rules in §§ 404.1081 through 404.1095, the term net earnings from self-employment means—

(1) Your gross income, as figured under subtitle A of the Code, from any trade or business you carried on, less deductions attributed to your trade or business that are allowed by that subtitle; plus

(2) Your distributive share of income (or loss) from a trade or business carried on by a partnership of which you are a member, as described in paragraph (b) of this section.

(b) Income or loss from a partnership.

(1) Your distributive share (whether or not actually distributed) of the income or loss from any trade or business carried on by a partnership of which you are a member, other than as a limited partner, is determined under section 704 of the Code.

(2) If you are a limited partner, your distributive share is included in your net earnings from self-employment if—

(i) The amount is payable to you for services you render to or on behalf of the partnerships; and

(ii) It is a guaranteed payment described in section 707(c) of the Code.

(3) You are a limited partner if your financial liability for the obligations of the partnership is limited to the amount of your financial investment in the partnership. Generally, you will not have to perform services in the operation of, or participate in the control of, the business carried on by the partnership for the taxable year involved.

(c) Reporting methods. Your gross income from a trade or business includes the gross income you received (under the cash method) or that accrued to you (under the accrual method) from the trade or business in the taxable year. It is immaterial that the income may be attributable in whole or in part to services you render or other acts you performed in a prior taxable year.

(d) What is a taxable year. (1) The term taxable year means—

(i) Your annual accounting period on which you regularly figure your income in keeping your books; or

(ii) A short period resulting from your death before the end of your annual accounting period or from a change of your annual accounting period.

(2) The term annual accounting period means—

(i) A calendar year, consisting of 12 months ending on December 31; or

(ii) A fiscal year, consisting of—

(A) 12 months ending on the last day of any month other than December; or

(B) A period, if elected under section 441 of the Code, that varies from 52 to 53 weeks and always ends on the same day of the week that occurs last in a calendar month or nearest to the last day of the calendar month.

(3) Your taxable year for figuring self-employment income is the same as your taxable year for the purposes of subtitle A of the Code. Your taxable year is a calendar year if—

(i) You keep no books;

(ii) You have no annual accounting period; or

(iii) You have an annual accounting period that differs from the definition of fiscal year as described in paragraph (d)(2)(ii) of this section.

§ 404.1081 General rules for figuring net earnings from self-employment.

(a) Determining net earnings. (1) In determining your gross income and the deductions attributable to your trade or business for the purpose of determining your net earnings from self-employment, the provisions that apply to the taxes imposed by sections 1 and 3 of the Code are used.

(2) If you use the accrual method of accounting to figure your taxable income from a trade or business, you must use the same method in determining your net earnings from self-employment.

(3) If you are engaged in a trade or business of selling property on the installment plan and elect, under the provisions of section 453 of the Code, to use the installment method of accounting in figuring your income, you must use the installment method in determining your net earnings from self-employment.

(4) Any income which can be excluded from gross income under any provision of subtitle A of the Code cannot be counted in determining your net earnings from self-employment, unless—
§ 404.1082 Rentals from real estate; material participation.

(a) In general. Your rentals from real estate and from personal property leased with the real estate (including rentals paid in crop shares) and the deductions attributable to the rentals are excluded in figuring your net earnings from self-employment, unless you receive the rentals in the course of a trade or business as a real estate dealer. If you are an owner or lessee of land, rentals paid in crop shares include income you get under an agreement with another person if the arrangement provides for the following:

(1) The other person will produce agricultural or horticultural commodities on the land.

(2) The commodities produced, or the income from their sale, will be divided between you and the other person.

(3) The amount of your share depends on the amount of the commodities produced.

(b) Real estate dealers. (1) You are a real estate dealer if you are engaged in the business of selling real estate to customers for profit.

(2) If you merely hold real estate for investment or speculation and receive rental income from it, you are not considered a real estate dealer.

(3) If you are a real estate dealer, but also hold real estate for investment or speculation in addition to real estate you hold for sale to customers, only the rental income from the real estate held for sale to customers and the deductions attributable to it are included in determining your net earnings from self-employment. The rental income from real estate you hold for investment or speculation and the deductions attributable to it are not counted in

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