



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

OFFICE OF  
CHIEF COUNSEL

October 10, 2008

Number: **INFO 2009-0004**  
Release Date: 1/2/2008

CC:ITA:B04  
GENIN-142508-08

UIL: 1221.00-00

Dear :

Thank you for your letter dated September 23, 2008. While we understand the arguments you present for the treatment of termination payments as capital gain, our position continues to be that such payments are ordinary income to the recipients. Moreover, every court considering this issue has agreed with the Commissioner of Internal Revenue in holding that termination payments are ordinary income and not capital gain. The cases you cite in your recent letter, which hold that termination payments are not subject to self employment tax, do not conclude that termination payments are to be accorded capital gain treatment.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2008-1, §2.04, 2008-1 IRB 7 (Jan. 3, 2008). In addition, we enclose a copy of the cover letter transmitting our letter of September 11, 2008, to Senator Shelby. If you have any additional questions, please contact our office at .

Sincerely,

Michael J. Montemurro  
Chief, Branch 4,  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosure (1):