does not trigger any withholding obligation.

H.R. 6300 (Mr. Rostenkowski)

In general, H.R. 6300 would provide for withholding at source at a tax rate of 10 percent if a taxpayer fails to supply a TIN or supplies an incorrect TIN to another person who must file information returns with respect to payments to the taxpayer. A person making a sale on a direct-sale basis would be treated as having made a payment to the buyer equal to the value of the goods sold.

If the TIN is not supplied, the payor-filer would start withholding when any payments are made. If the TIN is incorrect, the payor would start withholding upon notice from the IRS that the taxpayer has failed to supply the correct TIN. (A copy of such notice would also be required to be mailed to the taxpayer.) Generally, such withholding would continue as long as the taxpayer failed to supply or correct his TIN.

H.R. 5829 (Mr. Conable)

H.R. 5829 is similar to H.R. 6300 except that the withholding at source would be at a tax rate of 15 percent. Also, if the TIN is not supplied, the payor-filer would start withholding when aggregate payments to the taxpayer for the calendar year exceeded any threshold requiring the reporting of such payments. If the TIN is incorrect, the payor would start withholding upon notice from the IRS that the taxpayer has failed to supply the correct TIN within 60 days after notice from the IRS.

In addition, these requirements would not apply to sales of consumer products on a direct-sale basis.

H.R. 6311 (Messrs. Gephardt, Conable, Heftel, and Hance)

The withholding provision in H.R. 6311 is identical to that in H.R. 5829 except for minor technical differences.

H.R. 5867 (Mr. Guarini)

The bill would require a person who, in the course of a trade or business, pays an independent contractor for services to withhold 10 percent of the remuneration paid to the independent contractor. There would be several exceptions to this withholding requirement. No withholding would be required if: (1) the service-recipient has reason to believe that the independent contractor will perform similar services for five or more unrelated service-recipients; (2) the independent contractor certifies that withholding would be excessive; or (3) the transaction is a buy-sell or commission-deposit direct sale and the supplier provides no remuneration to the individual (other than a volume sale bonus).

The bill would not provide for withholding upon the failure by a payee to provide a payor with a TIN.

IV. EFFECTIVE DATES

H.R. 6300 (Mr. Rostenkowski)

The expanded information reporting requirements for payments to nonemployees would apply in calendar years beginning after 1982. The increased penalties for failure to file information returns would apply to returns the due date of which (without regard to extensions) is after December 31, 1982. The withholding provision would apply to payments made after December 31, 1983.

H.R. 5829 (Mr. Conable)

The increased penalties for failure to file information returns would apply to returns the due date for the filing of which (including extensions) is after December 31, 1982. The withholding provision would apply to amounts paid after December 31, 1983.

H.R. 6311 (Messrs. Gephardt, Conable, Heftel and Hance)

The expanded reporting requirements and increased penalties, in general, would apply to payments made after December 31, 1982. (However, the new reporting requirements for direct sellers would apply only to sales after December 31, 1983.) The withholding provisions would be effective for payments made after December 31, 1983.

H.R. 5867 (Mr. Guarini)

The provisions of H.R. 5867 would apply to payments made after June 30, 1982.

