



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

OFFICE OF
CHIEF COUNSEL

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Dear [REDACTED]:

Your letter to the Commissioner dated July 17, 2002, regarding the application of Rev. Rul. 70-504, 1970-2 C.B. 204, to police officers who perform off-duty services for businesses was forwarded to our office for reply. You state that Rev. Rul. 70-504 provides that police officers who perform services off-duty for organizations and businesses requiring police details are exempt from self-employment taxes.

Rev. Rul. 70-504 does not address the applicability of self-employment taxes, but rather the applicability of Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes, to services performed by police officers assigned by a city to a theater owned by an amusement company that paid their wages for the services. In Rev. Rul. 70-504, police officers were held to be exempt from FICA and FUTA taxes under sections 3121(b)(7) and 3306(c)(7), respectively, where services performed at a theater by the police officers were required by city ordinance. The police officers remained under the control of the police captain and were paid directly by the owners of the theater. The officers were exempt from FICA and FUTA taxes because they were considered to be employees of the city even while performing services for the theater because the officers were subject to the exclusive direction and control of the police department and the city.

Based on the facts and circumstances, police officers may be subject to self-employment tax. In March v. Commissioner, T.C. Memo 1981-339, a police officer was subject to self-employment taxes on amounts he earned for off-duty jobs because he was not considered an employee of the private employer, but merely provided security services. The police officer also was not considered to be an employee of the police department while performing the private services because the department did not have the right to control the officer's activities and the department only acted as a referral service for the officers.

In Kaiser v. Commissioner, T.C. Memo 1996-526, a police officer who provided security, traffic control, and other police-type services for private companies was subject to self-employment taxes on amounts he earned for the off-duty jobs. The court held that although the police department required the officers to abide by a code of conduct and required that any outside employment be approved in advance, the department was not the officer's employer with respect to the income earned off-duty because the broad control exerted over off-duty activities was different from the direct control found in a common law employer-employee relationship.

The authorities that we discussed above illustrate that the determination of a police officer's employment tax status depends upon the facts and circumstances of each case. Consequently, as the situation arises, a police officer who performs services for organizations and businesses requiring police details may be an employee exempt from FICA and FUTA taxes or may be an independent contractor subject to self-employment taxes.

I hope this information is helpful to you. If you need additional information, please contact me or _____ at (202) 622-6040.

Sincerely,
WILL E. MCLEOD
Chief, Employment Tax Branch 1
Division /Associate Chief Counsel
(Tax Exempt and Government Entities)