

Social Security Administration

§416.1121

the rules on when this exclusion applies.

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UNEARNED INCOME

§416.1120 What is unearned income.

Unearned income is all income that is not earned income. We describe some of the types of unearned income in §416.1121. We consider all of these items as unearned income, whether you receive them in cash or in kind.

§416.1121 Types of unearned income.

Some types of unearned income are—

(a) *Annuities, pensions, and other periodic payments.* This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

(b) *Alimony and support payments.* For SSI purposes, alimony and support payments are cash or in-kind contributions to meet some or all of a person's needs for food, clothing, or shelter. Support payments may be made voluntarily or because of a court order. Alimony (sometimes called *maintenance*) is an allowance made by a court from the funds of one spouse to the other spouse in connection with a suit for separation or divorce.

(c) *Dividends, interest, and certain royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources such as mines, oil wells, or timber tracts. Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. (See §416.1110(b) if you receive royalties as part of your trade or business and §416.1110(e) if you receive royalties in connection with the publication of your work.)

(d) *Rents.* Rents are payments you receive for the use of real or personal

property such as land, housing, or machinery. We deduct from rental payments your ordinary and necessary expenses in the same taxable year. These include only those expenses necessary for the production or collection of the rental income and they must be deducted when paid, not when they are incurred. Some examples of deductible expenses are interest on debts, State and local taxes on real and personal property and on motor fuels, general sales taxes, and expenses of managing or maintaining the property. (Sections 163, 164, and 212 of the Internal Revenue Code of 1954 and related regulations explain this in more detail.) We do not consider depreciation or depletion of property a deductible expense. (See §416.1110(b) for rules on rental income that is earned from self-employment. For example, you may be in the business of renting properties.)

(e) *Death benefits.* We count payments you get which were occasioned by the death of another person except for the amount of such payments that you spend on the deceased person's last illness and burial expenses. Last illness and burial expenses include related hospital and medical expenses, funeral, burial plot and interment expenses, and other related costs.

Example: If you receive \$2,000 from your uncle's life insurance policy and you spend \$900 on his last illness and burial expenses, the balance, \$1,100, is unearned income. If you spend the entire \$2,000 for the last illness and burial, there is no unearned income.

(f) *Prizes and awards.* A prize is generally something you win in a contest, lottery or game of chance. An award is usually something you receive as the result of a decision by a court, board of arbitration, or the like.

(g) *Gifts and inheritances.* A gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on the giver's part. An inheritance is something that comes to you as a result of someone's death. It can be in cash or in kind, including any right in real or personal property. Gifts and inheritances occasioned by the death of another person, to the extent that they are used to pay the expenses of the deceased's last

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illness and burial, as defined in paragraph (e) of this section, are not considered income.

(h) *Support and maintenance in kind.* This is food, clothing, or shelter furnished to you. Our rules for valuing this income depend on your living arrangement. We use one rule if you are living in the household of a person who provides you with both food and shelter. We use different rules for other situations where you receive food, clothing, or shelter. We discuss all of the rules in §§416.1130 through 416.1147.

[45 FR 65547, Oct. 3, 1980, as amended at 56 FR 36000, July 30, 1991; 59 FR 43471, Aug. 24, 1994]

§416.1123 How we count unearned income.

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: When you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe an exception to the rule on how we count unearned income in paragraph (d) of this section.

(b) *Amount considered as income.* We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see §416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. *Exception:* We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

Example: Joe, an SSI beneficiary, is also entitled to social security insurance benefits in the amount of \$200 per month. However, because of a prior overpayment of his social security insurance benefits, \$20 per month is being withheld to recover the overpayment. In figuring the amount of his SSI benefits, the full monthly social security insurance benefit of \$200 is included in Joe's unearned income. However, if Joe was receiving both benefits when the overpayment of the social

security insurance benefit occurred and we then included the overpaid amount as income, we will compute his SSI benefit on the basis of receiving \$180 as a social security insurance benefit. This is because we recognize that we computed his SSI benefit on the basis of the higher amount when he was overpaid.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program other than SSI, legal fees connected with the claim are subtracted. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(4) In certain situations, we may consider someone else's income to be available to you, whether or not it actually is. (For the rules on this process, called deeming, see §§416.1160 through 416.1169.)

(c) *In-kind income.* We use the current market value (defined in §416.1101) of in-kind unearned income to determine its value for SSI purposes. We describe some exceptions to this rule in §§416.1131 through 416.1147. If you receive an item that is not fully paid for and are responsible for the balance, only the paid-up value is income to you.

Example: You are given a \$1500 automobile but must pay the \$1000 due on it. You are receiving income of \$500.

(d) *Retroactive monthly social security benefits.* We count retroactive monthly social security benefits according to the rule in paragraph (d)(1) of this section, unless the exception in paragraph (d)(2) of this section applies:

(1) *Periods for which SSI payments have been made.* When you file an application for social security benefits and