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Internal Revenue Code Section 401(c)(2)

Qualified pension, profit-sharing, and stock bonus plans

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(c) Definitions and rules relating to self-employed individuals and owner-employees. For purposes of this section--

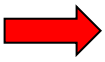
(1) Self-employed individual treated as employee.--

(A) In general. --The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual. --The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year--

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.



(2) Earned income.--

(A) In general. --The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined--

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c) ,

(iii) in the case of any individual who is treated as an employee under subparagraph (A) , (C) , or (D) of section 3121(d)(3) , without regard to section 1402(c)(2) ,

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f) .

For purposes of this subparagraph , section 1402 , as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6) .

(B) [(B) Repealed. Pub.L. 89-809, Title II, § 204(c) , Nov. 13 1966, 80 Stat. 1577]

(C) Income from disposition of certain property. --For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee.
The term "owner-employee" means an employee who--

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.
An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1) .

(5) Contributions on behalf of owner-employees.
The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan--

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen.
For purposes of this subsection , the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

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