

§ 404.447

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only in a grace year (including a termination grace year) as defined in § 404.435(c)(1). It is a test of whether, in view of all the services rendered by the individual and the surrounding circumstances, the individual reasonably can be considered retired in the month in question. In determining whether an individual has or has not performed substantial services in any month, the following factors are considered:

- (1) The amount of time the individual devoted to all trades and businesses;
- (2) The nature of the services rendered by the individual;
- (3) The extent and nature of the activity performed by the individual before he allegedly retired as compared with that performed thereafter;
- (4) The presence or absence of an adequately qualified paid manager, partner, or family member who manages the business;
- (5) The type of business establishment involved;
- (6) The amount of capital invested in the trade or business; and
- (7) The seasonal nature of the trade or business.

(b) *Individual engaged in more than one trade or business.* When an individual, in any month, performs services in more than one trade or business, his services in all trades or businesses are considered together in determining whether he performed substantial services in self-employment in such month.

(c) *Evidentiary requirements.* An individual who alleges that he did not render substantial services in any month, or months, shall submit detailed information about the operation of the trades or businesses, including the individual's activities in connection therewith. When requested to do so by the Administration, the individual shall also submit such additional statements, information, and other evidence as the Administration may consider necessary for a proper determination of whether the individual rendered substantial services in self-employment. Failure of the individual to submit the requested statements, information, and other evidence is a sufficient basis for a determination that the individual rendered substantial

services in self-employment during the period in question.

[32 FR 19159, Dec. 20, 1967, as amended at 47 FR 46691, Oct. 20, 1982]

§ 404.447 Evaluation of factors involved in substantial services test.

In determining whether an individual's services are substantial, consideration is given to the following factors:

(a) *Amount of time devoted to trades or businesses.* Consideration is first given to the amount of time the self-employed individual devotes to all trades or businesses, the net income or loss of which is includable in computing his earnings as defined in § 404.429. For the purposes of this paragraph, the time devoted to a trade or business includes all the time spent by the individual in any activity, whether physical or mental, at the place of business or elsewhere in furtherance of such trade or business. This includes the time spent in advising and planning the operation of the business, making business contacts, attending meetings, and preparing and maintaining the facilities and records of the business. All time spent at the place of business which cannot reasonably be considered unrelated to business activities is considered time devoted to the trade or business. In considering the weight to be given to the time devoted to trades or businesses the following rules are applied:

(1) *Forty-five hours or less in a month devoted to trade or business.* Where the individual establishes that the time devoted to his trades and businesses during a calendar month was not more than 45 hours, the individual's services in that month are not considered substantial unless other factors (see paragraphs (b), (c), and (d) of this section) make such a finding unreasonable. For example, an individual who worked only 15 hours in a month might nevertheless be found to have rendered substantial services if he was managing a sizable business or engaging in a highly skilled occupation. However, the services of less than 15 hours rendered in all trades and businesses during a calendar month are not substantial.

(2) *More than 45 hours in a month devoted to trades and businesses.* Where an individual devotes more than 45 hours

to all trades and businesses during a calendar month, it will be found that the individual's services are substantial unless it is established that the individual could reasonably be considered retired in the month and, therefore, that such services were not, in fact, substantial.

(b) *Nature of services rendered.* Consideration is also given to the nature of the services rendered by the individual in any case where a finding that the individual was retired would be unreasonable if based on time alone (see paragraph (a) of this section). The more highly skilled and valuable his services in self-employment are, the more likely the individual rendering such services could not reasonably be considered retired. The performance of services regularly also tends to show that the individual has not retired. Services are considered in relation to the technical and management needs of the business in which they are rendered. Thus, skilled services of a managerial or technical nature may be so important to the conduct of a sizable business that such services would be substantial even though the time required to render the services is considerably less than 45 hours.

(c) *Comparison of services rendered before and after retirement.* Where consideration of the amount of time devoted to a trade or business (see paragraph (a) of this section) and the nature of services rendered (see paragraph (b) of this section) is not sufficient to establish whether an individual's services were substantial, consideration is given to the extent and nature of the services rendered by the individual before his *retirement*, as compared with the services performed during the period in question. A significant reduction in the amount or importance of services rendered in the business tends to show that the individual is retired; absence of such reduction tends to show that the individual is not retired.

(d) *Setting in which services performed.* Where consideration of the factors described in paragraphs (a), (b), and (c) of this section is not sufficient to establish that an individual's services in self-employment were or were not substantial, all other factors are considered. The presence or absence of a ca-

pable manager, the kind and size of the business, the amount of capital invested and whether the business is seasonal, as well as any other pertinent factors, are considered in determining whether the individual's services are such that he can reasonably be considered retired.

§ 404.450 Required reports of work outside the United States or failure to have care of a child.

(a) *Beneficiary engaged in noncovered remunerative activity; report by beneficiary.* Any individual entitled to a benefit which is subject to a deduction in that month because of noncovered remunerative activity outside the United States (see § 404.417) shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which such event occurred.

(b) *Beneficiary receiving wife's, husband's, mother's or father's insurance benefits does not have care of a child; report by beneficiary.* Any person receiving wife's, husband's, mother's, or father's insurance benefits which are subject to a deduction (as described in § 404.421) because he or she did not have a child in his or her care shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which the deduction event occurred.

(c) *Report required by person receiving benefits on behalf of another.* Where a person is receiving benefits on behalf of a beneficiary (see subpart U of this part) it is his duty to make the report to the Administration required by paragraph (a) or (b) of this section, on behalf of the beneficiary.

(d) *Report; content and form.* A report required under the provisions of this section shall be filed with the Social Security Administration. (See § 404.614 of this part for procedures concerning place of filing and date of receipt of such a report.) The report should be made on a form prescribed by the Administration and in accordance with instructions, printed thereon or attached thereto, as prescribed by the Administration. Prescribed forms may