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Revenue Ruling 77-356

Section 1402. -- Definitions

July 1977

Speech maker; Member of Congress. Amounts received for speaking engagements by a Member of Congress who regularly engages in such activities are includible in net earnings from self-employment; Rev. Rul. 55-431 amplified.

Advice has been requested whether, under the circumstances described below, amounts received by an individual for giving speeches are includible in net earnings from self-employment for purposes of the Self-Employment Contributions Act (chapter 2, subtitle A, Internal Revenue Code of 1954).

A member of the United States Congress frequently receives invitations to speak on matters upon which the Member is an expert. The acceptance of an invitation depends on the Member's availability and the amount of time the Member would have to spend away from Congressional duties. There is no pattern to the number of speeches given and the remuneration received. Many invitations are accepted in order to set forth the Member's views on national policy in the Member's area of expertise. During the taxable year in question the Member made 10 speeches for which \$1,500 was received.

Section 1402 (a) of the SECA provides that the term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by the individual, less the deductions allowed by subtitle A of the Code (relating to income taxes) that are attributable to the trade or business.

Section 1402 (c) of the SECA provides that the term "trade or business" has the same meaning as it does in section 162 of the Code (relating to trade or business expenses), with certain specified exceptions. One of the exceptions is contained in section 1402 (c) (1) which provides that the term does not include the performance of the functions of a public office (other than certain State or local public officers who are paid on a fee basis).

Section 1.1402 (c)-2 (b) of the Income Tax Regulations provides that for purposes of the exception in section 1402 (c) (1) of the SECA, relating to public officers, a member of Congress performs the functions of a public office.

In *Flint v. Stone Tracy Co.*, 220 U.S. 107, 55 L. Ed. 389, 31 S. Ct. 342, T.D. 1685 (1911), the Supreme Court stated that a business is that which occupies the time, attention, and labor of men for the purpose of livelihood or profit. In *Deputy v. duPont*, 308 U.S. 488, 84 L. Ed. 416, 60 S. Ct. 363, 1940-1 C.B. 118 (1940), Ct.D. 1435, 1940-1 C.B. 118, it is stated that carrying on a trade or business involves holding one's self out to others as engaged in the selling of goods or services. An isolated or occasional activity is not a business. However, an individual may engage

in several trades or occupations either independent of, or in connection with, his principal business. *Freedman v. Commissioner*, 301 F.2d 359 (5th Cir. 1962); *Joseph M. Philbin*, 26 T.C. 1159 (1956).

Rev. Rul. 55-431, 1955-2 C.B. 312, concludes that an individual who accepts an occasional invitation to make a speech for which an honorarium is received is not engaged in a trade or business for self-employment tax purposes. That Revenue Ruling further states, however, that whether a certain activity constitutes engaging in a "trade or business" is dependent upon all the facts and circumstances in the particular case. In this regard and as a general rule, Rev. Rul. 55-431 also provides that when a person is regularly engaged in an occupation or profession for profit and, as to such occupation or profession, is not regarded as an employee for purposes of the taxes imposed by the Federal Insurance Contributions Act or otherwise excluded from the self-employment provisions, the person is engaged in a trade or business. Thus, lecturing or speech making may or may not be a trade or business, depending upon whether such engagements are carried on with a degree of regularity, whether the individual seeks or otherwise indicates availability for speaking engagements, and whether the individual receives compensation for such speech making.

During the taxable year the Member of Congress received \$1,500 from 10 speaking engagements. The frequency of the speaking engagements indicates a degree of recurrence, continuity, and availability for speech making, and the amount received during the year was compensatory. Although the Member of Congress is a public official in the performance of congressional duties, the income from the speaking engagements is not derived from performing those duties. The income from giving speeches is derived from the separate trade or business of speech making.

Accordingly, the amount received in the subject case during the taxable year for giving speeches is includible in computing the Member's net earnings from self-employment for purposes of the Self-Employment Contributions Act.

Rev. Rul. 55-431 is amplified.