

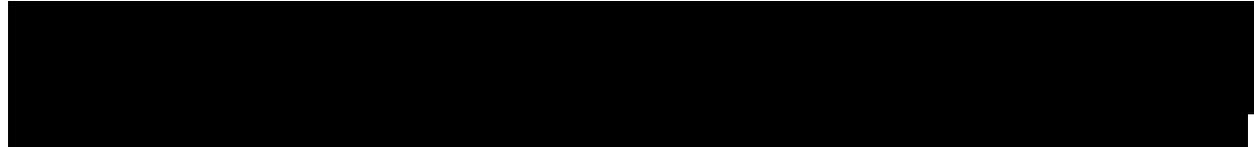


OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
February 23, 2001

Number: **2001-0069**
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CC:TEGE:EOEG:ET1:SKTank
COR-127488-00



Dear [REDACTED]:

This letter responds to your letter dated November 21, 2000, in which you requested information as to the specific percentage of income that must be received from the sale of life insurance in order for a life insurance salesman to be considered a "full-time life insurance salesman" under section 3121(d)(3)(B) of the Internal Revenue Code of 1986 (the "Code").

The Service has not established an exact percentage of income that must be from the sale of life insurance in order for a life insurance salesman to be deemed a "full-time life insurance salesman." Whether a life insurance salesman is considered a "full-time life insurance salesman" for purposes of section 3121(d)(3)(B) of the Code would require the Service to apply the tax laws to the taxpayer's specific set of facts. This type of guidance is provided in the form of a letter ruling. Since your request does not meet the guidelines set forth in Revenue Procedure 2001-1, 2001-1 I.R.B. 1, including the submission of a user fee, we cannot issue a private letter ruling. However, we can provide you with general information regarding the definition of a "full-time life insurance salesman."

For purposes of Federal Insurance Contributions Act ("FICA") employment taxes, section 3121(d)(3)(B) of the Code defines the term "employee" as any individual who performs services for remuneration for any person as a "full-time life insurance salesman" if the contract of services contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under section 3121(d)(3)(B) if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

COR-127488-00

Revenue Ruling 54-312, 1954-2 C.B. 327, describes a “full-time life insurance salesman” for purposes of the FICA taxes as an individual whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts primarily for one life insurance company.

The revenue ruling goes on to state that the entire or principal business activity of a life insurance salesman is deemed devoted to the solicitation of life insurance or annuity contracts primarily for one life insurance company when, pursuant to the terms and conditions of his arrangement with the life insurance company or its general agent, it is mutually agreed or clearly contemplated by the parties that the salesman’s entire or principal business activity is the solicitation of applications for life insurance or annuity contracts, or the solicitation of applications for such contracts and accident and health contracts for the life insurance company in accordance with the provisions of the salesman’s contract of service.

In Revenue Ruling 59-103, 1959-1 C.B. 259, an insurance salesman contracted with a life insurance company to sell both its life and accident and health insurance policies, but he spent approximately seventy-five percent of his time in soliciting accident and health insurance. In addition, for two of the past four years, his commissions on life insurance contracts sold amounted to less than ten percent of his annual income from the insurance business. The revenue ruling concludes that the salesman was not a “full-time life insurance salesman” and, therefore, not a statutory employee for FICA purposes. The revenue ruling, however, does not set forth a percentage of income from the sale of life insurance that will result in meeting the definition of a “full-time life insurance salesman”.

We hope that this information has been helpful to you. We have enclosed copies of Revenue Ruling 54-312 and Revenue Ruling 59-103 for your use. If you have any questions concerning this letter, please contact Suzanne Tank (Identification Number 50-16201R) of my staff at (202) 622-6040.

Sincerely,

MICHAEL A. SWIM
Chief, Employment Tax Branch 1
Office of the Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government Entities)

Enclosures (2)