



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

OFFICE OF
CHIEF COUNSEL

8/2/05

Number: **2005-0130**
Release Number: 9/30/05
CONEX-136255-05
UIL: 9999.98-00

The Honorable Tim Holden
Member, U.S. House of Representatives
Lebanon County District Office
47 South 8th Street
Lebanon, PA 17042

Attention: Matt Boyer

Dear Congressman Holden:

This letter responds to your request for information dated June 28, 2005, on behalf of . He asked whether the school district can offer property tax abatements to school volunteers on a tax free basis. In addition, Matt Boyer of your office requested the sections of the Internal Revenue Code (the Code) relevant to the federal employment tax treatment of the benefits.

Although I cannot provide binding legal advice applicable to questions, I can provide general information regarding the treatment of benefits provided to volunteers, which I hope is helpful.

Prior Chief Counsel Advice Related to Property Tax Abatements for "Volunteers"

I have enclosed copies of Chief Counsel Advice (CCA) 200025050 and CCA 200227003. Each CCA discusses a state statute that permits municipalities to reduce senior citizens property taxes in return for services. CCA 200025050 discusses the Federal Insurance Contributions Act (FICA) tax consequences and CCA 200227003 discusses the income tax consequences.

CCA 200025050 concludes that most likely the "volunteers" are employees; and therefore any remuneration provided to the workers is subject to FICA. In addition, if the municipalities pay the employee portion of FICA, such payment would also be included in gross income and subject to FICA.

CCA 200227003 concludes that property tax abatements in return for services are subject to income tax. Below are the relevant Code sections and corresponding regulations.

Federal Insurance Contributions Act

The law imposes FICA taxes on the wages paid by employers to employees with respect to employment. In general, all payments of remuneration by an employer for services performed by an employee are subject to FICA taxes, unless the payments are specifically excepted from the term "wages" or the services are specifically excepted from the term "employment," [Sections 3101 and 3111 of the Code].

"Wages" are all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain enumerated exclusions [Section 3121(a) of the Code]. "Employment" means any service, of whatever nature, performed by an employee for the person employing him, with certain enumerated exclusions. An "employee" is any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee [Section 3121(d)(2) of the Code]. The Employment Tax Regulations states, "If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial," [Section 31.3121(d)-1(a)(3)].

Generally, the medium in which the remuneration is paid is immaterial. The employer may pay remuneration in cash or in something other than cash. If the employer does not pay the remuneration in cash, the employer must compute it on the basis of the fair value of the items at the time of payment [Section 31.3121(a)-1(e) of the Employment Tax Regulations].

Income Tax Withholding

"Wages" for purposes of federal income tax withholding, are defined as all remuneration for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash [Section 3401(a) of the Code]. "Employee," for purposes of withholding, is defined as an officer or employee of a state or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing [Section 3401(c) of the Code].

If workers do not receive any cash from which to withhold the employee portion of the FICA tax, the employer may pay this tax, which will be additional wages to the employee for FICA and income tax purposes. The amount of wages is equal to the value of the remuneration plus the value of the employee portion of the FICA tax paid by the employer but not deducted from the wages of the employee [Section 31.3401(a)-1(b)(6) of the Employment Tax Regulations]. Alternatively, the employers can seek reimbursement of the employee FICA tax from the workers.

Federal Unemployment Tax Act

Taxes under the Federal Unemployment Tax Act (FUTA) do not apply to compensation for services in the employ of a state, any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly-owned by one or more states or political subdivisions [Section 3306(c)(7) of the Code].

Reporting Requirements

The law requires information reporting from every person required to deduct and withhold the employee portion of the FICA tax from an employee [Section 6051(a) of the Code]. The requirement applies to all payments subject to FICA tax, regardless of the amount. The employer must report the information on Form W-2. In addition, the law requires employers to have their employees complete Forms W-4 [Section 31.3402(f)(2)-1 of the Employment Tax Regulations].

Again, I hope this information is helpful. If you have any questions or if we can assist you further, please call

Sincerely,

Marie Cashman,
Special Counsel
Office of the Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)

Enclosures (2)
