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

March 28,2003

Number: Number: **INFO 2004-0058** GENIN-100432-03
Release Date: 3/31/04 CC:TEGE:EOEG:ET2
UIL: 3121.00-00

Dear :

Reference: Retroactive Social Security Coverage

This is in response to your letter of November 22, 2002, which asked specific questions concerning whether an employee formerly covered by a state or local retirement system may pay Federal Insurance Contributions Act (FICA) tax retroactively to obtain social security coverage for years in which the employee participated in the state retirement system.

Your request does not meet the requirements for a private letter ruling as described in Revenue procedure 2003-1 (copy enclosed), thus, we cannot provide a ruling on your specific facts. However, we can provide general information about the questions you pose.

The FICA tax is comprised of the Old-Age Survivors and Disability Insurance tax ("Social Security tax") and the Medicare tax. All state or local employees hired after March 31, 1986 are subject to the Medicare portion of FICA.

A state or local government employee can be subject to the Social Security tax in either of two ways. First, an employee's service can be covered by a Section 218 agreement between the State and the Social Security Administration. Second, if an employee's service is not covered under a Section 218 agreement, then whether the Social Security tax applies depends on whether the employee's service is subject to the applicable provisions of the Internal Revenue Code. Under section 3121(b)(7)(F) state and local government employees are subject to Social Security tax unless the employee is a qualified participant in a state or local retirement system that provides them with minimum retirement benefits comparable to the retirement benefits provided under Social Security.

Thus, if an employee is a qualified participant in a state or local retirement system, section 3121(b)(7)(F) excludes services performed for the state or local government from the Social Security tax. There is no provision in the Code that allows an employee to transfer an account balance from a state or local retirement system to the Social Security Administration. If the employee was not subject to the Social Security tax when employed by the state or local government, then the employee may not retroactively pay the Social Security tax to obtain social security coverage.

Distributions from a state retirement system may be subject to a 10% tax imposed by section 72(t) the Code. A copy of publication 575 is enclosed; pages 27 and 28 discuss exceptions from the 10% penalty.

Whether your service was covered by a Section 218 agreement is within the jurisdiction of the Social Security Administration and we have forwarded a copy of your letter to that office.

We hope you find the foregoing information helpful. If you have additional questions, please contact .

Sincerely,

Marie Cashman
Senior Technician Reviewer