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Sent: Wednesday, September 08, 2010 9:20:41 AM

To:

Cc:

Subject: RE: FUTA, Insurance and Domestic Partners

Greetings

The issue raised by the agent was discussed here in the National Office and with Treasury in connection with the development of Notice 2010-38. The conclusion reached at that time is that the FICA and FUTA provisions relating to "dependent" aren't really definitions in the sense of an exclusive meaning. They're instead worded to say "dependents" "include" an employee's family members. They do not preclude the possibility that other individuals could also be dependents for purposes of the FICA and FUTA exclusions.

When the issue was discussed in connection with Notice 2010-38, we viewed the PLRs (e.g., PLR 200339001 and PLR 200108010) as expanding the group of dependents described in the FICA and FUTA regs to include individuals who are dependents under section 152. Therefore, even though the PLRs can't be relied on by taxpayers other than those who got them, it is Counsel's position that a domestic partner who is a dependent of an employee under section 152 is also a dependent for purposes of the FUTA exclusion. Thus, the value of the health coverage for the domestic partner isn't FUTA wages.

Please let me know if I can be of further assistance.