



OFFICE OF  
CHIEF COUNSEL

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

Oct. 22, 2008

Number: **INFO 2009-0003**

Release Date: 1/2/2009

CONEX-141578-08

UIL: 9999.98-00

Dear \_\_\_\_\_ :

I am responding to your letter to Senator Ron Wyden about the tax treatment of amounts paid by the \_\_\_\_\_ to volunteer firefighters. Senator Wyden wrote to us on your behalf and asked us to respond directly to you.

The way the Internal Revenue Code (the Code) treats amounts paid to volunteer firefighters ultimately depends on whether they are "qualified payments," which the Code excludes from income and employment tax, and whether the recipients are employees or independent contractors. Employers must generally pay employment taxes anytime they pay their employees wages. Employment taxes on wages paid to employees of state or local government entities consist of two components: Federal Insurance Contribution Act (FICA) taxes - commonly known as Social Security and Medicare taxes - and withheld income taxes.

Whether an employer must pay employment taxes depends on whether the recipient is an employee. Under the Code, anyone, no matter what his official title, who provides services for someone under that person's direction and control is that person's employee [sections 31.3121(d)-1(c) and 31.3401(c)-1(b) of the Employment Tax Regulations].

Even if the recipient is an employee, the employer must pay an employment tax only if the payment qualifies as a wage. Generally, a wage is any payment of remuneration - no matter what its label - by an employer for services performed by an employee [sections 3121(a) and 3401(a) of the Code]. But sections 3402(a) and 3111 explicitly exclude from this general definition those amounts that qualify as "qualified payments" under section 139B. A qualified payment is an amount (limited to \$30 a month) that a state or a political subdivision provides to a volunteer firefighter in exchange for services. Fire departments, therefore, do not need to pay employment taxes for qualified payments.

