

**HB**

**236**

**HFIN**

**FILE**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 26, 2004

**SUBJECT:** Wage Tax (CSHB 236(FIN))

**TO:** House Finance Committee  
Attn: Shar Smith

**FROM:** Kathryn L. Kurtz *KLK*  
Legislative Counsel

Enclosed is the final version of CSHB 236(FIN). Although the committee did not request any changes from the /X version, in our review of the bill we noticed that the reference on page 5, line 21 to "sec. 2" was incorrect. Section 2 of the bill simply makes a conforming change. Section 3 is the portion of the bill that is implemented by the regulations, and the section that is referred to on page 5, line 20, so the reference on page 5, line 21 should be to sec. 3 as well. We have made this correction in the enclosed version.

KLK:med  
04-329.med

Enclosure

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 18, 2004

FURTHER REFERRALS:

Date of Committee Action: 3/25/04

The FINANCE Committee considered:

HB 236

HOUSE BILL NO. 236

EMPLOYMENT TAX FOR EDUCATION

"An Act imposing a tax on employment; and providing for an effective date."

Recommends it be replaced with  HCS or  CS for HB 236 (FIN)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
Labour	#1		✓	

*No Rec.*

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>K. Meyer</i>	Meyer			✓	X
<i>M. Hawks</i>	Hawks	X		✓	
<i>Bill Staff</i>	STAFF		X		X
<i>Frank</i>	Frank			✓	
<i>Robert</i>	ROBERT		✓		
<i>Paul</i>	MOSES			✓	
<i>Chinawit</i>	Chinawit			X	
<i>Foster</i>	FOSTER	X			
Chair: <i>John Harris</i>	Harris				X
Chair: <i>William</i>	William			X	

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB236(W&M)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Employment Tax for Education RDU Revenue Programs & Services  
Component Tax Division  
Sponsor Representative Wilson  
Requester House Finance Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	92.0	92.0	0.0	608.4	915.5	866.3
Travel	6.0	6.0	0.0	14.0	17.0	13.0
Contractual	32.5	100.5	38.0	220.6	206.8	198.6
Supplies	1.0	1.0	0.0	13.0	18.0	17.0
Equipment	8.0		0.0	176.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>139.5</b>	<b>199.5</b>	<b>38.0</b>	<b>1,032.0</b>	<b>1,157.3</b>	<b>1,094.9</b>

<b>CAPITAL EXPENDITURES</b>	<b>330.3</b>	<b>353.0</b>				
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>30,110.4</b>	<b>45,790.8</b>	<b>46,248.7</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	469.8	199.5	38.0	1,032.0	1,157.3	1,094.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Constitutional Budget Reserve Fund						
<b>TOTAL</b>	<b>469.8</b>	<b>199.5</b>	<b>38.0</b>	<b>1,032.0</b>	<b>1,157.3</b>	<b>1,094.9</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	0	13	13	12
Part-time						
Temporary	0	1	0	10	10	10

**ANALYSIS:** (Attach a separate page if necessary)

See page 2 for analysis.

Prepared by: Chuck Harlamert and Michael Williams Phone 465-2320  
Division Tax Division Date/Time 3/18/04 9:49 AM  
Approved by: Steve Porter, Deputy Commissioner Date 3/18/2004  
Agency Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB236(W&M)

### ANALYSIS CONTINUATION

#### Revenues

Using price figures from the current NYMEX futures curve we project that the cash balance of the CBRF at June 30, 2007 will be below the \$1 billion threshold. Accordingly, this fiscal note assumes that the tax goes into effect as of January 1, 2008. The actual initiation of the tax depends on the price of oil and other factors. The fall forecast suggests an implementation date a year earlier. However, for purposes of illustrating the creation of the systems, a period of dormancy and using the systems to implement the tax we have used a price projection that allows the tax to be implemented after a period of dormancy.

Assuming a 1% employment growth rate and that the tax begins on January 1, 2008, we project FY08 revenues of \$50,110.4 million and revenues of \$45,790.8 million in FY09, the first fiscal year during which the tax is in effect for the entire year. This estimate is based not on the number of jobs in Alaska, but on the number of different individuals who hold those jobs during the year and the number of individuals who are self-employed in the state.

#### Operating Expenditures

Given the uncertainty in the assumptions described above the department should put in place a technological and administrative infrastructure in preparation for implementation of the program as early as FY07. The fiscal note therefore reflects capital and operating costs for developing the infrastructure during FY05 and FY06. All operating cost estimates assume that the program is wholly administered by the Department of Revenue. The estimates are subject to adjustment based on efficiencies or incremental costs resulting from joint administration with the Department of Labor and Workforce Development.

For purposes of this estimate we assume that we will receive 75,000 returns/reports/payments from businesses and self-employed individuals during the year, plus an estimated 12,000 refund claims.

We project it will require 13 full-time and 10 temporary workers to administer the new program falling to 12 full time staff and 10 temps in the third year of the tax. Staffing costs reflect a start-up group growing to full staffing in the third quarter of FY08. The Department would employ imaging technology and electronic filing as much as possible to reduce the program's costs to the state and to employers.

Contractual costs for FY05 and FY06 include the cost of a project manager to facilitate systems development and implementation. Contractual costs for FY07 represent the estimated fixed costs of systems pending start up.

The \$683,300 capital requests for FY05 and FY06 is to pay for a large-scale imaging and data capture system, to accommodate data for businesses and an estimated 430,000 to 470,000 individuals each year, a web-based system to allow businesses and self-employed individuals to file paperless returns, and electronic filing on magnetic media or disk for businesses.

# FISCAL NOTE

CSHB 236(wgm)

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number:         
Bill Version: HB236CS-DOLWD-UI-03-16-04  
( ) Publish Date:       

Revision Date/Time (Note if correction):        Department: Labor and Workforce Development  
Title: Employment Tax for Education RDU: Employment Security Division  
Sponsor: Representative Wilson Component: Unemployment Insurance  
Requester: House W&M Component Number: 2276

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

\* Indeterminate Fiscal Note - See Attached Analysis.

Prepared by: Thomas W. Nelson, Director Phone 465-5933  
Division: Employment Security Division Date/Time 3/16/04 4:18 PM  
Approved by: Greg O'Claray, Commissioner Date 3/16/2004  
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: HB236CS-DOLWD-UI-03-16-04

ANALYSIS: (continued)

The Department of Labor and Workforce Development is submitting an indeterminate fiscal note at this time. Once the details for implementation of the legislation are worked out, the department can provide a more comprehensive cost analysis in cooperation with the Department of Revenue.

Federal grant money may only be used to collect Unemployment Insurance (UI) tax, so all design, programming and ongoing costs for the state 'employment' tax program would be from state general funds.

If the Department of Labor and Workforce Development were to implement and administer this tax it would have to be in accordance with a United States Department of Labor approved cost allocation method.



C 5 HB 236(wgm)

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: #1  
Bill Version: HB236CS-DOLWD-UI-03-16-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Employment Tax for Education RDU: Employment Security Division  
Sponsor: Representative Wilson Component: Unemployment Insurance  
Requester: House W&M Component Number: 2276

**Expenditures/Revenues** (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>	<b>* 0.0</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
  
\* Indeterminate Fiscal Note - See Attached Analysis.

Prepared by: Thomas W. Nelson, Director Phone 465-5933  
Division: Employment Security Division Date/Time 3/16/04 4:18 PM  
Approved by: Greg O'Claray, Commissioner Date 3/16/2004  
Agency: Department of Labor and Workforce Development

**FISCAL NOTE**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL VERSION:** HB236CS-DOLWD-UI-03-16-04

**ANALYSIS: (continued)**

The Department of Labor and Workforce Development is submitting an indeterminate fiscal note at this time. Once the details for implementation of the legislation are worked out, the department can provide a more comprehensive cost analysis in cooperation with the Department of Revenue.

Federal grant money may only be used to collect Unemployment Insurance (UI) tax, so all design, programming and ongoing costs for the state 'employment' tax program would be from state general funds.

If the Department of Labor and Workforce Development were to implement and administer this tax it would have to be in accordance with a United States Department of Labor approved cost allocation method.

3.22.04

Failed 1-10

**AMENDMENT 1**

OFFERED IN THE HOUSE FINANCE COMMITTEE  
BY REPRESENTATIVE CROFT

TO: CS HB 236 Work Draft version 23-LS0921\X

Page 1, line 7, after "known as the":

Delete: "Alaska Education Tax"

Insert: "Alaska Regressive Income Tax"

# 2004 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: \_\_\_\_\_

Amendment: # 1 Craft

CS #B 236 Version X

MEMBER

Favor

Oppose

MEMBER	Favor	Oppose
CROFT	X	
FATE		X
FOSTER		X
HAWKER		X
JOULE		X
MEYER		X
MOSES		X
STOLTZE		X
CHENAULT		X
WILLIAMS		X
HARRIS		X

Yea 1

Nay 10

Adopted  
3.22.04

23-LS0921\X  
Kurtz  
3/19/04

**CS FOR HOUSE BILL NO. 236( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE WILSON**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act imposing a limited tax on wages and on net earnings from self-employment;**  
2 **relating to the administration and enforcement of that tax; and providing for an**  
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 **SHORT TITLE.** This Act may be known as the Alaska Education Tax Act.

8 **\* Sec. 2.** AS 43.10.042(a) is amended to read:

9 (a) A lien imposed under AS 43.10.010 - 43.10.060 is not valid as against a  
10 mortgagee or other lien holder, pledgee, purchaser, or judgment creditor until notice of  
11 it is recorded in the records of the recording district where the property subject to the  
12 lien is situated. However, regardless of the date the liens are recorded, a lien arising  
13 out of a tax due under AS 43.45, AS 43.56, and AS 43.75 [AS 43.56 AND 43.75],  
14 including the penalties and interest on the tax, is a lien prior, paramount, and superior

1 to all other liens, mortgages, hypothecations, conveyances, and assignments, upon all  
2 the real and personal property of the person liable for the tax, and upon all the real and  
3 personal property used with the permission of the owner to carry on the business that  
4 is subject to the tax.

5 \* Sec. 3. AS 43 is amended by adding a new chapter to read:

6 **Chapter 45. Education Tax.**

7 **Sec. 43.45.011. Tax imposed.** (a) There is imposed a tax, not to exceed a  
8 combined total of \$100 a calendar year, on wages and net earnings from self-  
9 employment in excess of \$600.

10 (b) The rate of the tax is 10 percent.

11 (c) The tax imposed under this section does not apply to wages and net  
12 earnings exempt from the tax under federal law.

13 **Sec. 43.45.021. Collection of tax by employer.** (a) An employer shall  
14 deduct and withhold 10 percent of an employee's wages subject to withholding under  
15 26 U.S.C. 3401 - 3406 on the first regular payroll of the calendar year and from  
16 subsequent payrolls until the tax due under this chapter is fully withheld.

17 (b) An employer is liable for the tax required to be withheld from an employee  
18 unless the employer can demonstrate that the employer relied on proof provided by the  
19 employee that the total tax for the calendar year imposed under AS 43.45.011 had  
20 already been withheld under this section or paid under AS 43.45.031. A deduction of  
21 the tax may not be made from the wages of an individual who provides proof to the  
22 employer that the entire tax imposed under AS 43.45.011 on that individual for the  
23 calendar year has already been withheld or paid under AS 43.45.031.

24 (c) Tax withheld by an employer becomes due and shall be paid by an  
25 employer to the department in accordance with regulations adopted by the department.

26 (d) An employer shall maintain a record of the amount deducted from the  
27 wages of each employee and shall furnish an annual statement of the deductions to  
28 each employee and to the department in accordance with regulations adopted by the  
29 department.

30 (e) The Department of Revenue may, if it will result in cost savings for the  
31 state in the administration of the tax, for employers in the administration of the tax, or

1 for both, to the extent practicable, coordinate collection and reporting of the tax  
2 imposed in this chapter with the collection and reporting of employment security  
3 contributions by the Department of Labor and Workforce Development, including  
4 permitting the Department of Labor and Workforce Development to collect the tax  
5 payments and remit them to the Department of Revenue.

6 (f) The department may by regulation provide for an incentive to an employer  
7 or a self-employed individual for electronically filing returns and making payments or  
8 for other use of technology or filing methodologies to improve the efficiency of tax  
9 administration. Regulations adopted under this subsection must

10 (1) establish the duration, level, nature, and value of the incentive; the  
11 value of an incentive established under this subsection may not exceed \$300 for each  
12 return, application, filing, or payment; and

13 (2) require that the incentive be available only if the return,  
14 application, filing, or payment is filed timely with the department under this chapter.

15 **Sec. 43.45.026. Employer security.** (a) If the department determines that an  
16 employer has been delinquent in remitting the tax imposed under AS 43.45.011 in  
17 accordance with regulations adopted by the department, the department may require  
18 the employer to deposit and keep on deposit with the department a sum equal to the  
19 tax required to be withheld by the employer during the 12 months immediately  
20 preceding the determination of delinquency under this subsection by the department.  
21 If the employer was not required to withhold tax during the full 12 months  
22 immediately preceding the determination of delinquency, the department may require  
23 a deposit equal to the employer's estimated liability for a 12-month period based on  
24 the actual liability for the period during which the employer was required to withhold  
25 tax.

26 (b) The department may accept a bond or other security equal in value to the  
27 deposit required under (a) of this section in lieu of the deposit required under (a) of  
28 this section.

29 (c) The provision of a deposit, bond, or other security under this section does  
30 not relieve the employer from any other obligation under this title.

31 (d) The department may apply all or part of the deposit, bond, or other security

1 to payment of the tax imposed under AS 43.45.011, and to any interest and penalties  
2 imposed under AS 43.45.021.

3 (e) The deposit, bond, or other security provided under this section is exempt  
4 from process, attachment, garnishment, or execution unless otherwise provided by  
5 law.

6 (f) The department shall return the deposit, bond, or other security to the  
7 employer if the employer is timely in filing and remitting the tax under AS 43.45.021  
8 for a period of 24 consecutive months.

9 (g) If an employer ceases to be subject to AS 43.45.021, the department shall,  
10 after 12 months have elapsed and all liabilities of the employer to the department  
11 under this chapter have been satisfied, refund to the employer any remaining deposit,  
12 and cancel any bond or other security accepted by the department under this section.

13 **Sec. 43.45.031. Payment of tax by self-employed individual.** A self-  
14 employed individual shall remit to the department 10 percent of the individual's net  
15 earnings from self-employment in accordance with regulations adopted by the  
16 department until the entire tax has been paid.

17 **Sec. 43.45.041. Refund of overpayments.** (a) If an individual pays to the  
18 department, directly or through withholding, an amount exceeding the total tax  
19 imposed under this chapter during a calendar year and the individual applies for a  
20 refund in accordance with regulations adopted by the department, the department shall  
21 refund the overpayment to the individual.

22 (b) Interest on an overpayment may not be allowed under AS 43.05.280 if the  
23 department refunds the overpayment within 90 days after the date the individual  
24 correctly files the refund claim.

25 (c) The Department of Revenue may adopt regulations to coordinate refunds  
26 of overpayments under this section with refunds of employment security contributions  
27 under AS 23.20.165.

28 (d) An individual may apply for a refund under this section only during the  
29 calendar year immediately following the calendar year in which the excess was paid.

30 **Sec. 43.45.051. Report of payments to self-employed individuals.** A person  
31 required to report a payment to a self-employed individual to the federal government



1 under 26 U.S.C. shall also report that payment to the department in accordance with  
2 regulations adopted by the department.

3 **Sec. 43.45.061. Disposition of tax proceeds.** (a) The tax collected by the  
4 department under AS 43.45.021 shall be deposited into the general fund and accounted  
5 for separately.

6 (b) The legislature may appropriate the estimated amounts to be collected and  
7 separately accounted for under (a) of this section for education.

8 (c) The deposit required and appropriation authorized by this section are not  
9 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State  
10 of Alaska.

11 **Sec. 43.45.099. Definitions.** In this chapter,

- 12 (1) "employee" has the meaning given in 26 U.S.C. 3401;
- 13 (2) "employer" has the meaning given in 26 U.S.C. 3401;
- 14 (3) "net earnings from self-employment" has the meaning given in 26  
15 U.S.C. 1402;
- 16 (4) "wages" has the meaning given in 26 U.S.C. 3401.

17 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 REGULATIONS. Notwithstanding sec. 6 of this Act, the Department of Revenue  
20 may proceed to adopt regulations to implement sec. 3 of this Act. The regulations take effect  
21 under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 2 of  
22 this Act.

23 \* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

24 \* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2005.

HB 236

Work Draft Version X 3.19.04 (Wilson)

Amendment 1 (Croft) Failed 1-10 on 3.22.04

FN

# 1	Ø	Labor	2276	3.16.04	
			2476	3.17.04	
# 2	\$	DOR/Tax Div			
	\$	DOR/Tax Div	2476	3.18.04	* diff than #2

1 of 2



# Alaska State Legislature

Please enter into the record my testimony to the HFIN committee name

committee on HB 236 dated 3-18-04  
bill/subject

HB 236 is not an "Education Tax" it is an "employment penalty." Oil and Gas taxes tax Oil and Gas, Income taxes tax incomes, Studded tire taxes tax studded tires. It is akin to false advertising to promote this bill as an education tax when you have no intention of taxing education. This is obviously a dedication of revenue bill in violation of art. IX, sec. 7 notwithstanding the denial contained in Sec. 43.45.061. (c) on page 5 line 23-25.

Art. I sec. 1 Const. of the State of Alaska states in part that All Persons have a natural right... to the enjoyment of the rewards of their own industry ... are equal and entitled to equal rights, opportunities and protection under the law. HB 236 not only deprives a worker of the enjoyment of the rewards of his own industry but also imposes an unequal obligation to the people and to the State. Non-workers should not be exempt from this tax to the detriment of the self-reliant.

Signed: Roger H. Hays  
Testifier Self & family  
Representing (Optional)  
Box 521215 Big Lake AK. 99652  
Mailing Address  
892-8901  
Phone Number

As to this bill suspending the tax if the CBR exceeds 2.5 billion, HB 236 Basically insures that the Govt. will Never allow the CBR to Exceed 2.5 Billion. The Govt. has no incentive to suspend any tax. I would appreciate some feed back from the members of this committee as to what they think next best course of action is.

that I have a natural right to the enjoyment of the <sup>pg 2</sup>  
rewards of my own industry. Who has a right to my life, ~~my~~  
liberty and <sup>my</sup> industry. ME? ~~you?~~ or my neighbors

1 of 3



# Alaska State Legislature

Please enter into the record my testimony to the Finance Committee  
committee name

committee on Bill No. 236 dated 03/22/04  
bill/subject

I am against this bill Due to the fact I feel it is not fair to all persons who work. One-Retired persons who live on Social Security & work P/T to make ends meet, can't afford to give up \$100 year. ~~even with~~ Second- persons under 18 working only 8 hours a week at minumin wage of \$7.15 week only make \$2974.40 for the year & their reward for being motivated pay a \$100 penalty. The same ~~penalty~~ would happen to persons who are disabled & contributing to society by working P/T are also being pentalized. Would persons on welfare who gett a job Trying to raise above their misfortures, We will be saying "Here your pentaly" to them. Please rethink this Bill No. 236 and. →

Signed: B. Hansen

Testifier

Self

Representing (Optional)

801 E Malahatna Dr Wasilla AK 99654

Mailing Address

907-376-3953

Phone Number

2 of 3



# Alaska State Legislature

Please enter into the record my testimony to the Finance Committee  
committee name  
 committee on Bill No. 236, dated 3/22/04  
bill/subject

how it effects the lowest-wage earners in Alaska.

Also you would be asking persons with no children to contribute to public education, I feel it would be better to just charge each student in Public Education a \$100 a year rather Alaska's wage-earner. Or better Idea how about each ~~Senator~~ Senators & Representatives in a public office give up \$500<sup>00</sup> a year to education I earned \$18,500 this last year I pay \$1000<sup>00</sup> a month mortgage, which leaves me with \$6,500 to support my son & self for the year, I have a lot of needs - a better car, health insurance for myself but I don't need a Tax even a \$100. ~~OR~~

Signed: [Signature]  
 Testifier Self  
 Representing (Optional) \_\_\_\_\_  
 Mailing Address 801 E Mulchatna Dr  
 Phone Number 907-376-3953

3 of 3



# Alaska State Legislature

Please enter into the record my testimony to the Finance Committee  
committee name

committee on Bill No 236, dated 3/22/04  
bill/subject

I am suggesting instead of a Tax. How about ~~requiring~~ designing work ~~perm~~ permit system in which each worker ~~bu~~ buys a permit & setting the costs of permit according to F/T or P/T, Resident or non-resident, and using any ~~other~~ other considerations that could be used to set the costs of the permit.

Signed: [Signature]  
Testifier Self

Representing (Optional) 801 E Mulchatna Dr In Wasilla AK 99654  
Mailing Address 907-376-3953  
Phone Number



23-LS0921\X  
Kurtz  
3/19/04

**CS FOR HOUSE BILL NO. 236( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE WILSON**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act imposing a limited tax on wages and on net earnings from self-employment;**  
2 **relating to the administration and enforcement of that tax; and providing for an**  
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 **SHORT TITLE.** This Act may be known as the Alaska Education Tax Act.

8 **\* Sec. 2.** AS 43.10.042(a) is amended to read:

9 (a) A lien imposed under AS 43.10.010 - 43.10.060 is not valid as against a  
10 mortgagee or other lien holder, pledgee, purchaser, or judgment creditor until notice of  
11 it is recorded in the records of the recording district where the property subject to the  
12 lien is situated. However, regardless of the date the liens are recorded, a lien arising  
13 out of a tax due under AS 43.45, AS 43.56, and AS 43.75 [AS 43.56 AND 43.75],  
14 including the penalties and interest on the tax, is a lien prior, paramount, and superior



1 to all other liens, mortgages, hypothecations, conveyances, and assignments, upon all  
2 the real and personal property of the person liable for the tax, and upon all the real and  
3 personal property used with the permission of the owner to carry on the business that  
4 is subject to the tax.

5 \* Sec. 3. AS 43 is amended by adding a new chapter to read:

6 **Chapter 45. Education Tax.**

7 **Sec. 43.45.011. Tax imposed.** (a) There is imposed a tax, not to exceed a  
8 combined total of \$100 a calendar year, on wages and net earnings from self-  
9 employment in excess of \$600.

10 (b) The rate of the tax is 10 percent.

11 (c) The tax imposed under this section does not apply to wages and net  
12 earnings exempt from the tax under federal law.

13 **Sec. 43.45.021. Collection of tax by employer.** (a) An employer shall  
14 deduct and withhold 10 percent of an employee's wages subject to withholding under  
15 26 U.S.C. 3401 - 3406 on the first regular payroll of the calendar year and from  
16 subsequent payrolls until the tax due under this chapter is fully withheld.

17 (b) An employer is liable for the tax required to be withheld from an employee  
18 unless the employer can demonstrate that the employer relied on proof provided by the  
19 employee that the total tax for the calendar year imposed under AS 43.45.011 had  
20 already been withheld under this section or paid under AS 43.45.031. A deduction of  
21 the tax may not be made from the wages of an individual who provides proof to the  
22 employer that the entire tax imposed under AS 43.45.011 on that individual for the  
23 calendar year has already been withheld or paid under AS 43.45.031.

24 (c) Tax withheld by an employer becomes due and shall be paid by an  
25 employer to the department in accordance with regulations adopted by the department.

26 (d) An employer shall maintain a record of the amount deducted from the  
27 wages of each employee and shall furnish an annual statement of the deductions to  
28 each employee and to the department in accordance with regulations adopted by the  
29 department.

30 (e) The Department of Revenue may, if it will result in cost savings for the  
31 state in the administration of the tax, for employers in the administration of the tax, or

1 for both, to the extent practicable, coordinate collection and reporting of the tax  
2 imposed in this chapter with the collection and reporting of employment security  
3 contributions by the Department of Labor and Workforce Development, including  
4 permitting the Department of Labor and Workforce Development to collect the tax  
5 payments and remit them to the Department of Revenue.

6 (f) The department may by regulation provide for an incentive to an employer  
7 or a self-employed individual for electronically filing returns and making payments or  
8 for other use of technology or filing methodologies to improve the efficiency of tax  
9 administration. Regulations adopted under this subsection must

10 (1) establish the duration, level, nature, and value of the incentive; the  
11 value of an incentive established under this subsection may not exceed \$300 for each  
12 return, application, filing, or payment; and

13 (2) require that the incentive be available only if the return,  
14 application, filing, or payment is filed timely with the department under this chapter.

15 **Sec. 43.45.026. Employer security.** (a) If the department determines that an  
16 employer has been delinquent in remitting the tax imposed under AS 43.45.011 in  
17 accordance with regulations adopted by the department, the department may require  
18 the employer to deposit and keep on deposit with the department a sum equal to the  
19 tax required to be withheld by the employer during the 12 months immediately  
20 preceding the determination of delinquency under this subsection by the department.  
21 If the employer was not required to withhold tax during the full 12 months  
22 immediately preceding the determination of delinquency, the department may require  
23 a deposit equal to the employer's estimated liability for a 12-month period based on  
24 the actual liability for the period during which the employer was required to withhold  
25 tax.

26 (b) The department may accept a bond or other security equal in value to the  
27 deposit required under (a) of this section in lieu of the deposit required under (a) of  
28 this section.

29 (c) The provision of a deposit, bond, or other security under this section does  
30 not relieve the employer from any other obligation under this title.

31 (d) The department may apply all or part of the deposit, bond, or other security

1 to payment of the tax imposed under AS 43.45.011, and to any interest and penalties  
2 imposed under AS 43.45.021.

3 (e) The deposit, bond, or other security provided under this section is exempt  
4 from process, attachment, garnishment, or execution unless otherwise provided by  
5 law.

6 (f) The department shall return the deposit, bond, or other security to the  
7 employer if the employer is timely in filing and remitting the tax under AS 43.45.021  
8 for a period of 24 consecutive months.

9 (g) If an employer ceases to be subject to AS 43.45.021, the department shall,  
10 after 12 months have elapsed and all liabilities of the employer to the department  
11 under this chapter have been satisfied, refund to the employer any remaining deposit,  
12 and cancel any bond or other security accepted by the department under this section.

13 **Sec. 43.45.031. Payment of tax by self-employed individual.** A self-  
14 employed individual shall remit to the department 10 percent of the individual's net  
15 earnings from self-employment in accordance with regulations adopted by the  
16 department until the entire tax has been paid.

17 **Sec. 43.45.041. Refund of overpayments.** (a) If an individual pays to the  
18 department, directly or through withholding, an amount exceeding the total tax  
19 imposed under this chapter during a calendar year and the individual applies for a  
20 refund in accordance with regulations adopted by the department, the department shall  
21 refund the overpayment to the individual.

22 (b) Interest on an overpayment may not be allowed under AS 43.05.280 if the  
23 department refunds the overpayment within 90 days after the date the individual  
24 correctly files the refund claim.

25 (c) The Department of Revenue may adopt regulations to coordinate refunds  
26 of overpayments under this section with refunds of employment security contributions  
27 under AS 23.20.165.

28 (d) An individual may apply for a refund under this section only during the  
29 calendar year immediately following the calendar year in which the excess was paid.

30 **Sec. 43.45.051. Report of payments to self-employed individuals.** A person  
31 required to report a payment to a self-employed individual to the federal government

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under 26 U.S.C. shall also report that payment to the department in accordance with regulations adopted by the department.

**Sec. 43.45.061. Disposition of tax proceeds.** (a) The tax collected by the department under AS 43.45.021 shall be deposited into the general fund and accounted for separately.

(b) The legislature may appropriate the estimated amounts to be collected and separately accounted for under (a) of this section for education.

(c) The deposit required and appropriation authorized by this section are not intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State of Alaska.

**Sec. 43.45.099. Definitions.** In this chapter,

- (1) "employee" has the meaning given in 26 U.S.C. 3401;
- (2) "employer" has the meaning given in 26 U.S.C. 3401;
- (3) "net earnings from self-employment" has the meaning given in 26 U.S.C. 1402;
- (4) "wages" has the meaning given in 26 U.S.C. 3401.

\* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

**REGULATIONS.** Notwithstanding sec. 6 of this Act, the Department of Revenue may proceed to adopt regulations to implement sec. 3 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 2 of this Act.

\* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

\* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2005.

# FISCAL NOTE

CSHB236 (W&M)

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB236(W&M)  
( ) Publish Date: \_\_\_\_\_

#2

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Employment Tax for Education RDU: Revenue Programs & Services  
Component: Tax Division  
Sponsor: Representative Wilson  
Requester: House Ways & Means Component No.: 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	92.0	0.0	608.4	915.5	866.3	866.3
Travel	12.0	0.0	14.0	17.0	13.0	13.0
Contractual	125.0	38.0	220.6	206.8	198.6	198.6
Supplies	1.0	0.0	13.0	18.0	17.0	17.0
Equipment	8.0		176.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>238.0</b>	<b>38.0</b>	<b>1,032.0</b>	<b>1,157.3</b>	<b>1,094.9</b>	<b>1,094.9</b>

<b>CAPITAL EXPENDITURES</b>	<b>683.3</b>					
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>28,500.0</b>	<b>42,900.0</b>	<b>42,900.0</b>	<b>42,900.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	921.3	38.0	1,032.0	1,157.3	1,094.9	1,094.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Constitutional Budget Reserve Fund						
<b>TOTAL</b>	<b>921.3</b>	<b>38.0</b>	<b>1,032.0</b>	<b>1,157.3</b>	<b>1,094.9</b>	<b>1,094.9</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	0	13	13	12	12
Part-time						
Temporary	0	0	10	10	10	10

**ANALYSIS:** (Attach a separate page if necessary)

See page 2 for analysis.

Prepared by: Chuck Harlamert and Michael Williams  
Division: Tax Division  
Approved by: Steve Porter, Deputy Commissioner  
Agency: Department of Revenue

Phone: 465-2320  
Date/Time: 3/17/04 6:34 AM  
Date: 3/17/2004

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB236(W&M)

### ANALYSIS CONTINUATION

#### **Revenues**

Using figures from the Fall 2003 Forecast updated for actual oil prices and production volumes, we project that the cash balance of the CBRF at June 30, 2006 will be below the \$1.5 billion threshold. Accordingly, this fiscal note assumes that the tax goes into effect as of January 1, 2007. The actual initiation of the tax depends on the price of oil and other factors and could reasonably occur in FY06 or in years after FY07.

The Department estimates the new program could generate as much as \$42.9 million a year in state revenue in a full fiscal year and \$28.5 million in the first fiscal year in which the tax is imposed. This estimate is based not on the number of jobs in Alaska, but on the number of different individuals who hold those jobs during the year and the number of individuals who are self-employed in the state.

#### **Operating Expenditures**

Using the previously described assumptions, the department must put in place a technological and administrative infrastructure in preparation for implementation of the program as early as FY06. The fiscal note therefore reflects capital and operating costs for developing the infrastructure during FY05. FY06 operating costs represent system licensing and maintenance costs pending deployment in FY07. All operating cost estimates assume that the program is wholly administered by the Department of Revenue. The estimates are subject to adjustment based on efficiencies or incremental costs resulting from joint administration with the Department of Labor and Workforce Development.

For purposes of this estimate we assume that we will receive 75,000 returns/reports/payments from businesses and self-employed individuals during the year, plus an estimated 12,000 refund claims.

We project it will require 13 full-time and 10 temporary workers to administer the new program falling to 12 full time staff and 10 temps in the third year of the tax. Staffing costs reflect a start-up group growing to full staffing in the third quarter of FY07. The Department would employ imaging technology and electronic filing as much as possible to reduce the program's costs to the state and to employers.

Contractual costs for FY05 include the cost of a project manager to facilitate systems development and implementation.

The \$683,300 capital request for FY05 is to pay for a large-scale imaging and data capture system, to accommodate data for businesses and an estimated 429,000 individuals each year, a web-based system to allow businesses and self-employed individuals to file paperless returns, and electronic filing on magnetic media or disk for businesses.

# Alaska State Legislature

## House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

**Session Contact:**

State Capitol, Room 434

Juneau, AK. 99801

Phone (907) 465-4949

Fax (907) 465-4979

Staff Contact: Pauly Swanson (907) 465-6820



**Interim Contact:**

716 W. 4th Ave Room 620

Anchorage, AK 99501-2133

Phone: (907) 269-0244

Fax: (907) 269-0248

### Sectional Analysis CSHB 236 (W&M)

This Act imposes an education tax on wages and net earnings from self-employment in Alaska and provides that the tax collected be separately accounted for and may be appropriated for education. The tax imposed may not exceed \$100 per calendar year.

Section 1: Provides a short title: Alaska Education Tax Act.

Section 2: Adds the education tax to the list of taxes that are prior, paramount and superior to all other liens upon the real and personal property of the person liable for the tax.

Section 3:

43.45.011: Imposes a tax, not to exceed a combined total of \$100 a calendar year on wages and net earnings from self-employment in excess of \$600. The tax is imposed at a rate of 0% on the first \$600 of earnings, 10% on the next \$1,000 of earnings and 0% on all other earnings. Section 2 also provides that this tax is imposed only in calendar years following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve Fund is less than \$1.0 billion. The tax is suspended in a subsequent calendar year following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve Fund is greater than \$2.5 billion.

43.45.021: Provides that the education tax is to be collected from wages by employers in accordance with regulations adopted by the Department of Revenue.

43.45.026: Provides that the department may require security deposits from employers who have been delinquent in remitting the education tax.

43.45.031: Provides that self-employed individuals remit their education tax in accordance with regulations adopted by the Department of Revenue.

**Committee Members:**

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokoberg  
Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg  
Representative Max Gruenberg • Representative Carl Moses



43.45.041: Provides for refunds of overpayment of the education tax.

43.45.051: Requires that a person required to report a payment to a self-employed individual to the federal government report the same information to the Department of Revenue.

43.45.061: Provides that the tax collected be accounted for separately and may be used for education.

43.45.099: Defines critical terms by reference to the Internal Revenue Code (26 U.S.C.)

Section 4: Allows the department to develop regulation to implement the Act before the effective date of the Act.

Section 5: Allows Section 4 of the Act to take effect immediately.

Section 6: Allows the other sections of the Act to take effect January 1, 2005, although the education tax will not actually be imposed until the CBR trigger point is reached.



# Alaska State Legislature

## House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

**Session Contact:**

State Capitol, Room 434

Juneau, AK. 99801

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**Interim Contact:**

716 W. 4th Ave Room 620

Anchorage, AK 99501-2133

Phone: (907) 269-0244

Fax: (907) 269-0248

### Sponsor Statement and Sectional Analysis

#### CSHB 298 (W&M) - Version \S

HB 298 is effective only if a Percent of Market Value (POMV) constitutional amendment is approved by the voters during the 2004 general election and takes effect. HB 298 provides conforming language to existing statute to accommodate changing the constitutional requirement that all income of the Permanent Fund be deposited into the general fund to the more limiting appropriation mechanism of "up to 5%" of market value in the proposed POMV constitutional amendment and to recognize the merger of the Earnings Reserve Fund into the Permanent Fund.

HB 298 also provides that the annual appropriation from the Permanent Fund under the POMV management structure be divided equally between paying individual dividends and public services.

Section 1: Amends the basis for the Alaska jury list to people applying for a Permanent Fund Dividend. Former language referenced applicants for a "distribution of Alaska Income."

Section 2: Changes Legislative Budget and Audit Committee duties from making annual recommendations for investment policy for the "income" of the Permanent Fund to making annual recommendation for investment policy for the Permanent Fund. This change is consistent with the merger of the Earnings Reserve (income) Account into the Permanent Fund itself and with the general oversight responsibilities of the LB&A committee for the Permanent Fund and its operations.

Section 3(a): Provides that no appropriation shall be made from the Permanent Fund in excess of the average 10-year real rate of return. If the fund does not make a 5% real return over 10 years, the amount available for appropriation is reduced to that real return. This provision provides a statutory framework for implementing the "up to 5%" provision in the proposed POMV constitutional amendment.

**Committee Members:**

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokeberg

Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg

Representative Max Gruenberg • Representative Carl Moses

Section 3(b): Provides that annual appropriations from the Permanent Fund be divided equally between paying individual dividends and public services.

Section 4: The proposed POMV constitutional amendment allows appropriations based on the "market value" of the fund. This section provides a statutory mandate that "market value" be determined in accordance with generally accepted accounting principles.

Section 5: Eliminates the current statutory provision that any unexpended operating budget of the Permanent Fund Corporation be included in the determination of "income" of the fund for the calculation of income available for distribution. The determination of income available for distribution will no longer be required under the proposed POMV constitutional amendment that bases the amount that can be distributed on market value. Accordingly, this provision is no longer relevant.

Section 6: The Permanent Fund Corporation manages the investment portfolio of the Mental Health Trust Authority. Current statute provides that the income from those funds be determined "in the same manner the corporation determines the net income of the Alaska Permanent Fund..." The Mental Health Trust Authority has previously adopted a POMV style management. This section provides a statutory mandate that the net income of the Mental Health Trust fund be determined in accordance with generally accepted accounting principles. This is the same language that is being adopted for the Permanent Fund itself in Section 4.

Section 7: This section changes language in the existing Permanent Fund Dividend payment statutes to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the current dividend payment statutes.

Section 8: This section changes language in the disclosures required on the payment stub for Permanent Fund Dividends to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the disclosures required.

Section 9: Repeals statute that will be superseded by operation of the proposed POMV constitutional amendment. AS 37.13.140 defined income and net income of the Permanent Fund for purposes of making distributions. Under the proposed POMV constitutional amendment, distributions are based on Market Value not on income. AS 37.13.145 defined the disposition of the income of the permanent fund including inflation proofing and transfers to the dividend account. Inflation proofing is inherent in the proposed POMV constitutional amendment and Section 3 of this legislation provides for transfers to the dividend account.

Section 10: Provides that this Act takes effect only if a POMV amendment is approved by the voters during the 2004 general election and takes effect.

Section 11: Provides that, Subject to Section 10, the effective date of this act will be January 1, 2005.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Fin Com.

Committee on CS HB 236 Dated Mar 18, 2004  
Bill / Subject Committee Name

I request your committee consider not passing this bill out of your committee until you review substituting a graduated income tax to provide this funding source for CBR replacement, as intended by HB 236. I want to see Alaskans with many different types of income to provide for the replacement of funds into the CBR and not just those who are employed. ~~with~~ We need to spread this replacement allocation among all of us Alaskans as is the distribution of the PFD

SIGNED:

*Luke T Hopkins*

Testifier

self Luke T Hopkins

Representing

PO Box 81622, FLS 155-6805

Address / Phone Number



# Alaska State Legislature

Please enter into the record my testimony to the HFIN committee name

committee on HB 236, dated 3-18-04  
bill/subject

HB 236 is not an "Education Tax" it is an "employment penalty" Oil and Gas taxes tax Oil and Gas, Income taxes tax incomes, Studded tire taxes tax studded tires. It is akin to false advertising to promote this bill as an education tax when you have no intention of taxing education. This is obviously a dedication of revenue bill in violation of art. IX, sec. 7 notwithstanding the denial contained in Sec. 43.45.061. (c) on page 5 line 23-25.

Art. I sec. 1 Const. of the State of Alaska states in part that All Persons have a natural right... to the enjoyment of the rewards of their own industry ... are equal and entitled to equal rights, opportunities and protection under the law. HB 236 not only deprives a worker of the enjoyment of the rewards of his own industry but also imposes an unequal obligation to the people and to the State. Non-workers should not be exempt from this tax to the detriment of the self-reliants.

Signed: Roger H. May

Testifier Self & family

Representing (Optional) Box 521215 Big Lake AK. 99652

Mailing Address 892-8901

Phone Number

As to this bill suspending the tax if the CBR exceeds 2.5 billion. HB 236 Basically insures that the Govt. will Never allow the CBR to Exceed 2.5 Billion. The Govt. has no incentive to suspend any tax.



# Alaska State Legislature

Representative Peggy Wilson  
Putting Alaska's Families First

## Sponsor Statement

### "Tax on Employment for Education"

#### CSHB 236 (W&M)

For many years Alaska had a School Tax that was paid by all employed persons. The money went into the general fund and became a portion of the dollars legislators earmarked for education. When Alaskans thought they were rich beyond their wildest dreams and the supply of oil money was endless the "School Tax" was repealed.

CSHB 236 (W&M) imposes a \$100 "Alaska Education Tax" to be paid by all employed persons including self-employed who earn more than \$600 in Alaska. This is a way to assure that all persons who earn money in Alaska pay something for the services we all receive. It is a way to collect some money from the 18.2% of workers who earn their living here but reside somewhere else.

CSHB 236 (W&M) contains a trigger. The "Alaska Education Tax" would be imposed only in calendar years following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve fund is less than \$1 billion. The tax would be suspended in a subsequent calendar year following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve Fund is greater than \$2.5 billion.

The tax collected would be deposited into the state's general fund and accounted for separately. The legislature may then appropriate the amounts collected under this section for education. The Department of Revenue projects annual earnings from CSHB 236 (W&M) to be approximately \$43 million.

# Alaska State Legislature

## House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

**Session Contact:**

State Capitol, Room 434

Juneau, AK. 99801

Phone (907) 465-4949

Fax (907) 465-4979

Staff Contact: Pauly Swanson (907) 465-6820



**Interim Contact:**

716 W. 4th Ave Room 620

Anchorage, AK 99501-2133

Phone: (907) 269-0244

Fax: (907) 269-0248

### Sectional Analysis CSHB 236 (W&M) – Version \ V

This Act imposes an education tax on wages and net earnings from self-employment in Alaska and provides that the tax collected be separately accounted for and may be appropriated for education. The tax imposed may not exceed \$100 per calendar year.

Section 1: Adds the education tax to the list of taxes that are prior, paramount and superior to all other liens upon the real and personal property of the person liable for the tax.

**Section 2:**

43.45.011: Imposes a tax, not to exceed a combined total of \$100 a calendar year on wages and net earnings from self-employment in excess of \$600. The tax is imposed at a rate of 0% on the first \$600 of earnings, 10% on the next \$1,000 of earnings and 0% on all other earnings. Section 2 also provides that this tax is imposed only in calendar years following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve Fund is less than \$1.5 billion. The tax is suspended in a subsequent calendar year following a June 30 fiscal year end when the cash balance in the Constitutional Budget Reserve Fund is greater than \$2.5 billion.

43.45.021: Provides that the education tax is to be collected from wages by employers in accordance with regulations adopted by the Department of Revenue.

43.45.026: Provides that the department may require security deposits from employers who have been delinquent in remitting the education tax.

43.45.031: Provides that self-employed individuals remit their education tax in accordance with regulations adopted by the Department of Revenue.

43.45.041: Provides for refunds of overpayment of the education tax.

**Committee Members:**

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokeberg  
Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg  
Representative Max Gruenberg • Representative Carl Moses



43.45.051: Requires that a person required to report a payment to a self-employed individual to the federal government report the same information to the Department of Revenue.

43.45.061: Provides that the tax collected be accounted for separately and may be used for education.

43.45.099: Defines critical terms by reference to the Internal Revenue Code (26 U.S.C.)

Section 3: Allows the department to develop regulation to implement the Act before the effective date of the Act.

Section 4: Allows Section 3 of the Act to take effect immediately.

Section 5: Allows the other sections of the Act to take effect January 1, 2005, although the education tax will not actually be imposed until the CBR trigger point is reached.

**Subject: HB 236 Version V**

**Date: Tue, 16 Mar 2004 16:07:45 -0900**

**From: "Don Rulien" <drulien@rulienwhitlock.com>**

**To: <representative\_mike\_hawker@legis.state.ak.us>**

Representative Mike Hawker,

I have read through Version V of HB 236 "Education Tax", the newest version has dealt with many of my concerns regarding who will be taxed. By incorporating the definition of self employment earnings and the W-2 wage earner under this bill, you have successfully taxed all qualified individuals. I hope that the Department of Revenue can mimic the Employment Security Tax regulations regarding the collection and payment of this tax. Small businesses in Alaska would be able to make a simple transition for the collection and payment of this tax, as it would be similar to the current collection of Employment Security Tax.

Thank you,

Don Rulien

*Don Rulien*

Rulien, Whitlock & Associates, LLC

1407 W. 31st Avenue, Suite 500

Anchorage, AK 99503

email [drulien@rulienwhitlock.com](mailto:drulien@rulienwhitlock.com)

Tel. 907-272-1421

Fax 907-272-8556



ALASKA COUNCIL



OF SCHOOL ADMINISTRATORS

326 Fourth Street, Suite 404 • Juneau, Alaska 99801  
Phone: (907) 586-9702 • Fax: 586-5879  
web site: www.alaskaacsa.org

## Alaska Council of School Administrators

January 27, 2004

The Honorable Peggy Wilson  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Wilson:

This letter is to support HB 236, *Employment Tax for Education*, a bill that would help address the State's fiscal problem and be part of a comprehensive fiscal plan for Alaska. The ACSA membership has endorsed a resolution (attached) calling for a three-pronged approach to deal with our state's fiscal issues.

The ACSA membership strongly urges the Legislature to consider all three options outlined in our resolution (budget discipline, POMV approach to use of the fund and broad-based taxes). We do not favor invoking one or two of the above options, but rather support using all three in some form.

ACSA contends that a variety of steps are necessary to ameliorate the current fiscal situation facing Alaskans. We think HB 236 is part of a larger solution to our state's problems.

Respectfully,

Mary A. Francis, Ph.D.  
Executive Director

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Resolution 03-8

COMPREHENSIVE FISCAL PLAN

WHEREAS, the Alaska Council of School Administrators includes the educational and business leadership of public education in Alaska; and

WHEREAS, public education is a significant economic force throughout the State educating in excess of 134,000 students and employing more than 10,000 teachers, administrators and support personnel; and

WHEREAS, the economic vitality of the State impacts education's ability to conduct the business of operating Alaska's schools and school districts; and

WHEREAS, ACSA is eager to support a responsible and committed effort to address the fiscal challenges Alaska currently faces; and

WHEREAS, ACSA believes Alaska needs a comprehensive fiscal plan to address the priorities of the State in relation to the available resources and desired services; and

WHEREAS, ACSA believes that reform will require budget discipline, use of Permanent Fund earnings and the institution of broad-based taxes; now

THEREFORE IT IS RESOLVED that the Alaska Council of School Administrators supports the Percent of Market Value (POMV) approach to using earnings from the Permanent Fund as one part of a sound and responsible solution to increasing revenue to meet services and obligations of the State of Alaska.

Adopted by the Alaska Council of School Administrators (AASA, AAESP, AASSP and ALASBO) October and December 2003.

# NATIONAL PAYROLL REPORTING CONSORTIUM, INC.

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May 13, 2003

Representative Mike Hawker  
Co-Chair, House Ways & Means Committee  
Alaska State Legislature  
State Capital, Room 434  
Juneau, AK 99801-1182

Dear Representative Hawker:

This letter from the NPRC is being sent to your office in response to Alaska House Bill No. 236, a proposal that would create a state tax on employment with an effective date of July 1, 2003 for Alaska workers 19-years of age or older.

The *National Payroll Reporting Consortium* (NPRC), is a non-profit trade association whose member organizations provide payroll processing and related services to over one million employers nationwide. NPRC member companies handle payroll processing for over one-third of the private sector work force, and file and pay employment taxes in every state. The group's mission is to proactively address major policy, administrative and systemic issues that impact employers and their service providers.

Although members of the NPRC take no official position on whether the State of Alaska should or should not create an employment tax, we would like to provide constructive feedback concerning some of the implications of House Bill No. 236 that could adversely impact employers, their payroll tax service providers, and the Alaska Department of Revenue (DOR).

Upon initial review of this bill, NPRC members question the ease of collection and payment methodology of this proposed employment tax. In its present form, within *Sec. 43.45.021* of HB 236, the proposed administrative strategy of this employment tax deviates significantly from the way other states direct employers to withhold employment taxes from their employees' wages.

The following bullet points are provided to communicate potential pitfalls for Alaska employers, payroll reporting agents, software vendors, and the Alaska Department of Revenue should this bill be enrolled into state law in its current form:

- Since no other state withholding tax formula is currently set-up and administered like the one proposed in House Bill No. 236, accounting and payroll tax systems commonly used today by employers to administrate and pay their state withholding tax obligations would need "special" and labor intensive programming to accommodate this very unique tax calculation (referenced in *Sec. 43.45.021* of HB 236). Significant changes to accounting and payroll tax systems typically require at least 6-months of lead-time to budget, plan,

test and execute. These tasks also require continual technical guidance and feedback from the tax agency officials who would administer this withholding tax to ensure proper compliance with the law. At this juncture, a July 1, 2003 effective date of this tax would not be achievable for the employer, software vendor, and withholding tax reporting communities. NPRC members strongly suggest that this tax be administered on a calendar year basis, not on a fiscal year basis. (Note: In lieu of a the current withholding tax calculation, perhaps the Alaska legislature would consider a \$100 "head-tax", administered like an "local level" earned income tax within the Commonwealth of Pennsylvania.)

- Although *Sec. 43.45.011 (b) and (c)* briefly touches on the definition of "compensation" that would be applicable to this new employment tax, the NPRC would suggest that the final iteration of the bill elaborate on this topic further so that it is clear to employers and their reporting agents as to what type of compensation should be taxed. Perhaps the bill could follow the federal definition of wages for state income tax purposes. As well, the NPRC believes that the state should adopt the federal income tax definitions of "employer" and "employee" for the purpose of consistency and administrative convenience.
- Specifically, the particular age threshold (19 years of age) for collecting the employment tax (outlined in *Sec. 43.45.001* of HB 236) could be problematic for some employers and the accounting/payroll tax systems they may use within their organizations. Some systems may not be able to easily accommodate this age threshold requirement to collect the proposed \$100 annual withholding tax, creating a more manual age validation and tracking process for the HR and/or payroll departments of Alaska employers. NPRC members and employers would prefer to see the age threshold eliminated from the proposal.
- Especially in today's economy, some individuals frequently work for multiple employers. With this in mind, it is likely that Alaska employers would not have any knowledge or visibility of the other working relationships that their workers may potentially have with other employers. This means that without some communication and education plan executed by the Alaska Department of Revenue (with the help of the employer, accounting and payroll communities) and directed at Alaska workers on this matter, workers may have their \$100 employment tax withheld more than once during a tax year. Although House Bill No. 236 does permit taxpayers to claim a refund from the Department of Revenue when they pay more than \$100 in annual withholding tax, some taxpayers may not even notice that they paid more than required tax until they receive their annual Forms W-2 from all of their employers. This situation could create potential worker/taxpayer relations problems for employers and the Alaska Department of Revenue due to the potential whirlwind of employee/taxpayer queries about their refunds. Again, a July 1, 2003 effective date of this tax would not provide sufficient time to effectively educate workers and the accounting community about this new withholding tax.

The following questions are also items identified by NPRC members that we believe need clarification or guidance from the Alaska Department of Revenue, if and when this employment tax is implemented:

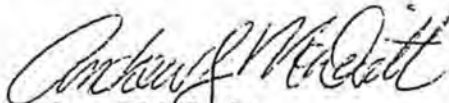
- Which classification of employee is subject to this withholding tax and which is excluded (e.g. members of the clergy)
- Will there be a withholding tax coupon to be used by employers when remitting the tax? Will the Alaska DOR require a quarterly/annual reconciliation tax return? If so, what would be the due dates of each? Will the Alaska DOR accept substitute forms from NPRC members and other reporting agents? What would be the substitute form approval process?
- What would be the deposit frequency of this withholding tax? Would there be more than one deposit frequency based on particular dollar thresholds determined by the Alaska DOR? (Note: NPRC members would prefer a monthly deposit frequency.)

The NPRC appreciates the opportunity to comment on this legislative proposal and would welcome the opportunity to provide you and other Alaska legislators with additional payroll tax industry knowledge on withholding tax matters, based on our experiences and best practices. Our members have many years of experience working with other state tax authorities on employment tax issues and would be willing to meet with you in person to share our perspectives on this subject.

Should you have any questions concerning our feedback, please do not hesitate to contact us at (925) 737-3196.

Thank you for your time and attention.

Sincerely,



Andrew J. McDevitt  
National Payroll Reporting Consortium

C.c. NPRC Members  
Alaska Department of Revenue

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[Laws in effect as of January 7, 2003]  
[Document not affected by Public Laws enacted between  
January 7, 2003 and February 12, 2003]  
[CITE: 26USC3401]

TITLE 26--INTERNAL REVENUE CODE

Subtitle C--Employment Taxes

CHAPTER 24--COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec. 3401. Definitions

(a) Wages

For purposes of this chapter, the term ``wages'' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid--

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if--

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89-809, title I, Sec. 103(k), Nov. 13, 1966, 80 Stat. 1554]

(8)(A) for services for an employer (other than the United States or any agency thereof)--

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the

law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

(9) for services performed 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

(10) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) to, or on behalf of, an employee or his beneficiary--

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

(C) for a payment described in section 402(h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408(p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), \1\ or

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\1\ So in original. The comma probably should be a semicolon.

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to



believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)); or  
 (16) (A) as tips in any medium other than cash;  
 (B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more; \2\

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 \2\ So in original. Probably should be followed by ``or''.  
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- (17) for service described in section 3121(b)(20); \2\  
 (18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129; \2\  
 (19) for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132; \2\  
 (20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6)); or  
 (21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).

(b) Payroll period

For purposes of this chapter, the term ``payroll period'' means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term ``miscellaneous payroll period'' means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

(c) Employee

For purposes of this chapter, the term ``employee'' includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term ``employee'' also includes an officer of a corporation.

(d) Employer

For purposes of this chapter, the term ``employer'' means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that--

- (1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term ``employer'' (except for purposes of subsection (a)) means the person having control of the payment of such wages, and  
 (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ``employer'' (except for purposes of subsection (a)) means such person.

(e) Number of withholding exemptions claimed

For purposes of this chapter, the term ``number of withholding exemptions claimed'' means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f), or in effect under the corresponding section of prior law, except that



if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(f) Tips

For purposes of subsection (a), the term ``wages'' includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

[(g) Repealed. Pub. L. 101-140, title II, Sec. 203(a)(2), Nov. 8, 1989, 103 Stat. 830]

(h) Crew leader rules to apply

Rules similar to the rules of section 3121(o) shall apply for purposes of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Pub. L. 87-256, Sec. 110(g)(1), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87-293, title II, Sec. 201(c), Sept. 22, 1961, 75 Stat. 625; Pub. L. 87-792, Sec. 7(1), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88-272, title II, Secs. 204(b), 213(c), Feb. 26, 1964, 78 Stat. 36, 52; Pub. L. 89-97, title III, Sec. 313(d)(1), (2), July 30, 1965, 79 Stat. 383, 384; Pub. L. 89-809, title I, Sec. 103(k), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 92-279, Sec. 2, Apr. 26, 1972, 86 Stat. 125; Pub. L. 93-406, title II, Sec. 2002(g)(7), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94-455, title XII, Sec. 1207(e)(1)(C), title XV, Sec. 1501(b)(7), title XIX, Secs. 1903(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1736, 1810, 1834; Pub. L. 95-600, title I, Sec. 164(b)(1), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 95-615, Sec. 207(a), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 96-222, title I, Sec. 103(a)(13)(A), Apr. 1, 1980, 94 Stat. 213; Pub. L. 97-34, title I, Secs. 112(b)(5), 124(e)(2)(A), title III, Sec. 311(h)(6), Aug. 13, 1981, 95 Stat. 195, 200, 282, Pub. L. 97-448, title I, Sec. 103(c)(12)(B), Jan. 12, 1983, 96 Stat. 2577; Pub. L. 98-369, div. A, title IV, Sec. 491(d)(38), title V, Sec. 531(d)(4), July 18, 1984, 98 Stat. 851, 885; Pub. L. 99-514, title I, Sec. 122(e)(4), title XII, Sec. 1272(c), Oct. 22, 1986, 100 Stat. 2112, 2594; Pub. L. 100-647, title I, Secs. 1001(g)(4)(B)(iii), 1011(f)(9), 1011B(a)(22)(D), (33), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3488; Pub. L. 101-140, title II, Sec. 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VII, Sec. 7631(a), (b), Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101-508, title XI, Sec. 11703(f)(1), Nov. 5, 1990, 104 Stat. 1388-517; Pub. L. 104-117, Sec. 1(c), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104-188, title I, Secs. 1421(b)(8)(D), 1704(t)(4)(C), Aug. 20, 1996, 110 Stat. 1798, 1887; Pub. L. 104-191, title III, Sec. 301(c)(2)(C), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105-206, title VI, Sec. 6023(14), (15), July 22, 1998, 112 Stat. 825; Pub. L. 107-16, title VI, Sec. 641(a)(1)(D)(i), June 7, 2001, 115 Stat. 119.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

References in Text

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are classified to sections 2504(c) and 2505(1), respectively, of Title 22, Foreign Relations and Intercourse.

Amendments

2001--Subsec. (a)(12)(E). Pub. L. 107-16, Secs. 641(a)(1)(D)(i), 901, temporarily added subpar. (E). See Effective and Termination Dates of 2001 Amendment note below.

1998--Subsec. (a)(19), (21). Pub. L. 105-206 inserted ``for'' after par. designation.

1996--Subsec. (a)(1). Pub. L. 104-188, Sec. 1704(t)(4)(C), substituted ``combat zone compensation'' for ``combat pay''.

Pub. L. 104-117 inserted before semicolon ``to the extent remuneration for such service is excludable from gross income under such section''.

Subsec. (a)(12)(D). Pub. L. 104-188, Sec. 1421(b)(8)(D), added subpar. (D).

Subsec. (a)(21). Pub. L. 104-191 added par. (21).

1990--Subsec. (a)(20). Pub. L. 101-508 added par. (20).

1989--Subsec. (a)(2). Pub. L. 101-239, Sec. 7631(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ``for agricultural labor (as defined in section 3121(g)); or''.

Subsec. (g). Pub. L. 101-140 amended this section to read as if amendments by Pub. L. 100-647, Sec. 1011B(a)(22)(D), had not been enacted, see 1988 Amendment note below.

Subsec. (h). Pub. L. 101-239, Sec. 7631(b), added subsec. (h).

1988--Subsec. (a)(12)(C). Pub. L. 100-647, Sec. 1011(f)(9), substituted ``section 402(h)(1) and (2)'' for ``section 219'' and ``an exclusion'' for ``a deduction''.

Subsec. (a)(15). Pub. L. 100-647, Sec. 1001(g)(4)(B)(iii), inserted ``(determined without regard to section 274(n))'' after ``section 217''.

Subsec. (a)(19), (20). Pub. L. 100-647, Sec. 1011B(a)(33), redesignated par. (20) as (19) and struck out former par. (19) which excluded medical care reimbursement made to or for benefit of employee under self-insured medical reimbursement plan.

Subsec. (g). Pub. L. 100-647, Sec. 1011B(a)(22)(D), added subsec. (g) relating to benefits provided under certain employee benefit plans.

1986--Subsec. (a)(8)(D). Pub. L. 99-514, Sec. 1272(c), added subpar. (D).

Subsec. (a)(20). Pub. L. 99-514, Sec. 122(e)(4), inserted reference to section 74(c).

1984--Subsec. (a). Pub. L. 98-369, Sec. 531(d)(4)(A), inserted ``(including benefits)'' in introductory provisions.

Subsec. (a)(12). Pub. L. 98-369, Sec. 491(d)(38), struck out subpar. (C) which provided: ``under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);'' and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98-369, Sec. 531(d)(4)(B), added par. (20).

1983--Subsec. (a)(12)(D). Pub. L. 97-448 substituted ``section 219'' for ``section 219(a)''.

1981--Subsec. (a)(12)(D). Pub. L. 97-34, Sec. 311(h)(6), substituted ``section 219(a)'' for ``section 219(a) or 220(a)''.

Subsec. (a)(18). Pub. L. 97-34, Sec. 124(e)(2)(A), substituted ``section 127 or 129'' for ``section 127''.

Pub. L. 97-34, Sec. 112(b)(5), redesignated par. (19) as (18). Former par. (18), relating to remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it was reasonable to believe that a corresponding deduction was allowable under section 913 (relating to deduction for certain expenses of living abroad), was struck out.

Subsec. (a)(19), (20). Pub. L. 97-34, Sec. 112(b)(5), redesignated par. (20) as (19). Former par. (19) redesignated (18).

1980--Subsec. (a)(18) to (20). Pub. L. 96-222 redesignated par. (18), added by Pub. L. 95-600, as (19), in par. (19) as so redesignated, substituted ``section 127; or'' for ``section 124.'', and added par. (20).

1978--Subsec. (a)(18). Pub. L. 95-615 added par. (18) relating to payments or benefits excludable from income under section 124.

Pub. L. 95-600 added par. (18) relating to remuneration for which a

corresponding deduction is allowable under section 913.

1976--Subsec. (a)(6). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (a)(12)(D). Pub. L. 94-455, Sec. 1501(b)(7), inserted ``or 220(a)'' after ``section 219(a)''.

Subsec. (a)(17). Pub. L. 94-455, Sec. 1207(e)(1)(C), added par. (17).

Subsec. (c). Pub. L. 94-455, Sec. 1903(c), struck out ``Territory'' after ``a State''.

1974--Subsec. (a)(12)(D). Pub. L. 93-406 added subpar. (D).

1972--Subsec. (a)(1). Pub. L. 92-279 struck out ``as a member of the Armed Forces of the United States'' after ``active service'', substituted ``employee'' for ``member'', and parenthetical text ``(relating to certain combat pay of members of the Armed Forces of the United States)''.

1966--Subsec. (a)(6), (7). Pub. L. 89-809, Sec. 103(k), struck out par. (6) dealing with services performed by nonresident alien individuals other than residents of contiguous countries who enter and leave the United States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated par. (7) as (6), and in par (6) as so redesignated, struck out ``who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals'' after ``nonresident alien individual''.

1965--Subsec. (a)(16). Pub. L. 89-97, Sec. 313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89-97, Sec. 313(d)(1), added subsec. (f).

1964--Subsec. (a)(14). Pub. L. 88-272, Sec. 204(b), added par. (14).

Subsec. (a)(15). Pub. L. 88-272, Sec. 213(c), added par. (15).

1962--Subsec. (a)(12)(B), (C). Pub. L. 87-792 substituted ``is a plan described in section 403(a)'' for ``meets the requirements of section 401(a)(3), (4), (5), and (6)'', in subpar. (B), and added subpar. (C).

1961--Subsec. (a)(6)(C). Pub. L. 87-256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87-293 added par. (13).

1955--Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, remuneration paid for services performed in a possession of the United States by a United States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

#### Effective and Termination Dates of 2001 Amendment

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### Effective Date of 1996 Amendments

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(8)(D) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Amendment by Pub. L. 104-117 applicable to remuneration paid after Mar. 20, 1996, see section 1(e) of Pub. L. 104-117, set out in a Treatment of Certain Individuals Performing Services in Certain

Hazardous Duty Areas; Effective Date note under section 112 of this title.

#### Effective Date of 1990 Amendment

Section 11703(f)(2) of Pub. L. 101-508 provided that: ``The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see Effective Date of 1986 Amendment note set out under section 79 of this title] but shall not apply to any amount paid before the date of the enactment of this Act [Nov. 5, 1990] which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.''

#### Effective Date of 1989 Amendments

Section 7631(c) of Pub. L. 101-239 provided that: ``The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.''

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

#### Effective Date of 1988 Amendment

Amendment by sections 1001(g)(4)(B)(iii), 1011(f)(9), and 1011B(a)(33) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(D) of Pub. L. 100-647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100-647, set out as a note under section 3121 of this title.

#### Effective Date of 1986 Amendment

Amendment by section 122(e)(4) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

#### Effective Date of 1984 Amendment

Amendment by section 491(d)(38) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 531(d)(4) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

#### Effective Date of 1983 Amendment

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section

109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### Effective Date of 1981 Amendment

Amendment by section 112(b)(5) of Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

Amendment by section 124(e)(2)(A) of Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f)(2) of Pub. L. 97-34, set out as a note under section 21 of this title.

Amendment by section 311(h)(6) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### Effective Date of 1980 Amendment

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### Effective Date of 1978 Amendments

Amendment by Pub. L. 95-615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c), Pub. L. 95-615, set out as a note under section 911 of this title.

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as a note under section 127 of this title.

#### Effective Date of 1976 Amendment

Amendment by section 1501(b)(7) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

#### Effective Date of 1974 Amendment

Amendment by Pub. L. 93-406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

#### Effective Date of 1972 Amendment

Section 3(b) of Pub. L. 92-279 provided that: "The amendments made by section 2 [amending this section] shall apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of the enactment of this Act [Apr. 26, 1972]."

#### Effective Date of 1966 Amendment

Amendment by Pub. L. 89-809 applicable with respect to remuneration paid after Dec. 31, 1966, see section 103(n)(4) of Pub. L. 89-809, set out as a note under section 871 of this title.

#### Effective Date of 1965 Amendment

Amendment by section 313(d)(1), (2) of Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as a note under section 6053 of this title.

#### Effective Date of 1964 Amendment

Amendment by section 204(b) of Pub. L. 88-272 applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88-272, set out as an Effective Date note under section 79 of this title.

Amendment by section 213(c) of Pub. L. 88-272 applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88-272, set out as a note under section 62 of this title.

#### Effective Date of 1962 Amendment

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

#### Effective Date of 1961 Amendments

Amendment by Pub. L. 87-293 applicable with respect to remuneration paid after Sept. 22, 1961, see section 201(d) of Pub. L. 87-293, set out as a note under section 912 of this title.

Section 110(h)(4) of Pub. L. 87-256 provided that: "The amendments made by subsection (g) of this section [amending this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961."

#### Short Title of 1966 Amendment

Pub. L. 89-368, Sec. 1, Mar. 15, 1966, 80 Stat. 38, provided that: "This Act [enacting sections 276 and 6682 of this title and section 428 of Title 42, The Public Health and Welfare, amending sections 1402, 1403, 3402, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, Customs Duties, and enacting provisions set out as notes under sections 276, 3402, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'."

#### Repeals; Amendments and Application of Amendments Unaffected

Section 201(c) of Pub. L. 87-293, cited as a credit to this section, was repealed by Pub. L. 89-572, Sec. 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

#### Controversies Involving Whether Individuals Are Employees for Purposes of Employment Taxes



Section 530 of Pub. L. 95-600, as amended by Pub. L. 96-167, Sec. 9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96-541, Sec. 1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97-248, title II, Sec. 269(c)(1), (2), 96 Stat. 552; Pub. L. 99-514, Sec. 2, title XVII, Sec. 1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781; Pub. L. 104-188, title I, Sec. 1122(a), Aug. 20, 1996, 110 Stat. 1766, provided that:

``(a) Termination of Certain Employment Tax Liability.--

``(1) In general.--If--

``(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

``(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

``(2) Statutory standards providing one method of satisfying the requirements of paragraph (1).--For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

``(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

``(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

``(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

``(3) Consistency required in the case of prior tax treatment.--Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

``(4) Refund or credit of overpayment.--If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

``(b) Prohibition Against Regulations and Rulings on Employment Status.--No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

``(c) Definitions.--For purposes of this section--

``(1) Employment tax.--The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

``(2) Employment status.--The term 'employment status' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or

as an independent contractor (or other individual who is not an employee).

“(d) Exception.--This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

“(e) Special Rules for Application of Section.--

“(1) Notice of availability of section.--An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

“(2) Rules relating to statutory standards.--For purposes of subsection (a)(2)--

“(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

“(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

“(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof--

“(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

“(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

“(3) Availability of safe harbors.--Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

“(4) Burden of proof.--

“(A) In general.--If--

“(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

“(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate, then the burden of proof with respect to such treatment shall be on the Secretary.

“(B) Exception for other reasonable basis.--In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

“(5) Preservation of prior period safe harbor.--If--

“(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

“(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period, then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

“(6) Substantially similar position.--For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.”



[Section 1122(b) of Pub. L. 104-188 provided that:

[(1) In general.--The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to periods after December 31, 1996.

[(2) Notice by internal revenue service.--Section 530(e)(1) of the Revenue Act of 1978 [Pub. L. 95-500] (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

[(3) Burden of proof.--

[(A) In general.--Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

[(B) No inference.--Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997.]]

[Section 1706(b) of Pub. L. 99-514 provided that: ``The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to remuneration paid and services rendered after December 31, 1986.'']

#### Plan Amendments Not Required Until January 1, 1998

For provisions directing that if any amendments made by subtitle D [Secs. 1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

#### Section Referred to in Other Sections

This section is referred to in sections 41, 275, 3402, 3507, 3509, 4999, 6014, 6051, 6053, 6103, 6331 of this title; title 42 section 653a.

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TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 2--TAX ON SELF-EMPLOYMENT INCOME

Sec. 1402. Definitions

(a) Net earnings from self-employment

The term ``net earnings from self-employment'' means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss--

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

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

(3) there shall be excluded any gain or loss--

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither--

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if--

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

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

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

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(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), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to citizens or residents of the United States living abroad), but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires;

(9) the exclusion from gross income provided by section 931 shall not apply;

(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, 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);

(11) the exclusion from gross income provided by section

911(a)(1) shall not apply;

(12) in lieu of the deduction provided by section 164(f) (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of--

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

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

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

(14) in the case of church employee income, the special rules of subsection (j)(1) shall apply; and

(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)--

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than \$2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be  $66\frac{2}{3}$  percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than \$2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than \$1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be \$1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than \$2,400, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be an amount equal to  $66\frac{2}{3}$  percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than \$2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than \$1,600, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be \$1,600.

For purposes of the preceding sentence, gross income means--

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method,

the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

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

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than \$1,600 and less than  $66\frac{2}{3}$  percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed \$1,600.

(b) Self-employment income

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act) during any taxable year; except that such term shall not include--

(1) in the case of the tax imposed by section 1401(a), that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

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

For purposes of paragraph (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 3121(1) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes 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. In the case of church employee income, the special rules of

subsection (j)(2) shall apply for purposes of paragraph (2).

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(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include--

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 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, except service which constitutes "employment" under section 3121(y),

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act,

(F) service described in section 3121(b)(20), and

(G) service described in section 3121(b)(8)(B);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) Employee and wages

The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) Ministers, members of religious orders, and Christian Science practitioners



## (1) Exemption

Subject to paragraph (2), any individual who is (A) 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 (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or 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) and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance, shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

## (2) Verification of application

The Secretary may approve an application for an exemption filed pursuant to paragraph (1) only if the Secretary has verified that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to this subsection and that the individual seeks exemption on such grounds. The Secretary (or the Commissioner of Social Security under an agreement with the Secretary) shall make such verification by such means as prescribed in regulations.

## (3) Time for filing application

Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

## (4) Effective date of exemption

An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

## (f) Partner's taxable year ending as the result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the

partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection--

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Members of certain religious faiths

(1) Exemption

Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or 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). Such exemption may be granted only if the application contains or is accompanied by--

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Commissioner of Social Security finds that--

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Period for which exemption effective

An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year--

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of



paragraph (1), or (ii) before the time as of which the Commissioner of Social Security finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Commissioner of Social Security finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(3) Subsection to apply to certain church employees

This subsection shall apply with respect to services which are described in subparagraph (B) of section 3121(b)(8) (and are not described in subparagraph (A) of such section).

(h) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than \$400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(i) Special rules for options and commodities dealers

(1) In general

Notwithstanding subsection (a)(3)(A), in determining the net earnings from self-employment of any options dealer or commodities dealer, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts.

(2) Definitions

For purposes of this subsection--

(A) Options dealer

The term "options dealer" has the meaning given such term by section 1256(g)(8).

(B) Commodities dealer

The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) Section 1256 contracts

The term "section 1256 contract" has the meaning given to such term by section 1256(b).

(j) Special rules for certain church employee income

(1) Computation of net earnings

In applying subsection (a)--

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2) Computation of self-employment income

(A) Separate application of subsection (b)(2)

Paragraph (2) of subsection (b) shall be applied separately--

- (i) to church employee income, and
- (ii) to other net earnings from self-employment.

(B) \$100 floor

In applying paragraph (2) of subsection (b) to church employee income, ``\$100'' shall be substituted for ``\$400''.

(3) Coordination with subsection (a)(12)

Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(12), and paragraph (1) shall be applied before determining the amount so allowable.

(4) Church employee income defined

For purposes of this section, the term ``church employee income'' means gross income for services which are described in section 3121(b)(8)(B) (and are not described in section 3121(b)(8)(A)).

(k) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if--

- (1) such amount is received after termination of such individual's agreement to perform such services for such company,
- (2) such individual performs no services for such company after such termination and before the close of such taxable year,
- (3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and
- (4) the amount of such payment--
  - (A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and
  - (B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, Sec. 201(a)-(c), 68 Stat. 1087; Aug. 1, 1956, ch. 836, title II, Sec. 201(e)(2), (3), (f), (g), (i), 70 Stat. 840-842; Pub. L. 85-239, Secs. 1(a), (b), 2, 5(b), Aug. 30, 1957, 71 Stat. 521-523; Pub. L. 85-840, title IV, Secs. 402(a), 403(a), Aug. 28, 1958, 72 Stat. 1042, 1043; Pub. L. 86-778, title I, Secs. 101(a)-(c), 103(k), (l), 105(c)(1), 106(b), Sept. 13, 1960, 74 Stat. 926, 927, 938, 944, 945; Pub. L. 87-64, title II, Sec. 202(a), June 30, 1961, 75 Stat. 141; Pub. L. 88-272, title II, Sec. 227(b)(6), Feb. 26, 1964, 78 Stat. 98; Pub. L. 88-650,

Sec. 2(a), (b), Oct. 13, 1964, 78 Stat. 1076, 1077; Pub. L. 89-97, title III, Secs. 311(b)(1)-(3), 312(b), 319(a), (c), 320(b)(1), 331(a), 341(a), (b), July 30, 1965, 79 Stat. 381, 390, 391, 393, 401, 411; Pub. L. 89-368, title I, Sec. 102(c), Mar. 15, 1966, 80 Stat. 64; Pub. L. 90-248, title I, Secs. 108(b)(1), 115(b), 118(a), 122(b), title V, Secs. 501(a), 502(b)(1), Jan. 2, 1968, 81 Stat. 835, 839, 841, 843, 933, 934; Pub. L. 92-5, title II, Sec. 203(b)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92-336, title II, Sec. 203(b)(1), July 1, 1972, 86 Stat. 418; Pub. L. 92-603, title I, Secs. 121(b), 124(b), 140(b), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93-66, title II, Sec. 203(b)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93-233, Sec. 5(b)(1), Dec. 31, 1973, 87 Stat. 954; Pub. L. 93-368, Sec. 10(b), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94-92, title II, Sec. 203(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94-455, title XII, Sec. 1207(e)(1)(B), title XIX, Secs. 1901(a)(155), (b)(1)(I)(iii), (X), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1789, 1791, 1792, 1834; Pub. L. 95-216, title III, Sec. 313(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95-600, title VII, Sec. 703(j)(8), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 95-615, Sec. 202(g)(5), formerly Sec. 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Sec. 202(g)(5), Pub. L. 96-222, title I, Sec. 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97-34, title I, Sec. 111(b)(3), (5), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97-248, title II, Sec. 278(a)(2), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98-21, title I, Sec. 124(c)(2), title III, Secs. 321(e)(3), 322(b)(2), 323(b)(1), Apr. 20, 1983, 97 Stat. 90, 120, 121; Pub. L. 98-369, div. A, title I, Sec. 102(c)(1), div. B, title VI, Secs. 2603(c)(2), (d)(2), 2663(j)(5)(B), July 18, 1984, 98 Stat. 622, 1129, 1130, 1171; Pub. L. 99-272, title XIII, Sec. 13205(a)(2)(B), Apr. 7, 1986, 100 Stat. 315; Pub. L. 99-509, title IX, Sec. 9002(b)(1)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99-514, title III, Sec. 301(b)(12), title XII, Sec. 1272(d)(8), (9), title XVII, Sec. 1704(a)(1), (2), title XVIII, Secs. 1882(a), (b)(1), 1883(a)(11)(A), Oct. 22, 1986, 100 Stat. 2218, 2594, 2779, 2914, 2916; Pub. L. 100-203, title IX, Sec. 9022(b), Dec. 22, 1987, 101 Stat. 1330-295; Pub. L. 100-547, title III, Sec. 3043(c)(1), title VIII, Sec. 8007(c), Nov. 10, 1988, 102 Stat. 3642, 3783; Pub. L. 101-239, title X, Sec. 10204(a)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 101-508, title V, Secs. 5123(a)(3), 5130(a)(2), title XI, Sec. 11331(b), Nov. 5, 1990, 104 Stat. 1388-284, 1388-289, 1388-467; Pub. L. 103-66, title XIII, Sec. 13207(b), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103-296, title I, Sec. 108(h)(1), title III, Sec. 319(a)(4), Aug. 15, 1994, 108 Stat. 1487, 1534; Pub. L. 104-188, title I, Sec. 1456(a), Aug. 20, 1996, 110 Stat. 1818; Pub. L. 105-34, title IX, Sec. 922(a), Aug. 5, 1997, 111 Stat. 879.)

#### References in Text

The Social Security Act, referred to in subsecs. (b), (c)(1), (2)(E), (e)(1), and (g)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (Sec. 301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Act are classified generally to subchapters II (Sec. 401 et seq.) and XVIII (Sec. 1395 et seq.) of Title 42. Sections 203, 218, 222, 230, and 233 of the Act are classified to sections 403, 418, 422, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Federal Insurance Contributions Act, referred to in subsec. (d), is act Aug. 16, 1954, ch. 736, 68A Stat. 415, as amended, which is classified generally to chapter 21 (Sec. 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

#### Amendments

1997--Subsec. (k). Pub. L. 105-34 added subsec. (k).  
 1996--Subsec. (a)(8). Pub. L. 104-188 inserted before semicolon at

end `` , but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires''.

1994--Subsec. (c)(1). Pub. L. 103-296, Sec. 108(h)(1), substituted ``Commissioner of Social Security'' for ``Secretary of Health and Human Services''.

Subsec. (c)(2)(C). Pub. L. 103-296, Sec. 319(a)(4), inserted at end ``except service which constitutes `employment' under section 3121(y),''.

Subsecs. (c)(2)(E), (e)(2), (g)(1), (2)(A), (B). Pub. L. 103-296, Sec. 108(h)(1), substituted ``Commissioner of Social Security'' for ``Secretary of Health and Human Services''.

1993--Subsec. (b). Pub. L. 103-66, Sec. 13207(b)(1)(C), (D), in concluding provisions, inserted ``and'' after ``section 3121(b),'' and struck out ``and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified government employment (as defined in section 3121(u)(3)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)'' after ``section 3201 or 3211, ''.

Subsec. (b)(1). Pub. L. 103-66, Sec. 13207(b)(1)(A), (B), substituted ``in the case of the tax imposed by section 1401(a), that part of the net'' for ``that part of the net'' and ``contribution and benefit base (as determined under section 230 of the Social Security Act)'' for ``applicable contribution base (as determined under subsection (k))''.

Subsec. (k). Pub. L. 103-66, Sec. 13207(b)(2), struck out subsec. (k) which defined parameters of the applicable contribution base under this chapter.

1990--Subsec. (a). Pub. L. 101-508, Sec. 5123(a)(3), struck out last undesignated par. which read as follows: ``Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).''

Subsec. (b). Pub. L. 101-508, Sec. 5130(a)(2), amended directory language of Pub. L. 98-21, Sec. 322(b)(2). See 1983 Amendment note below.

Subsec. (b)(1)(i). Pub. L. 101-508, Sec. 11331(b)(1), substituted ``the applicable contribution base (as determined under subsection (k))'' for ``the contribution and benefit base (as determined under section 230 of the Social Security Act)''.

Subsec. (k). Pub. L. 101-508, Sec. 11331(b)(2), added subsec. (k).

1989--Subsec. (g)(3). Pub. L. 101-239 substituted ``to apply'' for ``not to apply'' in heading and ``shall apply'' for ``shall not apply'' in text.

1988--Subsec. (a)(15). Pub. L. 100-647, Sec. 3043(c)(1), added par. (15).

Subsec. (g)(2) to (5). Pub. L. 100-647, Sec. 8007(c), struck out par. (2) which related to time for filing applications, struck out par. (4) which related to application by fiduciaries or survivors, and redesignated pars. (3) and (5) as (2) and (3), respectively.

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

1986--Subsec. (a)(8). Pub. L. 99-514, Sec. 1272(d)(8), inserted ``and'' after ``of the employer),'' and struck out ``and section 931 (relating to income from sources within possessions of the United States)'' after ``living abroad)''.

Subsec. (a)(9). Pub. L. 99-514, Sec. 1272(d)(9), amended par. (9)

generally. Prior to amendment, par. (9) read as follows: ``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.'`.

Subsec. (a)(14). Pub. L. 99-514, Sec. 1882(b)(1)(B)(i), amended par. (14) generally. Prior to amendment, par. (14) read as follows: ``with respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)--

``(A) no deduction for trade or business expenses provided under this Code (other than the deduction under paragraph (12)) shall apply;

``(B) the provisions of subsection (b)(2) shall not apply; and

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

Subsec. (b). Pub. L. 99-514, Sec. 1882(b)(1)(B)(ii), (iii), substituted ``paragraph' for ``clause' in second sentence and inserted at end ``In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2).''

Pub. L. 99-509 struck out ``under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or' after ``services include' in second sentence.

Pub. L. 99-272 substituted ``medicare qualified government employment (as defined in section 3121(u)(3))' for ``medicare qualified Federal employment (as defined in section 3121(u)(2))'.

Subsec. (c)(2)(G). Pub. L. 99-514, Sec. 1883(a)(11)(A), realigned margin of subpar. (G).

Subsec. (e)(1). Pub. L. 99-514, Sec. 1704(a)(1), (2)(A), substituted ``Subject to paragraph (2), any individual' for ``Any individual' and inserted ``and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance'.

Subsec. (e)(2) to (4). Pub. L. 99-514, Sec. 1704(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (g)(5). Pub. L. 99-514, Sec. 1882(a), added par. (5).

Subsec. (i)(1). Pub. L. 99-514, Sec. 301(b)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ``In determining the net earnings from self-employment of any options dealer or commodities dealer--

``(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

``(B) the deduction provided by section 1202 shall not apply.'`

Subsec. (j). Pub. L. 99-514, Sec. 1882(b)(1)(A), added subsec. (j). 1984--Subsec. (a)(14). Pub. L. 98-369, Sec. 2603(d)(2), added par.

(14)

Subsec. (c)(1), (2)(E). Pub. L. 98-369, Sec. 2663(j)(5)(B), substituted ``Secretary of Health and Human Services' for ``Secretary of Health, Education, and Welfare'.

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

Subsec. (g)(1), (3)(A), (B). Pub. L. 98-369, Sec. 2663(j)(5)(B), substituted ``Secretary of Health and Human Services' for ``Secretary of Health, Education, and Welfare'.

Subsec. (i). Pub. L. 98-369, Sec. 102(c)(1), added subsec. (i).

1983--Subsec. (a)(11). Pub. L. 98-21, Sec. 323(b)(1), struck out ``in the case of an individual described in section 911(d)(1)(B),' before ``the exclusion'.

Subsec. (a)(12), (13). Pub. L. 98-21, Sec. 124(c)(2), added par. (12) and redesignated former par. (12) as (13).

Subsec. (b). Pub. L. 98-21, Sec. 322(b)(2), as amended by Pub. L.



101-508, Sec. 5130(a)(2), inserted `` , except as provided by an agreement under section 233 of the Social Security Act'' in text preceding par. (1).

Pub. L. 98-21, Sec. 321(e)(3), substituted ``employees of foreign affiliates of American employers'' for ``employees of foreign subsidiaries of domestic corporations'' in cl. (A) of provisions following par. (2).

1982--Subsec. (b). Pub. L. 97-248 struck out ``and'' before ``(B)'' and inserted `` , and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)''.

1981--Subsec. (a)(8). Pub. L. 97-34, Sec. 111(b)(3), substituted ``relating to citizens or residents of the United States living abroad'' for ``relating to income earned by employees in certain camps''.

Subsec. (a)(11). Pub. L. 97-34, Sec. 111(b)(5), substituted ``in the case of an individual described in section 911(d)(1)(B), the exclusion from gross income provided by section 911(a)(1) shall not apply'' for ``in the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) shall not apply''.

1978--Subsec. (a). Pub. L. 95-615 substituted ``(relating to income earned by employees in certain camps)'' for ``(relating to earned income from sources without the United States)'' in par. (8).

Pub. L. 95-600, Sec. 703(j)(8)(A), substituted ``subsection (h)'' for ``subsection (i)'' wherever appearing in last par.

Subsec. (c)(6). Pub. L. 95-600, Sec. 703(j)(8)(B), substituted ``subsection (g)'' for ``subsection (h)''.

1977--Subsec. (a)(12). Pub. L. 95-216 added par. (12).

1976--Subsec. (a). Pub. L. 94-455, Secs. 1901(b)(1)(I)(iii), (X), 1906(b)(13)(A), substituted, in provisions preceding par. (1) and in two places in cl. (iv) of provisions extending the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, ``section 702(a)(8)'' for ``section 702(a)(9)'' and struck out in par. (2) `` (other than interest described in section 35)'' after ``unless such dividends and interest'' and in par. (10) ``or his delegate'' after ``Secretary''.

Subsec. (b)(1). Pub. L. 94-455, Sec. 1901(a)(155)(A), among other changes, struck out provisions spelling out fixed Social Security contributions and benefit base limits on wages paid during taxable years between 1955 through 1974

Subsec. (c)(2)(F). Pub. L. 94-455, Sec. 1207(e)(1)(B), added subpar. (F).

Subsec. (g). Pub. L. 94-455, Secs. 1901(a)(155)(B), (C), 1906(b)(13)(A), redesignated subsec. (h) as (g), and as so redesignated, struck out in par. (1)(A) ``or his delegate'' after ``Secretary'' and in par. (2) provisions relating to individuals who have self-employment income for taxable years ending before Dec. 31, 1967, on or before Dec. 31, 1968, and substituted in par. (2) reference to for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)) for reference to ending on or after Dec. 31, 1967 for which he has self-employment income (as so determined). Former subsec. (g), which related to treatment of certain remunerations erroneously reported as net earnings from self-employment, was struck out.

Subsecs. (h), (i). Pub. L. 94-455, Sec. 1901(a)(155)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1975--Subsec. (b). Pub. L. 94-92 struck out from item B of second sentence the limitation of ``wages'' to include ``compensation'' solely with respect to the tax imposed by section 1401(b).

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

1973--Subsec. (b)(1)(H). Pub. L. 93-233 substituted ``\$13,200'' for

``\$12,600''.

Pub. L. 93-66 substituted ``\$12,600'' for ``\$12,000''.

1972--Subsec. (a)(8), (11). Pub. L. 92-603, Secs. 121(b)(1), 124(b), 140(b), in par. (8), struck out limitation under which provisions authorizing the computation of net earnings without regard to sections 911 and 931 were limited to citizens of the United States performing religious service as employees of an American employer or as ministers in a foreign country having a congregation predominantly of citizens of the United States, added par. (11), and extended the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, with certain exceptions.

Subsec. (b)(1)(F). Pub. L. 92-336, Sec. 203(b)(1)(A), inserted ``and before 1973'' after ``1971''.

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

Subsec. (i). Pub. L. 92-603, Sec. 121(b)(2), added subsec. (i).

1971--Subsec. (b)(1)(E). Pub. L. 92-5, Sec. 203(b)(1)(A), inserted ``and beginning before 1972'' after ``1967'' and substituted ``; and'' for ``; or''.

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

1968--Subsec. (a)(10). Pub. L. 90-248, Sec. 118(a), added par. (10).

Subsec. (b). Pub. L. 90-248, Sec. 502(b)(1), designated existing provisions of second sentence respecting ``wages'' as item ``A'' and added item ``B''.

Subsec. (b)(1)(D). Pub. L. 90-248, Sec. 108(b)(1)(A), inserted ``and before 1968'' after ``1965''.

Subsec. (b)(1)(E). Pub. L. 90-248, Sec. 108(b)(1)(B), added subpar. (E).

Subsec. (c). Pub. L. 90-248, Sec. 115(b)(1), substituted ``such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him'' for ``such order performed by an individual during the period for which a certificate filed by him under subsection (e) is in effect'' in last sentence.

Subsec. (c)(1). Pub. L. 90-248, Sec. 122(b)(1), excepted from exclusion from definition of ``trade or business'' the functions of a public office of a State or a political division 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 by such State and the Secretary pursuant to section 218 of the Social Security Act [section 418 of Title 42, The Public Health and Welfare].

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

Subsec. (e). Pub. L. 90-248, Sec. 115(b)(2), substituted provisions allowing clergymen, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners to secure an exemption from social security self-employment tax upon meeting requirements of pars. (1) to (3) respecting such exemption, time for filing application, and effective date of exemption for provisions of former pars. (1) to (5) permitting such persons to secure social security coverage by filing a waiver certificate, prescribing time for filing certificate, effective date of certificate treatment of certain remuneration paid in 1955 and 1956 as wages, and optional provision for certain certificates filed on or before April 15, 1967.

Subsec. (h)(2). Pub. L. 90-248, Sec. 501(a), substituted ``December 31, 1967'' and ``December 31, 1968'' for ``December 31, 1965'' and ``April 15, 1966'', respectively, in subpar. (A) and ``December 31, 1967'' for ``December 31, 1965'' in subpar. (B) and inserted in such subpar. (B) exception provision as to when an application shall be deemed timely filed.

1966--Subsec. (e)(3)(E). Pub. L. 89-368 added subpar. (E).

1965--Subsec. (a). Pub. L. 89-97, Sec. 312(b), substituted ``2,400'' for ``\$1,800'' in cls. (i) to (iv) and ``\$1,600'' for ``\$1,200'' in cls.

(ii) and (iv) of second sentence following par. (9), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89-97, Sec. 320(b)(1)(C), inserted ``and before 1966'' after ``1958'' and substituted ``and'' for ``or'' after the semicolon.

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

Subsec. (c). Pub. L. 89-97, Secs. 311(b)(1), (2), 319(a), struck out from par. (5) ``doctor of medicine, or'' before and ``; or the performance of such service by a partnership'' after ``Christian Science practitioner,'' added par. (6), and consolidated into one sentence former last two sentences.

Subsec. (e)(1). Pub. L. 89-97, Sec. 311(b)(3)(A), substituted ``extended to service described in subsection (c)(4) or (c)(5) performed by him'' for ``extended to service described in subsection (c)(4), or service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be performed by him''.

Subsec. (e)(2)(A). Pub. L. 89-97, Sec. 311(b)(3)(B), substituted ``(computed without regard to subsections (c)(4) and (c)(5) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5)'' for ``(computed, in the case of an individual referred to in paragraph (1)(A), without regard to subsection (c)(4), and, in the case of an individual referred to in paragraph (1)(B), without regard to subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4), or from the performance of service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be''.

Subsec. (e)(2)(B). Pub. L. 89-97, Sec. 341(a), substituted ``his second taxable year ending after 1963'' for ``his second taxable year ending after 1962''.

Subsec. (e)(3)(D). Pub. L. 89-97, Sec. 341(b), added subpar. (D).

Subsec. (e)(5). Pub. L. 89-97, Sec. 331(a), extended applicability of section to earnings in taxable years beyond those ending before 1960, extended until April 15, 1966, the last date for filing a certificate by an individual and until Apr. 15, 1967, the last date for filing a supplemental certificate by an individual, provided for filing of the certificate on or before Apr. 15, 1967, if the individual died on or before April 15, 1966, and extended to Apr. 15, 1967, the date on or before which the tax under section 1401 had been paid, or the overpayment, including interest under section 6611, had been repaid.

Subsec. (e)(6). Pub. L. 89-97, Sec. 331(a), struck out par. (6) which dealt with filing of certificates by fiduciaries or survivors on or before April 15, 1962.

Subsec. (h). Pub. L. 89-97, Sec. 319(c), added subsec. (h).

1964--Subsec. (a)(3)(B). Pub. L. 88-272 inserted reference to iron ore.

Subsec. (e)(2)(B). Pub. L. 88-650, Sec. 2(a), substituted ``his second taxable year ending after 1962'' for ``his second taxable year ending after 1959''.

Subsec. (e)(3)(C). Pub. L. 88-650, Sec. 2(b), added subpar. (C).

1961--Subsec. (e)(6). Pub. L. 87-64 added par. (6).

1960--Subsec. (a). Pub. L. 86-778, Sec. 103(k), added par. (9) and inserted references to paragraph (9) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86-778, Sec. 103(l), substituted ``the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa'' for ``the Virgin Islands or a resident of Puerto Rico'' in last sentence.

Subsec. (c)(2). Pub. L. 86-778, Sec. 106(b), excluded 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.

Subsec. (e)(2)(B). Pub. L. 86-778, Sec. 101(a), substituted ``1959'' for ``1956''.

Subsec. (e)(3). Pub. L. 86-778, Sec. 101(b), designated existing provisions as cl. (A), struck out provisions which related to certificates for prior taxable years which have now become inapplicable, and added cl. (B).

Subsec. (e)(5). Pub. L. 86-778, Sec. 101(c), added par. (5).

Subsec. (g). Pub. L. 86-778, Sec. 105(c)(1), added subsec. (g).

1958--Subsec. (b)(1). Pub. L. 85-840, Sec. 402(a), increased limitation on self-employment income subject to tax, for taxable years ending after 1958, from \$4,200 to \$4,800.

Subsec. (f). Pub. L. 85-840, Sec. 403(a), added subsec. (f).

1957--Subsec. (a)(8). Pub. L. 85-239, Sec. 5(b), permitted computation of net earnings without regard to sections 107 and 119 of this title.

Subsec. (e)(2). Pub. L. 85-239, Sec. 1(a), permitted a person to file a certificate on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956.

Subsec. (e)(3). Pub. L. 85-239, Sec. 1(b), provided for the effective date of certificates filed after August 30, 1957, but on or before the due date of the return (including any extension thereof) for the second taxable year ending after 1956, for certificates filed on or before August 30, 1957, which are effective only for the third or fourth taxable year ending after 1954 and all succeeding taxable years, and for certificates filed after the due date of the return (including any extension thereof) for the second taxable year ending after 1956.

Subsec. (e)(4). Pub. L. 85-239, Sec. 2, added par. (4).

1956--Subsec. (a). Act Aug. 1, 1956, Sec. 201(i), amended generally last two sentences to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than \$1,800 to deem their net earnings to be 66 $\frac{2}{3}$  percent of such gross income, and those whose gross income is more than \$1,800 and the net earnings are less than \$1,200, to deem the net earnings to be \$1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, Sec. 201(e)(2), struck out from the exclusion income derived by an owner or tenant of land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(8)(B). Act Aug. 1, 1956, Sec. 201(g), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, Sec. 201(e)(3), included within ``trade or business'' service described in section 3121(b)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, Sec. 201(f), struck out exclusion of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954--Subsec. (a). Act Sept. 1, 1954, Sec. 201(a), (c)(4), in par. (1) clarified the term rentals to indicate that it includes rentals paid in the form of crop shares, struck out par. (2), redesignated pars. (3) to (8) as (2) to (7), respectively, added a new par. (8), and inserted provisions at end establishing an optional method of reporting income for self-employed farmers.

Subsec. (b). Act Sept. 1, 1954, Sec. 201(b), increased the limitation on self-employment income subject to tax, for taxable years ending after 1954, from \$3,600 to \$4,200 and included as ``wages'', for purposes of computing ``self-employment income,' ' remuneration of United

States citizens employed by a foreign subsidiary of a domestic corporation which has agreed to have the Social Security insurance system extended to service performed by such citizens.

Subsec. (c). Act Sept. 1, 1954, Sec. 201(c)(2), inserted two sentences at end making the provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under subsec. (e) is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, Sec. 201(c)(1), inserted ``and other than service described in paragraph (4) of this subsection'' after ``18''.

Subsec. (c)(5). Act Sept. 1, 1954, Sec. 201(c)(5), struck out exclusions from self-employment tax in the case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors and professional engineers.

Subsec. (e). Act Sept. 1, 1954, Sec. 201(c)(3), added subsec. (e).

#### Effective Date of 1997 Amendment

Section 922(c) of Pub. L. 105-34 provided that: ``The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to payments after December 31, 1997.''

#### Effective Date of 1996 Amendment

Section 1456(b) of Pub. L. 104-188 provided that: ``The amendments made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994.''

#### Effective Date of 1994 Amendment

Amendment by section 108(h)(1) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Section 319(c) of Pub. L. 103-296 provided that: ``The amendments made by this section [amending this section, sections 3102, 3121, and 3122 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the calendar quarter following the calendar quarter in which the date of the enactment of this Act [Aug. 15, 1994] occurs.''

#### Effective Date of 1993 Amendment

Section 13207(e) of Pub. L. 103-66 provided that: ``The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1994 and later calendar years.''

#### Effective Date of 1990 Amendment

Amendment by section 5123(a)(3) of Pub. L. 101-508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101-508, set out as a note under section 403 of Title 42, The Public Health and Welfare.

Section 5130(b) of Pub. L. 101-508 provided that: ``The amendments made by subsection (a) [amending this section, section 3509 of this title, and sections 408, 409, and 411 of Title 42] shall be effective as if included in the enactment of the provision to which it relates.''

Section 11331(e) of Pub. L. 101-508 provided that: ``The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1991 and later calendar years.''

#### Effective Date of 1989 Amendment

Section 10204(a)(2) of Pub. L. 101-239 provided that: ``The amendments made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1989.''

#### Effective Date of 1988 Amendment

Amendment by section 3043(c)(1) of Pub. L. 100-647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100-647, set out as an Effective Date note under section 7873 of this title.

Section 8007(d) of Pub. L. 100-647 provided that: ``The amendments made by subsection (a) [enacting section 3127 of this title and renumbering former section 3127 of this title as section 3128] shall apply to wages paid after December 31, 1988. The amendments made by subsection (b) [amending section 402 of Title 42, The Public Health and Welfare] shall apply to benefits paid for (and items and services furnished in) months after December 1988. The amendments made by subsection (c) [amending this section] shall apply to applications for exemptions filed on or after the date of the enactment of this Act [Nov. 10, 1988].''

#### Effective Date of 1987 Amendment

Section 9022(c) of Pub. L. 100-203 provided that: ``The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to services performed in taxable years beginning on or after January 1, 1988.''

#### Effective Date of 1986 Amendments

Amendment by section 301(b)(12) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 1272(d)(8), (9) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Section 1704(a)(3) of Pub. L. 99-514 provided that: ``The amendments made by paragraphs (1) and (2) [amending this section] shall apply to applications filed after December 31, 1986.''

Section 1882(b)(3) of Pub. L. 99-514 provided that: ``The amendments made by this subsection [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to remuneration paid or derived in taxable years beginning after December 31, 1985.''

Amendment by Pub. L. 99-509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99-509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99-272 applicable to services performed after

Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99-272, set out as a note under section 3121 of this title.

#### Effective Date of 1984 Amendment

Amendment by section 102(c)(1) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Amendment by section 2603(c)(2) of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2663(j)(5)(B) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42.

#### Effective Date of 1983 Amendment

Amendment by section 124(c)(2) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98-21, set out as a note under section 1401 of this title.

Amendment by section 321(e)(3) of Pub. L. 98-21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

Amendment by section 322(b)(2) of Pub. L. 98-21 effective for taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21 set out as a note under section 3121 of this title.

Section 323(c)(2) of Pub. L. 98-21 provided that: "Except as provided in subsection (b)(2)(B) [amending section 411 of Title 42, The Public Health and Welfare, effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984], the amendments made by subsection (b) [amending this section and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1983."

#### Effective Date of 1982 Amendment

Amendment by Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97-248, set out as a note under section 3121 of this title.

#### Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

#### Effective Date of 1978 Amendment

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

#### Effective Date of 1978 Amendment; Election of Prior Law

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

#### Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 313(c) of Pub. L. 95-216, set out as a note under section 411 of Title 42, The Public Health and Welfare.

#### Effective Date of 1976 Amendment

Amendment by section 1207(e)(1)(B) of Pub. L. 94-455 applicable to taxable years ending after Dec. 31, 1971, see section 1207(f)(4) of Pub. L. 94-455, set out as a note under section 3121 of this title.

Amendment by section 1901(a)(155), (b)(1)(I)(iii), (X) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

#### Effective Date of 1975 Amendment

Section 203(c) of Pub. L. 94-92 provided that: ``The amendments made by this section [amending this section and section 3231 of this title] shall be effective January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.''

#### Effective Date of 1974 Amendment

Amendment by Pub. L. 93-368 applicable with respect to taxable years beginning after Dec. 31, 1973, see section 10(c) of Pub. L. 93-368, set out as a note under section 411 of Title 42, The Public Health and Welfare.

#### Effective Date of 1973 Amendments

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42.

#### Effective Date of 1972 Amendments

Amendment by Pub. L. 92-603 applicable with respect to taxable years beginning after Dec. 31, 1972, see sections 121(c), 124(c), and 140(c) of Pub. L. 92-603, set out as notes under section 411 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 92-336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92-336, set out as a note under section 409 of Title 42.

#### Effective Date of 1971 Amendment

Amendment by Pub. L. 92-5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92-5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### Effective Date of 1968 Amendment

Amendment by section 108(b)(1) of Pub. L. 90-248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Section 115(c) of Pub. L. 90-248 provided that: ``The amendments made by subsections (a) and (b) [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending after 1967.''

Section 118(c) of Pub. L. 90-248 provided that: ``The amendments made by this section [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending on or after December 31, 1967.''

Section 122(c) of Pub. L. 90-248 provided that:

``(1) The amendments made by subsections (a) and (b) of this section [amending this section and section 411 of Title 42] shall apply with respect to fees received after 1967.

``(2) Notwithstanding the provisions of subsections (a) and (b) of this section [amending this section and section 411 of Title 42], 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.''

Section 501(b) of Pub. L. 90-248, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ``The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date.''

Section 502(b)(2) of Pub. L. 90-248 provided that: ``The amendments made by paragraph (1) [amending this section] shall be effective only with respect to taxable years ending on or after December 31, 1968.''

#### Effective Date of 1966 Amendment

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

#### Effective Date of 1965 Amendment

Amendment by section 311(b)(1)-(3) of Pub. L. 89-97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89-97, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 312(b) of Pub. L. 89-97 applicable only with respect to taxable years beginning after Dec. 31, 1965, see section 312(c) of Pub. L. 89-97, set out as a note under section 411 of Title 42.

Section 319(e) of Pub. L. 89-97, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ``The amendments



made by this section [amending this section and sections 402 and 411 of Title 42] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date.'

Amendment by section 320(b)(1) of Pub. L. 89-97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89-97, set out as a note under section 3121 of this title.

Section 331(d) of Pub. L. 89-97, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: 'The amendments made by this section [amending this section] shall be applicable (except as otherwise specifically provided therein) only to certificates with respect to which supplemental certificates are filed pursuant to section 1402(e)(5)(A) of such Code after the date of the enactment of this Act [July 30, 1965], and to certificates filed pursuant to section 1402(e)(5)(B) after such date; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments, and no lump sum death payment under such title [section 401 et seq. of Title 42] shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [July 30, 1965]. The provisions of section 1402(e)(5) and (6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which were in effect before the date of enactment of this Act shall be applicable with respect to any certificate filed pursuant thereto before such date if a supplemental certificate is not filed with respect to such certificate as provided in this section.'

Section 341(c) of Pub. L. 89-97, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: 'The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [July 30, 1965]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments.'

#### Effective Date of 1964 Amendments

Section 2(c) of Pub. L. 88-650, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: 'The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Oct. 13, 1964]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act [Oct. 1964] is enacted or any prior month shall be payable or increased by reason of such amendments.'

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

#### Effective Date of 1961 Amendment

Section 202(b) of Pub. L. 87-64 provided that: 'The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [June 30, 1961]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this



Act is enacted or any prior month shall be payable or increased by reason of such amendment, and no lump-sum death payment under such title shall be payable or increased by reason of such amendment in the case of any individual who died prior to the date of enactment of this Act [June 30, 1961].''

#### Effective Date of 1960 Amendment

Section 101(f) of Pub. L. 86-778, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ``The amendments made by this section [amending this section] shall be applicable (except as otherwise specifically indicated therein) only with respect to certificates (and supplemental certificates) filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendments, and no lump-sum death payment under such title shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960].''

Amendment by section 103(k) of Pub. L. 86-778 applicable only in the case of taxable years beginning after 1960, except that, insofar as such enactment involves the nonapplication of section 932 of this title to the Virgin Islands for purposes of section 1401 et seq. of this title and section 411 of Title 42, such enactment shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and section 411 of Title 42 are applicable, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

Amendment by section 103(l) of Pub. L. 86-778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

Amendment by section 106(b) of Pub. L. 86-778 applicable only with respect to taxable years ending on or after Dec. 31, 1960, see section 106(c) of Pub. L. 86-778, set out as a note under section 411 of Title 42.

#### Effective Date of 1958 Amendment

Section 403(b) of Pub. L. 85-840, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

``(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958].

``(2) In the case of an individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], the amendment made by subsection (a) [amending this section] shall apply only if--

``(A) before January 1, 1960, there is filed a return (or amended return) of the tax imposed by chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1401 et seq. of this title] for the taxable year ending as a result of his death, and

``(B) in any case where the return is filed solely for the purpose of reporting net earnings from self-employment resulting from the amendment made by subsection (a), the return is accompanied by the amount of tax attributable to such net earnings.

In any case described in the preceding sentence, no interest or penalty shall be assessed or collected on the amount of any tax due under chapter 2 of such Code solely by reason of the operation of section

1402(f) of such Code.''

Effective Date of 1957 Amendment

Section 4 of Pub. L. 85-239, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Section 3 [set out below], and the amendments made by the first section of this Act [amending this section], shall apply with respect to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for months beginning after, and lump sum death payments under such title in the case of deaths occurring after, the date of the enactment of this Act [Aug. 30, 1957].

''(b) Notwithstanding subsection (a), in the case of any individual who--

''(1) (A) has remuneration which is deemed, by reason of section 3, to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42], or

''(B) has income which constitutes net earnings from self-employment under such title by reason of the filing of a certificate pursuant to section 1402(e)(3)(A) or (B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(2) was entitled to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [August 1957], section 3 [set out below] and the amendments made by the first section of this Act [amending this section] shall apply with respect to monthly insurance benefits under such title based on his wages and self-employment income only if he, or any other person entitled to monthly insurance benefits under such title on the basis of such wages and self-employment income, files, on or after the date of enactment of this Act [Aug. 30, 1957], an application for recomputation by reason of this Act. Such recomputation shall be made in the manner provided in title II of the Social Security Acts [section 401 et seq. of Title 42] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount and as though the application therefor was filed in the month in which the application for such last previous computation or recomputation was filed. No recomputation under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of Title 42]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application therefor is filed, but in no case for any month which begins on or prior to the date of the enactment of this Act. Any such recomputation shall be effective only if it results in a higher primary insurance amount.

''(c) The preceding provisions of this section shall not render erroneous any monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act [August 1957] is enacted or any prior month.''

Section 5(c) of Pub. L. 85-239 provided that: ''The amendments made by this section [amending this section and section 411 of Title 42] shall, except for purposes of section 203 of the Social Security Act [section 403 of title 42], apply only with respect to taxable years ending on or after December 31, 1957. For purposes of section 203 of the Social Security Act [section 403 of Title 42] (other than subsection (a)), such amendments shall apply only with respect to taxable years beginning after the month in which this Act is enacted [August 1957]. For purposes of subsection (a) of such section 203, such amendments shall apply only with respect to taxable years of the insured individual ending on or after December 31, 1957.''

Effective Date of 1956 Amendment

Amendment by section 201(e)(2), (f) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, amendment by section 201(i) of that act applicable with respect to taxable years ending on or after Dec. 31, 1956, amendment by section 201(e)(3) of that act applicable with respect to taxable years ending after 1954, and, except as provided in section 201(m)(2)(B) of that act, amendment by section 201(g) of that act applicable only with respect to taxable years ending after 1956, see section 201(m) of act Aug. 1, 1956, set out as a under section 3121 of this title.

#### Effective Date of 1954 Amendment

Section 201(d) of act Sept. 1, 1954, provided that: ``The amendments made by subsections (a), (b) and (c) of this section [amending this section] shall be applicable only with respect to taxable years ending after 1954.''

#### Revocation by Members of the Clergy of Exemption From Social Security Coverage

Pub. L. 106-170, title IV, Sec. 403, Dec. 17, 1999, 113 Stat. 1910, provided that:

``(a) In General --Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Dec. 17, 1999], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed by the Commissioner of Internal Revenue), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1999. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act (42 U.S.C. 401 et seq.)), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1999, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding paragraphs (4) and (5) of section 1402(c)) except for the exemption under section 1402(e)(1) of such Code.

``(b) Effective Date.--Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1999, and with respect to monthly insurance benefits payable under title II on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

Limited Exemption for Canadian Ministers From Certain Self-Employment  
Tax Liability

Section 306 of Pub. L. 103-296 provided that:

“(a) In General.--Notwithstanding any other provision of law, if--  
“(1) an individual performed services described in section 1402(c)(4) of the Internal Revenue Code of 1986 which are subject to tax under section 1401 of such Code,  
“(2) such services were performed in Canada at a time when no agreement between the United States and Canada pursuant to section 233 of the Social Security Act [42 U.S.C. 433] was in effect, and  
“(3) such individual was required to pay contributions on the earnings from such services under the social insurance system of Canada,

then such individual may file a certificate under this section in such form and manner, and with such official, as may be prescribed in regulations issued under chapter 2 of such Code. Upon the filing of such certificate, notwithstanding any judgment which has been entered to the contrary, such individual shall be exempt from payment of such tax with respect to services described in paragraphs (1) and (2) and from any penalties or interest for failure to pay such tax or to file a self-employment tax return as required under section 6017 of such Code.

“(b) Period for Filing.--A certificate referred to in subsection (a) may be filed only during the 180-day period commencing with the date on which the regulations referred to in subsection (a) are issued.

“(c) Taxable Years Affected by Certificate.--A certificate referred to in subsection (a) shall be effective for taxable years ending after December 31, 1978, and before January 1, 1985.

“(d) Restriction on Crediting of Exempt Self-Employment Income.--In any case in which an individual is exempt under this section from paying a tax imposed under section 1401 of the Internal Revenue Code of 1986, any income on which such tax would have been imposed but for such exemption shall not constitute self-employment income under section 211(b) of the Social Security Act (42 U.S.C. 411(b)), and, if such individual's primary insurance amount has been determined under section 215 of such Act (42 U.S.C. 415), notwithstanding section 215(f)(1) of such Act, the Secretary of Health and Human Services (prior to March 31, 1995) or the Commissioner of Social Security (after March 30, 1995) shall recompute such primary insurance amount so as to take into account the provisions of this subsection. The recomputation under this subsection shall be effective with respect to benefits for months following approval of the certificate of exemption.”

Plan Amendments Not Required Until January 1, 1989

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

Revocation of Exemption From Coverage by Clergymen; Procedure,  
Applicability, Etc.

Section 1704(b) of Pub. L. 99-514 provided that:

“(1) In general.--Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a)(2)(B) of this section, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in

which this Act is enacted [enacted Oct. 22, 1986], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of subtitle A of such Code), if such application is filed--

``(A) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [42 U.S.C. 402(a), 423] (without regard to section 202(j)(1) or 223(b) of such Act [42 U.S.C. 402(j)(1), 423(b)]), and

``(B) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986].

Any such revocation shall be effective (for purposes of chapter 2 of subtitle A of the Internal Revenue Code of 1986 and title II of the Social Security Act [42 U.S.C. 401 et seq.]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the Federal income tax return for the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of such Code (notwithstanding paragraph (4) or (5) of section 1402(c) of such Code) but for the exemption under section 1402(e)(1) of such Code.

``(2) Effective date.--Paragraph (1) of this subsection shall apply with respect to service performed (to the extent specified in such paragraph) in taxable years ending on or after the date of the enactment of this Act [Oct. 22, 1986] and with respect to monthly insurance benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such paragraph) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

Section 316 of Pub. L. 95-216, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

``(a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any exemption which has been received under section 1402(e)(1) of such Code, by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act [Pub. L. 95-216, enacted Dec. 20, 1977] is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code [this chapter]), if such application is filed--

``(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of Title 42, The Public Health and Welfare] (without regard to section 202(j)(1) or 223(b) of such Act [section 402(j)(1) or 423(b) of Title 42]), and

``(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Dec. 20, 1977].

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 [this chapter] and title II of the Social



Security Act [section 401 et seq. of Title 42]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code [this chapter] (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act [Dec. 20, 1977], and with respect to monthly insurance benefits payable under title II of the Social Security Act [section 401 et seq. of Title 42] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

#### Election of Exemption of Fees From Coverages Self-Employment Income

Section 122(c)(2) of Pub. L. 90-248 authorized any individual affected by the amendments made by Pub. L. 90-248 to subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42, The Public Health and Welfare, to make an irrevocable election not to have such amendments apply to fees received in 1968 and every year thereafter if he filed, on or before the due date of his income tax return for 1968, with the Secretary of the Treasury, a certificate of election of exemption from such amendments.

#### Time for Claim for Refund or Credit of Overpayment; Disallowance of Interest

Section 501(c) of Pub. L. 90-248 authorized the payment of a refund or credit of any overpayment resulting from the amendment of subsec. (h)(2), relating to the filing of applications under this section, by section 501(a) of Pub. L. 90-248 if the claim therefore was filed on or before Dec. 31, 1968.

#### Refund or Credit on Claims for Overpayment Filed Before April 15, 1966, by Members of Religious Groups Opposed to Insurance

Section 319(f) of Pub. L. 89-97 authorized the payment of a refund or credit of any overpayment resulting from the amendments made to sections 402, 411, and 1402 of this title by Pub. L. 89-97, if the claim therefore is filed on or before Apr. 15, 1966.

#### Computation of Interest or Assessment of Penalties on Self-Employment Taxes Payable by Ministers, Members of Religious Orders, and Christian Science Practitioners

Section 331(b) of Pub. L. 89-97 established, for purposes of computing interest, Apr. 15, 1967, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before Jan. 1, 1966 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(5) of this section, which was struck out by section 115(b)(2) of Pub. L. 90-248.

#### Computation of Interest or Assessment of Penalties on Self-Employment Taxes Payable by Ministers, Members of Religious Orders, and Christian Science Practitioners

Section 101(d) of Pub. L. 86-778 established, for purposes of computing interest, Apr. 15, 1962, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before 1959 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(3)(B) or (5) of this section.

Section 1(c) of Pub. L. 85-239 established the due date, for purposes of computing interest, for the payment of taxes, where a certificate had been filed under subsec. (e)(3)(A) or (B) of this section after the due date of a return for any taxable year.

#### Remuneration Deemed Net Earnings From Self-Employment and not Remuneration for Employment

Section 105(c)(2) of Pub. L. 86-778, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Remuneration which is deemed under section 1402(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute net earnings from self-employment and not remuneration for employment shall also be deemed, for purposes of title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], to constitute net earnings from self-employment and not remuneration for employment. If, pursuant to the last sentence of section 1402(g) of the Internal Revenue Code of 1986, an individual is deemed to have become an employee of an organization (or to have become a member of a group) on the first day of a calendar quarter, such individual shall likewise be deemed, for purposes of clause (ii) or (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(18)(B)(ii), (iii) of Title 42], to have become an employee of such organization (or to have become a member of such group) on such day."

#### Remuneration Paid to Ministers, Members of Religious Orders, and Christian Science Practitioners in 1955 and 1956 Deemed Remuneration for Employment for Purposes of Social Security Benefits

Section 3 of Pub. L. 85-239, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Remuneration which is deemed under section 1402(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute remuneration for employment shall also be deemed, notwithstanding sections 210(a)(8)(A) and 211(c) of the Social Security Act [sections 410(a)(8)(A) and 411(c) of Title 42, The Public Health and Welfare], to constitute remuneration for employment (and not net earnings from self-employment) for purposes of title II of such Act [section 401 et seq. of Title 42]." See section 4 of Pub. L. 85-239, set out as an Effective Date of 1957 Amendment note above.

#### Monthly Benefits and Lump-Sum Death Payments Under Social Security Act

Section 105(d)(2) of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 3121 of this title, provided that no



monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for September 1960 or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of section 105 or the amendments made by such subsections [adding subsec. (g) to this section and enacting notes under this section and section 3121 of this title], and no lump-sum death payment under title II of the Social Security Act shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to Sept. 13, 1960.

#### Section Referred to in Other Sections

This section is referred to in sections 32, 162, 219, 401, 408, 475, 879, 981, 2032A, 3121, 3127, 6103, 6521, 6654 of this title; title 42 sections 401, 402, 411, 430.