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

OFFICE OF
CHIEF COUNSEL

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February 02, 2001

[redacted]

Dear [redacted]:

This letter is in reply to your correspondence dated September 8, 2000, to Mrs. Clinton. You said you switched jobs in 2000 and your second employer was withholding social security taxes from your wages even though the wages that you received from your first employer for 2000 already exceeded the contribution and benefit base. You expressed concern that the collection of employee social security taxes by two or more employers in this situation creates an undue tax burden for an employee. We are providing the following general information we hope will clarify this issue.

Every employer who makes payment of "wages" to an "employee" for "employment" as those terms are defined in the Federal Insurance Contributions Act (FICA), incurs liability for the employer tax imposed by that Act which includes the social security tax. No employer is excused from liability for the tax solely on the basis of the employee's wages from another employer. However, if an employee receives wages from more than one employer during a calendar year and the wages exceed the contribution and benefit base which is effective for that year, the employee is entitled to a credit or refund of any amount of tax on that part of the wages that exceeds the contribution and benefit base of such wages for the calendar year [section 6413(c)(1)]. Thus, you can request a credit or refund of any social security tax withheld in 2000 from your wages in excess of the contribution and benefit wage base amount on your Form 1040, U.S. Individual Income Tax Return, filed for 2000.

Congress considered the issue of liability of employees for the employee tax imposed by the FICA on wages received from all employers in connection with tax legislation in 1939.

Prior to 1940, employees performing services for more than one employer in a calendar year were liable for the employee tax under the FICA on wages received from all employers. As a result, Congress included the "special refund" provisions in the Social

Security Act Amendments of 1939 permitting employees to obtain a credit or refund, without interest, of the employee tax paid on the total in excess of the contribution and benefit base if they file a claim for refund. In considering these provisions, the Senate Committee on Finance on the Social Security Act Amendments of 1939, in Senate Report No. 734 (published in Cumulative Bulletin 1939-2, beginning at page 565), 76th Congress, 1st Session, stated, in part:

> "Under existing law, remuneration received by an employee with respect to employment during any calendar year is taxable up to and including $3,000 received by the employee from each employer he may have during the year. Hence, an employee who has more than one employer may be required to pay the old-age-insurance employee's tax on aggregate wages in excess of $3,000. The committee believes this bears harshly on the individual having more than one employer during a calendar year, and has accordingly incorporated an agreement which permits the employee to obtain a refund, without interest, of the tax paid on the aggregate in excess of $3,000 earned after December 31, 1939, provided a timely claim is filed. For administrative reasons the committee has not disturbed the liability of the employee having more than one employer for tax on each $3,000 of wages from each employer or the requirement that each employer shall deduct the employee's tax from wages which he pays his employee within the $3,000 maximum. No ground for relief exists in the case of the employer's tax. Each employer will and should be liable for tax with respect to the first $3,000 paid to each employee notwithstanding the employee may be receiving, or may later in the year receive, wages from another employer."

The Internal Revenue Service's mandate is to carry out the provisions of the tax laws as enacted by the Congress. We have no administrative authority to change or alter the laws where, as in this matter, the law is specific and the intent of the Congress concerning that law is clear.

If you have any questions, please contact [redacted], of this office at [redacted] (not a toll-free number).

Sincerely,

Michael A. Swim
Chief, Employment Tax Branch 1
Office of Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government Entities)