



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

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR KENNETH J. RUBIN
ASSISTANT DISTRICT COUNSEL CC:NER:PEN:PHI

FROM: Acting Assistant Chief Counsel CC:TEGE:EB

SUBJECT: Whether payments received for jury duty service are earned income for purposes of the Earned Income Credit

This responds to your request for Service Center Advice regarding whether amounts received by a taxpayer for services performed as a juror are considered to be earned income for purposes of computing the Earned Income Credit.

ISSUE

Whether amounts received by a taxpayer for services performed as a juror ("jury fees") are earned income for purposes of the Earned Income Credit (EIC).

CONCLUSION

Jury fees are not earned income for purposes of the EIC.

FACTS

This Service Center Advice does not address a specific factual scenario. Rather it addresses the general question of how jury fees are treated for purposes of the EIC. We note that State statutes differ in how they describe jury fees. Descriptions include "compensation," "travel allowance," and "attendance fee." The description used by a state is not determinative of the federal tax consequences.

LAW AND ANALYSIS

Section 32(a) of the Code allows an EIC in the case of an eligible individual. The amount of the EIC is based, in part, on the eligible individual's earned income.

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Section 32(c)(2)(A)(i) defines "earned income" as wages, salaries, tips, and other employee compensation, plus the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but the net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f). Under section 1402(a), "net earnings from self-employment" is the gross income derived by an individual from any trade or business carried on by the individual, less deductions attributable to the trade or business, and certain adjustments specified by law.

Thus, in order for jury fees to constitute earned income for the EIC, the payments must either be an employee's wages, salaries, tips, or other compensation, or be a self-employed individual's net earnings from self-employment.

Whether a worker is an employee depends on whether the entity that retains the worker's services exercises sufficient control over the worker so that the worker can be categorized as an employee under the common law. See Code section 3121(d)(2). Section 31.3121(d)-1(c)(2) of the Employment Tax Regulations provides that generally an employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished.

Section 1402(c) provides that the term "trade or business" for purposes of net earnings from self-employment shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that the term shall not include, in relevant part, the performance of the functions of public office, other than functions performed in a position compensated solely on a fee basis and not subject to an agreement under section 218 of the Social Security Act¹. Section 1.1402(c)-2(b) of the Income Tax Regulations defines "public office" to include any elective or appointive office of the United States or any possession thereof, of the District of Columbia, of a state or its political subdivisions, or of a wholly-owned instrumentality of any one or more of the foregoing. While juror is not specifically

¹ Rev. Rul. 74-608, 1974-2 C.B. 275, dealing with the application of self-employment tax to tax collectors who are paid salaries based on the amount of tax they collect states that only when a public official receives remuneration in the form of fees directly from members of the public with whom he does business does such remuneration constitute "fees" within the meaning of section 1402(c)(1). While compensation to jurors is described in the regulations under section 3401 as "in the nature of fees paid to public officials," this does not mean that jurors are fee-based public officials within the meaning of Code section 1402(c)(1), but only that such compensation is to be treated as fees paid to public officials for withholding purposes.

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mentioned as a public office, the definition is broad enough to include the role of juror as a public office.

Rev. Rul. 61-113, 1961-1 C.B. 400, deals with individuals who serve as members of a hearing board of an air pollution control district, who are appointed by the county board of supervisors, take an oath of office, hold public hearings, and submit their decisions to the county. They are not under the control or direction of the county board of supervisors or any other body. Their compensation is based on the number of hearings they attend. Their services constitute the performance of the functions of a public office and do not constitute a "trade or business" for purposes of Code section 1402(c)(1).

The performance of services as a juror differs in its very nature from the performance of services as an employee. The role of juror has its roots in the common law as a member of a body of persons chosen according to law and sworn to make determinations of fact in a particular case. The role of employee derives from a different common law relationship, that of master and servant. Service on a jury is often described as a civic duty. Since jurors are not employees, amounts paid to them for services performed as a juror are not wages, salaries, tips or other employee compensation.

The amounts paid to jurors are for performance of a civic duty analogous to public office, as described in Rev. Rul. 61-113. Section 1402(c)(1) excludes the performance of functions of a public office from the term "trade or business" for purposes of net earnings from self-employment. Therefore, amounts paid to jurors for services performed as a juror are not net earnings from self-employment.

Because jury fees are neither wages, salaries, tips, nor other employee compensation, nor net earnings from self-employment, jury fees are not earned income for purposes of the EIC.

We note that even though jury fees are not earned income, they are included in the juror's gross income under section 61 of the Code and section 1.61-2 of the Income Tax Regulations. Jury fees, however, are not subject to income tax withholding under section 31.3401(a)-2(b)(2) of the Employment Tax Regulations.

If you have any further questions, please call (202) 622-6060.

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