



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

OFFICE OF
CHIEF COUNSEL

June 20, 2001

CC:TE/GE:EOEG:ET2

Number: **INFO 2001-0169**
Release Date: 9/28/2001

UIL 3121.02-07



Dear Mr. [REDACTED]:

This responds to your letter dated June 4, 2001, requesting a private letter ruling on whether Medicare contributions were properly deducted from the earnings of [REDACTED] ("the Employee"), a teacher formerly employed by the [REDACTED] ("the Schools").

Unfortunately, we are not able to issue a ruling on this issue due to the fact that your submission does not comport with the requirements for requesting a private letter ruling. Revenue Procedure 2000-1, 2000-1 I.R.B. 4, sets forth procedures for requesting letter rulings. We have included a copy of Revenue Procedure 2000-1 for your information. If you request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2000-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope will be of assistance to you.

As we understand the facts of this matter, the Employee was appointed to a position as a teacher in the Schools, effective for the period from [REDACTED] through [REDACTED]. In April of 1986, the Employee was advised that she would not be reappointed to a teaching position for the [REDACTED] school year. Thereafter, the State determined that the Employee was eligible to collect unemployment insurance benefits, and the Employee began applying for other positions within the Schools. On [REDACTED], the Employee was appointed to a different position as a part-time teacher in the Schools for the [REDACTED] school year.

Taxes under the Federal Insurance Contributions Act (FICA) consist of an old-age, survivors, and disability (OASDI) portion and a hospital insurance (Medicare) portion. FICA taxes are computed as a percentage of "wages" paid by the employer and received by the employee with respect to "employment." In general, all payments of

remuneration by an employer for services performed by an employee are subject to FICA taxes, unless the payments are specifically excepted from the term “wages” or the services are specifically excepted from the term “employment.”

Section 3121(b)(7) of the Code generally excludes from “employment” services performed in the employ of any State, or any political subdivision thereof, or any wholly-owned instrumentality of any one or more of the foregoing, unless an agreement under Section 218 of the Social Security Act (section 218 agreement) is in effect.

Section 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 amended section 3121(u) of the Code to apply sections 3101(b) and 3111(b), the Medicare tax portion of the FICA, to wages for services rendered after March 31, 1986, by newly hired employees of States and political subdivisions. Previously, most employees of States and political subdivisions were not covered under the FICA, as their services were excepted from the term “employment” by section 3121(b)(7).

Section 3121(u)(2) provides a limited exception to section 3121(b)(7), subjecting certain State and local government employees to Medicare taxes, but not old-age, survivors, and disability insurance taxes. Under section 3121(u)(2), except in limited circumstances, services performed by State and local government employees hired after March 31, 1986, that are not subject to a section 218 agreement, are “employment” for Medicare tax purposes.

Under section 3121(u)(2)(C) of the Code, services performed by State or local government employees hired on or before March 31, 1986, continue to be exempt from Medicare taxes (if section 3121(b)(7) otherwise applies), provided that the employees were performing regular and substantial services for remuneration for that employer before April 1, 1986, their employment relationship with that employer was not entered into for the purpose of meeting the exception under section 3121(u)(2)(C), and their employment relationship with that employer has not been terminated after March 31, 1986. This is referred to as the “continuing employment exception” to the Medicare tax.

Rev. Rul. 86-88, 1986 - 2 C.B. 172, states the Service’s position concerning the continuing employment exception to the applicability of the Medicare tax. Rev. Rul. 86-88 provides that the continuing employment exception does not apply to an employee that was performing regular and substantial services for remuneration prior to April 1, 1986, and who was terminated after March 31, 1986, and then subsequently rehired. Q&A 5.

Rev. Rul. 86-88 states: “The question of whether an employment relationship has been terminated is a question of fact that must be determined on the basis of all the relevant facts and circumstances. Great weight, however, will be given to the personnel rules of the state employer or political subdivision employer to determine if an employment relationship has been terminated.” Q&A 6.

This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

The attorney assigned to this matter is Leo Latella (Employee ID #50-20376). He can be reached at (202) 622-6040.

Sincerely,

JERRY E. HOLMES
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)

Enclosure (1)