

Social Security Administration

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(1) For any period before the quarter in which the individual attained age 18; or

(2) If a larger benefit is payable without the deemed wages; or

(3) If a benefit based in whole or in part upon internment is determined by any agency of the United States to be payable under any other law of the United States or under a system set up by that agency. However, this exception does not apply in cases where the failure to receive deemed wages reduces the primary insurance amount by 50 cents or less.

(e) *Certification of internment.* The certification concerning the internment is made by the Archivist of the United States or his or her representative. After the internment has been verified, wages are deemed to have been paid to the internee.

[45 FR 20075, Mar. 27, 1980, as amended at 52 FR 29662, Aug. 11, 1987. Redesignated at 55 FR 7310, Mar. 1, 1990]

§ 404.1060 [Reserved]

SELF-EMPLOYMENT

§ 404.1065 Self-employment coverage.

For an individual to have self-employment coverage under social security, the individual must be engaged in a trade or business and have net earnings from self-employment that can be counted as self-employment income for social security purposes. The rules explaining whether you are engaged in a trade or business are in §§ 404.1066 through 404.1077. What are net earnings from self-employment is discussed in §§ 404.1080 through 404.1095. Section 404.1096 describes the net earnings from self-employment that are counted as self-employment income for social security purposes. See § 404.1913 for the effect of a totalization agreement on self-employment coverage. An agreement may exempt an activity from coverage as well as extend coverage to an activity.

[50 FR 36574, Sept. 9, 1985]

§ 404.1066 Trade or business in general.

For you to be covered as a self-employed person for social security purposes, you must be engaged in a trade

or business. You can carry on a trade or business as an individual or as a member of a partnership. With some exceptions, the term *trade or business* has the same meaning as it does when used in section 162 of the Code.

§ 404.1068 Employees who are considered self-employed.

(a) *General.* Although we generally exclude services performed by employees from the definition of trade or business, certain types of services are considered a trade or business even though performed by employees. If you perform any of the services described in paragraphs (b) through (f) of this section, you are self-employed for social security purposes. Certain other services described in § 404.1071 (relating to ministers and members of religious orders) and § 404.1073 (relating to certain public officers) may be considered a trade or business even though performed by employees.

(b) *Newspaper vendors.* If you have attained age 18 and perform services as a newspaper vendor that are described in § 404.1030(b), you are engaged in a trade or business.

(c) *Sharefarmers.* If you perform services as a sharefarmer that are described in § 404.1017, you are engaged in a trade or business.

(d) *Employees of a foreign government, an instrumentality wholly owned by a foreign government, or an international organization.* If you are a United States citizen and perform the services that are described in § 404.1032, § 404.1033(a), or § 404.1034(a), you are engaged in a trade or business if the services are performed in the United States and are not covered as employment based upon § 404.1034(c).

(e) *Certain fishermen.* If you perform services as a fisherman that are described in § 404.1031, you are engaged in a trade or business.

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings from those services which are known as church employee income. If you are paid \$100 or more in

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a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Effective for taxable years beginning on or after January 1, 1990, your church employee income is exempt from self-employment tax under the conditions set forth for members of certain religious groups (see § 404.1075).

[45 FR 20075, Mar. 27, 1980, as amended at 50 FR 36574, Sept. 9, 1985; 58 FR 64889, Dec. 10, 1993; 61 FR 38367, July 24, 1996]

§ 404.1069 Real estate agents and direct sellers.

(a) *Trade or business.* If you perform services after 1982 as a qualified real estate agent or as a direct seller, as defined in section 3508 of the Code, you are considered to be engaging in a trade or business.

(b) *Who is a qualified real estate agent.* You are a qualified real estate agent as defined in section 3508 of the Code if you are a salesperson and—

(1) You are a licensed real estate agent;

(2) Substantially all of the earnings (whether or not paid in cash) for the services you perform as a real estate agent are directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(3) Your services are performed under a written contract between yourself and the person for whom the services are performed which provides you will not be treated as an employee with respect to these services for Federal tax purposes.

(c) *Who is a direct seller.* You are a direct seller as defined in section 3508 of the Code if—

(1) You are engaged in the trade or business of selling (or soliciting the sale of) consumer products—

(i) To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations,

for resale (by the buyer or any other person) in the home or in other than a permanent retail establishment; or

(ii) In the home or in other than a permanent retail establishment; and

(2) Substantially all of your earnings (whether or not paid in cash) for the performance of these services are directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(3) Your services are performed under a written contract between yourself and the person for whom the services are performed which provides you will not be treated as an employee with respect to these services for Federal tax purposes.

[48 FR 40515, Sept. 8, 1983]

§ 404.1070 Christian Science practitioners.

If you are a Christian Science practitioner, the services you perform in the exercise of your profession are a trade or business unless you were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with section 1704(b) of the Tax Reform Act of 1986. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

[55 FR 7311, Mar. 1, 1990]

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with the Social Security Amendments of 1977, section 1704(b) of the Tax Reform Act of 1986, or section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999. An exemption cannot be granted if you filed a valid waiver certificate under