

SECTION 1402.--DEFINITIONS

(Also Part II, Section 481; Regulations 118, Section 39.481-1.)

An individual is employed as a professor by a State university. As sideline activities, separate and apart from his services for the university, the individual is engaged in writing books and giving lectures for profit. *Held*, the royalties and other income received by the individual from the sideline activities are includible in computing net earnings from self-employment for purposes of the Self-Employment Contributions Act of 1954.

[Text]

An inquiry has been received whether royalties and other income received by a professor employed by a State university, who writes books and gives lectures as sideline activities, may be includible in computing net earnings from self-employment under the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954).

In the instant case, a professor, employed by a State university to perform full-time teaching services at the university, is engaged in sideline activities involving public lecturing and the writing of several books. One of his books is a college textbook which he revises from time to time under contract with the publisher; another is a laboratory manual which he has devised for the use of students at the university where he teaches and which he sells direct to them. He receives royalties from the publisher from the sale of his textbook. During the past year, the publisher made him an advance on his royalties with respect to the preparation of a current revision of the textbook. Although the books and lectures are in the general field of education, they are the result of his own initiative and are not instigated pursuant to his employment contract with the university. Also, although the amounts which he receives from these sideline activities vary from year to year, they exceed the minimum requirement of \$400 per year for self-employment tax purposes.

Section 1402 of the Act provides in part:

(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 [Subtitle A] which are attributable to such trade or business, \* \* \*

\* \* \* \* \*

(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, \* \* \* except that such term shall not include--

\* \* \* \* \*

(2) the performance of service by an individual as an employee \* \* \*

Admittedly, the relationship between the university and the professor is that of employer and employee under the common law rules used, for Federal employment tax purposes, in arriving at such a determination. See S. S. T. 341, C. B. 1938-2, 297. This is true even though, for Federal employment tax purposes, such services are excepted from "employment" by sections 3121(b)(7) and 3306(c)(7) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act (chapters 21 and 23, respectively, subtitle C, Internal Revenue Code of 1954). Therefore, the services of the individual as a professor for the university are excluded from the term "trade or business," by virtue of section 1402(c)(2)

of the Act. However, the sideline activities engaged in by the professor are entirely separate from his services for the university and with respect to such activities he is not an employee.

Whether or not an individual is engaged in a trade or business depends upon the facts in the particular case. As a general rule, a person who is regularly engaged in an occupation or profession for profit which constitutes in whole or in part his livelihood, and who is not regarded as an employee for Federal Insurance Contributions Act purposes, is engaged in a trade or business for self-employment tax purposes. If an individual writes only one book as a sideline and never revises it, he would not be considered to be “regularly engaged” in an occupation or profession and his royalties therefrom would not be considered net earnings from self-employment. However, where an individual prepares new editions of the book from time to time, writes other books and materials, and lectures professionally, such activities reflect the conduct of a trade or business, and, if it is not one of the excluded professions of section 1402(c) of the Self-Employment Contributions Act, the income from it is includible in computing net earnings from self-employment, subject to the limitations of section 1402(b) of the Act.

In the instant case, it is held that the sideline activities of the professor constitute a trade or business for purposes of the Self-Employment Contributions Act. To the extent that the income from those activities does not exceed the limitations of \$3,600 (for 1954) and \$4,200 (for any taxable year ending after 1954), after considering the amount of any wages paid to him during the year, as set forth in section 1402(b) of that Act, the royalties and other income received by him from those sideline activities are to be taken into account in computing his net earnings from self-employment for such purposes.