



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

OFFICE OF
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Dear _____ :

This letter responds to your request for information dated November 4, 2005. We apologize for the delay in our response. You asked about the meaning of the term "supplemental wages" in Publication 15, *Employer's Tax Guide*.

As we understand your situation, you are currently employed as a teacher for a public high school. Additionally, you have a separate employment contract as an athletics coach for that same high school. For each employment contract, you perform different services and receive a separate wage. Your employer has determined that your employment as a coach is supplemental to your position as a teacher. In accord with the rules for supplemental wages set forth in Publication 15, your employer withholds 25% of your coaching paycheck to comply with Federal employment tax laws.

The Employment Tax Regulations distinguish between regular wages paid for a payroll period and supplemental wages for purposes of income tax withholding. The Employment Tax Regulations relative to supplemental wage payments provides that an employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. See Treas. Reg. § 31.3402(g)-1.

The Employment Tax Regulations define a "payroll period" as the period of service for which a payment of wages is ordinarily made to an employee by his employer. The regulations also indicate that an employee has but one payroll period with respect to wages paid by any one employer, and then illustrates this rule by distinguishing the

regular wages paid for a payroll period from the supplemental wages such as a bonus determined with respect to a different period. See Treas. Reg. § 31.3401(b)-1.

Supplemental wages are wages paid in addition to regular wages for services performed by an employee for the employer. For your convenience, we have attached Revenue Ruling 66-294, 1966-2 C.B. 459, which provides a non-exhaustive list of examples of supplemental wages. One example provided in the ruling is where an employer ordinarily includes any overtime pay due the employee in the employee's regular weekly wages and withholds thereon at the regular graduated rates. However, occasionally, due to a delay in posting on the employee's timecard, the employer issues a separate check for the overtime. The ruling held that the employer should treat this payment as a supplemental wage payment, and should follow the withholding rules for supplemental wages.

In order to clarify the use of the term supplemental wages, among other things, the Treasury Department has recently issued proposed regulations. Under the proposed regulations, supplemental wages include any payment of wages by an employer that is not "regular wages." Regular wages are defined as amounts paid by an employer for a payroll period either at a regular hourly rate or in a predetermined fixed amount. Wages that vary from payroll period to payroll period based on factors other than the amount of time worked, such as commissions, tips, and bonuses, are supplemental wages if they are paid in addition to regular wages. See Prop. Treas. Reg. § 31.3402(g)-1(a)(1)(i), 70 FR 767-01, 2005-6 I.R.B. 484 (Jan. 5, 2005). Please note that these regulations are not final yet and are subject to change. However, we believe this proposed language reflects the intent of the current supplemental wage withholding rules.

Thus, payments that are paid by an employer for a payroll period either at a regular hourly rate or in a predetermined fixed amount are considered regular wages, and subject to the ordinary income tax withholding requirements. On the other hand, wages that vary from payroll period to payroll period based on other factors are considered supplemental wages. The employer may choose among the withholding methods for supplemental wages detailed in Publication 15, *Employer's Tax Guide*.

The current guidance on regular and supplemental wages does not specifically address the situation of an employee performing more than one job for an employer for which separate payments are regularly made on a payroll period basis. The current guidance focuses on the connection between the wage payment and the payroll period.

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. 2006-1,

§2.04, 2006-1 IRB 7 (Jan. 3, 2006). If you have any additional questions, please contact our office at .

Sincerely,

/s/ Janine Cook

Janine Cook
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