

228q of Title 45, Railroads, and subsequently superseded. See section 231q of Title 45.

#### § 411. Definitions relating to self-employment

For the purposes of this subchapter—

##### (a) Net earnings from self-employment

The term “net earnings from self-employment” means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares, and including payments under section 3833(2) of title 16<sup>1</sup> to individuals receiving benefits under section 402 or 423 of this title), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest benefits<sup>2</sup> or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of

the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1986;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to earned income from sources without the United States) of the Internal Revenue Code of 1986, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires;

(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “coupons”. See 2008 Amendment note below.

Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(13) In the case of church employee income, the special rules of subsection (i)(1) shall apply;

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights);

(15) The deduction under section 162(l) of the Internal Revenue Code of 1986 (relating to health insurance costs of self-employed individuals) shall not be allowed; and

(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of

the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than the upper limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66 $\frac{2}{3}$  percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than the upper limit and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than the lower limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be the lower limit; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than the upper limit, his distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66 $\frac{2}{3}$  percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than the upper limit and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than the lower limit, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be the lower limit.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such

trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g), or by a partnership of which an individual is a member on a regular basis as defined in subsection (g), but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than the lower limit and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed the lower limit.

**(b) Self-employment income**

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) \$3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) \$4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) \$4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) \$6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) \$7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) \$9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) \$10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) \$13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than \$400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) shall apply for purposes of paragraph (2).

**(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 of the Internal Revenue Code of 1986, 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 418 of this title;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 410(a)(14)(B) of this title performed by an individual who has attained the age of eighteen,

(B) service described in section 410(a)(16) of this title,

(C) service described in section 410(a) (11), (12), or (15) of this title performed in the United States by a citizen of the United States, except service which constitutes "employment" under section 410(r) of this title,

(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 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(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 section 1402(g) of the Internal Revenue Code of 1986 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 section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

**(d) Partnership and partner**

The term “partnership” and the term “partner” shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

**(e) Taxable year**

The term “taxable year” shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under such subtitle A.

**(f) Partner’s taxable year ending as 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) 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.

**(h) Option dealers and commodity dealers**

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A), 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, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term “options dealer” has the meaning given such term by section 1256(g)(8) of such Code.

(B) 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) The term “section 1256 contracts” has the meaning given to such term by section 1256(b) of such Code.

**(i) Church employee income**

(1) 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)(A) Subsection (b)(2) shall be applied separately—

(i) to church employee income, and

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

(B) In applying subsection (b)(2) to church employee income, “\$100” shall be substituted for “\$400”.

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11), and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term “church employee income” means gross income for services which are described in section 410(a)(8)(B) of this title (and are not described in section 410(a)(8)(A) of this title).

**(j) 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).

**(k) Upper and lower limits**

For purposes of subsection (a)—

(1) The lower limit for any taxable year is the sum of the amounts required under section 413(d) of this title for a quarter of coverage in effect with respect to each calendar quarter ending with or within such taxable year.

(2) The upper limit for any taxable year is the amount equal to 150 percent of the lower limit for such taxable year.

(Aug. 14, 1935, ch. 531, title II, § 211, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 502; amended Sept. 23, 1950, ch. 994, title II, § 221(j)(2), 64 Stat. 947; Sept. 1, 1954, ch. 1206, title I, §§ 101(d), (g), 104(b), 68 Stat. 1054, 1078; Aug. 1, 1956, ch. 836, title I, §§ 104(c)(2), (3), (d), (h), 106(a), 70 Stat. 824–826, 828; Pub. L. 85–239, § 5(a), Aug. 30, 1957, 71 Stat. 523; Pub. L. 85–840, title I, § 102(b), title III, § 313(a), Aug. 28, 1958, 72 Stat. 1019, 1036; Pub. L. 86–778, title I, §§ 103(g), (h), (j)(3), 106(a), Sept. 13, 1960, 74 Stat. 937, 938, 945; Pub. L. 88–272, title II, § 227(b)(7), Feb. 26, 1964, 78 Stat. 98; Pub. L. 89–97, title III, §§ 311(a)(1), (2), 312(a), 319(b), 320(a)(2), July 30, 1965, 79 Stat. 380, 381, 391, 393; Pub. L. 90–248, title I, §§ 108(a)(2), 115(a), 118(b), 122(a), Jan. 2, 1968, 81 Stat. 834, 839, 841, 843; Pub. L. 92–5, title II, § 203(a)(2), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(a)(2), July 1, 1972, 86 Stat. 418; Pub. L. 92–603, title I, §§ 121(a), 124(a), 140(a), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93–66, title II, § 203(a)(2), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(a)(2), Dec. 31, 1973, 87 Stat. 953; Pub. L. 93–368, § 10(a), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–455, title XII, § 1207(e)(2)(B), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 95–216, title III, § 313(a), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 95–600, title VII, § 703(j)(14)(D), (E), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 98–21, title I,

§ 124(c)(3), title III, §§ 322(b)(1), 323(b)(2), Apr. 20, 1983, 97 Stat. 90, 121; Pub. L. 98–369, div. A, title I, § 102(c)(2), div. B, title VI, §§ 2603(c)(1), (d)(1), 2663(a)(8), July 18, 1984, 98 Stat. 622, 1129, 1163; Pub. L. 99–514, title XVIII, §§ 1882(b)(2), 1883(a)(6), Oct. 22, 1986, 100 Stat. 2915, 2916; Pub. L. 100–203, title IX, §§ 9022(a), 9023(b), Dec. 22, 1987, 101 Stat. 1330–295, 1330–296; Pub. L. 100–647, title I, § 1011B(b)(4), title III, § 3043(b), title VIII, § 8016(a)(2), Nov. 10, 1988, 102 Stat. 3488, 3642, 3792; Pub. L. 101–508, title V, §§ 5123(a)(1), 5130(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–284, 1388–289; Pub. L. 103–296, title I, § 107(a)(4), title III, § 319(b)(2), 321(a)(14), (c)(5), (6)(E)–(G), Aug. 15, 1994, 108 Stat. 1478, 1535, 1536, 1538; Pub. L. 105–34, title IX, § 922(b), Aug. 5, 1997, 111 Stat. 880; Pub. L. 108–203, title IV, §§ 422(a), 424(a), 425(a), Mar. 2, 2004, 118 Stat. 536; Pub. L. 110–28, title VIII, § 8215(b)(2), May 25, 2007, 121 Stat. 194; Pub. L. 110–234, title IV, § 4115(c)(1)(A)(i), (B)(iii), title XV, §§ 15301(b), 15352(b)(1), (2), May 22, 2008, 122 Stat. 1109, 1501, 1526; Pub. L. 110–246, § 4(a), title IV, § 4115(c)(1)(A)(i), (B)(iii), title XV, §§ 15301(b), 15352(b)(1), (2), June 18, 2008, 122 Stat. 1664, 1870, 2263, 2288.)

**Editorial Notes**

**REFERENCES IN TEXT**

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

Section 3833(2) of title 16, referred to in subsec. (a)(1), was in the original a reference to “section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2))”, which is section 1233(2) of Pub. L. 99–198, and which was classified to section 3833(2) of Title 16, Conservation, prior to the general amendment of section 1233 by Pub. L. 113–79, title II, § 2004, Feb. 7, 2014, 128 Stat. 715. As so amended, the substance of former section 1233(2) now appears in section 1233(a)(2), which is classified to section 3833(a)(2) of Title 16.

**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110–246, § 15352(b)(1), in concluding provisions, substituted “the upper limit” for “\$2,400” wherever appearing and “the lower limit” for “\$1,600” wherever appearing.

Subsec. (a)(1). Pub. L. 110–246, § 15301(b), inserted “, and including payments under section 3833(2) of title 16 to individuals receiving benefits under section 402 or 423 of this title” after “crop shares”.

Subsec. (a)(2). Pub. L. 110–246, § 4115(c)(1)(A)(i), (B)(iii), substituted “benefits” for “coupons”.

Subsec. (k). Pub. L. 110–246, § 15352(b)(2), added subsec. (k).

2007—Subsec. (a)(16). Pub. L. 110–28 added par. (16).

2004—Subsec. (a)(5)(A). Pub. L. 108–203, § 425(a), substituted “the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;” for “all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;”.

Subsec. (a)(7). Pub. L. 108-203, § 422(a), inserted “, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires” before semicolon at end.

Subsec. (a)(15). Pub. L. 108-203, § 424(a), substituted “section 162(l)” for “section 162(m)”.

1997—Subsec. (j). Pub. L. 105-34 added subsec. (j).

1994—Subsec. (a). Pub. L. 103-296, § 321(c)(6)(E), substituted “1986” for “1954” after “Code of” wherever appearing in introductory provisions, in pars. (3), (4), (6), (10), (11), and (12), and in cls. (iii) and (iv) of closing provisions.

Subsec. (a)(13) to (15). Pub. L. 103-296, § 321(a)(14), (c)(5), struck out “and” at end of par. (13), substituted “; and” for period at end of par. (14), and inserted “of the Internal Revenue Code of 1986” after “section 162(m)” in par. (15).

Subsec. (c). Pub. L. 103-296, § 321(c)(6)(F), substituted “1986” for “1954” after “Code of” in introductory and closing provisions.

Subsec. (c)(1). Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (c)(2)(C). Pub. L. 103-296, § 319(b)(2), which directed that subpar. (C) be amended by inserting “, except service which constitutes ‘employment’ under section 410(r) of this title” before the semicolon, was executed by making the insertion before the comma at end, to reflect the probable intent of Congress.

Subsec. (c)(2)(E). Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (c)(3), (6). Pub. L. 103-296, § 321(c)(6)(F), substituted “1986” for “1954” after “Code of”.

Subsecs. (d), (e), (h)(1)(B). Pub. L. 103-296, § 321(c)(6)(G), substituted “1986” for “1954” after “Code of”.

1990—Subsec. (a). Pub. L. 101-508, § 5123(a)(1), redesignated last undesignated paragraph, relating to income of an individual which results from or is attributable to performance of services by such individual as a director of a corporation, as subsec. (f)(5) of section 403 of this title.

Subsec. (a)(14), (15). Pub. L. 101-508, § 5130(a)(3), redesignated par. (14), relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals), as (15).

Subsec. (b). Pub. L. 101-508, § 5130(a)(2), made technical correction to directory language of Pub. L. 98-21, § 322(b)(1). See 1983 Amendment note below.

1988—Subsec. (a)(7). Pub. L. 100-647, § 8016(a)(2), inserted “of the Internal Revenue Code of 1986” before semicolon at end.

Subsec. (a)(14). Pub. L. 100-647, § 3043(b), added par. (14) relating to the exclusion of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (income derived by Indians from exercise of fishing rights).

Pub. L. 100-647, § 1011B(b)(4), added par. (14) relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals).

1987—Subsec. (a). Pub. L. 100-203, § 9022(a), inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.

Subsec. (a)(7). Pub. L. 100-203, § 9023(b)(1), struck out reference to section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954.

Subsec. (a)(8). Pub. L. 100-203, § 9023(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “The term ‘possession of the United States’ as used in sections 931 (relating to income from sources within the possessions of the United States) and 932 (re-

lating to citizens of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;”.

1986—Subsec. (a)(13). Pub. L. 99-514, § 1882(b)(2)(B)(i), amended par. (13) generally. Prior to amendment, par. (13) read as follows: “With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

“(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

“(B) the provisions of subsection (b)(2) of this section shall not apply; and

“(C) if the amount of such remuneration from an employer for the taxable year is less than \$100, such remuneration from that employer shall not be included in self-employment income.”

Subsec. (b). Pub. L. 99-514, § 1882(b)(2)(B)(ii), inserted at end “In the case of church employee income, the special rules of subsection (i)(2) shall apply for purposes of paragraph (2).”

Subsec. (c)(2)(G). Pub. L. 99-514, § 1883(a)(6), realigned margins of subpar. (G).

Subsec. (i). Pub. L. 99-514, § 1882(b)(2)(A), added subsec. (i).

1984—Subsec. (a). Pub. L. 98-369, § 2663(a)(8)(A), substituted “subtitle A of the Internal Revenue Code of 1954” for “chapter 1 of the Internal Revenue Code of 1939”, “such subtitle” for “such chapter”, and “section 702(a)(8) of the Internal Revenue Code of 1954” for “section 183 of the Internal Revenue Code of 1939”.

Pub. L. 98-369, § 2663(a)(8)(D), in provisions following numbered pars., substituted “702(a)(8)” for “702(a)(9)” in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98-369, § 2663(a)(8)(B), substituted “subtitle A of the Internal Revenue Code of 1954” for “chapter 1 of the Internal Revenue Code of 1939” and inserted “or” before “(C)”.

Subsec. (a)(4). Pub. L. 98-369, § 2663(a)(8)(C), substituted “section 172 of the Internal Revenue Code of 1954” for “section 23(s) of the Internal Revenue Code of 1939”.

Subsec. (a)(13). Pub. L. 98-369, § 2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98-369, § 2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98-369, § 2663(a)(8)(F), substituted “section 162 of the Internal Revenue Code of 1954” for “section 23 of the Internal Revenue Code of 1939” in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98-369, § 2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98-369, § 2663(a)(8)(G), substituted “section 3231 of the Internal Revenue Code of 1954” for “section 1532 of the Internal Revenue Code of 1939”.

Subsec. (d). Pub. L. 98-369, § 2663(a)(8)(H), substituted “subchapter K of chapter 1 of the Internal Revenue Code of 1954” for “supplement F of chapter 1 of the Internal Revenue Code of 1939”.

Subsec. (e). Pub. L. 98-369, § 2663(a)(8)(I), substituted “subtitle A of the Internal Revenue Code of 1954” for “chapter 1 of the Internal Revenue Code of 1939” in three places.

Subsec. (h). Pub. L. 98-369, § 102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98-21, § 323(b)(2)(A), substituted “The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply” for “In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply”.

Pub. L. 98-21, § 323(b)(2)(B), temporarily amended par. (10) by substituting “In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided

by section 911(a)(1) of such Code shall not apply” for “In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply”. See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98-21, § 124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98-21, § 322(b)(1), as amended by Pub. L. 101-508, § 5130(a)(2), inserted “, except as provided by an agreement under section 433 of this title” after “non-resident alien individual” in provisions preceding par. (1).

1978—Subsec. (a)(2). Pub. L. 95-600, § 703(j)(14)(D), which directed that “(other than interest described in section 35 of the Internal Revenue Code of 1954)” be struck out from subsec. (a)(2) of this section, was executed by striking out “(other than interest described in section 25(a) of the Internal Revenue Code of 1939)” as the probable intent of Congress.

Subsec. (c)(6). Pub. L. 95-600, § 703(j)(14)(E), substituted “section 1402(g)” for “section 1402(h)”.

1977—Subsec. (a)(11). Pub. L. 95-216 added par. (11).

1976—Subsec. (c)(2)(F). Pub. L. 94-455 added subpar. (F).

1974—Subsec. (a)(1). Pub. L. 93-368 inserted “(as determined without regard to any activities of an agent of such owner or tenant)” after “material participation by the owner or tenant” wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93-233 substituted “\$13,200” for “\$12,600”.

Pub. L. 93-66 substituted “\$12,600” for “\$12,000”.

1972—Subsec. (a). Pub. L. 92-603, §§ 121(a)(1), 124(a), 140(a), struck out provisions of par. (7) relating to citizens of the United States performing the specified services as an employee of an American employer (as defined in section 410(e) of this title) or as a minister in a foreign country who has a congregation composed predominantly of United States citizens, inserted provisions in par. (7) relating to the applicability of sections 911 and 931 of title 26, and added par. (10) and provisions for an optional method for determining self-employment earnings.

Subsec. (b)(1)(F). Pub. L. 92-336, § 203(a)(2)(A), inserted “and prior to 1973” after “1971”.

Subsec. (b)(1)(G) to (I). Pub. L. 92-336, § 203(a)(2)(B), added subpars. (G) to (I).

Subsec. (g). Pub. L. 92-603, § 121(a)(2), added subsec. (g).

1971—Subsec. (b)(1)(E). Pub. L. 92-5, § 203(a)(2)(A), inserted “and beginning prior to 1972” after “1967”.

Subsec. (b)(1)(F). Pub. L. 92-5, § 203(a)(2)(B), added subpar. (F).

1968—Subsec. (a)(9). Pub. L. 90-248, § 118(b), added par. (9).

Subsec. (b)(1)(D), (E). Pub. L. 90-248, § 108(a)(2)(A), (B), inserted “and prior to 1968” after “1965” and added subpar. (E), respectively.

Subsec. (c). Pub. L. 90-248, § 115(a), substituted in last sentence “unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him” for “during the period for which a certificate filed by him under section 1402(e) of the Internal Revenue Code of 1954 is in effect”.

Subsec. (c)(1). Pub. L. 90-248, § 122(a)(1), included in term “trade or business” functions of a public office of a State or political subdivision thereof with respect to fees received in a position compensated solely on a fee basis and which position is not covered under a State social security coverage agreement.

Subsec. (c)(2)(E). Pub. L. 90-248, § 122(a)(2), added subpar. (E).

1965—Subsec. (a). Pub. L. 89-97, § 312(a), substituted “\$2,400” for “\$1,800” in cls. (i) to (iv) and “\$1,600” for “\$1,200” in cls. (ii) and (iv) of second sentence following par. (8), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89-97, § 320(a)(2)(A), inserted “and prior to 1966” after “1958” and substituted “and” for “or” after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89-97, § 320(a)(2)(B), added subpar. (D).

Subsec. (c). Pub. L. 89-97, § 311(a)(1), (2), struck out from par. (5) “doctor of medicine or” before, and “; or the performance of such service by a partnership” after “Christian Science practitioner” and consolidated into one sentence former last two sentences.

Subsec. (c)(6). Pub. L. 89-97, § 319(b), added par. (6).

1964—Subsec. (a)(3)(B). Pub. L. 88-272 amended cl. (B) generally, substituting “, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies” for “or coal, if section 117(j) of the Internal Revenue Code of 1954 is applicable”.

1960—Subsec. (a)(6). Pub. L. 86-778, § 103(j)(3), substituted “section 933 of the Internal Revenue Code of 1954” for “section 116(1) of the Internal Revenue Code of 1954”, and struck out provisions which defined “possession of the United States” in the case of taxable years beginning before the effective date specified in former section 419 of this title.

Subsec. (a)(8). Pub. L. 86-778, § 103(g), added par. (8) and inserted a reference to paragraph (8) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86-778, § 103(h), provided that individuals who are not citizens of the United States but who are residents of Guam or American Samoa shall not, for the purposes of this subsection, be considered to be nonresident alien individuals, and struck out provisions which related to individuals who were citizens of Puerto Rico prior to the effective date specified in section 419 of this title.

Subsec. (c)(2). Pub. L. 86-778, § 106(a), excluded service described in section 410(a)(11), (12), or (15) of this title performed in the United States by a citizen of the United States.

1958—Subsec. (b)(1). Pub. L. 85-840, § 102(b), inserted “and prior to 1959” after “year ending after 1954” in cl. (B), and added cl. (C).

Subsec. (f). Pub. L. 85-840, § 313(a), added subsec. (f).

1957—Subsec. (a)(7). Pub. L. 85-239 permitted computation of net earnings without regard to sections 107 and 119 of the Internal Revenue Code of 1954.

1956—Subsec. (a). Act Aug. 1, 1956, § 106(a), amended last two sentences generally, to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than \$1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than \$1,800 and the net earnings are less than \$1,200, to deem the net earnings to be \$1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, § 104(c)(2), struck out from exclusion, income derived by an owner or tenant to land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(7)(B). Act Aug. 1, 1956, § 104(h), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, § 104(c)(3), included within term “trade or business” service described in section 410(a)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, § 104(d), struck out exclusion from coverage in the case of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 101(g)(2), made it clear that rentals paid in crop shares would be excluded as being rentals from real estate.

Subsec. (a)(2). Act Sept. 1, 1954, § 101(g)(1), redesignated par. (3) as (2), and struck out former par. (2).

Subsec. (a)(3). Act Sept. 1, 1954, §101(g)(3), redesignated par. (4) as (3), and excluded from “net earnings from self-employment” the gain or loss derived from coal royalties under certain conditions. Former par. (3) redesignated (2).

Subsec. (a)(4) to (6). Act Sept. 1, 1954, §101(g)(1), redesignated pars. (5) to (7) as (4) to (6), respectively. Former par. (4) redesignated (3).

Subsec. (a)(7). Act Sept. 1, 1954, §101(d)(3), added par. (7).

Subsec. (a). Act Sept. 1, 1954, §101(g)(1), inserted two sentences at end.

Subsec. (b)(1). Act Sept. 1, 1954, §104(b), excluded from self-employment income, for taxable years after 1954 any amount in excess of \$4,200 minus the amount of the wages paid to an individual during the taxable year.

Subsec. (c). Act Sept. 1, 1954, §101(d)(2), inserted two sentences at end making provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under section 1402(e) of title 26 is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, §101(d)(1), inserted “and other than service described in paragraph (4) of this subsection” after “eighteen”.

Subsec. (c)(5). Act Sept. 1, 1954, §101(g)(4), struck out exclusion from coverage in case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors, or professional engineers.

1950—Subsec. (a)(7). Act Sept. 23, 1950, made provisions applicable to Puerto Rico and provided the basis for computation of net earnings.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4115(c)(1)(A)(i), (B)(iii) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

Amendment by section 15301(b) of Pub. L. 110-246 applicable to payments made after Dec. 31, 2007, see section 15301(c) of Pub. L. 110-246, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 15352(b)(1), (2) of Pub. L. 110-246 applicable to taxable years beginning after Dec. 31, 2007, see section 15352(c) of Pub. L. 110-246, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-28 applicable to taxable years beginning after Dec. 31, 2006, see section 8215(c) of Pub. L. 110-28, set out as a note under section 761 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-203, title IV, § 422(b), Mar. 2, 2004, 118 Stat. 536, provided that: “The amendment made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994.”

##### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to payments after Dec. 31, 1997, see section 922(c) of Pub. L. 105-34, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

Amendment by section 319(b)(2) of Pub. L. 103-296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103-296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(1) of Pub. L. 101-508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101-508, set out as a note under section 403 of this title.

Amendment by section 5130(a)(2) of Pub. L. 101-508 effective as if included in the enactment of Pub. L. 98-21, § 322(b)(1), and amendment by section 5130(a)(3) of Pub. L. 101-508 effective as if included in the enactment of Pub. L. 100-647, § 1011B(b)(4), see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(b)(4) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 3043(b) of Pub. L. 100-647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100-647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8016(a)(2) of Pub. L. 100-647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100-647, set out as a note under section 3111 of Title 26.

##### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9022(a) of Pub. L. 100-203 applicable with respect to services performed in taxable years beginning on or after Jan. 1, 1988, see section 9022(c) of Pub. L. 100-203, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1882(b)(2) of Pub. L. 99-514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99-514, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 1883(a)(6) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98-369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603(c)(1), (d)(1) of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of this title.

Amendment by section 2663(a)(8) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law in-

volved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983  
AMENDMENT

Amendment by section 124(c)(3) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322(b)(2) of Pub. L. 98-21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment by section 323(b)(2)(A) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Pub. L. 98-21, title III, §323(b)(2)(B), Apr. 20, 1983, 97 Stat. 121, provided that the amendment made by such section 323(b)(2)(B) is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-216, title III, §313(c), Dec. 20, 1977, 91 Stat. 1536, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1977."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-368, §10(c), Aug. 7, 1974, 88 Stat. 422, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1973."

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93-66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-603, title I, §121(c), Oct. 30, 1972, 86 Stat. 1354, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1972."

Pub. L. 92-603, title I, §124(c), Oct. 30, 1972, 86 Stat. 1357, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972."

Pub. L. 92-603, title I, §140(c), Oct. 30, 1972, 86 Stat. 1366, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972."

Amendment by Pub. L. 92-336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92-336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable only with respect to taxable years beginning after 1971, see section

203(c) of Pub. L. 92-5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(2) of Pub. L. 90-248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of this title.

Amendment by section 115(a) of Pub. L. 90-248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90-248, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 118(b) of Pub. L. 90-248 applicable only with respect to taxable years ending on or after Dec. 31, 1967, see section 118(c) of Pub. L. 90-248, set out as a note under section 1402 of Title 26.

Amendment by section 122(a)(1), (2) of Pub. L. 90-248 applicable with respect to fees received after 1967 and with respect to election to exempt fees from coverage as self-employment income, see section 122(c) of Pub. L. 90-248, set out as a note under section 1402 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(a)(1), (2) of Pub. L. 89-97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89-97, set out as a note under section 410 of this title.

Pub. L. 89-97, title III, §312(c), July 30, 1965, 79 Stat. 381, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1965."

Amendment by section 319(b) of Pub. L. 89-97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89-97, set out as a note under section 1402 of Title 26.

Amendment by section 320(a)(2) of Pub. L. 89-97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89-97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88-272, set out as a note under section 272 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(g) of Pub. L. 86-778 applicable only in the case of taxable years beginning after 1960, except that, insofar as involves the nonapplication of section 932 of Title 26, Internal Revenue Code, to the Virgin Islands for purposes of sections 1401 et seq. of Title 26 and this section, such amendment shall be effective in the case of all taxable years with respect to which such sections 1401 et seq. (and corresponding provisions of prior law) and this section are applicable, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(h) of Pub. L. 86-778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(j)(3) of Pub. L. 86-778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86-778, set out as a note under section 402 of this title.

Pub. L. 86-778, title I, §106(c), Sept. 13, 1960, 74 Stat. 946, provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years ending on or after December 31, 1960; except that for purposes of section 203 of the Social Security Act [42 U.S.C. 403], the amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years (of the individual performing the service involved) beginning after the date of the enactment of this Act [Sept. 13, 1960]."

## EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-840, title III, §313(b), Aug. 28, 1958, 72 Stat. 1036, provided that: "The amendment made by subsection (a) [amending this section] shall apply—

"(1) with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958], and

"(2) with respect to any individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], but only if the requirements of section 403(b)(2) of this Act [26 U.S.C. 1402 note] are met."

## EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85-239 applicable, except for purposes of section 403 of this title, only with respect to taxable years ending on or after December 31, 1957, see section 5(c) of Pub. L. 85-239, set out as a note under section 1402 of Title 26, Internal Revenue Code.

## EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 104(c)(2), (d) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, see section 104(i) of such act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(c)(3) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1954, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(h) of act Aug. 1, 1956, applicable with respect to the same taxable years with respect to which the amendment to section 3121(k)(1) of Title 26, Internal Revenue Code, applies, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title, and section 201(m)(2) of such act Aug. 1, 1956, set out as a note under section 3121 of Title 26.

Act Aug. 1, 1956, ch. 836, title I, §106(b), 70 Stat. 829, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years ending on or after December 31, 1956."

## EFFECTIVE DATE OF 1954 AMENDMENT

Amendments by section 101(d), (g)(1), (2), (4) of act Sept. 1, 1954, applicable only with respect to taxable years ending after 1954, amendment by section 101(g)(3) of act Sept. 1, 1954, applicable only with respect to taxable years beginning after 1950, and, for purposes of section 403 of this title, the amendments made by paragraphs (1), (2), and (4) of subsection (g) and by subsection (d) [of said section 101] effective with respect to net earnings from self-employment derived after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

## EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Sept. 23, 1950, applicable with respect to taxable years beginning after Dec. 31, 1950, see act Sept. 23, 1950, ch. 994, title II, §221(k), 64 Stat. 947.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

## TREATY OBLIGATIONS

Act Sept. 23, 1950, ch. 994, title II, §214, 64 Stat. 937, provided that: "No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**§ 412. Self-employment income credited to calendar years****(a) Taxable years prior to 1978**

For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

**(b) Taxable years after 1977**

Except as provided in subsection (c), for the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

**(c) Proportional allocation**

For the purpose of determining average indexed monthly earnings, average monthly wage, and quarters of coverage in the case of any individual who elects the option described in clause (ii) or (iv) in the matter following section 411(a)(16) of this title for any taxable year that does not begin with or during a particular calendar year and end with or during such year, the self-employment income of such individual deemed to be derived during such taxable year shall be allocated to the two calendar years, portions of which are included within such taxable year, in the same proportion to the total of such deemed self-employment income as the sum of the amounts applicable under section 413(d) of this title for the calendar quarters ending with or within each such calendar year bears to the lower limit for such taxable year specified in section 411(k)(1) of this title.

(Aug. 14, 1935, ch. 531, title II, §212, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 504; amended Pub. L. 95-216, title III, §351(b), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 110-234, title XV, §15352(b)(3), May 22, 2008, 122 Stat. 1526; Pub. L. 110-246, §4(a), title XV, §15352(b)(3), June 18, 2008, 122 Stat. 1664, 2288.)

**Editorial Notes**

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub.