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

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Dear _____ :

This letter is in response to your inquiry dated May 5, 2009, sent to President Barack Obama. You inquired about the application of social security and Medicare taxes on payments made to your wife from the _____ program. This letter will provide you with general information regarding the application of FICA taxes on domestic service in a private home of the employer under the Internal Revenue Code ("Code").

The Federal Insurance Contributions Act ("FICA") imposes social security and Medicare taxes on wages paid by an employer to an employee with respect to employment. The term "employment" means any service, of whatever nature, performed by an employee for the employer. [Code section 3121(b).] Generally, the employer-employee relationship exists when the person for whom services are performed has the right to direct and control the worker who performs the services. [Treasury Regulation section 31.3121(d)-1(c).]

Social security and Medicare taxes also apply to domestic service in a private home of the employer, when the employer pays cash wages equal to or greater than the annual dollar threshold (\$1,700 in 2010). [Code section 3121(a)(7)(B).] Domestic service is work of a household nature done in or around the home of the employer. Some examples of domestic service include personal nurses, caretakers, domestic workers, nannies, and baby sitters. [Treasury Regulation section 31.3121(a)(7)-1(a)(2).] For more information, please see IRS Publication 926, *Household Employer's Tax Guide*.

However, certain services are excepted from employment because of the family relationship between the employer and employee. The law specifically excludes services performed in the employ of an individual's spouse from the term "employment". [Code section 3121(b)(3)(B); Treas. Reg. section 31.3121(b)(3)-1(a)(1).] Any cash wages paid to a spouse to provide domestic service is not subject to social security and Medicare taxes. Congress enacted a version of this family employment exception in _____

1939, and it has been the law ever since. [See Social Security Act Amendments of 1939, Pub. L. No. 76-379 (1939).]

Please note that the imposition of social security and Medicare taxes by the Code is separate from the provisions regarding coverage and eligibility for social security and Medicare benefits under the Social Security Act. For social security and Medicare coverage purposes, domestic service performed by a spouse in a private home of the employer is not considered "employment". [See Social Security Act section 210(a)(3), 42 U.S. Code section 410(a)(3), available at <http://www.socialsecurity.gov>.] While the two statutes correlate with one another generally and on this point specifically, they serve different purposes and are administered by different agencies. Contact the Social Security Administration for more information about "covered employment" for social security and Medicare purposes.

We also note that you indicated that [redacted] withheld social security and Medicare taxes from the money paid to your wife. You may want to contact [redacted] to discuss further why the taxes were withheld. If the taxes should not have been withheld, you should discuss with [redacted] regarding reimbursement of the taxes.

For your convenience, I have included with this letter a copy of IRS Publication 926, *Household Employer's Tax Guide*. See the "Social Security and Medicare Taxes" section on page 4 for more information on wages that are subject to social security and Medicare taxes.

I hope this information is helpful. Please contact me or [redacted] of my staff at [redacted] if you would like to discuss further.

Sincerely,

/s/ Janine Cook

Janine Cook
Branch Chief, Employment Tax Branch 1
(Exempt Organizations/ Employment Tax/
Government Entities)
Tax Exempt and Government Entities