

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

Date: September 17, 2007

To: Glenn DeLoria
Acting Program Manager
Exam Specialization Technical Guidance

From: Janine Cook
Branch Chief
CC:TEGE:EOEG:ET1

CC: Merrill Feldstein; CC:ITA:B03
Mon Lam; CC:ITA:B3
Timothy Sheppard; CC:PA:01
James Gibbons; CC:PA:APJP:B1

Subject: Reporting SECA Payments Made to Medical Research Participants

We wanted to get back to you with our suggestion on the issue of SECA and payments made to medical research study participants. We collaborated with attorneys in Procedure & Administration and Income Tax & Accounting on this issue.

Briefly, the issue concerns the treatment of fees received by medical research study participants. Some fees may be subject to SECA tax because the participants are in a trade or business of participating in medical research studies. It is unlikely that a majority of these fees are incurred in a trade or business, however. The payors (the institutes that administer the medical research studies) are not clear as to whether to report these payments in either box 3 (other income) or 7 (nonemployee compensation) on Forms 1099-MISC when they make these payments to the research participants.¹

Generally, the payors have been instructed to report the payments in box 7 as nonemployee compensation. We understand that such reporting generated taxpayer notices for SECA tax to medical research participants who, in many cases, did not have a trade or business of participating in medical research studies and, thus, were not subject to SECA tax on such payments. The stakeholder liaison forwarded a question from one of the payors regarding the proper reporting of these amounts.

We considered three possibilities for addressing this issue. One possibility is to instruct payors to report the payments in box 3. Another possible approach is to instruct payors to place the payments in box 7 *unless* the payor determined that the research study

¹ For purposes of this discussion, we have assumed that none of the research participants are employees for which the payments should be reported as wages of Forms W-2, *Wage and Tax Statement*.

participant was not in a trade or business (under section 162). The final possible approach is to instruct payors to determine if the participant was in a trade or business with respect to the medical study participation, based on specific criteria, and report the payments in box 3 if the taxpayer did not have a trade or business and in box 7 if the taxpayer did have a trade or business.



I hope that the above information is helpful. If we can be of more assistance or if you would like to discuss the above, please do not hesitate to contact Ilya Enkishev at 202-622-