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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 2.5@ WITHHOLDING TAX ON WAGES

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Chapter 2@ WITHHOLDING AND PAYMENT OF TAX

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Section 4325-1@ Remuneration Other Than in Cash for Service Performed by Retail Commission Salesperson

## **4325-1 Remuneration Other Than in Cash for Service Performed by Retail Commission Salesperson**

### **(a)**

In General. (1) An employer, in computing the amount to be deducted and withheld as tax in accordance with Section 13020 of the code, may, at his election, disregard any wages paid in a medium other than cash for services performed for him or her by an employee if (A) the noncash remuneration is paid for services performed by the employee as a retail commission salesperson and (B) the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed by him or her as a retail commission salesperson. (2) Section 13025 of the code and this regulation are not applicable with respect to (A) noncash wages paid to a retail commission salesperson for services performed by him or her in a capacity other than as such a salesperson or (B) noncash wages paid by an employer to an employee for services performed as a retail commission salesperson if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesperson, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the

employee is measured by sales. (3) Retail Commission Salesperson. For purposes of Section 13025 of the code and this regulation, the term "retail commission salesperson" includes an employee who is engaged in the solicitation of orders at retail, that is, from the ultimate consumer, for merchandise or other products offered for sale by his or her employer. The term does not include an employee salesperson engaged in the solicitation on behalf of his or her employer of orders from wholesalers, retailers, or others, for merchandise for resale. However, if the salesperson solicits orders for more than one principal, he or she is not excluded from the term solely because he or she solicits orders from wholesalers or retailers on behalf of one or more principals. In such case the salesperson may be a retail commission salesperson with respect to services performed for one or more principals and not with respect to services performed for his or her other principals. (4) Noncash Remuneration. The term "noncash remuneration" includes remuneration paid in any medium other than cash, such as goods or commodities, stocks, bonds, or other forms of property. The term does not include checks or other monetary media of exchange.

**(1)**

An employer, in computing the amount to be deducted and withheld as tax in accordance with Section 13020 of the code, may, at his election, disregard any wages paid in a medium other than cash for services performed for him or her by an employee if (A) the noncash remuneration is paid for services performed by the employee as a retail commission salesperson and (B) the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed by him or her as a retail commission salesperson.

**(2)**

Section 13025 of the code and this regulation are not applicable with respect to (A)

noncash wages paid to a retail commission salesperson for services performed by him or her in a capacity other than as such a salesperson or (B) noncash wages paid by an employer to an employee for services performed as a retail commission salesperson if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesperson, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the employee is measured by sales.

**(3)**

Retail Commission Salesperson. For purposes of Section 13025 of the code and this regulation, the term "retail commission salesperson" includes an employee who is engaged in the solicitation of orders at retail, that is, from the ultimate consumer, for merchandise or other products offered for sale by his or her employer. The term does not include an employee salesperson engaged in the solicitation on behalf of his or her employer of orders from wholesalers, retailers, or others, for merchandise for resale. However, if the salesperson solicits orders for more than one principal, he or she is not excluded from the term solely because he or she solicits orders from wholesalers or retailers on behalf of one or more principals. In such case the salesperson may be a retail commission salesperson with respect to services performed for one or more principals and not with respect to services performed for his or her other principals.

**(4)**

Noncash Remuneration. The term "noncash remuneration" includes remuneration paid in any medium other than cash, such as goods or commodities, stocks, bonds, or other forms of property. The term does not include checks or other monetary media of

exchange.