

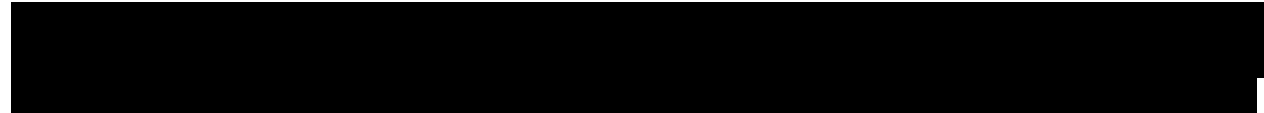


DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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Dear [REDACTED]:

This letter is in reply to your inquiry about the taxability of severance pay that you have been receiving from your former employer since your retirement in 1995. You are concerned that your employer is currently deducting Federal Insurance Contributions Act (FICA) taxes, commonly referred to as social security and Medicare taxes, from the severance pay.

Although the information submitted does not contain the terms of the plan under which you are receiving payments, it appears that your employer may have been treating the payments as nonqualified deferred compensation under a transition rule in final regulations under section 3121(v) of the Internal Revenue Code. See Treasury Regulations section 31.3121(v)(2)-1 and 31.3121(v)(2)-2.

If the amounts paid by your employer are severance pay, severance pay is subject to social security and Medicare taxes when paid. The taxes apply regardless of when the services were performed. There has been no change in the law on January 1, 2000, that would affect the social security and Medicare taxation of severance pay.

In Cohen v. United States, 63 F.Supp.2d 1131 (C.D. Cal. 1999), the United States District Court for the Central District of California held that severance pay paid by an employer to a former employee in 1994, 1995, 1996, and 1997, was wages subject to social security and Medicare taxes when paid.

I hope this information is helpful to you. If you have further questions, please call Alfred G. Kelley (Identification Number 50-03882) at (202) 622-6040.

Sincerely,

Jerry E. Holmes  
Chief, Employment Tax Branch 2  
Office of Division Counsel/  
Associate Chief Counsel  
(Tax Exempt and Government Entities)