

§ 404.416 [Removed]

5. Section 404.416 is removed.

6. Section 404.428 is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) When we apply the annual earnings test to your earnings as a beneficiary under this subpart (*see* § 404.415), we count all of your earnings (as defined in § 404.429) for all months of your taxable year even though you may not be entitled to benefits during all months of that year. (*See* § 404.430 for the rule that applies to the earnings of a beneficiary who attains full retirement age (as described in § 404.409)).

(b) Your taxable year is presumed to be a calendar year until you show to our satisfaction that you have a different taxable year. If you are self-employed, your taxable year is a calendar year unless you have a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. In either case, the number of months in a taxable year is not affected by:

- (1) The time a claim for Social Security benefits is filed;
- (2) Attainment of any particular age;
- (3) Marriage or the termination of marriage; or
- (4) Adoption.

(c) The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, we use twelve as the number of months to determine whether the beneficiary had excess earnings for the year under § 404.430.

(d) Wages, as defined in § 404.429(c), are charged as earnings for the months and year in which you rendered the services. Net earnings or net losses from self-employment count as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

7. Section 404.429 is revised to read as follows:

§ 404.429 Earnings; defined.

(a) *General.* The term "earnings" as used in this subpart (other than as a part of the phrase "net earnings from self-employment") includes the sum of your wages for services rendered in a taxable year, plus your net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings or net loss from self-employment.* Your net earnings or net loss from self-employment are determined under the provisions in subpart K of this part, except that:

(1) In this section, the following occupations are included in the definition of "trade or business" (although they may be excluded in subpart K):

(i) The performance of the functions of a public office;

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

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

(iv) The performance by an individual in the exercise of his or her profession as a doctor of medicine, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the earnings test under this subpart:

(i) If you reach full retirement age, as defined in § 404.409, on or before the last day of your taxable year, you will have excluded from your gross earnings from self-employment, your royalties attributable to a copyright or patent obtained before the taxable year in which you reach full retirement age; and

(ii) If you are entitled to insurance benefits under title II of the Act, other than disability insurance benefits or child's insurance benefits payable by reason of being disabled, we will exclude from gross earnings any self-employment income you received in a year after your initial year of entitlement that is not attributable to services you performed after the first month you became entitled to benefits. In this section, services means any significant work activity you performed in the operation or management of a trade, profession, or business which can be related to the income received. If a part of the income you receive in a year is not related to any significant services you performed after the month of initial entitlement, only that part of your income may be excluded from gross earnings for deduction purposes. We count the balance of the income for deduction purposes. Your royalties or other self-employment income is presumed countable for purposes of the earnings test until it is shown to our satisfaction that such income may be excluded under this section.

(3) We do not count as significant services:

(i) Actions you take after the initial month of entitlement to sell a crop or product if it was completely produced in or before the month of entitlement. This rule does not apply to income you receive from a trade or business of

buying and selling products produced or made by others; for example, a grain broker.

(ii) Your activities to protect an investment in a currently operating business or activities that are too irregular, occasional, or minor to be considered as having a bearing on the income you receive, such as—

(A) Hiring an agent, manager, or other employee to operate the business;

(B) Signing contracts where your signature is required, so long as the major contract negotiations were handled by others in running the business for you;

(C) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for you;

(D) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(E) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(4) In figuring your net earnings or net loss from self-employment, we count all net income or net loss even though:

(i) You did not perform personal services in carrying on the trade or business;

(ii) The net profit was less than \$400;

(iii) The net profit was in excess of the maximum amount creditable to your earnings record; or

(iv) The net profit was not reportable for social security tax purposes.

(5) Your net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal Revenue Code). Net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. You cannot deduct, from wages or net earnings from self-employment, expenses in connection with the production of income excluded from gross income under (b)(2)(ii) of this section.

(c) *Wages.* Wages include the gross amount of your wages rather than the net amount paid after deductions by your employer for items such as taxes and insurance. Wages are defined in subpart K of this part, except that we also include the following types of wages that are excluded in subpart K:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Wages of less than the amount stipulated in section § 404.1057 that you