



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

OFFICE OF
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December 15, 2005

Number: **INFO 2006-0021**
Release Date: 3/31/06
UIL: 31.00.00-00, 3101.00-00, 3401.00-01

CC:TEGE:EOEG:ET2
GENIN-141870-05

Dear :

This letter responds to your request for information dated August 5, 2005 regarding whether the Federal Insurance Contributions Act (FICA) tax imposed under Section 3101 of the Internal Revenue Code (the Code) can be taken as a credit against income tax liability reported on the Form 1040, U.S. Individual Income Tax Return.

By way of background, section 3101 imposes FICA tax on the wages paid by employers to employees with respect to employment. FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed on both the employer and the employee.

The OASDI portion of FICA taxes applies only to a certain amount of wages paid in a calendar year. Code section 3121(a)(1) limits the amount of wages subject to the OASDI tax to an amount equal to the contribution and benefit base (the wage base) as determined under section 230 of the Social Security Act. After an employee's wages exceed this annually-adjusted wage base, the OASDI portion of the FICA tax does not apply.

Each employer is responsible for withholding and paying FICA tax on wages up to the wage base. Thus, employees who receive wages from more than one employer during a calendar year and whose total wages exceed the FICA wage base will generally have FICA tax withheld on amounts in excess of the wage base. In such cases, Code section 6413(c) provides that the employees will be entitled to a credit or refund of any amount of tax deducted from the employees' wages which exceeds the tax with respect to the amount of such wages received in the calendar year which is equal to the FICA wage base.

Section 31 of the Code is the statutory provision that governs the application of the tax withheld on wages as a credit against an individual's income tax liability. Section 31(a)(1) provides the general rule that "the amount withheld as a tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle." Chapter 24 contains the statutory provisions relating to income tax

withholding, and it is part of subtitle A, which pertains only to income taxes. Thus, Code section 31(a)(1) stands for the proposition that the amount of income taxes withheld from an employee's wages shall be applied as a credit against the employee's income tax liability.

FICA taxes are not imposed by subtitle A, and they are not withheld under the provisions of chapter 24. Instead, FICA taxes are imposed by subtitle C, and they are withheld under chapter 21. Because FICA taxes are not considered to be income taxes, the amount of FICA taxes withheld cannot generally be taken as a credit against income tax liability, except under circumstances expressly authorized in the Code. The overall organization and legislative history of the Code reflects intended separate treatment for the categories of taxes created under the various subtitles. See Jones v. Liberty Glass Co., 332 U.S. 524 (1947).

Section 31(b) is the statutory provision that governs the limited circumstances wherein employees may be allowed to credit a portion of the FICA tax withheld from their wages against their income tax liability. Pursuant to Code section 31(b) and its implementing regulations, employees who, by reason of receiving wages from more than one employer during a calendar year, have had FICA tax deducted from wages in excess of the FICA wage base, are entitled to credit against their income tax liability the amount by which the FICA taxes withheld exceed the tax on the amount of wages received in the calendar year which is equal to the FICA wage base. For purposes of this credit only, the excess of the FICA taxes withheld over the FICA tax due on the amount of wages equal to the FICA wage base "is considered as an amount deducted and withheld as income tax at the source under chapter 24 of the Internal Revenue Code." See Code section 31(b) and Income Tax Regulations section 1.31-2(a)(3).

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2005-1, §2.04, 2005-1 IRB 7 (Jan. 3, 2005). If you have any additional questions, please contact our office at

Sincerely,

Lynne Camillo
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Organizations/Employment Tax/Gov
(Tax Exempt & Government Entities)