



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

OFFICE OF THE CHIEF COUNSEL

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Reference: Tax Treatment of Payments to Retired Law Firm Partners
Providing Pro Bono Services

Dear _____ :

This is in response to your letter dated March 15, 2016, to Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury, and William J. Wilkins, Chief Counsel, Internal Revenue Service, in which you reaffirm your support for a previous request made by _____, your predecessor as _____, requesting published guidance on the Self-Employment Contributions Act (SECA) tax treatment of certain retirement payments to retired law firm partners who provide pro bono legal services. I apologize that we did not provide a separate response to _____ prior to his retirement.

_____ had requested that the Department of Treasury and the IRS issue published guidance that removes SECA-tax related obstacles to the provision of pro bono services by any retired partner in partnership with their former law firm. As Deputy Associate Chief Counsel (Tax Exempt and Government Entities) (Exempt Organizations/Employment Tax/Government Entities), your letter was forwarded to me for response as my office has subject matter jurisdiction over SECA tax issues.

We certainly applaud efforts by _____ and _____ to increase access to legal representation for people in need, including establishment of _____ (_____). We are considering your request for guidance regarding the SECA tax implications for otherwise retired attorneys who volunteer with _____ and desire to provide the pro bono services in partnership with _____.

their law firms. We note that section 1402(a)(10) of the Internal Revenue Code provides specific conditions for application of the SECA tax exception for payments from partnerships to retired partners. More specifically, section 1402(a)(10) provides that:

[T]here shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if —

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A).

Any guidance on the application of this self-employment tax exception in connection with the provision of pro bono services by retired law partners would need to be in accord with these statutory requirements. Specifically, it is unclear whether the arrangements briefly described in _____ letter could be consistent with the statutory requirement of section 1402(a)(10)(A) that the partner "rendered no services with respect to any trade or business carried on by [the] partnership".

Thank you for sharing this issue for our consideration. Please feel free to contact me if you have any questions regarding this issue. I can be reached by telephone at _____

Sincerely,

Janine Cook
Deputy Associate Chief Counsel
(Tax Exempt and Government Entities)
(Exempt Organizations/Employment
Tax/Government Entities)