

**R156-55a-306. Contractor Financial Responsibility - Division Audit.**

In accordance with Subsections 58-55-302(10)(c), [~~58-55-306(2)~~] 58-55-306(5), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

- (1) (a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;
- (b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;
- (c) an acceptable current credit report that meets the following requirements:
  - (i) for individuals:
    - (A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or
    - (B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or
  - (ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;
- (d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;
- (e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;
- (f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;
- (g) any guaranty agreements provided for the applicant or licensee and any owners; and
- (h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

**R156-55a-503. Administrative Penalties.**

- (1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE  
FIRST OFFENSE

| Violation     | All Licenses Except<br>Electrical or Plumbing | Electrical or<br>Plumbing |
|---------------|---|---------------------------|
| 58-55-308(2)  | \$ 500.00                                     | N/A                       |
| 58-55-501(1)  | \$ 500.00                                     | \$ 500.00                 |
| 58-55-501(2)  | \$ 500.00                                     | \$ 800.00                 |
| 58-55-501(3)  | \$ 800.00                                     | \$1,000.00                |
| 58-55-501(9)  | \$ 500.00                                     | \$ 500.00                 |
| 58-55-501(10) | \$ 800.00                                     | \$1,000.00                |

|               |           |           |
|---------------|-----------|-----------|
| 58-55-501(12) | N/A       | \$ 500.00 |
| 58-55-501(14) | \$ 500.00 | N/A       |
| 58-55-501(19) | \$ 500.00 | N/A       |
| 58-55-501(21) | \$ 500.00 | \$ 500.00 |
| 58-55-501(22) | \$ 500.00 | N/A       |
| 58-55-501(23) | \$ 500.00 | N/A       |
| 58-55-501(24) | \$ 500.00 | N/A       |
| 58-55-501(25) | \$ 500.00 | N/A       |
| 58-55-501(26) | \$ 500.00 | N/A       |
| 58-55-501(27) | \$ 500.00 | N/A       |
| 58-55-501(28) | \$ 500.00 | N/A       |
| 58-55-501(29) | \$ 500.00 | N/A       |
| 58-55-504(2)  | \$ 500.00 | N/A       |

### SECOND OFFENSE

|               |            |            |
|---------------|------------|------------|
| 58-55-308(2)  | \$1,000.00 | N/A        |
| 58-55-501(1)  | \$1,000.00 | \$1,500.00 |
| 58-55-501(2)  | \$1,000.00 | \$1,500.00 |
| 58-55-501(3)  | \$1,600.00 | \$2,000.00 |
| 58-55-501(9)  | \$1,000.00 | \$1,000.00 |
| 58-55-501(10) | \$1,600.00 | \$2,000.00 |
| 58-55-501(12) | N/A        | \$1,000.00 |
| 58-55-501(14) | \$1,000.00 | N/A        |
| 58-55-501(19) | \$1,000.00 | N/A        |
| 58-55-501(21) | \$1,000.00 | \$1,000.00 |
| 58-55-501(22) | \$1,000.00 | N/A        |
| 58-55-501(23) | \$1,000.00 | N/A        |
| 58-55-501(24) | \$1,000.00 | N/A        |
| 58-55-501(25) | \$1,000.00 | N/A        |
| 58-55-501(26) | \$1,000.00 | N/A        |
| 58-55-501(27) | \$1,000.00 | N/A        |
| 58-55-501(28) | \$1,000.00 | N/A        |
| 58-55-501(29) | \$1,000.00 | N/A        |
| 58-55-504(2)  | \$1,000.00 | N/A        |

### THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

- (2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.
- (3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

- (4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.
- (5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

**R156-55a-602. Contractor License Bonds.**

Pursuant to the provisions of Subsections 58-55-306(1)(b), [~~58-55-306(4)(e)~~] and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

- (1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.
- (2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.
- (3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.
- (4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.
- (5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be \$50,000 for the E100 or B100 classification of licensure; \$25,000 for the R100 classification of licensure; or \$15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).
- (6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

- (7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:
- (a) the contractor demonstrates by clear and convincing evidence that:
    - (i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;
    - (ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and
    - (iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and
  - (b) the Commission and Division approve the amount.

## **R156-55d. Burglar Alarm Licensing Rule.**

### **R156-55d-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Conviction", as used in this rule, means criminal conduct where the filing of a criminal charge has resulted in:

(a) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(b) a pending diversion agreement;

(c) a plea of nolo contendere;

(d) a guilty plea;

(e) a finding of guilt based on evidence presented to a judge or jury; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(2) "Employee", as used in Subsections 58-55-102(17) [~~and R156-55d-102(1)~~], means an individual providing labor services for compensation who: [~~has federal and state taxes withheld and workers compensation and unemployment insurance provided by the individual's employer.~~]

(a) has federal and state taxes withheld or is exempt from such withholdings under federal law as a direct seller pursuant to 26 U.S.C. §3508; and

(b) has worker's compensation and unemployment insurance provided by the individual's employer.

(~~1~~3) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

(~~3~~4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

### **R156-55d-302d. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination [~~may~~] shall wait 30 days before retak[~~e the~~]ing a failed examination [as follows:

(a) ~~no sooner than 30 days following any failure, up to three failures; and~~

(b) ~~no sooner than six months following any failure thereafter].~~

10, 1993, 107 Stat. 435; Pub. L. 103-465, title VII, §721(c), Dec. 8, 1994, 108 Stat. 5002, related to advance payment of earned income credit.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111-226, set out as an Effective Date of 2010 Amendment note under section 32 of this title.

**§ 3508. Treatment of real estate agents and direct sellers**

**(a) General rule**

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

- (1) the individual performing such services shall not be treated as an employee, and
- (2) the person for whom such services are performed shall not be treated as an employer.

**(b) Definitions**

For purposes of this section—

**(1) Qualified real estate agent**

The term "qualified real estate agent" means any individual who is a sales person if—

- (A) such individual is a licensed real estate agent,
- (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and
- (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

**(2) Direct seller**

The term "direct seller" means any person if—

- (A) such person—
  - (i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,
  - (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or
  - (iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),
- (B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

**(3) Coordination with retirement plans for self-employed**

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97-248, title II, §269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104-188, title I, §1118(a), Aug. 20, 1996, 110 Stat. 1764.)

**AMENDMENTS**

1996—Subsec. (b)(2)(A), Pub. L. 104-188 added cl. (11).

**EFFECTIVE DATE OF 1996 AMENDMENT**

Section 1118(b) of Pub. L. 104-188 provided that: "The amendments made by this section shall apply to services performed after December 31, 1995."

**EFFECTIVE DATE**

Section 269(e) of Pub. L. 97-248 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending provisions set out as a note under section 3401 of this title] shall take effect on July 1, 1982."

**RULES AND REGULATIONS**

Section 269(c)(3) of Pub. L. 97-248 provided that: "Nothing in section 530 of the Revenue Act of 1978 [set out as a note under section 3401 of this title] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 3401 of this title]."

**§ 3509. Determination of employer's liability for certain employment taxes**

**(a) In general**

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

**(1) Withholding taxes**

Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

**(2) Employee social security tax**

Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.