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OFFICE OF THE CHIEF COUNSEL

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The Honorable Gregorio Kilili Camacho Sablan
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Sablan:

I am responding to your inquiry of January 27, 2012. You asked about the recent changes in IRS Publication 80, *Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands* concerning the application of Federal Insurance Contributions Act (FICA) taxes to Filipino workers temporarily present in the Commonwealth of the Northern Mariana Islands (CNMI).

The change in the FICA taxation of Filipino residents in the CNMI is not due to a change in IRS policy but, rather, to a change in immigration law. The transition in CNMI from its own immigration law to federal immigration law changed the application of FICA taxes to Filipino workers.

From the time FICA taxes became applicable in the CNMI under the ratification of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the Covenant), no exemption from FICA that applies to all Filipino workers in CNMI has been available. The Internal Revenue Code (the Code) and the Covenant together provide only a limited FICA exemption for residents of the Philippines temporarily in CNMI in H-2 status under the Immigration and Nationality Act (see section 3121(b)(18) of the Code). When CNMI had its own immigration laws and the H-2 visa was not available in the CNMI, we interpreted the section 3121(b)(18) exemption as applying to those workers whose status under CNMI immigration law was most similar to workers in H-2 status. We publicized this position for the first time in 2009 when we updated Publication 80.

Because the immigration laws in CNMI have changed and the H-2 visa is now available in the CNMI, the 3121(b)(18) exemption for H-2 applies directly to Filipino workers in the CNMI in H-2 status. Filipino workers not in H-2 status, on the other hand, are not

exempt under section 3121(b)(18) exemption because that exemption applies only to H-2 visa holders. Section 3121(b)(18) has not been amended to apply to other visa holders, and the text of the Consolidated Natural Resources Act does not provide FICA exemptions for Filipino residents who are not in H-2 status. The transition to federal immigration law has heightened awareness that the existing exemption in the Code and the Covenant applies only to Filipino nonimmigrant workers temporarily present in the CNMI in H-2 status.

In your letter, you suggested that the IRS and the Department of the Treasury establish an effective date in the future for the application of FICA taxes to Filipino workers to clarify when employers should begin withholding and paying FICA and to allow employers and Filipino nonimmigrant workers to plan accordingly for their responsibilities to pay FICA. Thank you for this suggestion. I assure you that we will consider it carefully. We recognize the important role public input plays as it helps us to focus resources on issues that are most important to taxpayers and tax administration.

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)