

89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

**§ 3506. Individuals providing companion sitting placement services**

**(a) In general**

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

**(b) Definition**

For purposes of this section, the term “sitters” means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

**(c) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95-171, §10(a), Nov. 12, 1977, 91 Stat. 1356.)

EFFECTIVE DATE

Pub. L. 95-171, §10(c), Nov. 12, 1977, 91 Stat. 1356, provided that: “The amendments made by this section [enacting this section] shall apply to remuneration received after December 31, 1974.”

UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED

Pub. L. 95-171, §10(d), Nov. 12, 1977, 91 Stat. 1356, provided that: “The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual’s right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov. 12, 1977], or (2) any individual’s eligibility for social security benefits to the extent based on services performed before that date.”

**[§ 3507. Repealed. Pub. L. 111-226, title II, § 219(a)(1), Aug. 10, 2010, 124 Stat. 2403]**

Section, added Pub. L. 95-600, title I, §105(b)(1), Nov. 6, 1978, 92 Stat. 2773; amended Pub. L. 97-248, title III, §§307(a)(3), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title IV, §474(r)(30), title X, §1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044; Pub. L. 99-514, title I, §111(d)(2), (3), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 101-508, title XI, §1111(c), Nov. 5, 1990, 104 Stat. 1388-412; Pub. L. 103-66, title XIII, §13131(d)(4)-(6), Aug. 10, 1993, 107 Stat. 435; Pub. L. 103-465, title VII, §721(c), Dec. 8, 1994, 108 Stat. 5002, related to advance payment of earned income credit.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111-226, set out as an Effective Date of 2010 Amendment note under section 32 of this title.

**§ 3508. 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).

(Added Pub. L. 97-248, title II, §269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104-188, title I, §1118(a), Aug. 20, 1996, 110 Stat. 1764.)

## AMENDMENTS

1996—Subsec. (b)(2)(A). Pub. L. 104-188 added cl. (iii).

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title XI, §1118(b), Aug. 20, 1996, 110 Stat. 1764, provided that: “The amendments made by this section shall apply to services performed after December 31, 1995.”

## EFFECTIVE DATE

Pub. L. 97-248, title II, §269(e), Sept. 3, 1982, 96 Stat. 553, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

“(2) SUBSECTION (c).—The amendments made by subsection (c) [amending provisions set out as a note under section 3401 of this title] shall take effect on July 1, 1982.”

## RULES AND REGULATIONS

Pub. L. 97-248, title II, §269(c)(3), Sept. 3, 1982, 96 Stat. 553, provided that: “Nothing in section 530 of the Revenue Act of 1978 [set out as a note under section 3401 of this title] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 3401 of this title].”

### § 3509. Determination of employer's liability for certain employment taxes

#### (a) In general

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

##### (1) Withholding taxes

Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

##### (2) Employee social security tax

Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

#### (b) Employer's liability increased where employer disregards reporting requirements

##### (1) In general

In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to reasonable cause and not willful neglect, subsection (a) shall be applied with respect to such employee—

(A) by substituting “3 percent” for “1.5 percent” in paragraph (1); and

(B) by substituting “40 percent” for “20 percent” in paragraph (2).

##### (2) Applicable requirements

For purposes of paragraph (1), the term “applicable requirements” means the require-

ments described in paragraph (1) which would be applicable consistent with the employer's treatment of the employee as not being an employee for purposes of chapter 24 or subchapter A of chapter 21.

#### (c) Section not to apply in cases of intentional disregard

This section shall not apply to the determination of the employer's liability for tax under chapter 24 or subchapter A of chapter 21 if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such tax.

#### (d) Special rules

For purposes of this section—

##### (1) Determination of liability

If the amount of any liability for tax is determined under this section—

(A) the employee's liability for tax shall not be affected by the assessment or collection of the tax so determined,

(B) the employer shall not be entitled to recover from the employee any tax so determined, and

(C) sections<sup>1</sup> 3402(d) and section 6521 shall not apply.

##### (2) Section not to apply where employer deducts wage but not social security taxes

This section shall not apply to any employer with respect to any wages if—

(A) the employer deducted and withheld any amount of the tax imposed by chapter 24 on such wages, but

(B) failed to deduct and withhold the amount of the tax imposed by subchapter A of chapter 21 with respect to such wages.

##### (3) Section not to apply to certain statutory employees

This section shall not apply to any tax under subchapter A of chapter 21 with respect to an individual described in subsection (d)(3) of section 3121 (without regard to whether such individual is described in paragraph (1) or (2) of such subsection).

(Added Pub. L. 97-248, title II, §270(a), Sept. 3, 1982, 96 Stat. 553; amended Pub. L. 100-647, title II, §2003(d), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101-508, title V, §5130(a)(4), Nov. 5, 1990, 104 Stat. 1388-289.)

## AMENDMENTS

1990—Subsec. (d)(3). Pub. L. 101-508 substituted “subsection (d)(3)” for “subsection (d)(4)”.

1988—Subsec. (d)(3). Pub. L. 100-647 substituted “subsection (d)(4)” for “subsection (d)(3)”.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the enactment of Pub. L. 100-647, §2003(d), see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of this title.

## EFFECTIVE DATE

Pub. L. 97-248, title II, §270(c), Sept. 3, 1982, 96 Stat. 554, provided that: “The amendment made by this section [enacting this section] shall take effect on the

<sup>1</sup> So in original. Probably should be “section”.