§ 1.1402(c)–2

Public office.

(a) In general—(1) General rule. Except as otherwise provided in subparagraph (2) of this paragraph, the performance of the functions of a public office does not constitute a trade or business.

(2) Fee basis public officials—(i) In general. If an individual receives fees after 1967 for the performance of the functions of a public office of a State or a political subdivision thereof for which he is compensated solely on a fee basis, and if the service performed in such office is eligible for (but is not made the subject of) an agreement between the State and the Secretary of Health, Education, and Welfare pursuant to section 221 of the Social Security Act to extend social security coverage thereto, the service for which such fees are received constitutes a trade or business within the meaning of section 1402(c) and §1.1402(c)–1. If an individual performs service for a State or a political subdivision thereof in any period in more than one position, each position is treated separately for purposes of the preceding sentence. See also paragraph (f) of §1.1402(c)–3 relating to the performance of service by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis.

(ii) Election with respect to fees received in 1968. (A) Any individual who in 1968 receives fees for service performed by him with respect to the functions of a public office of a State or a political subdivision thereof in any period in which the functions are performed in a...