PPAI
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Independent Contractors and the Promotional Products Industry

The Promotional Products Association International urges Congress to preserve the current safe harbor in Section 530 of the Revenue Act of 1978. If this safe harbor is changed, the long standing practice of treating promotional consultants as independent contractors would likely be harmed as our promotional consultants would be forced to make considerations about questionable application of tax law, their company affiliation and their business practices within the industry. Independent contractors in our industry are independent by choice and according to the law. Altering the safe harbor and not updating the tax code would adversely impact the entire promotional products industry.

Promotional consultants remain independent because they can set their own hours, run a business as their own, decide their own career path, be active in family and community, and pay their own way, among other incentives. These contractors are self-employed even though they may only sell on behalf of only one company. Without the support of a distributor firm essentially acting as a lender to the consultant, the promotional consultants would either have to receive payment from end buyers in advance or have the financial ability to finance the orders themselves. The vast majority of promotional consultants are very small businesses, often sole proprietors, and are unable to self-fund these transactions.

The ability to process orders through a single distributor company transfers much of the financial risk from the promotional consultant to the distributor, thus lowering the barriers to entry for promotional consultants to become economically viable. Unfortunately, under IRS interpretations, that financial dependence on a single control point is considered an indicator of employee status, which if applied would have significant impact on these independent consultants.

If one believes that promotional consultants are independent contractors, notwithstanding this particular economic characteristic, then for the same reasons, promotional consultants need to be recognized as having a unique status that is not measurable under common law principles and that would provide appropriate clarity of law for this significant segment of independent contractors. Fortunately, Congress has already recognized so-called “direct sellers” as unique businesses in the tax code. PPAI believes the case for the unique circumstances of the independent promotional consultant are clear-cut and should be included with other “direct sellers.”

Therefore, PPAI urges Congress to adopt the following revision:

Modify Section 3508 (b)(2) of the tax code by broadening the definition of a "direct seller" by adding section (iv):

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)

(iv) is engaged in the trade or business of selling (or soliciting the sale of) promotional products from other than a permanent retail establishment. For the purposes of this section, a 'promotional product' shall mean a tangible item with permanently marked promotional words, symbols or art of the buyer

(B) substantially all 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.