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INTERNAL REVENUE SERVICE

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The Honorable John Shimkus
Member, US House of Representatives
3130 Chatham Road, Suite C
Springfield, IL 62704

Attention

Dear Congressman Shimkus:

This letter is in response to a letter from your constituent, _____, dated January 29, 2010. _____ asked about the reporting requirements for payments to volunteer firefighters and the handling of expenses related to volunteer firefighting.

The Mortgage Forgiveness Debt Relief Act of 2007 enacted section 139B of the Internal Revenue Code (the Code) to provide members of qualified volunteer emergency response organizations (including firefighters) an exclusion from gross income for qualified payments.

A qualified payment is any payment (whether by reimbursement or otherwise) that a state or local government provides for services performed as a member of a qualified volunteer emergency response organization. The law limits a qualified payment to \$30 for each month during which the taxpayer performs the services. Thus, the maximum income exclusion is \$360 for any taxable year.

Amounts that are excludable under section 139B are also excepted from wages for purposes of the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA). See sections 3121(a)(23) and 3306(b)(20) of the Code. These amounts are not subject to income tax withholding. See section 3401(a)(23). We refer to FICA, FUTA, and income tax withholding collectively as employment taxes. Thus, the amounts excluded under section 139B are not subject to employment tax withholding and employers are generally not required to report them on a Form W-2 or Form 1099-MISC. However, amounts that are in excess of the excludable amount, and which are not excludable under any other provision, are taxable as wages and may be subject to employment tax withholding, and are required to be reported on Form W-2 or Form 1099-MISC, depending on the status of the individual as an employee or an independent contractor (non-employee). An employer who pays wages to an employee

is required to furnish the employee with a Form W-2 showing the amount of wages paid and the employment taxes withheld. Wages paid to workers who are independent contractors must be reported on Form 1099-MISC.

Whether a worker is an employee or independent contractor is determined under the Employment Tax regulations and the Code. See sections 31.3121(d)-1 and 31.3401(c)-1 of the Employment Tax Regulations. These regulations provide, in general, that if the worker provides services under the direction and control of the service recipient, the worker is considered an employee for Federal employment tax purposes. The rules reflect common law principles, developed and affirmed over decades by the courts, that govern IRS policy in the area. The tax laws generally apply to volunteer firefighters in the same way they do to other workers. The fact that a firefighter may be called a "volunteer" does not determine his or her status as an employee or independent contractor.

When a volunteer emergency responder incurs expenses in connection with his performance as an emergency responder, he or she can deduct those expenses as a charitable contribution to the extent that the expenses exceed the amount of any qualified payment excluded from gross income and to the extent that the volunteer emergency response organization is a qualified charity under section 170.

Unreimbursed expenditures that qualify as a charitable contribution include driving expenses up to either the standard mileage rate of 14 cents per mile or the actual vehicle operating expenses (gasoline and oil paid).

I hope this information is helpful. If you have any questions, please contact me or
at .

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)