

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: Monday, December 19, 2016

to: Kyle N. Brown
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from: Victoria Judson
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subject: Section 3121(v)(2) and Closing Agreements

ISSUE

Whether the Service should enter into a voluntary closing agreement where an employer did not timely take nonqualified deferred compensation (NQDC) into account for purposes of Federal Insurance Contributions Act (FICA) taxes and seeks a closing agreement with the Service to resolve taxable years that are statutorily barred from assessment?

CONCLUSION

As a policy matter, since regulations exist which govern and contain methods for the correction of NQDC reporting failures, it is not appropriate to enter into a closing agreement in situations where employers did not timely take NQDC into account for purposes of FICA for taxable years which are statutorily barred from assessment.¹

FACTS

You have received requests to enter into voluntary closing agreements submitted by employers regarding NQDC plans, as defined in § 3121(v)(2)(C). These closing agreement requests have been submitted by employers who have discovered, after the

¹The same result applies for Federal Unemployment Tax Act (FUTA) taxes and Railroad Retirement Tax Act (RRTA) taxes. See §§ 3306(r)(2) and 31.3306(r)(2)-1 for FUTA tax and § 3231(e)(8)(B) for RRTA tax.