



June 1, 2009

**BUREAU CIRCULAR NO. 854**

To All Members of the Bureau:

Re: **INDEPENDENT CONTRACTORS**

Delaware legislation passed in 2007 requires that all “independent contractors” in Delaware must be covered for workers compensation or secure the necessary exclusionary documentation. The legislation defines the individuals and/or entities that are subject to this requirement as those persons or businesses that are licensed or should be licensed under Title 30, Chapter 25 of the Delaware Code (essentially construction contractors). The effective date of this change was July 17, 2007 for new and renewal policies. See Delaware Bureau Circulars No. 819 and 820.

In response to this law, Bureau staff contacted the Delaware Department of Finance and obtained information from that agency concerning which workers’ compensation basic classifications would be considered to be subject to provisions of the new law. See the list of such classifications, as provided by the Delaware Department of Finance. below.

012	608	645	653	660	668	682
055	609	646*	654	661	669	691
601	611	647	655	663	673*	693
602	615	648	656	664	674	695
603	617	649	657	665	675*	
605	625	651	658	666	676	
607	643	652	659	667	677	

\*This code would not meet definition of contractor as contained in Chapter 25 of the Delaware Code unless such “installation” or erection was performed in such a way as to permanently affix the item to realty.

In terms of the mechanics of performing audits of employers potentially subject to this legislation, the following suggestions are offered based on the experience Bureau staff has had to date.

On the appointment letter to the insured the following documentation should be indicated as needed from employers.

- Cash or check disbursements identifying payments to subcontractors
- Certificates of insurance for subcontractors used during the policy period
- Copies of the “Agreement by Executive Officer(s)/LLC Member(s) not to be subject to the Delaware Workers’ Compensation Law” forms (see attached)

- Copies of Form 1280 “Statement of Payments made by General Contractors to Subcontractors (see attached). These forms are filled out and sent to the State of Delaware, Department of Finance, Division of Revenue as part of the determination of Delaware’s Gross Receipts Tax. These forms are filed monthly or quarterly depending on the number of subcontractors used and the size of the payments.

At the audit, the following steps should be performed:

- Review the cash disbursements and record the names of the subcontractors used and the amounts paid to them for the policy period.
- Review the certificates of insurance and record the name of the subcontractor, amount paid, type of work done by the subcontractor, name of the insurance company that issued the certificate, policy number and dates of coverage.
- Record the names of the excluded executive officers/members of the limited liability companies from the ‘Agreement by Executive Officer(s) /LLC Members(s) not to be subject to the Delaware Workers’ Compensation Law Form.”
- Review Form 1280-9403 to determine the names and amounts paid to subcontractors as a secondary source of verification.

If a qualifying contractor uses multiple subcontractors, it is recommended that each subcontractor be checked for insurance coverage when possible. However, if this is not feasible, then a random sample of the subcontractors should be checked for coverage. If all subcontractors in the selected sample had valid certificates of insurance, the appropriate information noted above should be recorded and then a note should be entered on the audit worksheets stating “Sample of x subcontractors checked – coverage verified for all subcontractors checked – insured stated that they maintained a complete file of certificates of insurance or agreements of exclusion for all subcontractors used.”

If the sample chosen does not produce valid certificates of insurance for all selected entities, then the auditor should review each subcontractor for coverage purposes.

The Bureau is in the process of determining the approach it may take regarding the test audit review of employers/contractors subject to this legislation. Current test audit procedure lists independent contractors as a factor not subject to test audit criticism. The Bureau is evaluating the merits of continuing, revising or eliminating this exclusion in Delaware. As part of this evaluation process, Bureau staff has been conducting reviews of selected Delaware construction contractors, including an analysis of the coverage status of independent contractors. This review is presently being done on a research basis only. No criticisms/ differences have been generated with respect to the treatment of independent contractors during this research project. Staff hopes to learn more about audit issues associated with the above-referenced law change and to determine from that experience how best to proceed in administering the Test Audit Program with respect to this issue going forward.

Any questions should be addressed to Vincent P. Dean, Director, Classification & Field Operations, at 302-654-1435, Extension 4490, or [vdean@dcrb.com](mailto:vdean@dcrb.com).

Timothy L. Wisecarver  
President

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**Remember to visit our web site at [www.dcrb.com](http://www.dcrb.com) for more information about this and other topics.**

## AGREEMENT BY EXECUTIVE OFFICER(S)/LLC MEMBERS(S) NOT TO BE SUBJECT TO THE DELAWARE WORKERS' COMPENSATION LAW

Executive officers of corporations and members of Limited Liability Companies (LLCs) are covered under the Delaware Workers' Compensation Law. However, up to eight (8) executive officers who are stockholders of a corporation or up to four (4) members of an LLC may elect not to be subject to Delaware Workers' Compensation Law by completing this agreement with their corporation/LLC. **SPECIAL NOTE** - **CONSTRUCTION** corporations/LLCs subject to Title 30, Chapter 25 of the Delaware Code may elect to exclude up to four (4) executive officers who are stockholders of a corporation or up to four (4) members of an LLC. Executive Officers are the president, any vice president, secretary, treasurer or any other executive officer(s) elected by the board of directors in accordance with the charter and the regularly adopted by-laws of the corporation. This Executive Officer/LLC member Exclusion Procedure must be repeated each time a corporation/LLC wishes to change the status of any executive officer/LLC member and/or secures coverage from a different carrier group.

**Name of business**

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Federal Employer Identification Number

Business **has** employee(s) (other than those listed below) - please check here   
 Business **does not have** employee(s) (other than those listed below) - please check here

**Please check type of business**

- Corporation** Not Subject to Title 30, Chapter 25 (non construction) – *Maximum 8 exclusions*
- Corporation** Subject to Title 30, Chapter 25 (**construction**) – *Maximum 4 exclusions*
- Limited Liability Company** (LLC) – *Maximum 4 exclusions*

\_\_\_\_\_  
*Signature of Representative of Corporation or LLC* *Title* *Date*

**Named below are the executive officer(s)/LLC member(s) electing not to be subject to the Delaware Workers Compensation Law:**

NAME(s) <small>(Print name)</small>	TITLE	MEMBER OFFICER(S) SIGNATURE	STOCKHOLDER YES/NO	DATE

Additional space below limited to officers of corporations not subject to Title 30, Chapter 25. Cannot be used for other corporations or any LLC.


**IMPORTANT:** If you have workers compensation insurance, you **must** submit the **original** of this completed form to your insurance carrier, together (in the case of a corporation) with the shareholders resolution(s), shareholders agreement(s), and/or shareholders written consent(s) evidencing the executive officer status of the electing executive officer(s), or together (in the case of an LLC) with the operating agreement and/or certificate of formation evidencing the member status of the electing member(s). If you are a subcontractor, you **must** also provide a copy of the same documents to each general contractor by whom you are hired.

STATE OF DELAWARE  
 Department of Finance  
 Division of Revenue  
 820 N. French Street  
 P.O. Box 2340  
 Wilmington, Delaware 19899-2340

STATEMENT OF PAYMENTS  
 MADE BY GENERAL CONTRACTORS  
 TO SUBCONTRACTORS

FORM 1280

THIS FORM MUST BE ATTACHED TO CONTRACTOR'S MONTHLY GROSS RECEIPT TAX COUPON  
 TO SUBSTANTIATE PAYMENTS TO SUBCONTRACTORS

1. Enter Federal Employee Identification Number OR Social Security Number

1 -   -

2 -    -   -

2. Name \_\_\_\_\_

3. Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

4. General Contractors Total Monthly Gross Receipts: Month \_\_\_\_\_ \$ \_\_\_\_\_

5. Less Payments to Subcontractors:

Name & Address		Employer ID No.	DE Business License No.
1	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Amount of Payment	Business Code
2	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Amount of Payment	Business Code
3	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Amount of Payment	Business Code
4	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Amount of Payment	Business Code
5	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Amount of Payment	Business Code

(See reverse side for additional space.)

6. Total Payments to Subcontractors \$ \_\_\_\_\_

7. Total Taxable Gross Receipts for the Month: \$ \_\_\_\_\_

\* Business Codes 331, 332, 333, 335, 336 or 337. See Reverse side of this form for listing of activities not deductible as amounts paid to subcontractors.

\_\_\_\_\_  
 SIGNATURE TITLE DATE

## LINE-BY-LINE INSTRUCTIONS

FORM 1280

1. Enter the account number of the business for which you are filing. This is either a federal employer identification number or a social security number, and can be found in your annual gross receipts coupon book.
2. Enter the contractor's business name, as it appears on the Delaware business license.
3. Enter the contractor's mailing address.
4. Enter the month and year for which the gross receipts tax is being reported. Enter the total amount of gross receipts being reported. (The total on Line 4 should also be entered on Line 1 of your gross receipts reporting coupon.)
5. List payments made to subcontractors. If you are reporting payments to more than five subcontractors, use the back of Form 1280 for additional space:
  - 1) Enter the subcontractor's business name and mailing address in the field provided.
  - 2) Enter the subcontractor's employer identification number.
  - 3) Enter the total amount of payment(s) made to the subcontractor.
  - 4) Enter the subcontractor's Delaware business license number. **Payments to subcontractors without a current business license will be denied.**
  - 5) Enter the subcontractor's business code (this can only be business code 331, 332, 333, 335, 336 or 337).
6. Enter the total amount of payments made to subcontractors. (The total on Line 6 should also be entered on Line 2 of your gross receipts reporting coupon.)
7. Subtract Line 6 from Line 4. Enter this amount on Line 7. (The amount on Line 7 should also be entered on Line 3 of your gross receipts reporting coupon.)

The following is a listing of activities/expenses which are **NOT DEDUCTIBLE** as amounts paid to subcontractors:

Accounting Expenses	Inspections
Advertising	Interior Designers/Decorators
Architects	Material supplied without labor
Attorneys	Operating Expenses
Cleaning	Realtors
Construction Management	Sanitation
Delivery or transportation charges	Security
Employment Agencies or temporary employees	Surveyors
Engineers	Taxes or other fees paid to any state, county, city or municipality
Environmental Studies	Trailer Rentals
Equipment Rental	Trash Removal
Exterminators	Utility Expenses
Hauling	
Horticulture	

(Form 1280 - Revised 11/2007)