



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
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The Honorable Gregorio Kilili Camacho Sablan  
U.S. House of Representatives  
423 Cannon House Office Building  
Washington, DC 20515

Dear Mr. Sablan:

I am responding to your inquiry of July 28, 2011. You asked whether nonimmigrant Filipino workers, who are present in the Commonwealth of the Northern Mariana Islands (CNMI) under the Commonwealth Only Transitional Worker (CW) visa classification created under the Consolidated Natural Resources Act of 2008 (CNRA), are exempt from Federal Insurance Contributions Act (FICA) taxes.

The law imposes Old-Age, Survivors, and Disability Insurance taxes on wages paid to employees (sections 3101(a) and 3111(a) of the Internal Revenue Code (the Code)). The law also imposes hospital insurance taxes on wages paid to employees (sections 3101(b) and 3111(b) of the Code). These two taxes comprise FICA taxes. Taxes under FICA apply to "wages," as defined in section 3121(a), that employers pay for "employment," as defined in section 3121(b).

Under section 3121(b)(18), services that Filipino residents perform while temporarily admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (H-2 status) are exempt from FICA taxes. By operation of section 3121(b)(18) and sections 601(c) and 606(b) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the Covenant), services that Filipino residents perform while admitted to the CNMI in H-2 status are also exempt from FICA taxes.

The CNMI has historically not been subject to the U.S. Immigration and Nationality Act (INA). However, CNMI immigration laws contained in the Commonwealth of Northern

Mariana Code, 3 CMC section 4303(q)(8)(B), had a counterpart to H-2 status. Both laws similarly defined a nonimmigrant worker as one temporarily in the United States or the CNMI to perform temporary services or labor. Therefore, the exemption from FICA under section 3121(b)(18) applied to nonimmigrant Filipinos admitted to the CNMI on the CNMI visa. However, with the enactment of the CNRA, CNMI immigration laws no longer apply and this CNMI visa is no longer available to CNMI workers.

The CNMI is transitioning to U.S. immigration law. During this transition period, running from November 28, 2009, to December 31, 2014, the U.S. Citizenship and Immigration Services established the new CW visa classification [CNRA 48 U.S.C. § 1806(d)]. This classification is for nonimmigrant workers who are ineligible for other employment-based nonimmigrant U.S. visa classifications. Thus, we understand that workers who are in the CNMI in CW status would not meet the eligibility criteria for a U.S. H-2 status.

Section 3121(b)(18) provides an exception from “employment” for services performed only in H-2 status. Because Filipino workers temporarily present in the CNMI under a CW classification do not hold an H-2 status, they are not eligible for the FICA exemption that section 3121(b)(18) provides. Unless an individual is eligible for FICA exemption based on some other circumstances, FICA taxes will apply to these Filipino workers.

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

Sincerely,

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