

# Self Employment for People with Disabilities

with  
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## Learning Objectives

1. Understand the difference between self vs. wage employment
2. Describe the difference between self-employment & Hobbies
3. Calculate Net Earnings from Self-Employment and How wages of business owners impact SSA benefits

## Learning Objectives

4. Understand IRS rules, schedule C and the self employment from tax returns.
5. Define the role of the BPAO and PABSS in self-employment cases.

## Learning Objective #1

Understand the difference between self employment vs. wage employment

## Clues to Employment Type

### Self Employment

- IRS Form 1099, Schedules C or SE
- Cash, checks or non cash items in lieu of payment to individual or business
- Individual responsible for making all FICA contributions & tax payments

### Wage Employment

- IRS form W2
- Cash, paycheck or non-cash items in lieu of pay
- Employer withholds FICA & taxes from pay (some exceptions)
- When in doubt – refer to SSA

## Learning Objective #2

Describe the difference between self-employment and Hobbies

## Is It A Business?

- The good faith intention of making a profit or producing income,
- Continuity of operations, repetition of transactions, or regularity of activities,

## Is It A Business?

- Regular occupation
- Holding out to others as being engaged in the selling of goods or services

## Is It A Business?

NOTE: A single factor is not sufficient upon which to determine the existence of a trade or business. All the factors need not apply.

When in doubt, this is something the SSA must determine

## Other Factors

- Hobbies
  - The buying and selling involved with a hobby is generally done for the purpose of improving or otherwise furthering the hobby. In these cases, the activities do not constitute a trade or business.

RS 01802.002 – Factors Indicating the Existence of a Trade or Business – 09/27/94

## Learning Objective #3

- Calculate Net Earnings from Self-Employment , and...
- How do wages of business owners impact SSA benefits.

## NESE Calculation

- NESE =  
$$\text{Gross Receipts} - \text{Expenses} \times .9235$$

## Example

- Mike's annual gross earnings – \$15,000
- Expenses - \$5,000
- Net Profit – \$10,000
- Multiply .9235
- Equals Net Earnings of \$9,235.00

## Earnings from Self Employment and SSI

- Earnings are averaged over an entire taxable year (calendar), even if business
  - Is seasonal
  - Did not operate for the entire year
  - Ceased operation prior to SSI application

## Earnings from Self Employment and SSI

- Average vs. actual monthly earnings
- Averaging earnings results in the same adjusted SSI check each month

## SSI Work Incentives for Self Employment

- Once avg net earnings are determined, subtract GIE & EIE, then apply the 1 for 2 reduction. Subtract countable earned income from the person's base SSI rate
- 1619(b) rules apply to self employment with no changes.

## SSI Work Incentives for Self Employment

- All other SSI work incentives apply to recipients who are self employed with no changes.
- Some additional opportunities for Property Essential for Self-Support (PESS)

## Property Essential for Self- Support (PESS)

- PESS may include land, buildings, equipment, inventory, and/or liquid assets (cash)

## Property Essential for Self- Support (PESS)

- There is no upper limit to PESS
- The property must be in “current use” for self-support to qualify as PESS
- See SI01130.500 - SI01130.510

## Self Employment & Social Security Disability Benefits

- NESE is NOT averaged during TWP, but assessed on a month by month basis by examining income and expenses.

This also applies in the EPE after cessation. NESE is averaged over the period of work when making SGA determinations.

## Self Employment & Social Security Disability Benefits

- TWP months occur when NESE are over \$590 (in 2005) or when the beneficiary works for 80 hours or more, regardless of the amount earned.

## SGA Determinations

- The value of the work effort is what is most important
- SSA is looking for a consistent pattern of work behavior

## SGA Determinations

- SSA uses numerous “tools” to assess the value of work:
  - Income averaging
  - Unsuccessful Work Attempt (UWA)
  - Subsidy
  - IRWEs

## SGA and Self-Employment

“In determining whether a self-employed individual is engaging in SGA, consideration must be given to the individual's activities and their value to the business. Self-employment income alone is not a reliable factor in determining SGA, since it is influenced not only by the individual's services but also by such things as market conditions, capital investments, the services of other people, and agreements on distribution of profits.” (POMS DI 10510.001)

## Example

- John's NESE: 1,200
- Subtract IRWE: - 450
- Countable Earnings: 750

## Unpaid Help

In determining "countable income" from SE, 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) should be deducted.

## Un-Incurred Business Expenses

In determining "countable income" from SE, the SSA deducts from the individual's net income 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.

## SGA Test for Self-Employment

### 3-step SGA test:

- Significant services & substantial income
- Comparability of work activity
- Worth of work activity

\* Only test 1 applies to individuals who are blind

## Substantial Income

- Substantial income exists when average NESE is over the SGA guideline

## Significant Services

- If NESE is under SGA limits, it may still be significant if income is comparable to what the person earned before becoming disabled or ...

comparable to that of non-disabled self-employed persons doing the same type of work.

## Comparability of Work Activity

Work activity is SGA when all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities, are comparable to non-disabled persons engaged in the type of work;

## Learning Objective #4

- Understand IRS rules , schedule C and the self employment from tax returns.

## Tax Return Time

- Under either the SSI or Title II program, the person must submit the self-employment tax return when they are available.

## Tax Return Time

- Under SSI program, the claims rep will enter the corrected net earnings into the record.
  - If higher than previous est. = overpaid
  - If less than earlier est. = underpaid
  - Accurate estimates are essential!

## Tax Return Time

- For Title II disability program, the Claims Rep will use the tax returns to confirm that the individual has used trial work months or has performed SGA.

If average earnings are not above the guidelines, then other factors, such as hours of work, or services performed may be considered.

## Some Additional Considerations

- Individuals may have self-employment income as well as wage income.

### Some Additional Considerations

- If someone receives both Social Security benefits and SSI, always calculate the effect of work or self-employment on the Social Security benefit first—then look at SSI

### Learning Objective #5

- Define the role of the BPAO and PABSS in self-employment cases.