



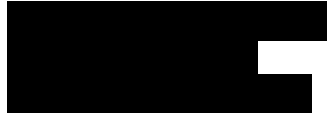
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:TEGE:EOEG:ET1: [REDACTED]
CONEX-156826-01



Dear [REDACTED]:

This is in reply to your letter to President Bush, dated July 20, 2001, that was forwarded to this office for response. In your letter, you express concern about the social security taxes levied on ministers. For purposes of social security taxes, you request that action be taken to have ministers treated under the Federal Insurance Contributions Act (FICA) [sections 3101 - 3128 of the Internal Revenue Code (Code)] rather than under the Self-Employment Contributions Act (SECA) [sections 1401 - 1403]. You request this action to place some of the tax burden upon parishes and/or dioceses.

We are providing general information on FICA, SECA, and the deductions allowed to self-employed persons that we think is relevant to your inquiry.

Social security and Medicare taxes are collected under two systems. Under FICA, the employee and the employer each pay half of the taxes. Under SECA, the self-employed person pays all the taxes. For the 2001 tax year, SECA taxes equal 15.3 percent of net earnings from self-employment (*i.e.*, a total of 12.4 percent for social security and 2.9 percent for Medicare), which is the same rate that employees and employers combined pay in FICA taxes.

In order for a FICA tax obligation to arise, three requirements must be met under section 3121 of the Code. First, there must be an employer-employee relationship. Second, there must be a payment of "wages." Third, the payment of wages must be with respect to "employment." If one of these three requirements is not met, liability for FICA taxes does not arise.

A minister is not generally covered by FICA because the minister's services are generally excepted from the statutory definition of "employment." Section 3121(b)(8)(A) of the Code excepts from the definition of "employment" services that are performed by a duly ordained, commissioned, or licensed minister in the exercise of his ministry. In

contrast, under SECA, a duly ordained, commissioned, or licensed minister is liable for self-employment tax on income derived from his ministry.

Under section 1402 of the Code, the performance of services by a duly ordained, licensed, or commissioned minister in the exercise of his ministry are covered by social security and Medicare under SECA, unless the minister has qualified for the exemption from self-employment tax. Section 1402(e) provides for a limited exemption if a minister is conscientiously opposed to public insurance when certain other related qualifications are met.

Thus, even though ordained, commissioned, or licensed ministers may be common-law employees for income tax purposes, they are generally treated as self-employed for social security purposes.

In explaining the reason for treating a minister as self-employed for social security purposes (with respect to services performed in the exercise of his ministry), the Tax Court, in *Silvey v. Commissioner*, T.C. Memo 1976-401, observed that “Congress chose not to place the onus of participation in the old-age and survivors insurance program upon the churches.”

To partly offset the tax burden that falls on self-employed persons, sections 164(f) and 1402(a)(12) of the Code provide separate deductions available to all individuals who are subject to self-employment taxes. In explaining these deductions Congress stated that their purpose was “to achieve parity between employees and self-employed.” H.R. Rep. No. 98-47, 98th Cong., 1st Sess. 126 (1983), 1983-2 C.B. 336, 342.

A self-employed person is entitled to an income tax deduction under section 164(f) of the Code for a portion of SECA taxes. The deduction under section 164(f) is taken above the line and is available for income tax purposes only. Persons who are self-employed for social security purposes can deduct half of their actual self-employment taxes from gross income (line 27 of the 2001 Form 1040, U.S. Individual Income Tax Return).

Section 1402(a)(12) of the Code also provides for a deduction in computing net earnings from self-employment. Self-employment tax is computed on Schedule SE (Form 1040), Self-Employment Tax, and the deduction is built into the current Schedule SE. The deduction provided by section 1402(a)(12) is taken by the taxpayer when the taxpayer performs the computational step of multiplying 0.9235 by trade or business income (line 4 of the 2001 Short Schedule SE or lines 4a and 5b of the Long Schedule SE).

In summary, as a self-employed person, a minister pays self-employment tax at a rate of 15.3 percent with respect to services performed in the exercise of his ministry. To

partly offset this tax burden, deductions under sections 164(f) and 1402(a)(12) are available.

I hope this general information is helpful to you. If you have any questions, please contact Margaret Owens (Badge No. 50-05478) at (202) 622-6040.

We appreciate the time and trouble you have taken to provide your comments and suggestions for a change in the present treatment of ministers for social security purposes. The Office of the Assistant Secretary of the Treasury for Tax Policy has been assigned responsibility for formulating the tax policies of the Department of the Treasury. We are therefore sending your letter to that office for its information.

Sincerely,

Michael A. Swim
Chief, Employment Tax Branch 1
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt & Government Entities)

cc: Assistant Secretary of the Treasury for Tax Policy