

Can Ministers Opt Out of Social Security?

A Question Often Asked:

"My advisor has recommended that, as a minister, I can elect out of Social Security coverage and put my money into an annuity program, thereby securing a better retirement. Is this true? Is it legal? What forms might be involved?"

A Law Often Misunderstood:

The Tax Code does provide a means for **some** ministers in **some** denominations to exercise an option to terminate Social Security/Medicare coverage for their ministerial earnings. IRS Form 4361 must be used, and it must be filed on the correct basis of religious belief. If approved by the IRS, only earnings from ministerial services are exempt from self-employment tax. Form 4361 indicates that once the exemption is approved, you cannot revoke it.

Form 4361 states that the form must be filed "by the due date, including extensions, of your tax return for the 2nd tax year in which you had at least \$400 of net earnings from self-employment, any of which came from services performed as a minister..." Some have misunderstood this provision to mean "two years after ordination." However, in some church bodies a licensed minister may file taxes as a minister prior to ordination. It is at this same point that the two years must begin.

The individual filing the Form 4361 must certify, by signature, that specific statements are true. The first statement is:

"I certify that I am conscientiously opposed to, or because of my religious principles I am opposed to, the acceptance (for services I perform as a minister...) of any public insurance that makes payments in the event of death, disability, old age, or retirement; or that makes payments toward the cost of, or provides services for, medical care. (Public insurance includes insurance systems established by the Social Security Act)."

Under the Tax Reform Act of 1986, and effective after December 31, 1986, any minister who applies for exemption from Social Security based on conscientious opposition is required to inform the ordaining, commissioning, or licensing body of his/her denomination that he or she is conscientiously opposed to the acceptance of "any public insurance that makes payments in the event of death, disability, old age, or retirement; or that makes payments toward the cost of, or provides services for, medical care, including the benefits of any insurance system established by the Social Security Act." The second statement deals with certifying that the applicant has informed the denomination.

The third statement certifies that the applicant has not filed Form 2031. (Before 1968, one had to sign Form 2031 to elect *into* Social Security. Now, *all ministers* are included automatically *unless* there is a basis for electing out.)

The fourth statement deals with the specific request for exemption and certifies an understanding as to which earnings the exemption would apply if granted.

According to the Form 4361 "General Instructions," before your application can be approved, the IRS must *again* certify that you are aware of the grounds for exemption and that you want the exemption on that basis.

"When your completed Form 4361 is received, the IRS will mail you a statement that describes the grounds for receiving an exemption under section 1402(e). You must certify that you have read the statement and seek exemption on the grounds listed on the statement. The certification must be made by signing a copy of the statement under penalties of perjury and mailing it to the IRS not later than 90 days after the date the statement was mailed to you. If it is not mailed by that time, your exemption will not be effective until the date the signed copy is received by the IRS.

If your application is approved, a copy of Form 4361 will be returned to you marked 'approved.'... Once the exemption is approved, you cannot revoke it."

These measures are to prevent persons from seeking exemption simply on economic grounds.

A "Catch" Often Overlooked:

Key words in qualifying for exemption from Social Security coverage on ministerial earnings are "religious principles" and "conscientiously opposed to the *acceptance* of any public insurance." The tax regulations and court decisions are quite clear. Religious principles cannot be simply the personal conviction that perhaps Social Security will not be there when you retire, or that a better retirement can be secured through other retirement investments. The belief must be an integral part of your system of religious beliefs—your theology.

Further, this religious principle must be one that would prevent you from ever asking for the benefits from such a plan based on your church salary. No basis exists for an objection to paying the taxes, or to the level of the taxes to be paid. It is as though you would be saying, "Even if I have to pay the taxes, I can never file for the benefits, since my theology will never allow me to accept them."

If You Made a Mistake in a Past Election for Exemption:

Some ministers who previously made an election for exemption have become aware that they made their decision based on erroneous information. As a result of their expressed desire to reenter the Social Security System, Congress made provision in the Tax Reform Act of 1986 for a brief "window of opportunity" to be opened to those persons to opt back into Social Security without having to pay the back taxes (SECA). Of course, no Social Security/Medicare coverage was to be retroactive for the years one was exempt from SECA tax. (Only earnings on which SECA tax was paid is included when one's benefit is calculated.) This specific "window of opportunity" closed on April 15, 1988.

Another "window of opportunity" to opt back into Social Security without having to pay the back taxes (SECA) was opened by the Work Incentives Improvement Act of 1999. This two-year window closed April 15, 2002.

The Servant Solutions office is not aware of any formal provision that now exists to allow ministers to revoke previous exemptions and "opt back into" Social Security. If you are a minister who has opted out of Social Security based on erroneous information and wish now to participate, you probably should secure the services of professional legal and tax advisors to analyze your unique situation and determine if there is any course of action available to accomplish your desire.

Disclaimer

The information contained in this Toolbox series is of a general nature. It is not offered as specific legal or tax "advice." Each person and local church board should evaluate their own unique situation in consultation with their local legal and tax advisors.

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