

INDEPENDENT CONTRACTORS

At its' January meeting, the MVD Board passed a salesperson license resolution, which requires all persons licensed by the MVD Board as *salespersons*, be employed by a dealer (dealership) as a *wage employee (IRS Form W-2)* and **not** as an *independent contractor, (IRS Form 1099)* as defined in the United States Department of Treasury, Internal Revenue Service (IRS) Publication 1779.

A full copy of this resolution may be found on page 2 of this newsletter. Internal Revenue Service (IRS) Publication 1779 is reprinted on page 3 of this newsletter or may be accessed from our website at under the *Special Reports* button.

Therefore, effective April 1, 2003, all salespersons employed by a dealer must be classified as a wage employee, and issued an IRS form W-2 as proof of employment status. Failure to comply will result in a written warning; and subsequent occurrences may result in civil penalties, suspension, or revocation of your dealer license.

By June 30, 2003, all original and renewal dealer and salesperson license applicants will be required to certify on the licensing applications that they are in compliance with this resolution. Falsified certifications will be considered material misstatements under §46.2-1575.1 and could result in a \$1,000.00 civil penalty being levied, your license being suspended, or ultimately revoked.

Soon, a letter will be sent to all dealers concerning this requirement.

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HOLIDAY HOURS

In observance of the upcoming holidays, all state agencies, including the Dealer Board, will be closed on the following date:

Monday

February 17, 2003



President's Day 

Salesperson License Resolution January 13, 2003

WHEREAS the Virginia Motor Vehicle Dealer Act defines a salesperson as “. . . any person who is licensed as and **employed** (emphasis added) as a salesperson by a motor vehicle dealer . . .”; and

WHEREAS Sections 46.2-1518; 46.2-1537; 46.2-1538; and 46.2-1546 of the Motor Vehicle Dealer Act refer to salespersons “**employed**” (emphasis added) by the dealer and,

WHEREAS Section 46.2-1550 states that “employees” of the dealership are permitted to use dealer license plates; and

WHEREAS independent contractors act independently, buying and selling motor vehicles from locations other than the dealer’s licensed location and tend not to maintain records at the dealership location; and

WHEREAS independent contractors oftentimes use their own funds and compensate the dealer from which their license is issued; and

WHEREAS United States Department of the Treasury Internal Revenue Service (IRS) Publication 1779 states that an individual who is an “independent contractor” is not an employee; and

WHEREAS the Motor Vehicle Dealer Board Chairman’s Task Force on Licensing has recommended that the Board implement a policy whereby all salespersons must be employed by the dealership as a wage employee and not as an independent contractor.

NOW THEREFORE BE IT RESOLVED that all dealers be notified by mail that by March 1, 2003, all salespersons must be employed by the dealer as a wage employee and not as an independent contractor and that failure to comply could result in a civil penalty or suspension or revocation of the dealer’s license and

NOW THEREFORE BE IT RESOLVED that the Motor Vehicle Dealer Board staff develop a system to ensure that at the time of the issuance of an original license and at the time of renewal of an existing license, that all licensed salespersons for dealers be employed by the dealer and be issued an IRS Form W-2.

DEALER TALK

A Bi-monthly newsletter of The Virginia Motor Vehicle Dealer Board
Bruce Gould, Executive Director
Peggy Bailey, Office Manager
Debbie Allison, Field Representative Supervisor

Virginia Motor Vehicle Dealer Board
2201 West Broad Street
Suite 104
Richmond, Virginia 23220
Phone: (804) 367-1100
FAX: (804) 367-1053
Toll Free: (877) 270-0203 (Intra-State only)
E-mail: dboard@mvb.state.va.us
Website: www.mvdb.vipnet.org

NOTE: We make every effort to ensure information in *Dealer Talk* is accurate, but it is not a substitute for legal advice.

Calendar of Events

**All Meetings held at DMV Headquarters
2300 W. Broad Street, Room 702
Richmond, VA**

Monday, March 10, 2003
Time: 8:30 a.m.
Dealer Practices Committee Meeting

Monday, March 10, 2003
Time: Immediately following Dealer Practices
Licensing Committee Meeting

Monday, March 10, 2003
Time: 9:30 a.m.
Advertising Committee Meeting

Monday, March 10, 2003
Time: Immediately following Advertising
Transaction Recovery Fund Committee Meeting

Monday, March 10, 2003
Time: 10:30 a.m.
Full Board Meeting

NOTE: Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate.

IRS Publication 1779 (Rev. 12/99)

Which are you? For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now.

The courts have considered many facts in deciding whether a work is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: behavioral control; financial control and relationship of the parties. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

Behavioral Control. These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an **employee**. Instructions can cover a wide range of topics, for example:
 1. how, when, or where to do the work
 2. what tools or equipment to use
 3. what assistants to hire to help with the work
 4. where to purchase supplies and services.

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

Financial Control. These facts show whether there is a right to direct or control the business part of the work. For example:

- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.

IRS Publication 1779 (Rev. 12/99)

- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

Relationship of the Parties. These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.
- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

When You Are An Employee. Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, Wage and Tax Statement, showing the amount of taxes withheld from your pay.

You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.

When You Are An Independent Contractor. The business may be required to give you Form 1099-MISC, Miscellaneous Income, to report what it has paid to you.

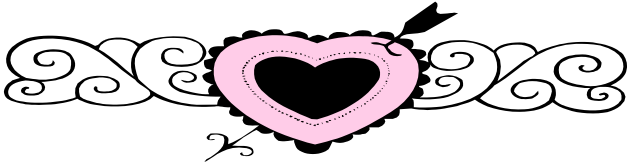
You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act-SECA). The business does not withhold taxes from your pay.

You may need to make estimated tax payments during the year to cover your tax liabilities. You may deduct business expenses on Schedule C of your income tax return.

If you are still unsure whether a salesperson is an employee or an independent contractor, the IRS can help you make that determination. Contact the IRS toll free at 1-877-233-6767 to request the form SS-8, Determination of Employee Work Status for Purpose of Federal Employee Taxes and Income Tax Withholding. IRS Publication 15-A, Employer's Supplemental Tax Guide, provides additional information on independent contractor sales. IRS forms and publications can also be downloaded and printed from the IRS web site (www.irs.gov).

LEGISLATION

Several bills of interest to dealers were introduced during the 2003 session of the General Assembly. The session is scheduled to end on February 22. The Governor will then have until about April 2, 2002 to either veto, approve or amend legislative proposals. The General Assembly will reconvene on April 2 to act on any bills that the Governor may have vetoed or amended. The next issue of Dealer Talk will include a summary of legislation that will impact motor vehicle dealers.



BOARD ACTIONS

RECORD KEEPING. A random inspection of a Haymarket area dealership revealed a number of record keeping problems. A second inspection conducted three months after the first inspection, revealed that the record keeping problems had not been corrected. As a result, the Dealer Board convened an informal fact-finding conference.

Acting on the hearing officer's recommendation, the Board voted at its September 2002 meeting to impose a \$1,000 civil penalty for record keeping violations, and a 30-day suspension for failing to comply with a written warning. The dealer appealed the Board's decision and requested a formal hearing.

The formal hearing was held in November of 2002 and this time the hearing officer recommended imposing a civil penalty totaling \$1,500 for record keeping violations. The Board agreed with this recommendation. The Dealer will have 30 days to either pay the civil penalty or appeal to circuit court.

SALESPERSONS LICENSES. The Board made decisions on six license applications. In each of the six cases, the individual had appealed the decision after participating in an informal fact-finding conference and requested a formal conference. A summary of the Board's actions is as follows:

- The Dealer Board voted to suspend the license of a salesperson for 120 days for an April 2001 conviction of distribution of cocaine. The offense occurred in the winter of 1998-99.
- A 120-day suspension was imposed on a salesperson for being convicted of one felony count of indecent liberties.
- A salesperson's license was suspended for 45 days after completing a court ordered 200 hours of community service for one felony count of conspiracy to obstruct justice and effect the movement of goods in interstate commerce by extortion.
- Two salespersons were granted licenses after the Board reviewed their circumstances. Final approval for two of the applicants was contingent on the applicant meeting certain conditions.