



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This responds to your letter dated May 29, 2021, asking about the operation of the exclusion from gross income of up to \$10,200 of unemployment compensation for taxable year 2020 under section 85(c) of the Internal Revenue Code (Code) in the context of spouses who reside in a community property state.

Section 85 of the Code provides that unemployment compensation is taxable. However, the American Rescue Plan of 2021 added new section 85(c) to the Code, allowing an exclusion of unemployment compensation of up to \$10,200 for individuals for taxable year 2020. In the case of married individuals filing a joint federal income tax return, this exclusion is up to \$10,200 per spouse. To qualify for this exclusion, your adjusted gross income must be less than \$150,000. This threshold applies to all filing statuses and it doesn't double to \$300,000 if you are married and file a joint return. Any unemployment compensation in excess of \$10,200 (\$10,200 per spouse if married filing jointly) should still be included on the tax return as taxable income.

You raise a question regarding how section 85(c) should work in a situation where spouses living in a community property state file a joint federal income tax return and only one spouse receives unemployment compensation.

In general, where a state's community property laws require that each spouse split income, the income received by one spouse is allocated equally among both spouses. For taxable year 2020, where spouses living in a community property state file a joint federal income tax return and spouses are required to split their income:

- (1) Each spouse is considered to receive one half of the unemployment income

- received by the other spouse; and
- (2) Each spouse may exclude up to \$10,200 of unemployment compensation from income.

You asked why unemployment compensation is treated as community income in a community property state whereas the Additional Medicare Tax imposed by Code section 3101(b)(2) is imposed only on the spouse that earned the wages that created the Additional Medicare Tax liability.

Code section 6013 provides that spouses may make a single return jointly *of income taxes under subtitle A*. Additional Medicare Tax is a Federal Insurance Contributions Act (FICA) tax under subtitle C of the Code. The income tax imposed by section 1 of the Code (in subtitle A) is separate and distinct from the Federal Insurance Contributions Act (FICA) tax imposed by section 3101 of the Code (in subtitle C), even though provision has been made for reporting both classes of tax on the same form in certain instances (e.g., Additional Medicare Tax is reported on an income tax return). See Rev. Rul. 79-39, 1979-1 C.B. 435. While section 6013(d)(3) provides that, for joint filers, taxes under subtitle A shall be computed on the aggregate income of the couple and that the liability with respect such taxes shall be joint and several, it is an established principle that FICA tax liability (under subtitle C) applies to the wages of the employee who earned them. Therefore, FICA taxes attach to the total wages of a married employee irrespective of the fact that state law requires a husband and wife to split the wage income and treat the wages as community property. See Rev. Rul. 71-116, 1971-1 C.B. 277.

I hope this is helpful. If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_

Sincerely,

Lynne Camillo  
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