



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Amy Klobuchar
United States Senator
1200 Washington Avenue South, Suite 250
Minneapolis, MN 55415

Attention:

Dear Senator Klobuchar:

This letter is in response to your inquiry dated May 17, 2011, on behalf of your constituent, . asked about the employment tax treatment of long-term disability payments.

As a general matter, apart from the procedure for issuing a formal ruling as described in Revenue Procedure 2011-1, 2011-1 Internal Revenue Bulletin 1, we cannot provide binding legal advice to particular taxpayers. However, we have reviewed the facts provided and can provide general information, which we hope will be helpful.

The law imposes Old-Age, Survivors, and Disability Insurance taxes and hospital insurance taxes on wages employers pay to employees. These two taxes comprise the Federal Insurance Contributions Act (FICA). Taxes under FICA apply to "wages," as defined in section 3121(a) of the Internal Revenue Code (the Code), that employers pay for "employment," as defined in section 3121(b) of the Code.

The law exempts long term-disability payments from wages for FICA purposes in two situations. If neither of these situations applies, then FICA applies to the full amount of the disability payment. First, the law exempts from wages any payment made to or on behalf of an employee under a plan or system an employer established that provides for its employees on account of sickness or accident disability, if the employee receives the payments under a workmen's compensation law. For purposes of this exemption, a payment an employer made under a workers' compensation law includes a payment

made under a statute in the nature of a workers' compensation act. If an employee receives a payment on account of non-occupational injury, sickness, or accident disability, he or she cannot exclude the payment from wages (Section 31.3121(a)(2)-1(d)(4) of the Treasury Regulations).

The second exemption is for any payment on account of sickness or accident disability an employer makes to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer (Section 3121(a)(4) of the Code). FICA taxes apply to the full amount of the disability payment while the employee continues to perform services for the employer and for the first six calendar months after the employee has ceased performing services for the employer. Disability payments will be exempt from FICA starting in the seventh calendar month after the employee has stopped performing services for the employer.

Any changes to the law would require legislative action by the Congress.

I hope this information is helpful. If you have any questions, please contact me or of my staff at () .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Exempt Organizations/ Employment Tax/
Government Entities)
(Tax Exempt and Government Entities)