

§ 1.1402(a)-1

26 CFR Ch. I (4-1-04 Edition)

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

(c) In general, self-employment income consists of the net earnings derived by an individual (other than a nonresident alien) from a trade or business carried on by him as sole proprietor or by a partnership of which he is a member, including the net earnings of certain employees as set forth in § 1.1402(c)-3, and of crew leaders, as defined in section 3121(o) (see such section and the regulations thereunder in part 31 of this chapter (Employment Tax Regulations)). See, however, the exclusions, exceptions, and limitations set forth in §§ 1.1402(a)-1 through 1.1402(h)-1.

[T.D. 6993, 34 FR 828, Jan. 18, 1969, as amended by T.D. 7333, 39 FR 44445, Dec. 24, 1974]

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

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

(1) The gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by chapter 1 of the Code which are attributable to such trade or business, plus

(2) His distributive share (whether or not distributed), as determined under section 704, of the income (or minus the loss), described in section 702(a)(9) and as computed under section 703, from any trade or business carried on by any partnership of which he is a member.

(b) Gross income derived by an individual from a trade or business includes payments received by him from a partnership of which he is a member for services rendered to the partnership

or for the use of capital by the partnership, to the extent the payments are determined without regard to the income of the partnership. However, such payments received from a partnership not engaged in a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1 do not constitute gross income derived by an individual from a trade or business. See section 707(c) and the regulations thereunder, relating to guaranteed payments to a member of a partnership for services or the use of capital. See also section 706(a) and the regulations thereunder, relating to the taxable year of the partner in which such guaranteed payments are to be included in computing taxable income.

(c) Gross income derived by an individual from a trade or business includes gross income received (in the case of an individual reporting income on the cash receipts and disbursements method) or accrued (in the case of an individual reporting income on the accrual method) in the taxable year from a trade or business even though such income may be attributable in whole or in part to services rendered or other acts performed in a prior taxable year as to which the individual was not subject to the tax on self-employment income.

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 7333, 39 FR 44445, Dec. 24, 1974]

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

(a) *General rule.* In general, the gross income and deductions of an individual attributable to a trade or business (including a trade or business conducted by an employee referred to in paragraphs (b), (c), (d), or (e) of § 1.1402(c)-3), for the purpose of ascertaining his net earnings from self-employment, are to be determined by reference to the provisions of law and regulations applicable with respect to the taxes imposed by sections 1 and 3. Thus, if an individual uses the accrual method of accounting in computing taxable income from a trade or business for the purpose of the tax imposed by section 1 or 3, he must use the same method in determining net earnings from self-employment. Likewise, if a taxpayer engaged in a trade or business of selling