

his farm (computed in accordance with paragraph (b)(2) of this section) is \$2,800. He has actual net earnings from self-employment derived from such farm in the amount of \$1,250. As his net earnings from self-employment derived from his farm, G may report his actual net earnings of \$1,250, or by the optional method he may report \$1,600. If G's actual net earnings from self-employment from his farming activities for 1966 were in an amount of \$1,600 or more, he would be required to report such amount in computing his self-employment income.

*Example (3).* M, who files his income tax returns on a calendar year basis, is one of the three partners of the XYZ Company, a partnership, engaged in the business of farming. The taxable year of the partnership is the calendar year, and its income is computed under the cash receipts and disbursements method. For M's services in connection with the planting, cultivating, and harvesting of the crops during the year 1966 the partnership agrees to pay him \$500, the full amount of which is determined without regard to the income of the partnership and constitutes a guaranteed payment within the meaning of section 707(c). This guaranteed payment to M is the only such payment made during such year. The gross income derived from the business for the year 1966 computed in accordance with paragraph (b)(1) of this section and after being reduced by the guaranteed payment of \$500 made to M, is \$3,000. One-third of the \$3,000 (\$1,000), is M's distributive share of such gross income. Under paragraph (c) of this section, the guaranteed payment (\$500) received by M and his distributive share of the partnership gross income (\$1,000) are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing net earnings from self-employment. Since M's combined gross income from his two agricultural businesses (\$1,000 and \$500) is not more than \$2,400 and since such income is deemed to be derived from one trade or business, M's net earnings from self-employment derived from such farming business may, at his option, be deemed to be \$1,000 (66⅔ percent of \$1,500).

*Example (4).* A is one of the two partners of the AB partnership which is engaged in the business of farming. The taxable year of the partnership is the calendar year and its income is computed under the accrual method. A files his income tax returns on the calendar year basis. The partnership agreement provides for an equal sharing in the profits and losses of the partnership by the two partners. A is an experienced farmer and for his services as manager of the partnership's farm activities during the year 1966 he receives \$6,000 which amount constitutes a guaranteed payment within the meaning of section 707(c). The gross income of the partnership derived from such business for the

year 1966, computed in accordance with paragraph (b)(2) of this section and after being reduced by the guaranteed payment made to A, is \$9,600. A's distributive share of such gross income is \$4,800 and his distributive share of income described in section 702(a)(9) derived from the partnership's business is \$1,900. Under paragraph (c) of this section, the guaranteed payment received by A and his distributive share of the partnership gross income are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing his net earnings from self-employment. Since the aggregate of A's guaranteed payment (\$6,000) and his distributive share of partnership gross income (\$4,800) is more than \$2,400 and since the aggregate of A's guaranteed payment (\$6,000) and his distributive share (\$1,900) of partnership income described in section 702(a)(9) is not less than \$1,600, the optional method of computing net earnings from self-employment is not available to A.

*Example (5).* F is a member of the EFG partnership which is engaged in the business of farming. F files his income tax returns on the calendar year basis. The taxable year of the partnership is the calendar year, and its income is computed under a cash receipts and disbursements method. Under the partnership agreement the partners are to share equally the profits or losses of the business. The gross income derived from the partnership business for the year 1966, computed in accordance with paragraph (b)(1) of this section is \$7,500. F's share of such gross income is \$2,500. Due to drought and an epidemic among the livestock, the partnership sustains a net loss of \$7,800 for the year 1966 of which loss F's share is \$2,600. Since F's distributive share of gross income derived from such business is in excess of \$2,400 and since F does not receive income described in section 702(a)(9) of \$1,600 or more from such business, he may, at his option, be deemed to have received \$1,600 as his distributive share of income described in section 702(a)(9) from such business.

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 6993, 34 FR 828, Jan. 18, 1969]

#### § 1.1402(a)-16 Exercise of option.

A taxpayer shall, for each taxable year with respect to which he is eligible to use the optional method described in § 1.1402(a)-14 or § 1.1402(a)-15, make a determination as to whether his net earnings from self-employment are to be computed in accordance with such method. If the taxpayer elects the optional method for a taxable year, he

shall signify such election by computing net earnings from self-employment under the optional method as set forth in Schedule F (Form 1040) of the income tax return filed by the taxpayer for such taxable year. If the optional method is not elected at the time of the filing of the return for a taxable year with respect to which the taxpayer is eligible to elect such optional method, such method may be elected on an amended return (or on such other form as may be prescribed for such use) filed within the period prescribed by section 6501 and the regulations thereunder for the assessment of the tax for such taxable year. If the optional method is elected on a return for a taxable year, the taxpayer may revoke such election by filing an amended return (or such other form as may be prescribed for such use) for the taxable year within the period prescribed by section 6501 and the regulations thereunder for the assessment of the tax for such taxable year. If the taxpayer is deceased or unable to make an election, the person designated in section 6012(b) and the regulations thereunder may, within the period prescribed in this section elect the optional method for any taxable year with respect to which the taxpayer is eligible to use the optional method and revoke an election previously made by or for the taxpayer.

**§ 1.1402(a)-17 Retirement payments to retired partners.**

(a) *In general.* There shall be excluded, in computing net earnings from self-employment for taxable years ending on or after December 31, 1967, certain payments made on a periodic basis by a partnership, pursuant to a written plan of the partnership, to a retired partner on account of his retirement. The exclusion applies only if the payments are made pursuant to a plan which meets the requirements prescribed in paragraph (b) of this section, and, in addition, the conditions set forth in paragraph (c) of this section are met.

(b) *Retirement plan of partnership.* (1) To meet the requirements of section 1402(a)(10), the written plan of the partnership must set forth the terms and conditions of the program or system

established by the partnership for the purpose of making payments to retired partners on account of their retirement. To qualify as payments on account of retirement, the payments must constitute bona fide retirement income. Thus, payments of benefits not customarily included in a pension or retirement plan such as layoff benefits are not payments on account of retirement. Eligibility for retirement generally is established on the basis of age, physical condition, or a combination of age or physical condition and years of service. Generally, retirement benefits are measured by, and based on, such factors as years of service and compensation received. In determining whether the plan of the partnership provides for payments on account of retirement, factors, formulas, etc., reflected in public, and in broad based private, pension or retirement plans in prescribing eligibility requirements and in computing benefits may be taken into account.

(2) The plan of the partnership must provide for payments on account of retirement:

- (i) To partners generally or to a class or classes of partners,
- (ii) On a periodic basis, and
- (iii) Which continue at least until the partner's death.

For purposes of subdivision (i) of this subparagraph, a class of partners may, in an appropriate case, contain only one member. Payments are made on a periodic basis if made at regularly recurring intervals (usually monthly) not exceeding one year.

(c) *Conditions relating to exclusion*—(1) *In general.* A payment made pursuant to a written plan of a partnership which meets the requirements of paragraph (b) of this section shall be excluded, in computing net earnings from self-employment, only if:

- (i) The retired partner to whom the payment is made rendered no service with respect to any trade or business carried on by the partnership (or its successors) during the taxable year of the partnership (or its successors), which ends within or with the taxable year of the retired partner and in which the payment was received by him;