

“TO EXCHANGE IDEAS, ASSIST EACH OTHER, GET BETTER ACQUAINTED”



Bulletin

July/August

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FROM THE PRESIDENT...

To Exchange Idea, Assist Each Other, and Get Better Acquainted



That is just what we did at the MACMA annual conference at the beautiful Crowne Plaza Hotel in

Asheboro. Circulation Professionals and vendors spent time learning, networking with one another, and creating partnerships to support their business relationships.

Our hosts, Frank Shipman and his staff from the Asheville Citizen Times did an outstanding job taking care of the MACMA group. The MACMA Board of Directors and Officers did a wonderful job organizing the conference and making sure that everything went smoothly. I commend the MACMA past presidents for their continued support as they are an invaluable resource when it comes to planning these events. I want to express my gratitude and extend many THANKS to all of these good people for the hard work and dedication that they put into this conference. I am proud to be

serving with such a fine group of professionals.

I am also honored to be serving as your new president for the next year. I welcome your comments and suggestions and look forward to working with each and every one of you.

I would also like to recognize the new MACMA Officers: (See page 2)

These fine folks are the “go to” people when it comes to answering questions. Their many years of experience and expertise in the Circulation Industry will go a long way in providing answers to everyday challenges that you may face.

You can find contact information for any of them in the *MACMA Buyers Guide*. If you do not have the latest copy please call 252-635-5635 or email smeadows@freedomenc.com, to have a copy mailed to you.

Training Seminar Coming October 27, 2010

Legally Speaking
By L. Michael Zinser
MACMA General Counsel

This month's column will update our readers on: (1) a recent IRS case involving independent contractor status, (2) the National Labor Relations Board appointees of President Obama and (3) Employee Free Choice Act update.

1. IRS/SS-8/Direct Seller Amendment – Very recently, a division of Lee Enterprises, Inc. received a letter from the Internal Revenue Service enclosing its SS-8 form concerning an individual with whom it has an independent contractor relationship for the delivery of newspapers for home delivery. Lee Enterprises declined to complete the SS-8 form independent contractor questionnaire and instead drafted a reply to the IRS explaining that the newspaper contractor involved qualified as a "Direct Seller" pursuant to 26 USC §3508. Much to its surprise, on February 9, 2010, Lee Enterprises received a determination in the case, finding that the newspaper contractor involved was an employee and proceeding to make many erroneous factual findings concerning the relationship of Lee Enterprises and the contractor at issue.

The determination letter of the IRS did **not** anywhere comment on the applicability of the above-mentioned Direct Seller Amendment. Lee Enterprises contacted the IRS by phone and questioned why the Direct Seller Amendment was not addressed in the determination letter. The agent contacted explained to Lee Enterprises that once she determined that Lee Enterprises did not complete the SS-8 form, she did not even read the letter. Talk about arbitrary and capricious agency action!

Lee Enterprises then filed a request for redetermination. This written request recounted the action of the IRS in failing to even consider the written response when it was determined that the SS-8 "form" questionnaire had not been completed. In the request for redetermination, it was explained that the SS-8 is irrelevant because of the applicability of the Direct Seller Amendment. Lee Enterprises told the IRS that its "failure to consider the information set forth in my April 27 reply constitutes arbitrary and capricious agency action, and infringes upon Lee's due process rights in violation of the Fourteenth Amendment to the United States Constitution."

On March 9, 2010, the IRS reconsidered its earlier determination of employee status. The IRS redetermination stated:

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We have thoroughly considered your request for reconsideration and have concluded that the worker's status, for federal unemployment tax purposes, should be changed. We hereby find the worker to be an independent contractor when she performs services for

you.

The worker was engaged to deliver newspapers to the firm's customers. Her remuneration was based upon sales/output, not hours worked. The worker's remuneration was established in the Independent Contractor Agreement in which she would be paid a delivery fee per newspaper delivered.

Under §3508 of the Internal Revenue Code, workers that meet certain qualifications will not be treated as employees for FICA, FUTA or FITW purposes. These workers are referred as statutory non-employees

The worker in this case meets the requirements to be classified as a direct seller under the IRS §3508(b)(2).

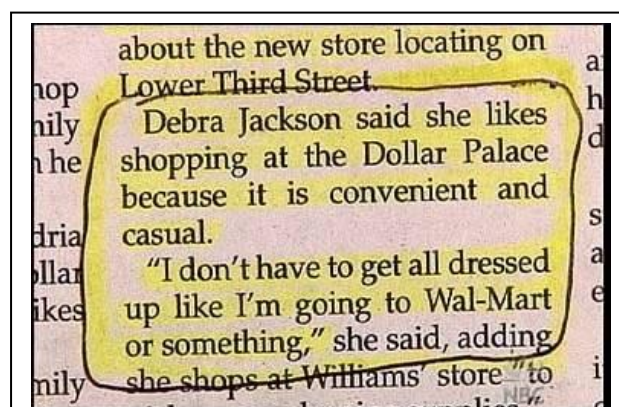
The determination letter goes on to conclude that the parties had a written agreement and that the written agreement provided that the contractor would not be treated as an employee for federal tax purposes. Compensation to an individual classified as an independent contractor is not subject to federal income tax withholding, federal insurance contributions tax, or federal unemployment tax.

One must wonder whether the agent involved is one of the army of new employees employed by the Obama administration to attack independent contractor status. Is it possible these new agents are unaware of the Direct Seller Amendment?

Editor's Note: Lee Enterprises, Inc. was represented by The Zinser Law Firm.

2. NLRB Appointments – On March 27, 2010, President Obama announced two recess appointments to fill two of the three vacancies on the National Labor Relations Board. One of the recess appointments was union attorney Craig Becker. Mr. Becker had been so controversial that his nomination was blocked by a filibuster in December 2009 and was sent back to the President. The President re-nominated him and has opted to give him a recess appointment, which will allow him to serve, unconfirmed, until the end of 2011. The President also appointed Mark Pearce to fill another vacancy on a recess basis. Becker and Pearce are both very pro-union Democrats. President Obama had also nominated Bryan Hayes to fill a vacant Republican seat on the Board. Interestingly, the President did not appoint Mr. Hayes on a recess basis. Thus, there are currently three Democrats and one Republican on the NLRB. The one Republican, Peter Schaumber, will leave in August 2010, when his term expires. The NLRB will then have 3 very pro-union Democrats on the Board, with the 2 Republican seats vacant.

3. Employee Free Choice Act Update – The President's healthcare bill has been rammed down our throats. While the administration may try to do the same thing with the Employee Free Choice Act, it may prove to be a little more difficult. While the Employee Free Choice Act has passed in the House of Representatives, there is no version that has passed in the United States Senate. Additionally, the election of Scott Brown to the Senate in Massachusetts gives the Republicans 41 votes, thereby making it impossible for the Democrats to cut off a filibuster against EFCA. Democratic Senators Blanche Lincoln and Ben Nelson are publicly opposed to EFCA as well. This writer, however, does **not** believe that the unions have given up on this bill. Employers must remain vigilant and continue to impress upon your United States Senators your opposition to EFCA.





WEBINAR

CARRIER PROFILING

October 27, 2010

2 p.m.

Having trouble filling or keeping home delivery carriers?

Tired of Running Routes?

This webinar will focus on building a profile of what to look for in a carrier prospect. Also, what type of indicators that would indicate that you may be choosing is the wrong carrier!

This 45 minute webinar will change the way you look at carrier prospects and improve your chances of filling your routes with the right carrier.

For more information about this webinar, contact Scot Newcom at 803-644-2350.



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What are some of the characteristic that make a good carrier?

Are there some danger signals to look for?

We will take a step by step approach to identify what to look for in a good carrier; and what are the warning signs?

Webinar – Carrier Profiling October 27, 2010 2 p.m.