

SUBTITLE A. INCOME TAXES
CHAPTER 2. TAX ON SELF-EMPLOYMENT INCOME

IRC Sec. 1402

Sec. 1402. Definitions.

(c) Trade or business. The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 [26 USCS § 162] (relating to trade or business expenses), except that such term shall not include--

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act [42 USCS § 418];

(2) the performance of service by an individual as an employee, other than--

(A) service described in section 3121(b)(14)(B) [26 USCS § 3121(b)(14)(B)] performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16) [26 USCS § 3121(b)(16)],

(C) service described in section 3121(b)(11), (12), or (15) [26 USCS § 3121(b)(11), (12), or (15)] performed in the United States (as defined in section 3121(e)(2) [26 USCS § 3121(e)(2)]) by a citizen of the United States, except service which constitutes "employment" under section 3121(y) [26 USCS § 3121(y)],

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act [42 USCS § 418],

(F) service described in section 3121(b)(20) [26 USCS § 3121(b)(20)], and

(G) service described in section 3121(b)(8)(B) [26 USCS § 3121(b)(8)(B)];

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231 [26 USCS § 3231];

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) Employee and wages. The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) Ministers, members of religious orders, and Christian Science practitioners.

(1) Exemption. Subject to paragraph (2), any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter [26 USCS §§ 1401 et seq.]) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act [42 USCS §§ 301 et seq.]) and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance, shall receive an exemption from the tax imposed by this chapter [26 USCS §§ 1401 et seq.] with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) Verification of application. The Secretary may approve an application for an exemption filed pursuant to paragraph (1) only if the Secretary has verified that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to this subsection and that the individual seeks exemption on such grounds. The Secretary (or the Commissioner of Social Security under an agreement with the Secretary) shall make such verification by such means as prescribed in regulations.

(3) Time for filing application. Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5) of \$ 400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

(4) Effective date of exemption. An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsection (c)(4) and (c)(5) of \$ 400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) Partner's taxable year ending as the result of death. In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection--

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the

partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Members of certain religious faiths.

(1) Exemption. Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter [26 USCS §§ 1401 et seq.]) for an exemption from the tax imposed by this chapter [26 USCS §§ 1401 et seq.] if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act [42 USCS §§ 301 et seq.]). Such exemption may be granted only if the application contains or is accompanied by--

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act [42 USCS §§ 401 et seq. and 1395 et seq.] on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person, and only if the Commissioner of Social Security finds that--

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act [42 USCS § 403 or 422(b)], would have become payable) at or before the time of the filing of such waiver.

(2) Period for which exemption effective. An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year--

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Commissioner of Social Security finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Commissioner of Social Security finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(3) Subsection to apply to certain church employees. This subsection shall apply

with respect to services which are described in subparagraph (B) of section 3121(b)(8) [26 USCS § 3121(b)(8)] (and are not described in subparagraph (A) of such section).

(h) Regular basis. An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than \$ 400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(i) Special rules for options and commodities dealers.

(1) In general. Notwithstanding subsection (a)(3)(A), in determining the net earnings from self-employment of any options dealer or commodities dealer, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts.

(2) Definitions. For purposes of this subsection--

(A) Options dealer. The term "options dealer" has the meaning given such term by section 1256(g)(8) [26 USCS § 1256(g)(8)].

(B) Commodities dealer. The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) Section 1256 contracts. The term "section 1256 contract" has the meaning given to such term by section 1256(b) [26 USCS § 1256(b)].

(j) Special rules for certain church employee income.

(1) Computation of net earnings. In applying subsection (a)--

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2) Computation of self-employment income.

(A) Separate application of subsection (b)(2). Paragraph (2) of subsection (b) shall be applied separately--

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) \$ 100 floor. In applying paragraph (2) of subsection (b) to church employee income, "\$ 100" shall be substituted for "\$ 400".

(3) Coordination with subsection (a)(12). Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(12), and paragraph (1) shall be applied before determining the amount so allowable.

(4) Church employee income defined. For purposes of this section, the term "church employee income" means gross income for services which are described in section 3121(b)(8)(B) [26 USCS § 3121(b)(8)(B)] (and are not described in section 3121(b)(8)(A) [26 USCS § 3121(b)(8)(A)]).

(k) Codification of treatment of certain termination payments received by former insurance salesmen. Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if--

- (1) such amount is received after termination of such individual's agreement to perform such services for such company,
 - (2) such individual performs no services for such company after such termination and before the close of such taxable year,
 - (3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and
 - (4) the amount of such payment--
 - (A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and
 - (B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).
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