


Internal Revenue Code Section 3508(a)

Treatment of real estate agents and direct sellers.

 (a) General rule. For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) Definitions. For purposes of this section

(1) Qualified real estate agent. The term 'qualified real estate agent' means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) Direct seller. The term "direct seller" means any person if—

(A) such person

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or

(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) Coordination with retirement plans for self-employed. This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).