
SOCIAL-SECURITY STATUS OF VENDORS OF NEWSPAPERS AND MAGAZINES

JULY 22 (legislative day, JULY 16), 1947. —Ordered to be printed

Mr. MILLIKIN, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 3997]

The Committee on Finance, to whom was referred the bill (H. R. 3997) to exclude certain vendors of newspapers or magazines from certain provisions of the Social Security Act and Internal Revenue Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the bill is to exempt newspaper vendors coming under its provisions. This bill does not affect the status of other salesmen. Any salesman who is able to establish his status as an independent contractor continues to be exempt from the provisions of the social-security law.

The vendor of newspapers or magazines excluded from the provisions of the Social Security Act and from related provisions of the Internal Revenue Code by the bill is the vendor who retains as the profits of his enterprise the difference between the amount at which the newspapers or magazines are charged to him and the fixed price at which he sells them. The exclusion applies whether or not he is guaranteed a minimum return and whether or not he is entitled to credit for returns of unsold newspapers or magazines. The exclusion is limited to the vendor of newspapers and magazines who sells directly to the ultimate buyer. It does not apply to persons whose services are antecedent to, and not immediately a part of, the sale to the ultimate buyer.

The need for this legislation is to limit application of the term "employment" in section 209 of the Social Security Act, as amended, and in the sections 1426 and 1607 of the Internal Revenue Code.

The definitions of "employment" and "wages" in these statutes are broad. In a statute such as the Social Security Act, enacted by the Congress as a wide measure of attack against some of the insecurities growing out of a complex economic environment,

limited and constricted definitions were neither appropriate nor feasible. Providing broad exemptions and limitations which had discernible grounds, the Congress otherwise left the term "employment" as meaning broadly "any service, of whatever nature, performed * * * by an employee for his employer * * *" and "wages" as meaning "* * * all remuneration for employment * * *" for subsequent statutory clarification as the necessity manifested itself.

Clearly, all who render services in the processes by which goods come to be produced and distributed and the facilities of modern life come to be provided are not employees. Many who serve others in these processes are in effect self-employed, have the independence of contractors, stand in a different relation to those with whom they participate in bringing these processes to final fruition from that of employee, or servant, or agent. Long-standing regulations of the administrative authorities recognize the exempt status of the independent contractor, but there are cases in which the broad provisions of the act admit uncertainties that give difficulty to administrative officials and the courts in their efforts to apply the intentions of the act. In such cases it is appropriate for the Congress to declare where the line of demarcation shall be drawn. In the opinion of your committee, the status of vendors of newspapers or magazines presents one of such cases and the act needs to be clarified by a statutory expression as the House bill provides.

Your committee is impressed that the vendors of newspapers and magazines are ordinarily free to sell other goods, wares, and merchandise, and frequently do; that they determine the way and the manner of offering the papers and magazines for sale; that they assume the risk of loss or destruction of papers or magazines which they are prevented from returning for credit; and that their gains should be considered as profits from their own business rather than as wages for employment. Accordingly, your committee is of the opinion that such vendors should be treated as self-employed, and the definitions of the act should be clarified so as to remove any uncertainties respecting the application of the act to them.

As to taxes, the bill gives effect to the exclusion of vendors of newspapers or magazines as if it had been a part of the Social Security Act amendments of 1939 except that the bill prohibits credit or refund of amounts paid prior to enactment constituting an overpayment of tax solely by reason of the provisions of the bill. Consistently, and in order to avoid wiping out benefits and benefit rights which may have accrued, the amendment of section 209 (b) (15) of the Social Security Act relating to old-age and survivors' benefits is made effective only with respect to services performed after the enactment of the bill.

The report on the bill by the Committee on Ways and Means follows.

The bill would exclude from the Social Security Act and related provisions of the Internal Revenue Code certain services performed in the vending of newspapers or magazines.

Under the Social Security Act and the Internal Revenue Code the social-security system does not apply to certain service performed by individuals under the age of 18 in the delivery or distribution of newspapers or shopping news.

It has been held by a district court that under certain circumstances the relationship of employer and employee may exist between a newspaper and the

street vendors of its papers, and the vendors thus be covered under the social-security system, even though their basic compensation is derived from the retention of the excess of the fixed price at which the papers are sold over the amount at which they are charged to the vendors. The method of handling the retail sale of newspapers in many of our larger cities is peculiar, and your committee does not believe that such service should be covered under the social-security system where the basic method of compensation is that described above. The bill reported will remedy this defect. It will also exclude services in the sale of magazines under the same kind of arrangements.

The bill would leave unaffected the present exclusion of certain services in the distribution of newspapers and shopping news if performed by employees under the age of 18. It would add a new provision which would exclude, from the term "employment," service performed by an individual, without regard to his age, in making sales of newspapers or magazines to ultimate consumers under a particular type of arrangement. This exclusion would be applicable only to service performed at the time of the direct sale and delivery or handing over of the newspaper or magazine by the vendor to the reader under an arrangement under which the newspaper or magazine is to be sold by the vendor at an established price, and under which the basic compensation of the vendor for his services is the excess of such established price over the amount at which the newspapers or magazines are charged to him. The exclusion does not apply to vendors who are compensated on any other basis, such as a salary or commission basis. If the services meet the requirements of the exclusion, it is immaterial that the vendor is guaranteed a minimum amount of compensation for such services, or that, in addition to the profits which he is entitled to retain, he may also be entitled to receive incidental compensation in the form of incentive payments, or that he is entitled to be credited with the unsold newspapers or magazines turned back.

The requirement of the bill, that the services will not be excluded unless performed "at the time of" the sale to the ultimate consumer, was inserted to make it clear that the exclusion was not to apply to a regional distributor whose services are antecedent to but not immediately part of the sale to the ultimate consumer. The insertion of the quoted words will not deny the exclusion although the vendor performs incidental services as a part of the sale, such as services in assembling newspapers and in taking them to the place of sale.

In order to avoid wiping out benefits and benefit rights which have already accrued and on which individuals may have placed reliance, the amendment to section 209 (b) (15) of the Social Security Act, relating to benefits under the old-age and survivors insurance system, is made effective with respect only to services performed after the enactment of the bill. The amendments to the old-age and survivors insurance and unemployment taxing provisions in the Internal Revenue Code are applicable with respect to services performed after December 31, 1939. In the case of the unemployment tax, the bill provides that, as to services performed before July 1, 1946, the amendment shall operate in the same manner and have the same effect as if such amendment had been a part of section 1607 (c) (15) of the code as added to the code by section 614 of the Social Security Act amendments of 1939.

The bill prohibits any credit or refund of any amount paid prior to the date of enactment of this bill which constitutes an overpayment of tax solely by reason of an amendment made by this bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"SOCIAL SECURITY ACT, AS AMENDED

"(53 Stat. 1375-6; 59 Stat. 67)

"DEFINITIONS

"SEC. 209. When used in this title—

* * * * *

"(b) The term 'employment' means any service performed after December 31, 1936, and prior to January 1, 1940, which was employment as defined in section 210 (b) of the Social Security Act prior to January 1, 1940 (except service per-

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formed by an individual after he attained the age of sixty-five if performed prior to January 1, 1939), and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * * * *
“(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; [or]

“(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; or

“INTERNAL REVENUE CODE

“SEC. 1426. DEFINITIONS.

“When used in this subchapter—

* * * * *
“(b) Employment.—The term ‘employment’ means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * * * *
“(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; [or]

“(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back, or

“SEC. 1607. DEFINITIONS.

“When used in this subchapter.—

* * * * *
“(c) Employment.—The term ‘employment’ means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed; and any service, of whatever nature, performed after June 30, 1946, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * * * *
“(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

"(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back."

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