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**From:** [REDACTED]  
**Sent:** Friday, October 14, 2022 8:44:48 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Bcc:**  
**Subject:** Response to Employment Tax issues re: Medicaid in-home care payments to family care providers

#### QUESTION

You asked (1) whether the Field Service Advisory, 2002 WL 1315695 (2002) is still valid for employment tax purposes, and (2) can an individual care/service provider who received payments for the care of their own child choose to “opt out” of a statutory exclusion, such as IRC § 3121(b)(3)(B), and have the payments subject to FICA?

#### FACTS

You stated, similar to the facts in the 2002 FSA, a parent who is an individual service provider to their disabled child received in-home care payments from a State program. The 2002 FSA concluded that these payments to a service provider, even a parent who provides in-home care to their child, are includible in gross income subject to tax as compensation for services. Further, all remuneration for employment is wages subject to FICA and FUTA taxes, unless specifically excepted.

#### LAW

Section 3121(a) and Treasury Regulation section 31.3121(a)-1(b) provide that, for purposes of the FICA tax, all remuneration for employment is wages, unless a specific exception applies. Section 3306(b) and Treasury Regulation section 31.3306(b)-1(b) provide similar statements for purposes of the FUTA tax.

Section 3121(b)(3)(B) provides that the term “employment” does not include domestic service in a private home of the employer performed by an individual in the employ of his/her son or daughter for purposes of FICA tax. This exception is not applicable if certain other situations apply. Section 3306(c)(5) provides a similar exception for FUTA tax.

Field Service Advisory, 2002 WL 1315695 (2002), concluded that certain in-home care payments from a state program or agency to a service provider, including payments to a parent who provides in-home care to the parent's child, are taxable as compensation for services for income tax and employment tax purposes.

Notice 2014-7, 2014-4 I.R.B. 445, 2014 WL 27959 (2014), stated certain in-home care payments to service providers, including parents who receive payments from the Medicaid waiver program for the care of their child, are treated as difficulty of care payments under § 131 and therefore not includible in gross income for federal income tax purposes. However, the Notice did not address the FICA or FUTA tax treatment of these in-home care payments.

## CONCLUSION

In response to your questions:

1. Whether the Field Service Advisory, 2002 WL 1315695 (2002) is still valid for employment tax purposes.

The 2002 Field Service Advisory (FSA) stated in-home care payments to the service providers, whether related or not, are generally remuneration for employment. As such, the payments were subject to federal income tax as well as to FICA and FUTA taxes, unless there's an exception.

Notice 2014-7 reverses the conclusion for federal income tax purposes. Prior to Notice 2014-7, the IRS usually took the position the payments to care/service providers are includible in gross income. With Notice 2014-7, payments to service providers, including parents who receive payments from the Medicaid waiver program for the care of their child, are treated as difficulty of care payments under IRC § 131 and therefore excluded from gross income. As such, taxpayers are not required under IRC §§ 6041 or 6051 to report the payments as wages subject to income tax and income tax withholding.

However, the analysis and conclusions regarding the FICA and FUTA tax treatment of the payments described in the 2002 FSA and Notice 2014-7 have not changed. These payments are still generally subject to FICA and FUTA taxes, and therefore may be required to reported under IRC § 6051, unless an exception applies.

In short, yes – the 2002 FSA conclusions with respect to FICA and FUTA are still valid if there's an employment relationship, including between a parent and child/related parties – that is, IRC § 131 payments to individual care providers are generally like any other wages/compensation for services that are subject to FICA and FUTA, unless a specific exception applies, such as the parent-child exception under IRC §§ 3121(b)(3)(B) and 3306(c)(5). The FSA also seems consistent with PLR 201623003 and PLR 201624012, as well as FAQs 12 - 20 that address social

security and Medicare taxes and reporting requirements on the IRS website at [Certain Medicaid Waiver Payments May Be Excludable From Income | Internal Revenue Service \(irs.gov\)](#). There is also some general information on [Family Caregivers and Self-Employment Tax | Internal Revenue Service \(irs.gov\)](#).

2. Whether an individual who received payments as a service provider for the care of their child can choose to “opt out” of a statutory exclusion, such as IRC § 3121(b)(3)(B), and have the payments subject to FICA tax.

No. A taxpayer cannot choose to “opt out” of a statutory exclusion. The exclusion applies, unless there is an exception to it, such as under IRC §§ 3121(b)(3)(B)(i) – (iii).

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