



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Patty Murray
United States Senator
950 Pacific Avenue, Suite 650
Tacoma, WA 98402

Attention:

Dear Senator Murray:

I am responding to your inquiry dated November 17, 2014, on behalf of your constituent, . is 71 years old and is working part-time as a home care aide. He contacted your office about social security taxes withheld from his pay. Specifically, he asked if he needed to pay social security taxes for his work as a home care aide and how to get a refund of the social security taxes that were withheld from his pay.

As a general matter, we cannot provide binding legal advice applicable to particular taxpayers except through the private letter ruling process or, in the case of a determination about worker classification, the Form SS-8 process. If your constituent wants to request a worker classification determination, he should follow the procedures in the instructions to Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, available on www.irs.gov. Although I may not provide binding legal advice to , I can provide the following general information about the law.

Sections 3101 and 3111 of the Internal Revenue Code (the Code) impose social security and Medicare taxes (collectively, called Federal Insurance Contributions Act (FICA) tax) on employees and employers, respectively. Social security and Medicare taxes apply to "wages" paid by an employer or received by an employee with respect to employment. Section 3121(a) defines "wages" as "all remuneration for employment," subject to certain exceptions. There are no exceptions from the definition of wages based on age, part-time employment, or work as a health care aide.

While there are special rules regarding the application of social security and Medicare taxes to pay for household work done in or around a home, such as by caretakers, health aides, nannies, private nurses, and yard workers, when such work is performed by an employee of the person receiving the household services, these rules do not generally exclude such payment from social security and Medicare taxes, but only provide a limited exclusion based on a threshold.

If the worker is an employee of the person receiving the services, the employer and the employee are each subject to social security and Medicare taxes if the wages exceed a threshold amount. For 2014, the threshold amount is \$1,900. Generally, the worker is an employee for federal tax purposes if the service recipient has the right to direct and control the worker, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. The service recipient does not have to actually direct or control the manner in which the worker performs the services, but must have the right to do so. This determination is based on all the facts and circumstances.

If the worker is an employee of a party other than the person receiving the services (such as a company), the work is not viewed as household work and social security and Medicare taxes apply without application of any threshold.

It appears that the entity paying _____ is treating _____ as an employee of the person receiving his services. If _____ does not believe that treatment is correct, he may file Form SS-8 and request a determination of his worker status, but, as previously indicated, work as an employee of a third party would be subject to social security and Medicare taxes without application of the threshold. If an employer withholds social security or Medicare tax from an employee in error, the employee may request the employer to repay or reimburse the employee the overwithheld tax and the employer may file a Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, to correct the overreported amounts and request a refund. If the employer will not do so, the employee may file a Form 843, *Claim for Refund and Request for Abatement*, to request a refund of social security and Medicare taxes withheld in error.

I hope this information is helpful. If you have additional questions, please call me at _____ or _____ at _____.

Sincerely,

Victoria A. Judson
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)