



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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Dear [REDACTED]

We regret the delay in replying to your letter of August 13, 2002, to Commissioner Rossotti regarding the Federal Insurance Contributions Act (FICA) and income tax withholding liabilities of your organization. In response to your inquiry, we are providing the following general information.

Definition of an International Organization

The status of an entity as an "international organization" is provided for in the International Organizations Immunities Act (22 U.S.C. 288). This section provides that the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress and which has been designated by the President through appropriate executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act. [REDACTED]

The definition of "international organization" in the International Organizations Immunities Act also applies for purposes of the Internal Revenue Code (hereinafter "Code"). Section 7701(a)(18) of the Code provides that the term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act. In the remainder of this letter, all references to "international organization" are intended to use the term as defined in section 7701(a)(18).

FICA and Self-employment Tax Provisions related to service for an International Organization

Specific exceptions from FICA and income tax withholding apply to services performed in the employ of an international organization. Section 3121(b)(15) of the Code, relating to the FICA, provides that service in the employ of an international organization is excepted from the definition of employment for purposes of the FICA and thus remuneration for such service is not subject to FICA taxes. There is no provision allowing an international organization to waive this exception from FICA. Thus, an international organization is not liable for FICA taxes with respect to its employees.

Under the Code, social security and Medicare benefits are generally financed through two taxing systems: (1) the FICA, which generally taxes employers and employees on wages received by employees, and (2) the Self-Employment Contributions Act (SECA), which imposes the self-employment tax on the self-employment income of self-employed individuals.

The services of certain employees are excepted from FICA, but the employees are treated as if they were self-employed for purposes of the SECA. Thus, such employees are subject to self-employment tax on their earnings, and they obtain coverage for social security and Medicare through the SECA. Included within the groups of employees that are deemed to be self-employed for purposes of the SECA are citizens of the United States who are performing services in the United States as employees of an international organization.

Section 1402(c)(2)(C) of the Code provides that service described in section 3121(b)(15) performed in the United States by a citizen of the United States is generally treated as a trade or business for self-employment tax purposes, and thus the earnings from such service is subject to self-employment tax. (Under section 3121(y), there is an exception to this rule providing that in the case of certain federal employees who are transferred to the employ of international organizations pursuant to section 3582 of title 5, United States Code, the employees will be treated as if employed by the United States Government and subject to FICA.)

Self-employment taxes are computed on Form 1040, Schedule SE, Self-Employment Tax. Generally, an individual is required to take account of self-employment tax liability in computing estimated tax liability. See Form 1040-ES, Estimated Tax for Individuals.

In contrast to United States citizens performing services within the United States, aliens in the employ of an international organization are not subject to self-employment taxes and cannot waive that exception.

Income Tax Withholding

a. Aliens

We now turn to the issue of income tax withholding. Generally federal income tax withholding is imposed on wages as defined in section 3401(a) of the Code. Section 3401(a)(6) provides an exception from wages for such services performed by a nonresident alien individual as may be designated by regulations prescribed by the Secretary of the Treasury.

The Employment Tax Regulations under section 3401(a)(6) of the Code provide that all remuneration paid for services performed by a nonresident alien individual, if such remuneration otherwise constitutes wages within the meaning of section 31.3401(a)-1 of the regulations and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this regulations section. Section 31.3401(a)(6)-1(f) of the regulations provides that remuneration paid for services performed within the United States by a nonresident alien individual is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of section 1.1441-1(e)(1)(ii) of the regulations (for a claim based on a provision of the Code) or section 1.1441-4(b)(2) of this chapter (for a claim based on an income tax convention).

Section 893 of the Code, in part, excludes from gross income and exempts from income taxation the wages, fees, or salary of any employee of an international organization, received as compensation for official services to such international organization if such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States).

A provision exists under the Immigration and Nationality Act allowing certain individuals to waive the privileges, exemptions, and immunities that otherwise accrue because of their occupational status (including the exemption under section 893 of the Code) in order to retain their immigrant status, but no provision exists for the international organization to waive the individuals' exemption under section 893 or any other privileges, exemptions, and immunities they are otherwise entitled to because of their international organization status. An officer or employee of an international organization who executes and files with the Attorney General the waiver provided for in section 247(b) of the Immigration and Nationality Act (8 U.S.C. 1257(b)) thereby waives the exemption conferred by section 893 of the Code. As a consequence, that

exemption does not apply to income received by that individual after the date of the filing of the waiver. Section 1.893-1(b)(4) of the regulations. However, if a tax convention, consular convention, or international agreement provides that compensation paid by the foreign government or international organization to its employees is exempt from federal income tax, and the application of this exemption is not dependent upon the provisions of the internal revenue laws, the exemption so conferred is not affected by the execution and filing of a waiver under section 247(b) of the Immigration and Nationality Act.

B. United States Citizens and Resident Aliens

With respect to income tax withholding on compensation paid to United States citizens or resident aliens, section 3401(a)(5) of the Code provides an exception from wages for remuneration for services by a citizen or resident of the United States for an international organization.

There is also no provision for voluntary income tax withholding on compensation paid to United States citizen or resident alien employees for services for an international organization. Section 3402(p) of the Code authorizes regulations to provide for voluntary withholding on remuneration for services performed by an employee for the employer that is not wages. Section 31.3402(p)-1(a) of the regulations provides that an employee and his employer may enter into an agreement to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of section 31.3401(a)-3 of the regulations. However, section 31.3401(a)-3(b)(2) provides, in effect, that remuneration for services in the employ for an international organization may not be the subject of a voluntary withholding agreement.

Generally, employees of international organizations who are United States citizens should satisfy their income tax liability through the payment of estimated tax. See Form 1040-ES.

We hope the above information will prove helpful to you. If you have questions about this matter, please contact Alfred G. Kelley (Internal Revenue Service [REDACTED])
[REDACTED]

Sincerely yours,
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(Tax Exempt and Government Entities)