(6) In making his determination, the Regional Federal Highway Administrator shall consider the following:

(i) The adequacy and the conclusions of the air quality analysis;

(ii) The comments received from the air pollution control agency resulting from the requirements of § 770.204(a)(2) and § 770.205(a)(3) (where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator); and

(iii) Comments received from other agencies as part of the EIS procedure and the disposition of these comments.

(7) The Regional Federal Highway Administrator shall furnish the results of any consultation with the EPA Regional Administrator on the final EIS and the FHWA determination on consistency in the transmitted information for those final environmental impact statements which require review by FHWA Headquarters.

(b) The following procedures shall apply to highway sections for which the draft environmental impact statement was submitted to the FHWA prior to the effective date of this directive and for which the final environmental impact statement is submitted to FHWA after the effective date of this directive:

(1) Prior to the processing of the final EIS, the highway agency, in consultation with the FHWA Division Engineer, shall review available material on the development of the highway section, including the draft EIS, and shall make a written determination on the adequacy of the consideration of air quality for the highway section.

(2) If the determination concludes that the consideration of air quality is adequate, the final EIS may be processed following established EIS processing procedures.

(3) If the determination concludes that additional information and/or analysis are necessary, a revised draft or supplement shall then be furnished to appropriate local, State, and Federal agencies with expertise in air quality. At least forty-five days shall be allowed for comment by interested agencies.

(4) Comments received shall be incorporated and addressed in the final EIS as required in Volume 7, Chapter 7, section 2 of the Federal-Aid Highway Program Manual,[1] "Environmental Impact and Related Statements."

(5) Where required by 40 CFR 51.18 the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to the FHWA Regional Administrator for adoption if the indirect source review agency has found as part of the procedures established pursuant to 40 CFR 51.18 that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(6) Where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the FHWA Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator.

(7) Adoption of the final EIS by the FHWA shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(c) The following procedures shall apply to highway sections for which the final environmental impact statement is submitted to FHWA not later than the effective date of this directive, for which a substantial amount of the grade and drain work remains to be advertised for bids, and for which a decision on the consistency of the highway section with the approved State implementation plan has not been made by the Regional Federal Highway Administrator.

(1) The highway agency shall review the information available on the development of the highway section, including the final EIS, and shall prepare a report for the FHWA on the consistency of the proposed action with the approved State implementation plan.

(i) If the highway agency or the FHWA Division Engineer concludes that additional information and/or analysis are necessary to make a determination on consistency, the highway agency shall develop such information or perform such analysis before making the report.

(ii) If the information on the development of the highway section or the air quality analysis indicates that implementation of the proposed action will result in a significant air quality impact, the highway agency shall solicit comments from and consult with the air pollution control agency. In such cases, the report shall set forth the anticipated air quality effects of the proposal, a brief summary of coordination with the air pollution control agency, including comments received and a discussion of substantial unresolved air quality issues, if any.

(2) The FHWA Division Engineer may concur in such reports, except those which include an inconsistency finding by the air pollution control agency. Concurrence in the report by the FHWA Division Engineer shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(3) Reports containing an inconsistency finding shall be forwarded to the FHWA Regional Administrator. Before concurring in proposed highway section approvals, the FHWA Regional Administrator shall consult with the EPA Regional Administrator for the purpose of reviewing the air quality information and consistency determination presented in the report.

(4) Concurrence in proposed highway section approvals by the FHWA Regional Administrator shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(5) The FHWA Regional Administrator may request preparation and processing of a revised or supplemental EIS for the highway section where, in his judgement, the air quality issues raised are of such magnitude as to make the processing in this form necessary. The revised or supplemental EIS shall be processed in accordance with procedures contained in Volume 7, Chapter 7, Section 2 of the Federal-Aid Highway Program Manual, "Environmental Impact and Related Statements."

(d) Advancement of highway sections may continue under the provisions of 23 U.S.C. where the Regional Federal Highway Administrator has made a consistency determination in accordance with the interim regulations (23 CFR 770, 38 FR 31677) or where a substantial amount of the grade and drain work has been authorized prior to the effective date of this directive.

§ 770.206 Construction of Highways.

(a) The highway agency shall take steps to assure that its current specifications, and any revisions thereof and the use of specific equipment and/or materials associated with construction are consistent with the approved State implementation plan. This shall be accomplished in coordination with the air pollution control agency.

(b) The highway agency shall establish procedures in order that any changes in the State implementation plan will be reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with FHWA.

Effective Date. This amendment is effective December 26, 1974.

Issued on December 16, 1974.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.74-29901 Filed 12-23-74;8:45 am]

[1] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7333]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Rates and Earnings Base of Certain Self-Employment Tax [1]

By a notice of proposed rule making appearing in the FEDERAL REGISTER for July 3, 1973 (38 FR 17727), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to the provisions of sections 115(b)(2), 118(a), 122 (b) and (c), and 502(b) of the Social Security Amendments of 1967 (81 Stat. 839, 841, 843, 844, 934), section 203(b)(1) of the Act of March 17, 1971 (Pub. L. 92–5, 85 Stat. 10), sections 203(b)(1) and 204 (a)(1) and (b)(1) of the Act of July 1, 1972 (Pub. L. 92–336, 86 Stat. 418, 420, 421), and section 135 (a)(1) and (b)(1) of the Social Security Amendments of 1972 (86 Stat. 1362, 1363), relating to the rates and earnings base of the self-employment tax and to self-employment coverage of retired partners, certain employees of States and political subdivisions, and ministers, members of religious orders, and Christian Science practitioners. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made. The proposed amendments of the regulations, as revised, including an amendment to the Income Tax Regulations in order to conform such regulations to the provisions of section 203(b)(1) of the Act of July 9, 1973 (Pub. L. 93–66, 87 Stat. 153) and section 5(b)(1) and (f) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 954), relating to the earnings base of the self-employment tax, and section 6(b)(1) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 955), relating to the rate of tax on self-employment income for purposes of hospital insurance, are adopted by this document.

Several of the above statutory amendments revised the rates and earnings base of the tax on self-employment income. For taxable years beginning after 1974, the taxable earnings base may be increased by the Secretary of the Department of Health, Education, and Welfare under section 230 of the Social Security Act if he provides a cost-of-living increase in benefits under section 215(i) of that Act.

Under prior law, the term "trade or business", for self-employment tax purposes, did not include the performance of services by a minister, a member of a religious order, or a Christian Science practitioner in his capacity as such unless such individual (other than a member of a religious order under a vow of poverty) elected to have the social security program extended to him in respect of such services. Under present law such service constitutes a trade or business (except in the case of a member of a religious order under a vow of poverty) unless the individual is granted an exemption from the tax on self-employment income in respect of such service. To qualify for the exemption an individual must be conscientiously opposed to, or because of religious principles be opposed to, the acceptance (with respect to service performed by him in his capacity as a minister, member, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance established by the Social Security Act). Based on the legislative history of section 115(b)(2) of the Social Security Amendments of 1967, the regulations require that this conscientious opposition be based on religious grounds.

Applications for exemption must be made by the later of (1) the due date of the return (including any extension thereof) for the second taxable year for which the clergyman has at least $400 of net earnings from self-employment, or (2) the due date of the return (including any extension thereof) for his second taxable year ending after 1967. For this purpose, if a clergyman's last original return filed before the expiration of the application period shows no liability for tax on self-employment income, that return will be treated as an application for exemption, provided that, before February 18, 1975, he files a Form 4361, the form specified for use as an application for exemption.

Under prior law, the term "trade or business", for self-employment tax purposes, did not include the performance of the functions of a public office or service performed by an individual as an employee of a State or a political subdivision. The amendment placed a minor limitation on the scope of these exclusions thereby providing coverage to certain individuals performing service for a State or a political subdivision thereof in a position compensated solely on a fee basis. In general, the rules of the proposed regulations on this subject are finalized without substantive change, except that section 1.1402(c)–2(a)(2), describing certain covered officials, has been reserved and is the subject of a new notice of proposed rulemaking.

Retirement payments made by a partnership to a retired partner are excluded from net earnings from self-employment provided certain conditions (designed to assure that the payments are bona fide retirement income) are met. Generally speaking, the treatment accorded such payments is similar to that accorded retirement income under the Federal Insurance Contributions Act.

A credit or refund is provided, under certain circumstances, in respect of the hospital insurance tax in the case of a railroad employee or employee representative subject to tax under the Railroad Retirement Tax Act who is also subject to tax under the Federal Insurance Contributions Act. If such an employee or employee representative has net earnings from self-employment, his taxable railroad compensation is taken into account in computing self-employment income. The purpose of these changes was to prevent the imposition of a double tax burden on an individual with respect to hospital insurance. Adoption of amendments to the regulations.

On July 3, 1973, a notice of proposed rule making with respect to the Income Tax Regulations (26 CFR Part 1) under sections 1401 and 1402 of the Internal Revenue Code of 1954 to conform such regulations to sections 115(b)(2), 118(a), 122 (b) and (c), and 502(b) of the Social Security Amendments of 1967 (81 Stat. 839, 841, 843, 844, 934), section 203 (b)(1) of the Act of March 17, 1971 (Pub. L. 92–5, 85 Stat. 10), sections 203(b)(1) and 204 (a)(1) and (b)(1) of the Act of July 1, 1972 (Pub. L. 92–336, 86 Stat. 418, 420, 421), and section 135 (a)(1) and (b)(1) of the Social Security Amendments of 1972 (86 Stat. 1362, 1363) was published in the Federal Register (38 FR 17727). After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendment of the Income Tax Regulations under sections 1401 and 1402 is hereby adopted, subject to the following changes (including changes conforming such regulations to the provisions of section 203(b)(1) of the Act of July 9, 1973 (Pub. L. 93–66, 87 Stat. 153), section 5(b)(1) and (f) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 954), and section 6(b)(1) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 955)):

PARAGRAPH 1. Section 1.1401 is amended as set forth in paragraph 1 below.

PAR. 2. Section 1.1401–1, as set forth in paragraph 2 below, is amended by revising paragraph (b)(2).

PAR. 3. Section 1.1402 (b), as set forth in paragraph 8 below, is amended by revising subparagraph (H) and the historical note.

PAR. 4. Section 1.1402(b)–1, as set forth in paragraph 9 below, is amended by revising paragraph (b)(1)(ii) and (2)(ii) and the examples in paragraphs (b)(2)(iii) and (c).

PAR. 5. Section 1.1402(c)–2, as set forth in paragraph 11 below, is amended by revising paragraph (a).

PAR. 6. Section 1.1402(c)–3, as set forth in paragraph 12 below, is amended by revising paragraph (f)(1).

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 16, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.74-29748 Filed 12-19-74;8:45 am]

[1] See proposed rule on subject (74-29749) published elsewhere in this issue.

PARAGRAPH 1. Section 1.1401 is amended by revising paragraph (3) of section 1401(a), by revising paragraphs (2), (3), (4), and (5) of section 1401(b), and by revising the historical note to read as follows:

§ 1.1401 Statutory provisions; rate of tax on self-employment income.

Sec. 1401. *Rate of tax*—(a) *Old-age, survivors, and disability insurance.* * * *

(3) In the case of any taxable year beginning after December 31, 1970, and before January 1, 1973, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such taxable year;

* * * * *

(b) *Hospital insurance.* * * *

(2) In the case of any taxable year beginning after December 31, 1972, and before January 1, 1974, the tax shall be equal to 1.0 percent of the amount of the self-employment income for such taxable year;

(3) In the case of any taxable year beginning after December 31, 1973, and before January 1, 1978, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year;

(4) In the case of any taxable year beginning after December 31, 1977, and before January 1, 1981, the tax shall be equal to 1.10 percent of the amount of the self-employment income for such taxable year;

(5) In the case of any taxable year beginning after December 31, 1980, and before January 1, 1986, the tax shall be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and

(6) In the case of any taxable year beginning after December 31, 1985, the tax shall be equal to 1.50 percent of the self-employment income for such taxable year.

[Sec. 1401 as amended by sec. 208(a), Social Security Amendments of 1954 (68 Stat. 1093); sec. 202(a), Social Security Amendments 1956 (70 Stat. 845); sec. 401(a), Social Security Amendments 1958 (72 Stat. 1041); sec. 201(a), Social Security Amendments 1961 (75 Stat. 140); secs. 111(c)(4) and 321(a), Social Security Amendments 1965 (79 Stat. 342, 394); sec. 109(a)(1) and (b)(1), Social Security Amendments 1967 (81 Stat. 835); sec. 204(a)(1) and (b)(1), Act of July 1, 1972 (Pub. Law 92-336, 86 Stat. 420, 421); sec. 135(a)(1) and (b)(1), Social Security Amendments 1972 (86 Stat. 1362, 1363); sec. 6(b)(1), Act of December 31, 1973 (Pub. Law 93-233, 87 Stat. 955)]

PAR. 2. Section 1.1401-1 is amended by revising subparagraph (2) of paragraph (b), to read as follows:

§ 1.1401-1 Tax on self-employment income.

(b) The rates of tax on self-employment income are as follows:

* * * * *

(2) For hospital insurance:

Taxable year	*Percent*
Beginning after December 31, 1965 and before January 1, 1967	0.35
Beginning after December 31, 1966 and before January 1, 1968	.50
Beginning after December 31, 1967 and before January 1, 1973	.60
Beginning after December 31, 1972 and before January 1, 1974	1.0
Beginning after December 31, 1973 and before January 1, 1978	.90
Beginning after December 31, 1977 and before January 1, 1981	1.10
Beginning after December 31, 1980 and before January 1, 1986	1.35
Beginning after December 31, 1985	1.50

* * * * *

PAR. 3. Section 1.1402(a) is amended by revising paragraphs (8) and (9) of section 1402(a), by adding a new paragraph (10) immediately after such paragraph (9), and by revising the historical note. These amended and added provisions read as follows:

§ 1.1402(a) Statutory provisions; definitions; net earnings from self-employment.

Sec. 1402. *Definitions*—(a) *Net earnings from self-employment.* * * *

(8) 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) and section 119 (relating to meals and lodging furnished for the convenience of the employer) and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 3121(h)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States);

(9) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa; and

(10) 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 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).

[Sec. 1402 (a) as amended by sec. 201 (a) and (c) (4), Social Security Amendments 1954 (68 Stat. 1087, 1089); sec. 201 (e) (2), (g), and (1), Social Security Amendments 1956 (70 Stat. 840-842); sec. 5 (b), Act of Aug. 30, 1957 (Pub. Law 85-239, 71 Stat. 523); sec. 103 (k), Social Security Amendments 1960 (74 Stat. 938); sec. 227, Rev. Act 1964 (78 Stat. 97); sec. 312 (b), Social Security Amendments 1965 (79 Stat. 381); sec. 118 (a), Social Security Amendments 1967]

PAR. 4. The portion of paragraph (a) of § 1.1402 (a)-1 which precedes subparagraph (1) of such paragraph is amended to read as follows:

§ 1.1402 (a)-1 Definition of net earnings from self-employment.

(a) Subject to the special rules set forth in §§ 1.1402 (a)-3 to 1.1402 (a)-17, inclusive, and to the exclusions set forth in §§ 1.1402 (c)-2 to 1.1402 (c)-7, inclusive, the term "net earnings from self-employment" means—

* * * * *

PAR. 5. Paragraphs (c) and (d) of § 1.1402(a)-2 are amended to read as follows:

§ 1.1402(a)-2 Computation of net earnings from self-employment.

* * * * *

(c) *Aggregate net earnings.* Where an individual is engaged in more than one trade or business within the meaning of section 1402(c) and § 1.1402(c)-1, his net earnings from self-employment consist of the aggregate of the net income and losses (computed subject to the special rules provided in §§ 1.1402(a)-1 to 1.1402(a)-17 inclusive) of all such trades or businesses carried on by him. Thus, a loss sustained in one trade or business carried on by an individual will operate to offset the income derived by him from another trade or business.

(d) *Partnerships.* The net earnings from self-employment of an individual include, in addition to the earnings from a trade or business carried on by him, his distributive share of the income or loss, described in section 702(a)(9), from any trade or business carried on by each partnership of which he is a member. An individual's distributive share of such income or loss of a partnership shall be determined as provided in section 704, subject to the special rules set forth in section 1402(a) and in §§ 1.1402(a)-1 to 1.1402(a)-17, inclusive, and to the exclusions provided in section 1402(c) and §§ 1.1402(c)-2 to 1.1402(c)-7, inclusive. For provisions relating to the computation of the taxable income of a partnership, see section 703.

* * * * *

PAR. 6. Section 1.1402 (a)-3 is amended to read as follows:

§ 1.1402 (a)-3 Special rules for computing net earnings from self-employment.

For the purpose of computing net earnings from self-employment, the gross income derived by an individual from a trade or business carried on by him, the allowable deductions attributable to such trade or business, and the individual's distributive share of the income or loss, described in section 702 (a) (9), from any trade or business carrier on by a partnership of which he is a member shall be computed in accordance with the special rules set forth in §§ 1.1402 (a)-4 to 1.1402 (a)-17, inclusive.

PAR. 7. The following section is added immediately after § 1.1402 (a)–16.

§ 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;

(ii) No obligation (whether certain in amount or contingent on a subsequent event) exists (as of the close of the partnership's taxable year referred to in subdivision (i) of this subparagraph) from the other partners to the retired partner except with respect to retirement payments under the plan or rights such as benefits payable on account of sickness, accident, hospitalization, medical expenses, or death; and

(iii) The retired 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 subdivision (i) of this subparagraph.

By application of the conditions set forth in this subparagraph, either all payments on account of retirement received by a retired partner during the taxable year of the partnership ending within or with his taxable year are excluded or none of the payments are excluded. Subdivision (ii) of this subparagraph has application only to obligations from other partners in their capacity as partners as distinguished from an obligation which arose and exists from a transaction unrelated to the partnership or to a trade or business carried on by the partnership. The effect of the conditions set forth in subdivisions (ii) and (iii) of this subparagraph is that the exclusion may apply with respect to payments received by a retired partner during the taxable year of the partnership ending within or with his taxable year only if at the close of the partnership's taxable year the retired partner had no financial interest in the partnership except for the right to retirement payments.

(2) *Examples*—The application of subparagraph (1) of this paragraph may be illustrated by the following examples. Each example assumes that the partnership plan pursuant to which the payments are made meets the requirements of paragraph (b) of this section.

Example (1). A, who files his income tax returns on a calendar year basis, is a partner in the ABC partnership. The taxable year of the partnership is the period July 1 to June 30, inclusive. A retired from the partnership on January 1, 1973, and receives monthly payments on account of his retirement. As of June 30, 1973, no obligation existed from the other partners to A (except with respect to retirement payments under the plan) and A's share of the capital of the partnership had been paid to him in full. The monthly retirement payments received by A from the partnership in his taxable year ending on December 31, 1973, are not excluded from net earnings from self-employment since A rendered service to the partnership during a portion of the partnership's taxable year (July 1, 1972, through June 30, 1973) which ends within A's taxable year ending on December 31, 1973.

Example (2). D, a partner in the DEF partnership, retired from the partnership as of the close of December 31, 1972. The taxable year of both D and the partnership is the calendar year. During the partnership's taxable year ending December 31, 1973, D rendered no service with respect to any trade or business carried on by the partnership. On or before December 31, 1973, all obligations (other than with respect to retirement payments under the plan) from the other partners to D have been liquidated, and D's share of the capital of the partnership has been paid to him. Retirement payments received by D pursuant to the partnership's plan in his taxable year ending December 31, 1973, are excluded in determining his net earnings from self-employment (if any) for that taxable year.

Example (3). Assume the same facts as in example (2) except that as of the close of December 31, 1973, D has a right to a fixed percentage of any amounts collected by the partnership after that date which are attributable to services rendered by him prior to his retirement for clients of the partnership. The monthly payments received by D in his taxable year ending December 31, 1973, are not excluded from net earnings from self-employment since as of the close of the partnership's taxable year which ends with D's taxable year, an obligation (other than an obligation with respect to retirement payments) exists from the other partners to D.

PAR. 8. Section 1.1402(b) is amended by revising subparagraph (E) and adding subparagraphs (F), (G), (H) and (I) of paragraph (1), and by revising the flush material following paragraph (2) of section 1402(b) and the historical note to read as follows:

§ 1.1402 (b) Statutory provisions; definitions; self-employment income.

Sec. 1402. *Definitions.* • • •

(b) *Self-employment income.* • • •

(1) • • •

(E) For any taxable year ending after 1967 and beginning before 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 before 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 before 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 before 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 230 of the Social Security Act) 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.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes, but solely with respect to the tax imposed by section 1401 (b), compensation which is subject to the tax imposed by section 3201 or 3211. 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 purposes of this chapter, be considered to be a nonresident alien individual.

[Sec. 1402(b) as amended by sec. 201(b), Social Security Amendments 1954 (68 Stat. 1088); sec. 402(a), Social Security Amendments 1958 (72 Stat. 1042); sec. 103(1), Social Security Amendments 1960 (74 Stat. 938); sec. 320(b)(1), Social Security Amendments 1965 (79 Stat. 393); secs. 108(b)(1) and 502(b), Social Security Amendments 1967 (81 Stat. 835, 934); sec. 203(b)(1), Act of March 17, 1971 (Pub. Law 92-5, 85 Stat. 10); sec. 203(b)(1), Act of July 1, 1972 (Pub. Law 92-336, 86 Stat. 418); sec. 203(b)(1), Act of July 9, 1973 (Pub. Law 93-66, 87 Stat. 153); sec. 5(b)(1) and (f), Act of December 31, 1973 (Pub. Law 93-233, 87 Stat. 954)]

PAR. 9. Paragraphs (b) and (c) of § 1.1402(b)-1 are amended to read as follows:

§ 1.1402(b)-1 Self-employment income.

* * * * *

(b) *Maximum self-employment income*—(1) *General rule.* Subject to the special rules described in subparagraph (2) of this paragraph, the maximum self-employment income of an individual for a taxable year (whether a period of 12 months or less) is—

(i) For any taxable year beginning in a calendar year after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for such calendar year; and

(ii) For any taxable year—

Ending before 1955	$3,600
Ending after 1954 and before 1959	4,200
Ending after 1958 and before 1966	4,800
Ending after 1965 and before 1968	6,600
Ending after 1967 and beginning before 1972	7,800
Beginning after 1971 and before 1973	9,000
Beginning after 1972 and before 1974	10,800
Beginning after 1973 and before 1975	13,200

(2) *Special rules.* (i) If an individual is paid wages as defined in subparagraph (3) of this paragraph in a taxable year, the maximum self-employment income for such taxable year is computed as provided in subdivision (ii) or (iii) of this subparagraph.

(ii) If an individual is paid wages as defined in subparagraph (3) (i) or (ii) of this paragraph in a taxable year, the maximum self-employment income of such individual for such taxable year is the excess of the amounts indicated in subparagraph (1) of this paragraph over the amount of the wages, as defined in subparagraph (3) (i) and (ii) of this paragraph, paid to him during the taxable year. For example, if for his taxable year beginning in 1974, an individual has $15,000 of net earnings from self-employment and during such taxable year is paid $1,000 of wages as defined in section 3121(a) (see subparagraph (3)(i) of this paragraph), he has $12,200 ($13,200 −$1,000) of self-employment income for the taxable year.

(iii) For taxable years ending on or after December 31, 1968, wages, as defined in subparagraph (3)(iii) of this paragraph, are taken into account in determining the maximum self-employment income of an individual for purposes of the tax imposed under section 1401 (b) (hospital insurance), but not for purposes of the tax imposed under section 1401 (a) (old-age, survivors, and disability insurance). If an individual is paid wages as defined in subparagraph (3) (iii) of this paragraph in a taxable year, his maximum self-employment income for such taxable year for purposes of the tax imposed under section 1401 (a) is computed under subparagraph (1) of this paragraph or subdivision (ii) of this subparagraph (whichever is applicable), and his maximum self-employment income for such taxable year for purposes of the tax imposed under section 1401 (b) is the excess of his section 1401 (a) maximum self-employment income over the amount of wages, as defined in subparagraph (3) (iii) of this paragraph, paid to him during the taxable year. For purposes of this subdivision, wages as defined in subparagraph (3) (iii) of this paragraph are deemed paid to an individual in the period with respect to which the payment is made, that is, the period in which the compensation was earned or deemed earned within the meaning of section 3231 (e). For an explanation of the term "compensation" and for provisions relating to when compensation is earned, see the regulations under section 3231 (e) in Part 31 of this chapter (Employment Tax Regulations). The application of the rules set forth in this subdivision may be illustrated by the following example:

Example. M, a calendar-year taxpayer, has $15,000 of net earnings from self-employment for 1974 and during the taxable year is paid $1,000 of wages as defined in section 3121 (a) (see subparagraph (3)(i) of this paragraph) and $1,600 of compensation subject to tax under section 3201 (see subparagraph (3)(iii) of this paragraph). Of the $1,600 of taxable compensation, $1,200 represents compensation for services rendered in 1974 and the balance ($400) represents compensation which pursuant to the provisions of section 3231(e) is earned or deemed earned in 1973. M's maximum self-employment income for 1974 for purposes of the tax imposed under section 1401(a), computed as provided in subdivision (ii) of this subparagraph, is $12,200 ($13,200−$1,000), and for purposes of the tax imposed under section 1401(b) is $11,000 ($12,200−$1,200). However, M may recompute his maximum self-employment income for 1973 for purposes of the tax imposed under section 1401(b) by taking into account the $400 of compensation which is deemed paid in 1973.

(3) *Meaning of term "wages".* For the purpose of the computation described in subparagraph (2) of this paragraph, the term "wages" includes:

(i) Wages as defined in section 3121 (a);

(ii) Such remuneration paid to an employee for services covered by—

(*a*) An agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), which section provides for extension of the Federal old-age, survivors and disability insurance system to State and local government employees under voluntary agreements between the States and the Secretary of Health, Education, and Welfare (Federal Security Administrator before April 11, 1953), or

(*b*) An agreement entered into pursuant to the provisions of section 3121 (l), relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corportations,

as would be wages under section 3121 (a) if such services constituted employment under section 3121 (b). For an explanation of the term "wages", see the regulations under section 3121 (a) in Part 31 of this chapter (Employment Tax Regulations); and

(iii) Compensation, as defined in section 3231 (e), which is subject to the employee tax imposed by section 3201 or the employee representative tax imposed by section 3211.

(c) *Minimum net earnings from self-employment.* Self-employment income does not include the net earnings from self-employment of an individual when the amount of such earnings for the taxable year is less than $400. Thus, an individual having only $300 of net earnings from self-employment for the taxable year would not have any self-employment income. However, an individual having net earnings from self-employment of $400 or more for the taxable year may, by application of paragraph (b)(2) of this section, have less than $400 of self-employment income for purposes of the tax imposed under section 1401 (a) and the tax imposed under section 1401 (b) or may have self-employment income of $400 or more for purposes of the tax imposed under section 1401 (a) and of less than $400 for purposes of the tax imposed under section 1401 (b). This could occur in a case in which the amount of the individual's net earnings from self-employment is $400 or more for a taxable year and the amount of such net earnings from self-employment plus the amount of wages, as defined in paragraph (b) (3) of this section, paid to him during the taxable year exceed the maximum self-employment income, as set forth in paragraph (b) (1) of this section, for the taxable year. However, the result occurs only if such maximum self-employment income exceeds the amount of such wages. The application of this paragraph may be illustrated by the following example:

Example. For 1974 M, a calendar-year taxpayer, has net earnings from self-employment of $2,000 and wages (as defined in paragraph (b)(3) (i) and (ii) of this section) of $12,500. Since M's net earnings from self-employment plus his wages exceed the maximum self-employment income for 1974 ($13,200), his self-employment income for 1974 is $700 ($13,200−$12,500). If M also had wages, as defined in paragraph (b)(3) (iii) of this section, of $200, his self-employment income would be $700 for purposes of the tax imposed under section 1401(a) and $500 ($13,200−$12,700 ($12,500+$200)) for

purposes of the tax imposed under section 1401(b).

For provisions relating to when wages as defined in paragraph (b)(3)(iii) of this section are treated as paid, see paragraph (b)(2)(iii) of this section.

* * * * *

PAR. 10. Section 1.1402(c) is amended by revising paragraphs (1) and (2) of section 1402(c), by revising the historical note, and by adding material following the historical note. These amended and added provisions read as follows:

§ 1.1402 (c) Statutory provisions; definitions; trade or business.

Sec. 1402. *Definitions.* * * *

(c) *Trade or business.* * * *

(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 Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

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

(A) Service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) Service described in section 3121(b)(16),

(C) Service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) Service described in paragraph (4) of this subsection, and

(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 Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

[Sec. 1402(c) as amended by secs. 201(c)(1), (2), and (5), and 205(e), Social Security Amendments 1954 (68 Stat. 1088, 1089, 1092); sec. 201(e)(3) and (f), Social Security Amendments 1956 (70 Stat. 841); sec. 106(b), Social Security Amendments 1960 (74 Stat. 945); secs. 311(b)(1) and (2) and 319(a), Social Security Amendments 1965 (79 Stat. 381, 390); secs. 115(b)(1) and 122(b), Social Security Amendments 1967 (81 Stat. 839, 843)]

Sec. 122. [Social Security Amendments of 1967]. * * *

(c) [Effective dates] * * *.

(2) Notwithstanding the provisions of subsections (a) and (b) of this section, any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments.

[Sec. 122(c)(2), Social Security Amendments 1967 (81 Stat. 844)]

PAR. 11. Section 1.1402(c)-2 is amended to read as follows:

§ 1.1402(c)-2 Public office.

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

(2) *Fee basis public officials.* [Reserved]

(b) *Meaning of public office.* The term "public office" includes any elective or appointive office of the United States or any possession thereof, of the District of Columbia, of a State or its political subdivisions, or of a wholly-owned instrumentality of any one or more of the foregoing. For example, the President, the Vice President, a governor, a mayor, the Secretary of State, a member of Congress, a State representative, a county commissioner, a judge, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable, a registrar of deeds, or a notary public performs the functions of a public office.

PAR. 12. Section 1.1402(c)-3 is amended by revising paragraph (a) and by adding a new paragraph (f) immediately after paragraph (e). These amended and added provisions read as follows:

§ 1.1402 (c)-3 Employees.

(a) *General rule.* Generally, the performance of service by an individual as an employee, as defined in the Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code) does not constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. However, in five cases set forth in paragraphs (b) to (f), inclusive, of this section, the performance of service by an individual is considered to constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. (As to when an individual is an employee, see section 3121(d) and (o) and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations).)

* * * * *

(f) *State and local government employees compensated on fee basis*—(1) *In general.* (i) Section 1402(c)(2)(E) and this paragraph are applicable only with respect to fees received by an individual after 1967 for service performed by him as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis. If an individual performs service for a State or a political subdivision thereof in more than one position, each position is treated separately for purposes of determining whether the service performed in such position is performed by an employee and whether compensation for service performed in the position is solely on a fee basis.

(ii) If an individual receives fees after 1967 for service performed by him as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis, the service for which such fees are received constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1 except that if service performed in such position is covered under an agreement entered into by the State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act at the time a fee is received, the service to which such fee relates does not constitute a trade or business. See also paragraph (a) of § 1.1402(c)-2, relating, in part, to the performance of the functions of a public office of a State or a political subdivision thereof by an individual.

(2) *Election with respect to fees received in 1968.* (i) Any individual who in 1968 receives fees for service as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis may elect, if the performance of the service for which such fees are received constitutes a trade or business pursuant to the provisions of subparagraph (1) of this paragraph, to have such performance of service treated as excluded from the term "trade or business" for the purpose of the tax on self-employment income, pursuant to the provisions of section 122(c)(2) of the Social Security Amendments of 1967 (as quoted in § 1.1402(c)). Such election shall not be limited to service to which the fees received in 1968 are attributable but must also be applicable to service (if any) in subsequent years which, except for the election, would constitute a trade or business pursuant to the provisions of subparagraph (1) of this paragraph. An election made pursuant to the provisions of this subparagraph is irrevocable.

(ii) The election referred to in subdivision (i) of this subparagraph shall be made by filing a certificate of election of exemption (Form 4415) on or before the due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for the taxable year of the individual making the election which begins in 1968. The certificate of election of exemption shall be filed with an internal revenue office in accordance with the instructions on the certificate.

PAR. 13. The following sections are inserted immediately after § 1.1402(e)-1A.

§ 1.1402 (e)-2A Ministers, members of religious orders and Christian Science practitioners; application for exemption from self-employment tax.

(a) *In general.* (1) Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, any individual who is (i) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (ii) a Christian Science practitioner may request an exemption from the tax on self-employment income (see §§ 1.1401 and 1.1401-1) with respect to services performed by him in his capacity as a minister or member, or as a Christian Science practitioner, as the case may be. Such a request shall be made by filing an application for exemption on Form 4361 in the manner provided in paragraph (b) of this section and within the time specified

in § 1.1402(e)–3A. For provisions relating to the taxable year or years for which an exemption from the tax on self-employment income with respect to service performed by a minister or member or a Christian Science practitioner in his capacity as such is effective, see § 1.1402 (e)–4A. For additional provisions applicable to services performed by individuals referred to in this subparagraph, see paragraph (e) of § 1.1402(c)–3 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.

(2) The application for exemption shall contain, or there shall be filed with such application, a statement to the effect that the individual making application for exemption is conscientiously opposed to, or because of religious principles is opposed to, the acceptance (with respect to services performed by him in his capacity as a minister, member, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Thus, ministers, members of religious orders, and Christian Science Practitioners requesting exemption from social security coverage must meet either of two alternative tests: (1) A religious principles test which refers to the institutional principles and discipline of the particular religious denomination to which he belongs, or (2) a conscientious opposition test which refers to the opposition because of religious considerations of individual ministers, members of religious orders, and Christian Science Practitioners (rather than opposition based upon the general conscience of any such individual or individuals). The term "public insurance", as used in section 1402(e) and this paragraph, refers to governmental, as distinguished from private, insurance and does not include insurance carried with a commercial insurance carrier. To be eligible to file an application for exemption on Form 4361, a minister, member, or Christian Science practitioners need not be opposed to the acceptance of all public insurance making payments of this specified type; he must, however, be opposed on religious grounds to the acceptance of any such payment which, in whole or in part, is based on, or measured by earnings from, services performed by him in his capacity as a minister or member (see § 1.1402(c)–5) or in his capacity as a Christian Science practitioner (see paragraph (b)(2) of § 1.1402(c)–6). For example, a minister performing service in the exercise of his ministry may be eligible to file an application for exemption on Form 4361 even though he is not opposed to the acceptance of benefits under the Social Security Act with respect to service performed by him which is not in the exercise of his ministry.

(3) An exemption from the tax imposed on self-employment income with respect to service performed by a minister, member, or Christian Science practitioner in his capacity as such may not be granted to a minister, member, or practitioner who (in accordance with the provisions of section 1402(e) as in effect prior to amendment by section 115(b)(2) of the Social Security Amendments of 1967 (81 Stat. 839)) filed a valid waiver certificate on Form 2031 electing to have the Federal old-age, survivors, and disability insurance system establish by title II of the Social Security Act extended to service performed by him in the exercise of his ministry or in the exercise of duties required by the order of which he is a member, or in the exercise of his profession as a Christian Science practitioner. For provisions relating to waiver certificates on Form 2031, see §§ 1.1402 (e)(1)–1 through 1.1402(e)(6)–1.

(b) *Application for exemption.* An application for exemption on Form 4361 shall be filed in triplicate with the internal revenue officer or the internal revenue office, as the case may be, designated in the instructions relating to the application for exemption. The application for exemption must be filed within the time prescribed in § 1.1402(e)–3A. If the last original Federal income tax return of an individual to whom paragraph (a) of this section applies which was filed before the expiration of such time limitation for filing an application for exemption shows no liability for tax on self-employment income, such return will be treated as an application for exemption, provided that before February 18, 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.

§ 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 toolmaker 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 exceed 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.

§ 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

(2) Is approved (see paragraph (c) of § 1.1402(e)–2A),

the exemption from the tax on self-employment income shall be effective for the first taxable year ending after 1967 for which such minister, member, or practitioner has net earnings from self-employment of $400 or more any part of which was derived from the performance of service in his capacity as a minister, member, or practitioner, and for all succeeding taxable years. See, however, paragraphs (b)(1)(ii) and (d)(2) of § 1.1402(c)–5 relating to ministers and members of religious orders and paragraph (b)(2) of § 1.1402(c)–6 relating to Christian Science practitioners.

(b) *Exemption irrevocable.* An exemption granted to a minister, a member of a religious order, or a Christian Science practitioner pursuant to the provisions of section 1402(e) is irrevocable.

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Title 32—National Defense

CHAPTER XIV—THE RENEGOTIATION BOARD

PART 1459—COSTS ALLOCABLE TO AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

PART 1470—INFORMATION REQUIRED OF CONTRACTORS

Miscellaneous Amendments

The Renegotiation Board hereby adopts the proposed amendments to Parts 1459 and 1470 of its regulations which were published on October 9, 1974 (39 FR 36352–36354), certain significant changes having been made therein.

Under the proposed amendments as published on October 9, 1974, the Renegotiation Board sought in a two-phase program to require that all financial statements filed with the Renegotiation Board be in conformance with cost accounting standards promulgated by the Cost Accounting Standards Board. The proposed amendments provided that for the first phase (fiscal years beginning after December 31, 1974 but before January 1, 1976), contractors with any renegotiable contracts or subcontracts subject to one or more cost accounting standards would have been required to report all their renegotiable business in conformance with the standards in effect with respect to such renegotiable contracts and subcontracts. For the second phase (fiscal years beginning on or after January 1, 1976), all contractors subject to renegotiation would have been required to file financial statements with the Renegotiation Board in conformance with all cost accounting standards in effect, even though none of the renegotiable business reported in the financial statements was subject to such standards.

Significant changes in the proposed amendments are reflected in the within regulations adopted by the Board. The second phase of the proposed program has been eliminated and conformance with cost accounting standards has been limited only to that portion of a contractor's renegotiable business which is derived from contracts or subcontracts subject to such standards. The remaining portion of the contractor's renegotiable business will be reported in accordance with the contractor's usual method of accounting, except that, under certain circumstances, extended application of cost accounting standards is permissible.

The new regulations, as adopted, read as set forth below.

Dated: December 19, 1974.

REX M. MATTINGLY,
Acting Chairman.

Section 1459.1 is amended as follows:

1. Paragraphs (b) (1) through (7) inclusive are deleted in their entirety and the following inserted in lieu thereof.

2. Paragraph (b) (8) is redesignated as (b) (9) and a new paragraph (b) (8) is added as follows.

§ 1459.1 Statutory provisions and general regulations.

* * * * *

(b) *Profits, cost allocation and allowance; general*—(1) *Accounting methods.* In connection with renegotiation on an over-all fiscal year basis, except as otherwise provided in these regulations, income received or accrued and costs paid or incurred will be considered as having been received or accrued or paid or incurred in the fiscal year to which such items are to be attributed in accordance with the method of accounting

employed by the contractor in determining net income for Federal income tax purposes or in accordance with such other method of accounting as the contractor and the Board may agree upon pursuant to the provisions of paragraph (b)(3) of this section: *Provided*, That, the method of accounting to be employed is not in conflict with the contractor's obligations under paragraph (b)(2) of this. Except with respect to allocations made pursuant to such paragraph (b)(2), nothing in the preceding sentence shall affect the authority of the Board under section 103 (f) and (i) of the Act to determine the income received or accrued or the costs paid or incurred by the contractor with respect to renegotiable business in a fiscal year in accordance with such method of accounting as, in the opinion of the Board, properly reflects such income or costs, if the method of accounting employed by the contractor in determining net income for Federal income tax purposes does not, in the opinion of the Board, properly reflect such income or costs, and the contractor and the Board are unable to agree upon a method which does properly reflect such income or costs.

(2) *Cost accounting standards.* The Board was designated a "relevant Federal agency" by Cost Accounting Standards Board regulation, § 331.2, 4 CFR 331.2, issued under Pub. L. 91-379 (84 Stat. 796, approved August 15, 1970), 50 U.S.C. App. 2168. Accordingly, the Board extends recognition to cost accounting standards promulgated by the Cost Accounting Standards Board, and in filing financial statements with the Renegotiation Board, contractors are required to comply with such standards as provided herein.

(i) *Fiscal years beginning after December 31, 1974.* For fiscal years beginning after December 31, 1974, contractors with any renegotiable contracts or subcontracts subject to one or more cost accounting standards are required to file financial statements with the Renegotiation Board in conformance with these standards for that portion of their renegotiable business subject to such standards, with the remaining portion of their renegotiable business to be reported in such financial statements in accordance with the provisions of paragraph (b)(1) of this section, except as provided in paragraphs (b)(2)(ii) (*a*), (*b*) and (*c*) of this section.

(ii) *Extended application of cost accounting standards.* For fiscal years beginning after December 31, 1974, contractors subject to cost accounting standards for a portion of their renegotiable business who file financial statements with the Renegotiation Board as provided in subsection paragraph (b)(2)(i) of this section, may extend the application of such cost accounting standards in the following manner:

(*a*) In addition to that portion of the renegotiable business that is subject to one or more cost accounting standards and required to be reported for renegotiation purposes in accordance with such standards, contractors may report all other renegotiable business within the same profit center (as defined in § 351.30 of the Cost Accounting Standards Board regulations, 4 CFR 351.30) in accordance with such cost accounting standards.

(*b*) In addition to that portion of the renegotiable business that is subject to one or more cost accounting standards and required to be reported for renegotiation purposes in accordance with such standards, or any renegotiable business reported as provided in paragraph (b)(2)(ii)(*a*) of this section, contractors, with Board approval, may report any other renegotiable business in accordance with such standards.

(*c*) Financial statements filed with the Renegotiation Board pursuant to paragraphs (b)(2)(ii)(*a*) or (ii)(*b*) of this section shall conform with all other requirements of this part of the regulations, including the requirement that no item will be allowed as a cost of renegotiable business to the extent that such item has, in a previous renegotiation under the act, been allowed as a cost of renegotiable business (see RBR § 1459.1(c)(8)); and the requirement that any reporting practice followed pursuant to (b)(2)(ii) (*a*) or (*b*) must be followed in subsequent fiscal years (see, for example, RBR § 1459.1(c)(1)).

(iii) *Accounting period.* The Renegotiation Board has been excepted from certain provisions of Cost Accounting Standard No. 406, "Cost Accounting Period." Thus, where the contractor's cost accounting period is different from its fiscal year under the Act, the latter shall be used.

(3) *Differing accounting methods.* (i) The Board will permit a contractor to adopt for renegotiation purposes a method of accounting other than that used by the contractor for Federal income tax purposes, *provided* That:

(*a*) The method of accounting to be adopted is not in conflict with the contractor's obligation under 50 U.S.C. App. 2168 or paragraph (b)(2) of this section to comply with the cost accounting standards.

(*b*) The Board finds that the method of accounting employed by the contractor for Federal income tax purposes is manifestly unsuitable for the purpose of renegotiation because it does not clearly reflect the profits attributable to the contractor's performance of renegotiable contracts for the fiscal year under review, and the method of accounting to be adopted does clearly reflect such profits; and

(*c*) The contractor enters into a written agreement with the Board before the conclusion of the renegotiation proceedings for the year under review, providing among other things substantially as follows:

(*1*) That the contractor will employ such different method of accounting for the purposes of the renegotiation proceedings for the year under review and all subsequent years, whether such proceedings are concluded by agreement or order;

(*2*) That no cost or expense recognized in the renegotiation proceedings for the first year covered by the agreement will be recognized in any subsequent renegotiation proceeding; and

(*3*) That the computation of losses, if any, in preceding fiscal years (see § 1457.9 of this chapter) will be made on the basis of such different method of accounting.

(ii) Under this section, a contractor may adopt a different method of accounting for the purpose of determining all amounts received or accrued and costs paid or incurred in a fiscal year, as in the case of a change from a cash receipts and disbursements method of accounting to an accrual method of accounting; or it may adopt a different method of accounting for a particular item of cost or for a particular class of items of cost which would result in recognizing such item or items in one fiscal year rather than another.

(iii) Subject to the foregoing conditions, the Board will also permit a contractor to adopt for renegotiation purposes the completed contract method of accounting for contracts to be performed over a period of more than one fiscal year, which, because of circumstances of performance, would require estimates of performance and allocation of income and cost that could result in material distortion in accounting on an interim basis prior to completion. Such contracts may include contracts for construction of major facilities or major units (such as a vessel or group of vessels) when the profits can best be determined upon completion.

(iv) If a contractor employs, for the purposes of a renegotiation proceeding relating to the year under review, a method of accounting different from that which it employed for the purposes of a renegotiation proceeding relating to the preceding fiscal year, whether pursuant to this section or otherwise, it will be required to employ such different method of accounting for the purposes of all subsequent renegotiation proceedings, and the amounts received or accrued and costs paid or incurred which have been recognized in prior renegotiation proceedings will not be recognized in the proceedings relating to the year under review.

(4) *Allocation of costs.* In general, except as provided in paragraph (b)(2) of this section, the costs paid or incurred with respect to renegotiable business in the fiscal year under review will be the costs allocated to such business and such year by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If in the opinion of the Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the

reports or statements filed for the purpose of renegotiation, costs will be allocated in accordance with such method as in the opinion of the Board does properly reflect such costs. The fact that all receipts and accruals during a fiscal year are classifiable as renegotiable does not necessarily mean that all items of cost estimated to be deductible in that year are allocable to renegotiable business.

(5) *Tax deductions.* When an item of cost is allocable in whole or in part to renegotiable business, the Board will estimate the amount allowable as a deduction or exclusion under chapter 1 of the Internal Revenue Code, and such estimated amount will be allowed as a cost of renegotiable business in the fiscal year under review to the extent that it is allocable to such business and such year in accordance with the principles set forth in this paragraph (b). No such item of cost will be allowed in an amount less than or in excess of that estimated to be in the determination of taxable income under the Internal Revenue Code, and all items of cost will be allocated to the fiscal year in which they are allowable in the determinatoin of taxable income under said Code, except as otherwise provided in this paragraph (b). When it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are in the aggregate either high or low on a comparative basis, this circumstance will be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of any profit adjustment to be required of the contractor. In estimating amounts allowable as deductions or exclusions under chapter 1 of the Internal Revenue Code, due consideration will be given to any pertinent action by the Internal Revenue Service. Published rulings of the Internal Revenue Service on matters of general application will be adhered to in making such estimates. However, the allowance of items as costs is not required merely because they have been or are expected to be allowed for tax purposes by particular revenue agents or other field representatives of the Internal Revenue Service. Occasionally cases may be encountered in which revenue agents will have allowed salaries or other items as deductions for tax purposes which the Board concludes are not properly allowable under the Internal Revenue Code or are properly allowable in a different amount or for a different year. In such cases the action of the revenue agents is not regarded as conclusive. Similarly, disallowances by such officials are not conclusive. The Board will exercise independent judgment on whether and to what extent and for what year items are allowable as deductions or exclusions under the Internal Revenue Code. Such judgment will be based upon an estimate of what the courts would do if the deductibility or excludability of the items were the subject of litigation.

(6) *Effect of cost principles promulgated by other agencies.* Agreements for the allowance or disallowance of costs entered into by a contractor with another agency of the Government, either by specific contractual provision or by acceptance (expressed or implied) of Government regulations or policies, are not controlling with respect to recognition of Thus, a cost properly disallowed in acsuch costs for renegotiation purposes. cordance with the Armed Services procurement regulation, in connection with a contract to which such regulation is applicable, will nevertheless be recognized for renegotiation purposes if such cost is a proper Federal income tax deduction. Similarly, an item allowable as a "cost" by such regulation or by specific contractual agreement will not be allowed unless it is a proper Federal income tax deduction. Furthermore, a specific agreement that additional proper costs incurred in performing a contract will not be claimed as an addition to the contract price will not result in the non-recognition of such cost for renegotiation purposes.

(7) *Conditional allowance of cost.* If an occasion should arise in which the Board is unable to make a reasonable estimate of whether or the extent to which a particular item is allowable as a deduction or exclusion under the Internal Revenue Code for the year under review and the item is material in relation to the excessive profits to be eliminated, the Board may allow the item as a cost in renegotiation, *provided,* That the contractor agrees to refund as additional excessive profits the amount so allowed to the extent that such amount may finally be determined to be not allowable as a deduction or exclusion under the Internal Revenue Code for the year under review.

(8) *Costs previously allowed in renegotiation.* No item will be allowed as a cost of renegotiable business to the extent that such item has, in a previous renegotiation under the act or under any other renegotiation law, been allowed as a cost in determining excessive profits, notwithstanding that such item may be a deduction or exclusion under chapter 1 of the Internal Revenue Code in computing taxable net income for the taxable period corresponding to the fiscal period covered by the current renegotiation.

(9) *Replacement of inventory involuntarily liquidated.* * * *

* * * * *

Section 1470.3 *Filing of financial statement* is amended as follows:

1. Paragraph (c) is amended by designating the existing material as (c)(1), *General,* and by inserting immediately following paragraph (c)(1) the following new paragraph (c)(2) as follows:

§ 1470.3 Filing of financial statement.

* * * * *

(c) *Sufficiency of contents.* (1) *General.* * * *

(2) *Cost accounting standards.* The Board recognizes the cost accounting standards promulgated by the Cost Accounting Standards Board. To the extent one or more such standards are applicable to a fiscal year, under the provisions of 50 U.S.C. App. 2168 and § 1459.1(b)(2) of this chapter, the Standard Form of Contractor's Report shall be prepared in accordance therewith. Upon request there shall be filed with the Board copies of disclosure statements, if any, and other explanatory documents and information filed with the Cost Accounting Standards Board and procurement agencies.

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(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

[FR Doc.74-30009 Filed 12-23-74;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74 295]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

GIWW, Mile 57.6 Through Mile 59.8, West of Harvey Lock, Houma, La.

This amendment changes the regulations for the drawbridges located across the GIWW at mile 57.6 through mile 59.8, west of Harvey Lock, Houma, Louisiana to allow closed periods during the morning and evening rush hour vehicular traffic. This amendment is required while extensive repairs are completed on the drawbridge located at mile 57.7. Marine interests have agreed to this temporary restriction. The Coast Guard has found that good cause exists for granting this change without notice of proposed rule making on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.241 immediately after § 117.240 to read as follows:

§ 117.241 GIWW, Houma, Louisiana, bridges.

(a) The drawbridges located at mile 57.6 through mile 59.8, west of Harvey Lock, Houma, Louisiana need not open for the passage of vessels from 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m., Monday through Friday, except holidays.

(b) These regulations shall be revoked as of January 31, 1975.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499), (49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall become effective on December 24, 1974.

Dated: December 16, 1974.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

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