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MEMORANDUM FOR ALL FIELD EXAMINATION OPERATIONS

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SUBJECT: Interim Guidance on Enforcement of FICA tax on wages paid to residents of the Philippines for services performed in the Commonwealth of Northern Mariana Islands (CNMI)

The purpose of this memorandum is to provide administrative guidance to IRS employees assigned to conduct enforcement activities on businesses in the CNMI that employ residents of the Philippines.

Section 3121(b)(18) of the Internal Revenue Code, in combination with the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, provides an exception from employment for purposes of the FICA tax for services performed by residents of the Philippines temporarily admitted to the CNMI on H-2 status under the United States Immigration and Nationality Act (INA).

Prior to November 28, 2009, the CNMI had its own immigration laws with its own visa categories, and the INA did not apply in the CNMI. However, CNMI immigration laws provided a CNMI temporary work visa in the Commonwealth of Northern Mariana Code, which was similar to INA's H-2 status. The IRS determined that the exemption from FICA under section 3121(b)(18) applied to residents of the Philippines admitted to the CNMI on this similar CNMI temporary work visa.

On May 8, 2008, Congress enacted the Consolidated Natural Resources Act of 2008 (CNRA), which extended federal immigration laws of the INA to the CNMI. As a result of the CNRA, CNMI immigration laws no longer apply and CNMI visas and work permits

no longer exist. Nonresident aliens in the CNMI must apply for a federal immigration status if they wish to remain in the CNMI.

Residents of the Philippines employed in the CNMI are no longer exempt from FICA tax on the basis of holding a work permit under CNMI immigration law. While the CNMI is transitioning to full implementation of U.S. immigration law, a new Commonwealth Only Transitional Worker (CW) visa classification is available to workers in the CNMI. Workers on the CW visa, including those from the Philippines, are not exempt from FICA tax under section 3121(b)(18). Employers are required to withhold and pay FICA tax unless the worker in the CNMI is eligible for an exemption from FICA tax as a resident of the Philippines holding a valid U.S. H-2 visa or based on some other circumstance.

Many residents of the Philippines currently employed in the CNMI have been seeking to determine their proper immigration status. As a result, these workers and their employers have been or are uncertain about their immigration statuses. For this reason, and in order to ease the CNMI's transition to federal immigration law, Announcement 2012-43 provides that the IRS will not assert that any taxpayer has understated liability for FICA taxes by reason of a failure to treat services performed before January 1, 2015, in the CNMI by a resident of the Philippines as employment under section 3121(b) of the Code. Accordingly, IRS employees should cease enforcement activity regarding the imposition of FICA tax owed by businesses in the CNMI on wages paid to residents of the Philippines until after December 31, 2014. IRS employees should resume normal enforcement activity to ensure that employers in the CNMI withhold and pay FICA taxes on wages paid to residents of the Philippines who do not hold an H-2 status for services performed in the CNMI after December 31, 2014, unless those workers are eligible for FICA exemption based on some circumstances other than the exemption at section 3121(b)(18).

Any IRS employee who encounters this issue with a business in the CNMI that employs residents of the Philippines should contact Joseph Tiberio, SBSE Employment Tax Policy Program Manager or Ed Hutzmann, SBSE Employment Tax Policy. Questions regarding this memo should also be addressed to Mr. Tiberio or Mr. Hutzmann.

cc: [www.IRS.gov](http://www.IRS.gov)