



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

OFFICE OF THE CHIEF COUNSEL

April 20, 2010

Number: **INFO 2010-0094**

Release Date: 6/25/2010

CONEX-111911-10

UIL: 36A.00-00

The Honorable Joseph R. Pitts  
Member, U.S. House of Representatives  
150 North Queen Street, Suite 716  
Lancaster, PA 17603

Attention:

Dear Congressman Pitts:

I am responding to your inquiry dated March 16, 2010 on behalf of a constituent, a tax return preparer. Your constituent's clients are exempt from Self-Employment Contributions Act (SECA) tax because they are members of a recognized religious sect or division that is conscientiously opposed to accepting the benefits of certain kinds of insurance, including insurance under the Social Security Act and they adhere to the tenets of the religious sect. Your constituent asked whether these clients may claim the Making Work Pay Credit.

Taxpayers with earned income in 2009 and 2010 may be eligible for the Making Work Pay Credit (section 36A of the Internal Revenue Code (the Code)). In general, a qualifying taxpayer's Making Work Pay Credit equals 6.2 percent of earned income, not to exceed \$400 (\$800 if married filing jointly). For purposes of the Making Work Pay Credit, the term "earned income" generally means the sum of the taxpayer's taxable employee compensation and "net earnings from self-employment" for the taxable year (section 32(c)(2)(A) of the Code).

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by the individual, less the deductions allowed that are attributable to such trade or business (section 1402(a) of the Code). The law, however, excludes from the definition of "trade or business", for purposes of determining net earnings from self-employment, the performance of service by an individual during the period for which an exemption under section 1402(g) is effective with respect to him (section 1402(c)(6) of the Code).

An individual can apply for an exemption from self-employment taxes and a waiver of benefits if the individual, who because he or she is a member of, and follows the tenets of, a religious sect or division, is conscientiously opposed to receiving certain insurance benefits, including social security benefits, and if the Commissioner of Social Security finds that the religious sect or division meets certain requirements (section 1402(g)(1) of the Code). Taxpayers file this application on Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*.

Thus, an individual who is exempt from self-employment taxes under a filed Form 4029 does not carry on a trade or business for self-employment tax purposes (section 1402(c)(6) and (g)(1) of the Code). Consequently, such an individual has \$0.00 of net earnings from self-employment for purposes of the Making Work Pay Credit (Line 2(b) of the Earned Income Worksheet for the 2009 Instructions for Schedule M (Form 1040A and 1040), *Making Work Pay and Government Retiree Credits*, reflects this position). However, an individual who is exempt from self-employment taxes under a filed Form 4029 may be entitled to the Making Work Pay Credit for taxable employee compensation.

The IRS is checking returns to make sure the Making Work Pay Credit is not erroneously claimed or granted when an individual is exempt from self-employment taxes under a filed Form 4029.

Thank you for forwarding your constituent's letter. We appreciated the comments and the issues he raised. If you have any questions, please contact me or  
at .

Sincerely,

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