



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

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

This is in response to your letter dated _____, expressing concern that your employer reported income you earned performing services part-time through a work study program at a local community college on a Form W-2 (Wage and Tax Statement). You indicated that you were a full-time student during the entire period that you participated in the work study program, and you were also permanently disabled and had received Social Security Administration Title II disability benefits.

As a preliminary matter, apart from the procedure for issuing a formal opinion as described in Revenue Procedure 2004-1, 2004-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. 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 and set forth below general information, which we hope will be helpful to you.

Section 6051 of the Internal Revenue Code (the Code) provides generally that an employer must annually report to each of its employees the total wages paid to the employee. Compensation income constitutes "wages" for purposes of this reporting obligation. Form W-2 is used to report the information required by Section 6051.

Section 3101 of the Code imposes Federal Insurance Contributions Act (FICA) taxes on the income of every individual in an amount equal to a defined percentage of the wages received by the taxpayer with respect to employment. Section 3121 of the Code provides that for purposes of FICA taxes, the term "wages" means all remuneration for employment, and the term "employment" means any service of whatever nature, performed by an employee for the person employing him, unless specific exceptions apply. The employment tax provisions provide limited exclusions from the definitions of employment and wages. For example, Code section 3121(b)(10) excludes from employment for purposes of FICA services performed by a student in the

employ of a school, college, or university, or an organization operated exclusively for the benefit of a school, college, or university provided the student is enrolled and regularly attending classes. In addition, Code section 3121(a)(15) excludes from FICA any payment made by an employer to an employee, if at the time such payment is made the employee is entitled to Social Security disability insurance benefits so long as entitlement to such benefits commenced prior to the calendar year in which the payment is made, and the employee performed no services for the employer during the period for which such payment is made.

Employees who think that FICA was erroneously withheld from their wages are encouraged to contact their employers and request that they seek a refund of the erroneously withheld FICA on the employees' behalf. If the employer refuses to seek a refund on the employees' behalf, employees may file a claim for refund themselves using Form 843 (Claim for Refund and Request for Abatement). However, under Section 6511 of the Code, a taxpayer has a limited time period within which to file a claim for a credit or refund of overpaid taxes. The time period is either: (a) the later of 3 years from the time the return for that year was filed or 2 years from the time the tax was paid; or (b) if the taxpayer did not file a return, within 2 years from the time the tax was paid.

Unfortunately, this statutory bar on recovery is not discretionary: it is as binding on the Internal Revenue Service as it is on the taxpayer. Section 6511 of the Code prevents the Internal Revenue Service from returning overpayments outside of the period of limitations.

If you have any further questions, please feel free to contact

(Internal Revenue Service Identification Number _____) of my staff at

Sincerely,

Lynne Camillo
Chief, Employment Tax Branch 2
Office of the Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government Entities)