



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

OFFICE OF
CHIEF COUNSEL

CC:EBEO:2:
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MEMORANDUM FOR

Attn:

FROM: Jerry Holmes, Chief
CC:EBEO:2

SUBJECT: Information Reporting for Jurors

This responds to your request for significant service center advice, dated November 13, 1998, in connection with a question concerning the information reporting requirements applicable to payments to jurors. This memorandum may not be used or cited as precedent.

Questions:

1. What are the information-reporting and withholding requirements applicable to compensation paid to jurors?
2. On which form, and in which box, is the compensation paid to jurors reported?

Brief Answers:

1. Information reporting for compensation to jurors is governed by section 6041 of the Code, which requires reporting of payments of \$600 or more in a taxable year. Jurors' compensation is not subject to withholding of federal income tax or tax under the Federal Insurance Contributions Act (FICA).

2. Payments of compensation to jurors are reportable on Form 1099-MISC, box 3, as "Other income."

Facts

You have received an inquiry from a state concerning the requirements for information reporting with respect to compensation paid to jurors. The individuals in question serve on grand juries and can serve a maximum of _____ days per year. They are paid a set amount per day, and they may receive \$600 or more in a calendar year. You have not stated whether the jurors are covered by an agreement under section 218 of the Social Security Act (218 agreement), and we assume that there is no 218 agreement.

Law

In general, the withholding and information reporting requirements for compensation to workers depend upon whether the workers are employees, independent contractors, or other non-employees. Employee status depends upon whether the entity which retains the individual's services exercises sufficient control over the worker so that the worker can be categorized as an employee under the common law. Code section 3121(d)(2).

Generally [an employee] relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, 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. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. Section 31.3121(d)-1(c), Employment Tax Regulations.

Section 3121(a), dealing with the FICA tax, provides that nothing in the regulations relating to federal income tax withholding which provides an exclusion from "wages" for withholding purposes shall be construed to require a similar exclusion from "wages" for FICA purposes.

Section 3401(a), concerning Federal income tax withholding, states that the term "wages" for withholding purposes means all remuneration for employment other than fees paid to a public official. Section 31.3401(a)-2(b)(2) of the Employment Tax Regulations provides as follows:

Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

Section 1401 imposes tax under the Self-Employment Contributions Act (SECA tax) on "net earnings from self-employment" as defined in section 1402(a). Section 1402(c) provides that the term "trade or business" for SECA tax purposes shall have the same meaning as when used in section 162 (relating to trade or

business expenses), except that such term shall not include, in relevant part, the performance of the functions of a public office, other than the functions performed in a position compensated solely on a fee basis and not subject to an agreement under section 218 of the Social Security Act.¹ Code section 1402(c)(1). Section 1.1402(c)-2(b), Income Tax Regulations, defines “public office” to include any elective or appointive office or the United States or any possession thereof, of the District of Columbia, of a state or its political subdivisions, or of a wholly-owned instrumentality of any one of more of the foregoing. While juror is not specifically mentioned as a public office, the definition is broad enough to include the role of juror as a public office.

Rev. Rul. 61-113, 1961-1 C.B. 400, deals with individuals who serve as members of a hearing board of an air pollution control district, who are appointed by the county board of supervisors, take an oath of office, hold public hearings, and submit their decisions to the county. They are not under the control and direction of the county board of supervisors or any other body. Their compensation is based on the number of hearings they attend. Their services constitute the performance of the functions of a public office and do not constitute a “trade or business” for purposes of Code section 1402(c)(1).

Section 6041(a), in relevant part, imposes an information-reporting requirement as follows:

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income . . . of \$600 or more in any taxable year . . . shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

¹Rev. Rul. 74-608, 1974-2 C.B. 275, dealing with the application of SECA tax to tax collectors who are paid salaries based on the amount of tax they collect states that only when a public official receives remuneration in the form of fees directly from members of the public with whom he does business does such remuneration constitute “fees” within the meaning of section 1402(c)(1). While compensation paid to jurors is described in regulations under section 3401 as “in the nature of fees paid to public officials” this does not mean that jurors are fee-based public officials within the meaning of Code section 1402(c)(1), but only that such compensation is to be treated as fees paid to public officials for withholding purposes.

Section 1.6041-1(a)(1), Income Tax Regulations, requires reports in the course of a trade or business of payments to “another person,” a term which includes a person who is not an employee. The amounts required to be reported, including wages, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, include compensation which is not “wages” for FICA purposes. The term “all persons engaged in a trade or business” includes those engaged in activities that are not for profit. Section 6041-1(b)(1), Income Tax Regs. Section 1.6041-1(a)(2), Income Tax Regulations, requires the filing of Form 1099 for individuals who are not employees.

Analysis

The performance of services as a juror differs in its very nature from the performance of services as an employee. The role of juror has its roots in the common law as a member of a body of persons chosen according to law and sworn to make determinations of fact in a particular case. The role of employee derives from a different common law relationship, that of master and servant. Service on a jury is often described as a civic duty; its closest analogue is to the exercise of public office, as described in Rev. Rul. 61-113. Therefore, jurors’ fees do not constitute wages for employment for FICA tax purposes.

Section 1402(c)(1) generally excludes from the term “trade or business” for SECA purposes the performance of functions of a public office.² As stated above, the compensation paid to jurors is for performance of a civic duty analogous to public office.

Section 3401(a) provides, for income tax withholding purposes, that fees paid to a public official are not subject to income tax withholding, and section 31.3401(a)-2(b)(2) of the Employment Tax Regulations clarifies that this provision applies to fees paid to jurors. Consequently fees paid to jurors are not subject to income tax withholding.

According to section 6041 and regulations thereunder, compensation paid to nonemployees is reportable on Form 1099, provided that the total compensation paid to any individual in a taxable year is \$600 or more. The instructions to Form 1099 state that generally amounts reportable in box 7, Nonemployee compensation, are subject to SECA tax. If payments to individuals are not subject to SECA tax, the instructions state that they should be reported in box 3, Other income. Since

²The exception to this rule for fee-based public officials has no application to this case. Rev. Rul. 74-608, supra, n. 1, states that only when an official receives remuneration in the form of fees directly from members of the public with whom he does business does such remuneration constitute “fees” within the meaning of section 1402(c)(1).

payments to a juror are not subject to SECA tax, the payments should be reported on Form 1099, box 3, if they equal or exceed \$600 in a year.

Conclusion

Since jurors are not employees, their compensation is not subject to FICA tax. Since jurors most closely resemble public officials, their compensation is not subject to SECA tax. Pursuant to section 3401(a) and regulations thereunder, remuneration paid to jurors is not subject to Federal income tax withholding. Information reporting for payments to jurors is governed by section 6041(a), and reporting is required for all individuals who are paid \$600 or more in a taxable year. These payments are reportable on Form 1099-MISC, box 3.