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STATE OF MARYLAND  
DEPARTMENT OF LABOR, LICENSING AND REGULATION

RRIS N. GLENDENING, Governor  
EUGENE A. CONTI, JR., Secretary

Board of Appeals  
Hazel A. Warnick, Chairperson

## - DECISION -

EMPLOYER:

America's Energy Savers Home  
Improvement, Inc.

DATE: November 26, 1996

DECISION #03579-BH-96

DETERMINATION #9452256

EMPLOYER ACCT.

Issue: The issue in this case is whether payments to certain individuals constitute covered employment or represent payments to independent contractors and are thereby excluded from unemployment insurance covered wages.

## - NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: December 11, 1996

## - APPEARANCES -

FOR THE APPELLANT:  
Michael Marr, Attorney  
Timothy Munson

FOR THE SECRETARY:  
John T. McGucken, Legal Counsel

## EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.



## FINDINGS OF FACT

The Board of Appeals adopts the findings of fact of the Hearing Examiner.

## CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, Section 8-201 provides that all compensation paid for personal services is considered covered employment unless exempted by law.

Maryland Code Annotated, Labor and Employment Article, Section 8-205 provides that work an individual performs under any contract is not covered employment if:

- 1) The individual who performs the work is free from control and direction over its performance both in fact and under the contract;
- 2) The individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work: and
- 3) The work is:
  - (i) outside the usual course of business of the person for whom work is performed; or
  - (ii) performed outside of any place of business of the person for whom work is performed.

In a case such as this the burden is on the employer to establish that all three prongs of section 8-205 have been met in order for individuals performing work to be exempted from covered employment. The employer has met that burden in this case.

The Board of Appeals adopts the Hearing Examiner's conclusions of law as to section 8-205 (1) and (3). Regarding section 8-205(1), the individuals performing the work are free from the control and direction of the employer over the performance of the work, both in fact and under the terms of the contract. The fact that the individuals performing the work had their licenses signed by this employer and are provided a pre-printed contract for customers to sign that is subject to the final approval of this employer, is insufficient to establish that the employer has such a degree of control and direction over how these individuals perform the work to make this work covered employment.

Regarding section 8-205(3), the individuals perform the work from their own homes and at the homes of potential customers. The amount of time spent by these individuals, at the workplace of the employer is but a small fraction of the time devoted to the performance of the work. The time spent at the workplace of the employer is minuscule and insufficient to make this work covered employment.

The Board of Appeals however does not adopt the Hearing Examiner's conclusions of law as to section 8-205(2). The Board concludes that the employer has met his burden of proof with regard to this prong of 8-205, also. Section 8-205 requires that the individual be customarily engaged in an independent business or occupation of the same nature as that involved in the work.