

### § 1.1402(e)-3A

### 26 CFR Ch. I (4-1-13 Edition)

that before February 28, 1975 such individual also files a properly executed Form 4361.

(c) *Approval of application for exemption.* The filing of an application for exemption on Form 4361 by a minister, a member of a religious order, or a Christian Science practitioner does not constitute an exemption from the tax on self-employment income with respect to services performed by him in his capacity as a minister, member, or practitioner. The exemption is granted only if the application is approved by an appropriate internal revenue officer. See § 1.1402(e)-4A relating to the period for which an exemption is effective.

[T.D. 7333, 39 FR 44448, Dec. 24, 1974; 39 FR 45216, Dec. 31, 1974]

#### § 1.1402(e)-3A Time limitation for filing application for exemption.

(a) *General rule.* (1) Any individual referred to in paragraph (a) of § 1.1402(e)-2A who desires an exemption from the tax on self-employment income with respect to service performed by him in his capacity as a minister or member of a religious order or as a Christian Science practitioner must file the application for exemption (Form 4361) prescribed by § 1.1402(e)-2A on or before whichever of the following dates is later:

(i) The due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for his second taxable year ending after 1967, or

(ii) The due date of the income tax return, including any extension thereof, for his second taxable year beginning after 1953 for which he has net earnings from self-employment of \$400 or more, any part of which:

(a) In the case of a duly ordained, commissioned, or licensed minister of a church, consists of remuneration for service performed in the exercise of his ministry,

(b) In the case of a member of a religious order who has not taken a vow of poverty as a member of such order, consists of remuneration for service performed in the exercise of duties required by such order, or

(c) In the case of a Christian Science practitioner, consists of remuneration for service performed in the exercise of

his profession as a Christian Science practitioner.

See paragraph (c) of this section for provisions relating to the computation of net earnings from self-employment.

(2) If a minister, a member of a religious order, or a Christian Science practitioner derives gross income in a taxable year both from service performed in such capacity and from the conduct of another trade or business, and the deductions allowed by Chapter 1 of the Internal Revenue Code which are attributable to the gross income derived from service performed in such capacity equal or exceed the gross income derived from service performed in such capacity, no part of the net earnings from self-employment (computed as prescribed in paragraph (c) of this section) for the taxable year shall be considered as derived from service performed in such capacity.

(3) The application of the rules set forth in subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

*Example (1).* M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1960. During each of two or more taxable years ending before 1968 M has net earnings from self-employment in excess of \$400 some part of which is from service performed in the exercise of his ministry. M has not filed an effective waiver certificate on Form 2031 (see paragraph (a)(3) of § 1.1402(e)-2A). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

*Example (2).* M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1966. M has net earnings of \$350 for the taxable year 1966 and has net earnings in excess of \$400 for each of his taxable years 1967 and 1968 (some part or all of which is derived from service performed in the exercise of his ministry). M has not filed an effective waiver certificate on Form 2031 (see paragraph (a)(3) of § 1.1402(e)-2A). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

*Example (3).* Assume the same facts as in example (2) except that M has net earnings in excess of \$400 for each of his taxable years 1967 and 1969 (but less than \$400 in 1968). The application for exemption must be filed on or before the due date of his income tax return for 1969, or any extension thereof.

*Example (4).* M was ordained as a minister in May 1973. During each of the taxable years 1973 and 1975, M, who makes his income tax returns on a calendar year basis, derives net earnings in excess of \$400 from his activities as a minister. M has net earnings of \$350 for the taxable year 1974, \$200 of which is derived from service performed by him in the exercise of his ministry. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or any extension thereof.

*Example (5).* M, who was ordained a minister in January 1973, is employed as a tool-maker by the XYZ Corporation for the taxable years 1973 and 1974 and also engages in activities as a minister on weekends. M makes his income tax returns on the basis of a calendar year. During each of the taxable years 1973 and 1974 M receives wages of \$14,000 from the XYZ Corporation and derives net earnings of \$400 from his activities as a minister. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1974, or any extension thereof. It should be noted that although by reason of section 1402(b)(1) (G) and (H) no part of the \$400 represents "self-employment income", nevertheless the entire \$400 constitutes "net earnings from self-employment" for purposes of fulfilling the requirements of section 1402(e)(2).

*Example (6).* M, who files his income tax returns on a calendar year basis, was ordained as a minister in March 1973. During 1973 he receives \$410 for service performed in the exercise of his ministry. In addition to his ministerial services, M is engaged during the year 1973 in a mercantile venture from which he derives net earnings from self-employment in the amount of \$4,000. The expenses incurred by him in connection with his ministerial services during 1973 and which are allowable deductions under Chapter 1 of the Internal Revenue Code amount to \$410. During 1974 and 1975, M has net earnings from self-employment in amounts of \$4,600 and \$4,800, respectively, and some part of each of these amounts is from the exercise of his ministry. The deductions allowed in each of the years 1974 and 1975 by Chapter 1 which are attributable to the gross income derived by M from the exercise of his ministry in each of such years, respectively, do not equal or ex-

ceed such gross income in such year. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or an extension thereof.

(b) *Effect of death.* The right of an individual to file an application for exemption shall cease upon his death. Thus, the surviving spouse, administrator, or executor of a decedent shall not be permitted to file an application for exemption for such decedent.

(c) *Computation of net earnings—(1) Taxable years ending before 1968.* For purposes of this section net earnings from self-employment for taxable years ending before 1968 shall be determined without regard to the fact that, without an election under section 1402(e) (as in effect prior to amendment by section 115(b)(2) of the Social Security Amendments of 1967, see § 1.1402(e)-1A), the performance of services 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, or the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, does not constitute a trade or business for purposes of the tax on self-employment income.

(2) *Taxable years ending after 1967.* For purposes of this section and § 1.1402(e)-4A net earnings from self-employment for taxable years ending after 1967 shall be determined without regard to section 1402(c) (4) and (5). See § 1.1402(c)-3(e)(2) and § 1.1402(c)-5 relating to ministers and members of religious orders, and paragraphs (a)(3)(ii) and (b) of § 1.1402(c)-6 relating to Christian Science practitioners.

[T.D. 7333, 39 FR 4449, Dec. 24, 1974]

**§ 1.1402(e)-4A Period for which exemption is effective.**

(a) *In general.* If an application for exemption on Form 4361:

(1) Is filed by a minister, a member of a religious order, or a Christian Science practitioner eligible to file such an application (see particularly paragraph (a) (2) and (3) of § 1.1402(e)-2A), and