

Frequently Asked Questions about How Self-Employment Affects Social Security Disability Benefits

February 2011

NOTE: This document addresses some of the most common questions asked by SSA disability beneficiaries who are considering self-employment or small business ownership. This document is written in plain language and is intended to be shared with beneficiaries, family members, and disability services professionals.

QUESTION: How will Social Security look at the money I make in my business? Do they count all the money that comes in?

For people who are self-employed, SSA is only interested in their “net earnings from self-employment” or NESE instead of gross income. This is completely different from the way SSA treats earned income from wage employment in which gross income is counted! There is a lot of confusion about the terms “gross” and “net” and what they mean for someone who is self-employed and receiving SSA disability benefits. Here is a brief explanation:

- *Gross income* is the total amount of money that a business takes in from sales of products and/or services. This is also called “gross sales” or sometimes “gross receipts”.
- *Net income* is the amount of profit that the business makes. Profit is derived by taking the gross sales and subtracting any legitimate expenses that the business incurred. It is this figure that a business owner reports to the IRS in order for business taxes to be assessed.

The Social Security Administration goes one step further than the IRS does. When SSA is looking at net earnings from self-employment or NESE, they take the profit you reported to the IRS and multiply it by a factor of .9235 which is equal to the employer portion of the FICA contribution for a person in wage employment. SSA does this so as not to penalize you for that portion of the self-employment taxes that an employer would pay for a person in wage employment. Self-employment tax (SE tax) is a Social Security and Medicare tax primarily for individuals who work for themselves. It is similar to the Social Security and Medicare taxes withheld from the pay of most wage earners.

You figure SE tax yourself using Schedule SE (Form 1040). For wage earners, Social Security and Medicare taxes of most wage earners are figured by their employers. Also, you

can deduct half of your SE tax in figuring your adjusted gross income. The self-employment tax rate is 15.3%. The rate consists of two parts: 12.4% for social security (old-age, survivors, and disability insurance) and 2.9% for Medicare (hospital insurance). You can learn more about the self-employment tax, how it is figured and how it is paid by contacting any qualified small business accountant in your area.

Not only is SSA interested in your net earnings from self-employment, but they also look to see what portion of this NESE actually is “countable” for their purposes. There are numerous special work incentives in the SSA disability programs that provide ways to reduce the income SSA counts when they are reducing your SSI check, or determining whether you are engaging in SGA for the Social security disability programs. These work incentives will be explained in more detail further on in this document.

QUESTION: I am interested in starting a business but I don't have any way to pay for what would I need to get the business off the ground. I have heard that there are ways to use my Social Security disability benefits to fund business start up. Can you explain how that works?

There is a particular Social Security work incentive known as a Plan for Achieving Self-Support or PASS which is a wonderful way for some beneficiaries to finance business start-up. The PASS work incentive allows you to set aside income or resources which would otherwise cause either ineligibility for SSI or a reduction in SSI cash payments for use in achieving an occupational goal – including self-employment. Basically, you have to determine a specific occupational goal, must determine what items or services are needed to achieve that goal and must complete the PASS form describing how PASS funds will be spent on the items or services needed to meet your goal. The income or resources set aside in the PASS are disregarded when SSA determines SSI eligibility and when calculating the amount of the SSI payment each month. This allows you to either establish SSI eligibility or to keep more of the SSI payment. By using a PASS, beneficiaries can actually leverage their own Social Security benefit to save for things they need or to pay for the start-up expenses needed to get a business off the ground.

The primary purpose for using a PASS in self-employment is to create operating capital while stabilizing cash flow during (at least) the first 18 months of the PASS. This makes PASS an invaluable source of ongoing funds to support day-to-day operating expenses during the initial business startup phase. In addition, PASS funds are considered to be “owner’s equity”. This means PASS funds provides you with available cash which is not counted as business income for tax purposes. To utilize a PASS for small business start-up, you will need to submit a written business plan in addition to your completed plan. For specific information about what SSA requires of business plans submitted as part of a PASS application, go to POMS SI 00870.026 Business Plans at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500870026!opendocument>

While the PASS work incentive is of tremendous assistance to many SSA disability beneficiaries who have a self-employment goal, but it does have some limitations and

won't work for everybody. To determine if a Plan for Achieving Self-Support (PASS) makes sense for you, contact your local Work Incentives Planning and Assistance (WIPA) provider to schedule an analysis of your unique benefits situation. Make sure you tell the Community Work Incentives Coordinator (CWIC) you work with that you have a self-employment goal. The CWIC can help you decide if a PASS plan is a good option for you and can help you develop your plan.

QUESTION: I was told that because I got disability benefits from Social Security I was only allowed to have \$2,000 in the bank. Wouldn't owning a business or having money in a business account make me ineligible for my benefits?

No, owning a business with assets, property, equipment and/or cash in business accounts will not hurt you in any way. Remember that there are two very different types of SSA disability benefits – Supplemental Security Income (SSI) and Social Security disability benefits (SSDI, CDB, DWB). The Social Security disability programs authorized under Title II of the Social Security Act are not means-tested in any way. Beneficiaries of these programs may have unlimited assets and still be eligible for benefits. This means you could own a business of any value and the property owned by the business including business bank accounts would not count against you in any way.

If you receive SSI, it is true that an individual may not have more than \$2,000 in countable resources and stay eligible for benefits, while eligible couples have a combined resource limit of \$3,000. However, assets held by a business are specifically excluded when SSA looks at countable resources under a special provision called "Property Essential for Self-Support" or PESS. Under these rules which went into effect on May 1, 1990, SSI recipients are permitted to have unlimited business property, assets or resources as long as they are in "current use" in a trade or business. In fact, owning a business is a wonderful way to build wealth while retaining SSI eligibility!

There are some special considerations for SSI recipients regarding the business structure. PESS exclusions do NOT apply when the SSI recipient has a business which is incorporated. In these situations, it is as if the SSI recipient owns "stock" in the business as a shareholder and the value of this "stock" is counted as a resource for SSI eligibility purposes.

This includes businesses using the limited liability corporation (LLC) structure, which is essentially the same as a corporation. Only businesses structured as simple partnerships or sole proprietorships would be permitted to exclude business assets under the PESS provisions. The problem with that is that these business structures offer beneficiaries no protection from assuming personal liability if the business is sued. This is a major reason why small businesses are formed as LLCs – it allows the business to assume liability and protects business owners from having lawsuits attach their personal assets. This creates a problem for SSI recipients who want to own small businesses. They may have to choose between liability protection and PESS protection. In some cases, it will be possible for

individuals to purchase professional or business liability insurance sufficient to protect personal assets, but this would be an additional expense.

QUESTION: If my business isn't making any money, do I still have to report to SSA that I am self-employed?

Yes, you do. Work activity of any kind must be reported to Social Security if you receive benefits based upon disability. We recommend that reporting of this type be done in writing so that you have a paper trail to document that you did in fact notify SSA of your self-employment. You may also go to the local SSA field office to make reports of this type, but we still recommend that you keep something for your records which proves you reported your work activity.

For SSI recipients, SSA needs to have an estimate of what you expect to earn from your business so that they can adjust your check accordingly. When the calendar year is over and you prepare your tax return for the year, you must submit these forms to SSA. Social Security will take the total profit you made for the year and average it out over all 12 months. This monthly average is what they will use to determine how much SSI you should have received and this will be applied retroactively. In some cases you may have received more than you were due, but in other cases, SSA may owe you money. They will adjust your check to account for this discrepancy. Even if you don't expect to make a profit right away, you still need to notify SSA that you have started a business.

If you receive a Social Security disability insurance benefit like SSDI, CDB or DWB, you also need to inform SSA that you are engaged in self-employment – even if you are not making a profit yet! Under these programs, beneficiaries are afforded various work incentives. The first work incentive is the Trial Work Period (TWP). The TWP allows a beneficiary to test their ability to work for a limited amount of time and offers a guarantee that benefits will NOT be lost, no matter how much is earned during this period. For someone who is self-employed, SSA will count a TWP month when either net earnings for the business were over the current TWP amount (\$720 per month for 2011), or when the business owner spent more than 80 hours per month operating the business. The amount of time you spend working in your business can trigger a TWP month, even if you lost money or just broke even in terms of profit for that month. In the Title II disability programs (SSDI, CDB, DWB), a beneficiary can be using up their Trial Work Period even if they are not making any profit.

QUESTION: I am on SSI and Medicaid. How will my benefits be affected if I am self-employed?

The SSI program treats both wage employment and self-employment very favorably. It is almost impossible to earn wages or have self-employment income and NOT be better off for it in the SSI program. The reason for this is that once countable net earnings from self-employment, or NESE, is determined, SSA only reduces your SSI check by \$1 for

every \$2 your business generated in countable NESE. The SSI check is not reduced dollar-for-dollar by self-employment income which means you will have more money at the end of the month than you had when all you got was an SSI payment. It really pays to own a profitable small business in the SSI program!

There are some important differences in the way Social Security treats income derived from self-employment as compared to wage employment that you need to be aware of. First, when you initially report to SSA that you have begun self-employment, SSA will adjust future SSI checks based upon your best estimates or projections of annual NESE. Because of this, small business owners on SSI need to think carefully about what they estimate their profits to be in the first year of operating a business. If you estimate your NESE too high, you will end up with a very small SSI check which may not be sufficient to pay your living expenses if the business does not do as well as you had hoped. Conversely, if you project your profit too conservatively, you will end up getting more SSI than you were due. This creates an overpayment situation which SSA will have to collect back from you at some point in the future.

At the end of every calendar year, you will need to bring your completed tax returns into the local Social Security office so that they can see what your actual NESE was. SSA will take your total profit for the year less any applicable work incentives and will divide that amount evenly by 12 months. They will retroactively adjust your SSI checks over the entire past calendar year based upon actual NESE. It is important to understand that SSA will adjust your SSI checks retroactively for the entire calendar year, even if your business was only in operation for part of that year. This means you will have some amount of money that has to be settled as Social Security will either have paid you too little SSI or too much SSI based upon your projections and the number of months your business was in operation. Social Security will take the NESE amount from that first year of operations and use that to estimate your earnings for the coming year so that the SSI check can be reduced moving forward. SSI recipients who are self-employed need to keep a careful watch on their accumulated profits to make sure that the estimate of NESE they are providing to SSA is fairly accurate!

QUESTION: Are there ways for me to reduce the income SSA counts from my business when they are calculating my adjusted SSI check?

Yes, as we mentioned earlier, the SSA disability programs include numerous special provisions for beneficiaries who are employed or self-employed which are intended to encourage work and to ease the transition from dependence on benefits to greater self-sufficiency. SSA refers to these special rules as “work incentives. The work incentives that apply to the SSI program are the same regardless of whether you are in wage employment or self-employment. A brief description of the SSI work incentives is provided below. You can also find information about these work incentives in a useful SSA publication called “The Redbook”. You can access the current edition of the Redbook from SSA’s website at: <http://www.socialsecurity.gov/redbook/>

Impairment Related Work Expenses (IRWEs) – SSA deducts the cost of items and services that you need to work because of your impairment (e.g., attendant care services, medical devices, etc.) from NESE when they calculate your adjusted SSI payment. By deducting IRWEs from your NESE, you are able to keep more of your SSI payment. An important thing to remember about IRWEs is that they often meet the IRS rules as regular business expenses and can be used to reduce net income. This is positive because it reduces your tax liability as well as allows you to keep more of your SSI payment! Even when you have an IRWE which does not meet the IRS rules for an allowable business expense, you may still be able to deduct these expenses from your personal income under another set of tax rules. Check with a knowledgeable tax advisor for more information about tax deductions for expenses related to your disability.

Blind Work Expenses (BWEs) – If you are receiving SSI because of blindness, when SSA determines your SSI eligibility and payment amount they will not count any earned income that you use to meet expenses you incur in earning the income. Blind Work Expenses do NOT need to be related to your disability or blindness in any way – they simply need to be expenses that you incurred by working or being self-employed. Just like with IRWEs, some expenses that qualify as BWEs can be used as regular business expenses to reduce net income. Others should be applied as BWEs.

Student Earned Income Exclusion (SEIE) – The student earned income exclusion (SEIE) is a work incentive that allows certain SSI recipients who are under age 22 and regularly attending school to exclude a specified amount of gross earned income or NESE per month up to a maximum annual exclusion. The student earned income exclusion (SEIE) decreases the amount of countable earned income, thus permitting SSI recipients to keep more of the SSI check when they work. In many cases, the SEIE allows students to test their ability to work without experiencing any reduction in the SSI check at all.

Plans for Achieving Self-Support (PASS) - Under an approved PASS, you may set aside income and/or resources over a reasonable time which will enable you to reach a work goal to become financially self-supporting. You then can use the income and resources that you set aside to obtain occupational training or education, purchase occupational equipment, establish a business, etc. SSA does not count the income and resources that you set aside under a PASS when they decide SSI eligibility or payment amount. While PASS is often referred to as an SSI work incentive, it is possible for someone on Social Security disability benefits to use a PASS to initially establish eligibility for SSI and Medicaid. PASS is a complex work incentive with many diverse applications and uses. To find out if you are a good candidate for a PASS, contact your local WIPA provider for a thorough benefits analysis!

1619(b) Extended Medicaid Coverage - Your Medicaid coverage can continue even if your wages or NESE along with your other income become too high for an SSI cash payment. To qualify for and retain this special extended Medicaid over time you must continue to meet SSA's disability requirement, demonstrate that you need your Medicaid in order to continue working, have countable NESE of less than the current state "threshold amount", and otherwise meet all of the SSI requirements for unearned income

and resources. There is no time limit on 1619(b) extended Medicaid coverage. It is available to you as long as you meet all of the eligibility criteria.

To request one or more of these work incentives, simply write a letter or visit your local SSA field office. You will need to indicate which work incentives you wish to claim and provide an explanation of what expenses you will be incurring and why. There are no required forms or formats to use when making requests for approval of work incentives. Keep in mind, that for some work incentives (like IRWEs), that you may need to keep receipts or other documents to prove that you actually paid for certain expenses. If you need assistance requesting a work incentive, contact your local WIPA provider. The Community Work Incentives Coordinators have lots of experience using the work incentives and can help you make your request correctly.

QUESTION: I get Social Security Disability Insurance (SSDI) and Medicare. What will happen to my benefits and my Medicare if I become self-employed?

SSDI is one of the Social Security disability programs authorized under Title II of the Social Security Act. This program applies an entirely different set of policies for self-employment income than is applied in the SSI program. First, it is important to understand that SSDI is an all-or-nothing benefit. This means that benefit payments are not reduced incrementally as income goes up like SSI checks are. In the SSDI program, beneficiaries are either eligible for a full payment or no payment at all. Second, while SSDI still works off of net self-employment income (NESE) like SSI does, income is not averaged and spread out in equal increments over an entire year – at least initially. For the Title II disability benefits, SSA needs to be able to see exactly how much NESE the business generated on a month-by-month basis in the beginning. This is because countable wages or NESE are measured against certain earnings guidelines which determine whether or not the individual enters the first phase of work incentives known as the Trial Work Period.

In the SSDI program there are specific phases of work incentives that occur more or less sequentially. Each phase offers less and less protection to the beneficiary in terms of a safety net which guards against benefit loss. The first work incentive phase is called the Trial Work Period or TWP. A Trial Work Period month is counted when you earn NESE of more than a certain amount within a calendar month (\$720 in 2011) or when you work for 80 hours or more in the business in a month. The Trial Work Period allows you to test your ability to work for at least 9 months. During your TWP, you will receive your full disability benefit regardless of how much you earn as long as your work activity has been reported and you continue to have a disabling impairment. The 9 months does not need to be consecutive and your TWP will last until you accumulate 9 months within a rolling 60-month period.

When you complete the TWP, SSA looks to see if the level of countable earnings generated by the business represents “Substantial Gainful Activity” or SGA. Substantial Gainful Activity is measured against established earnings guidelines. In 2011, the SGA

(Substantial Gainful Activity) guideline for net self-employment earnings (or gross wages) is \$1,000 per month for non-blind individuals and \$1,640 for blind individuals. For non-blind individuals receiving SSDI that equals only \$12,000 per year in net self-employment income. For blind individuals the limit is \$19,680 in net self-employment income. If you are not engaging in SGA, you will continue to receive SSDI payments and Medicare without interruption. If your business is consistently showing SGA level NESE after the TWP, you will be afforded three more months of benefits and then payments will be suspended. If SSDI payments are suspended due to SGA level work or self-employment income, SSA can automatically reinstate your benefits without a new application for any months in which your net earnings from self-employment drop below the SGA level. This reinstatement period lasts for 36 consecutive months following the end of the Trial Work Period and is called the Extended Period of Eligibility or EPE.

Obviously, the decision about whether a small business owner on SSDI is demonstrating the ability to engage in SGA level work is critically important since this determination may lead to benefit cessation. In determining whether a self-employed individual is engaging in SGA, SSA considers many factors in addition to looking at the net earnings such as the individual's activities and their value to the business. SSA does not consider the business income alone to be a reliable factor in determining SGA, since it is influenced not only by the individual's work but also by such things as market conditions, capital investments, the services of other people, and agreements on distribution of profits. This means that SGA determinations can be very complex for people who own small business.

It is important for beneficiaries of the Title II disability programs to meet with the local WIPA project prior to initiating a business in order to carefully plan for the impact self-employment will have upon the SSA benefits. Not only are the SSDI work incentives difficult to understand, but the intricacies of SGA determinations in self-employment situations can be quite confusing. In addition, there are several SSDI work incentives available for beneficiaries who own small businesses that can help reduce countable earnings for SGA determinations. Your local WIPA professional can help determine which work incentives will be most useful for you given your unique circumstances and self-employment goals.

QUESTION: Are there ways that I can reduce the income SSA counts from my business when they are deciding if I am engaging in Substantial Gainful Activity (SGA)?

Yes, as we mentioned earlier, the SSA disability programs include numerous special provisions for beneficiaries who are employed or self-employed which are intended to encourage work and to ease the transition from dependence on benefits to greater self-sufficiency. SSA refers to these special rules as “work incentives”. Some of the work incentives that apply to the Social Security disability programs (SSDI, CDB, DWB) are applied in the same manner regardless of whether you are in wage employment or self-employment – others are applied differently in self-employment situations. A brief description of the Social Security disability benefit work incentives is provided below.

You can also find information about these work incentives in a useful SSA publication called “The Redbook”. You can access the current edition of the Redbook from SSA’s website at: <http://www.socialsecurity.gov/redbook/>.

Impairment Related Work Expenses (IRWEs) – SSA deducts the cost of items and services that you need to work because of your impairment (e.g., attendant care services, medical devices, etc.) from NESE when they are making SGA determinations. Unfortunately, IRWEs may not be used to reduce countable NESE when SSA is counting Trial Work Period (TWP) months. Using the IRWE work incentive means that a small business owner may actually have more than the current SGA guideline in NESE and still not be determined to be engaging in SGA. An important thing to remember about IRWEs is that they often meet the IRS rules as regular business expenses and can be used to reduce net income. This is positive because it reduces your tax liability as well as allows you to keep more of your SSI payment! Even when you have an IRWE which does not meet the IRS rules for an allowable business expense, you may still be able to deduct these expenses from your personal income under another set of tax rules. Check with a knowledgeable tax advisor for more information about tax deductions for expenses related to your disability.

Subsidy for Self-Employment – Subsidy is a term SSA uses to refer to support a person receives on the job which results in more pay being received than the actual value of services performed. SSA considers the value of subsidies when they determine whether or not a person is engaging in SGA. Subsidy is applied differently in self-employment than wage employment. First, in determining “countable income” from self-employment, the reasonable monetary value of any significant amount of unpaid help furnished by a spouse, children, or others is deducted from net income. In estimating the value of unpaid help, SSA considers the prevailing wage rate in the community for similar services. Only the pro-rata value attributable to the services actually performed (as compared with those that a full-time employee would perform) may be deducted. Secondly, when determining countable NESE, SSA deducts any business expenses which were incurred and paid by another person or agency. This deduction is made even though no actual expense was incurred by the beneficiary. The item or service must meet the IRS definition of legitimate business expense. A variety of methods are used to determine the value of these expenses.

Extended Period of Medicare Coverage (EPMC) – Even if NESE causes the loss of Social Security disability payments, most individuals with disabilities who work will continue to receive at least 93 consecutive months of hospital and supplementary medical insurance under Medicare, after the nine month trial work period. You do not pay a premium for hospital insurance (Medicare Part A), but SSA will bill you on a quarterly basis for the Part B premium at the same rates paid by SSDI beneficiaries. Although cash benefits may cease due to work, you have the assurance of continued health insurance.

To request one or more of these work incentives, simply write a letter or visit your local SSA field office. You will need to indicate which work incentives you wish to claim and provide an explanation of what expenses you will be incurring and why. There are no

required forms or formats to use when making requests for approval of work incentives. Keep in mind, that for some work incentives (like IRWEs), that you may need to keep receipts or other documents to prove that you actually paid for certain expenses. If you need assistance requesting a work incentive, contact your local WIPA provider. The Community Work Incentives Coordinators have lots of experience using the work incentives and can help you make your request correctly.

QUESTION: I plan to just take a little bit of money out of my business account each month to make sure I don't have too much earned income to report to SSA. I sure don't want to lose my benefits until my business is making enough money to replace them!

When someone takes money out of their business, it is called an "owner's draw". Owner's draw is not a "salary" in the way this word usually is applied, but can include money, assets or services the owner takes out of the business. A common misconception is that SSA only counts what a beneficiary actually takes out of the business as earned income. Unfortunately, this is not true!

Remember that SSA is interested in the "net earnings from self-employment" or NESE which is essentially the net profit a business generates less half of the self-employment taxes. A business owner may choose to keep the profits of a business in the business account, or may take some or all of it out as an owner's draw. The amount of owner's draw a beneficiary takes is irrelevant to SSA. It is NESE that SSA uses when making SGA determinations for beneficiaries of the Title II disability programs and when determining how much in SSI is due.

In the SSI program, "owner's draw" is referred to by SSA as "Withdrawals for Personal Use". Since SSI is a means-tested program, taking in-kind items or cash out of the business for personal use could count as income to the individual which could cause a reduction in SSI cash payment, or possibly even cause ineligibility for SSI. When an individual alleges or when SSA discovers that cash or in-kind items are withdrawn from a business for personal use, SSA will ask the individual whether the withdrawals were properly accounted for in determining NESE. That is, were they either deducted on the individual's Federal income tax return in determining the cost of goods sold or the cost of expenses incurred, or deducted on his business records? If the individual alleges that the funds were properly accounted for, SSA will accept this allegation and will NOT count this income against the individual again. If the withdrawals were NOT properly accounted for SSA will proceed in the following manner:

1. SSA will ask the individual to estimate the value of the cash or in-kind withdrawals. SSA will deduct that amount from the cost of goods sold or the cost of expenses incurred on the profit and loss statement to arrive at the proper NESE.
2. If the individual cannot or will not provide the profit and loss statement, but alleges an amount of NESE, SSA will add the value of the withdrawals to the individual's allegation of NESE.
3. If an individual alleges withdrawals for personal use but cannot or will not estimate the value of the withdrawals, or if the individual's personal expenses exceed the stated NESE and no other income is available, SSA will develop for unstated income.

QUESTION: Does the way I do my book-keeping for my business have any affect on my Social Security benefits?

Yes, the way you track your accounts or keep your books DOES matter. The way a business owner keeps the business accounts can make it easier to report NESE to Social Security. Conversely, if a beneficiary uses the wrong accounting method, it can make Social Security's job much harder and actually be detrimental to the beneficiary. Basically, there are two different accounting methods which businesses may use – cash and accrual. A brief description of these two accounting methods is provided below:

Cash Accounting - In the cash method of accounting the business books operate a lot like a checkbook. When goods and services are purchased and paid for they are recorded as expenses. When products are sold and the cash collected they are recorded as sales. For example, if you sold a product in January, but the money wasn't received from the customer until February, this would be considered income in February under the cash accounting method. If attendance at a trade show was planned for May but the entry fees had to be paid for in March, this expense would count when it was paid in March. The cash method of accounting slightly favors people on Supplemental Security Income (SSI).

Accrual Accounting - In the accrual method of accounting transactions are recorded when they are actually performed rather than when the money is received or paid. This makes the accounting slightly more difficult because you are dealing with goods that have been purchased but not paid for and sales that have been made but the cash has not been collected. If there is a large expense benefiting multiple months the expense can be spread evenly over the months. Using the example of the sale in January we described above, under the accrual accounting method this sale would be recorded in January so that it matched when the expenses occurred. The receipt of cash in February is just a receipt of cash and is not a sale. In the trade show example above, the business would recognize the expense in May or could even spread the cost over the months when they expected increased sales due attendance at the trade show. This accounting method is required for people on Social Security disability benefits such as SSDI, CDB or DWB.

Regardless of whether you choose to use a cash or accrual accounting method, the most important thing is that you keep accurate and complete financial records for your business from the very first day of operations. If you don't keep books recording your sales and expenses, you have no way of knowing what your profit is. You must have these records in order to file your tax returns at the end of the year. SSA counts whatever you report to the IRS as your net income from self-employment, less any applicable work incentives.

NOTE: It is important that you use the services of a CPA, accountant or bookkeeper who has some working knowledge of self-employment for beneficiaries of the SSA disability programs. Unfortunately, most accountants do NOT have this knowledge or expertise.

Your local WIPA project may be able to help you explain the accounting issues related to your benefits to your accountant or book keeper.

QUESTION: My accountant is telling me that I need to “incorporate” my business, but I have heard that forming a corporation may affect my Social Security benefits in a negative way. Does the structure of my business really matter?

Yes, business structure does matter and in most cases, forming a corporation is NOT the best way to proceed for a variety of reasons! Accountants who are not accustomed to working with beneficiaries of SSA disability programs often recommend incorporation because it offers certain tax advantages and because they want to make sure the business owner is protected from personal liability claims which result from accident or injury claims that occur in the business. If you operate your business as a sole proprietorship or a simple partnership, for example, you can be sued personally by people with liability claims against your business – this means your personal assets can be at risk! There is another, more effective way of dealing with these liability issues in most cases – that is to file as a Limited Liability Company or LLC instead of a corporation. The LLC structure offers business owners the liability protection they need with out some of the negative financial consequences of forming a corporation. The LLC structure is also very flexible. They can be designed to act like sole proprietorships, partnerships, or even corporations in some instances. Besides, filing an LLC is usually far cheaper and faster than forming a corporation!

There are some special considerations for SSI recipients regarding the business structure. PESS exclusions do NOT apply when the SSI recipient has a business which is incorporated. In these situations, it is as if the SSI recipient owns “stock” in the business as a shareholder and the value of this “stock” is counted as a resource for SSI eligibility purposes.

In addition, a business using the LLC structure is essentially the same as a corporation, so PESS does not apply. Only businesses structured as simple partnerships or sole proprietorships would be permitted to exclude business assets under the PESS provisions. The problem with that is that these business structures offer beneficiaries no protection from assuming personal liability if the business is sued. This is a major reason why small businesses are formed as LLCs – it allows the business to assume liability and protects business owners from having lawsuits attach their personal assets. This creates a problem for SSI recipients who want to own small businesses. They may have to choose between liability protection and PESS protection. In some cases, it will be possible for individuals to purchase professional or business liability insurance sufficient to protect personal assets, but this would be an additional expense.

A full explanation of the various structures a business can take and how each structure is treated by SSA would consume far too much space for this simple document. Suffice it to say that in the overwhelming majority of cases, forming a corporation will most often

be detrimental to a SSA disability beneficiary – particularly SSI recipients. While corporations may offer certain tax advantages, the disadvantages of corporations in terms of the negative impact on benefit eligibility can far outweigh any benefit which incorporation might provide. It is critically important that you meet with a WIPA professional before you pay an accountant to incorporate your business. In some cases, the issues surrounding incorporation or other business structure will be beyond the capacity of the WIPA professional to resolve. .

NOTE: It is important that you use the services of a CPA, accountant or bookkeeper who has some working knowledge of self-employment for beneficiaries of the SSA disability programs. Unfortunately, most accountants do NOT have this knowledge or expertise. Your local WIPA project may be able to help you explain the accounting issues related to your benefits to your accountant or bookkeeper.

QUESTION: I do custodial work for a local office complex. The company that manages the complex pays me once a month and they don't take out any taxes or FICA deductions. I have been told that this means I am self-employed – is that true?

Sometimes it is a bit difficult to really tell if you are employed by a company or if you are actually self-employed. There are complex rules established by numerous federal agencies such as the Internal Revenue Service (IRS) and the US Department of Labor (DOL) which have to be followed when determinations like this are made. The Social Security Administration follows these rules when they are deciding whether a beneficiary is self-employed or in wage employment. It is important that this determination be made so that SSA will treat your income correctly. There are also some very important tax implications to being self-employed.

The situation you describe here sounds like you are functioning as an “Independent Contractor”. This is a specific form of self-employment and is treated in the same manner as other self-employment situations by SSA.

For more information about how SSA distinguishes between wage employment and self-employment, refer to a Briefing Paper entitled “Wage Employment vs. Self-Employment” available on to the VCU WIPA NTC website at: <http://www.vcu-ntc.org/resources/index.cfm>

QUESTION: Not only am I on SSI and Medicaid, but I also get food stamps, and get Section 8 rental assistance from the local housing authority to help me pay for my rent. If I become self-employed, won't I lose all these other benefits?

Small business owners with disabilities are often involved in a wide array of income support programs such as Section 8 housing, Medicaid waiver funding, food stamps, annuities from insurance accident funds, benefit programs operated by the Veteran's Administration, and even welfare assistance at times. Each program in each state tends to view self-employment in roughly the same manner as Social Security, but there can be

some variance based on past policies and internal operating procedures of the various agencies. For instance, food stamps in some states insists on monthly accounting of gross sales and net income per month, versus SSI which by policy and law has to apply an even number for the entire year for both gross sales and net earnings. Not planning in the beginning and not taking into account the impact of self-employment income on other support programs can again cause significant problems and surprises if not anticipated.

The best plan is to have a thorough and complete benefits analysis conducted by the local WIPA project BEFORE you start actively planning your business. The WIPA projects are your most reliable source of comprehensive and up-to-date information about how income from a small business will affect the full range of public benefit programs available in your State or local area. The way your benefits are affected by self-employment income will depend upon how much profit your business makes and how this profit is counted in your State. While the Social Security rules governing self-employment income are the same no matter where you live in the US, never assume that the rules for other public benefit programs exactly match how SSA does things. When working with your local WIPA provider agency, make sure they know about ALL of the different benefits you get and that self-employment is your goal.

QUESTION: I collect antique buttons as a hobby and sometimes I sell buttons to other collectors over the internet. Does this mean I am self-employed and should be reporting all of the money I get from selling my buttons to SSA?

Both Social Security and the IRS make a distinction between engaging in a hobby and engaging in business or trade. The IRS has a specific set of rules which they use to define when buying and selling activity would be considered a hobby as opposed to business activity. For the most part, SSA abides by these same rules.

Basically, buying and selling items involved with a hobby is generally done for the purpose of improving or otherwise furthering the hobby, rather than with the intention of making a profit. In these cases, the activities would not constitute a trade or business and no income would be reportable to either the IRS or Social Security. The IRS and SSA consider four main factors when determining whether or not activity constitutes a trade or business. An activity does not have to demonstrate all four factors in order for it to be considered a trade or business. These factors are:

- The good faith intention of making a profit or producing income,
- Continuity of operations, repetition of transactions, or regularity of activities,
- Whether the activities performed constitute a regular occupation, and
- Whether the individual is holding him/herself out to others as being engaged in the selling of goods or services.

The activity described in the example here would typically be consider a hobby and thus is not reportable to either the IRS or SSA. However, if the individual set up an internet site specifically designed for selling antique buttons, demonstrated regular ongoing sales,

and held himself out to the community at large as being engaged in the business of selling buttons in order to make a profit, it would no longer be considered merely a hobby. As a general rule of thumb, if you are unsure whether an activity constitutes a hobby or business, contact your local Social Security Field Office for a determination.

Acknowledgements

Contributing Authors: Lucy Miller (VCU NTC) with special thanks to Jim Huston, CPA, President of Venture Mentors, LLC.

The development of this paper was funded by the Social Security Administration under Contract Number: SS00-07-60050, Training and Technical Assistance for the Work Incentive Planning and Assistance (WIPA) Program.