



NCSSSA-Today

National Conference of State Social Security Administrators

Summer 2001

President Designates New Acting Commissioner

Larry G. Massanari has been appointed Acting Commissioner of Social Security by President Bush. Mr. Massanari has been with Social Security for 35 years, the last 14 of which he has served as Philadelphia Regional Commissioner.

Taxability of Health Benefits Furnished to Nondependents

The NCSSSA, on behalf of a member state, sought informal, general guidance from the Internal Revenue Service (IRS) on the taxability of domestic partner health benefits paid by a governmental retirement plan on behalf of a retiree. The Committee received such comments in an information letter from the Health and Welfare Branch of the Office of Chief Counsel.

The information letter from IRS infers there is no difference between active employees and retirees concerning FICA coverage, withholding and reporting requirements for health insurance premiums paid for a "nondependent." See section 152(a) of the Internal Revenue Code (Code) for definition of "dependent." Same sex domestic partners are not considered a spouse or dependent for purposes of the Code.

This NCSSSA summary and the IRS information letter highlight awareness of potential social security coverage and reporting responsibilities. Neither the NCSSSA summary nor the IRS information Letter can be cited or used as authority

with respect to federal employment taxes. The Internal Revenue Code and the Social Security Act, along with the associated regulations, rulings and case law, are the only valid citations of authority. Under Rev Proc 2001-1, such an information letter is a statement issued by the IRS National Office that only calls attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter is advisory only, has no binding effect on the IRS and does not formally express the IRS position on any tax requirements.

For purposes of FICA, the term wages is defined in section 3121(a) of the Code to mean all remuneration for employment, except that such term shall not include those items excluded in subsequent subsections. IRS regulation 31.3121(a)-1(i) states that remuneration for employment, unless such remuneration is specifically excepted under section 3121(a), constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

For purposes of FICA, the value of health insurance provided by a retirement system to a retiree's domestic partner is not excluded from the definition of wages under section 3121(a)(2)(B) of the Code. IRS concludes the value of health insurance provided by a retirement system to a retiree's domestic partner meets the definition of "wages" for FICA purposes. IRS then infers the retirement system must look to section 3121(b) and 3121(u) of the Code to

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ascertain if the service performed at the time the retiree was employed by the employer meets the definition of “employment.”

The IRS states in the letter that the value of health insurance provided by a retirement system to a retiree’s domestic partner (nondependent) is included in gross income under section 61 of the Code.

If such service was performed in positions under a section 218 agreement, the value of health insurance furnished a retiree’s domestic partner is subject to FICA, both social security and medicare, taxes.

If such service was performed in positions not covered under a section 218 agreement and the employee was a qualified participant in a public retirement system, under section 3121(b)(7)(F) of the Code, the value of health insurance furnished a retiree’s domestic partner is not subject to the social security portion of the FICA tax.

However, the retirement system must then ascertain if the “continuing employment exception” under section 3121(u) of the Code applies. If the retiree, when performing service as an employee, began performing such service after March 31, 1986, was not performing such service in a position under a section 218 agreement and was a qualified participant in a public retirement system, the value of health insurance furnished a retiree’s domestic partner is subject to the medicare portion of the FICA tax.

Again, we must emphasize this summary and the information letter from IRS highlight awareness of potential social security coverage and reporting responsibilities. Neither the NCSSEA summary nor the Information letter can be cited or used as authority with respect to federal

employment taxes. The Internal Revenue Code and the Social Security Act, along with the associated regulations, rulings and case law, are the only valid citations of authority.

New IRS Rules Would Allow For Electronic Furnishing of Form W-2

The Internal Revenue Service recently announced, in IR 2001-20, that providers of certain information statements, including Form W-2, now have the option of giving employees the information electronically instead of on paper.

Currently, employers are required to provide information statements in written form — generally on or before January 31. Under the temporary regulations, a person required to furnish a copy of a Form W-2, to an employee, may furnish the form when it is provided electronically on a Web site instead of on paper if certain conditions, described below, are met. The rules attempt to accommodate both filers and recipients. Some employers furnishing statements want to reduce costs and modernize business processes. Some recipients want to receive electronic statements to file income tax returns quickly and accurately. However, the rules also accommodate employees who want paper statements. These taxpayers may choose to continue to receive paper statements.

Generally, under the regulations, an employer that is required to furnish a statement is treated as timely furnishing it to an employee for federal tax purposes if the employee electronically consents or electronically agrees to receive the statement electronically, and the employer:

1. discloses certain information to the employee at or before the time the employee consents to receive the statement electronically;

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2. posts the statement on a website on or before January 31 and maintains access through October 15 of the year after the year to which the statement relates; and
3. notifies the employee on or before January 31 of the year after the year to which the statement relates that the statement is available on a website.

The new regulations apply to copies of forms W-2 that are required to be furnished to employees after December 31, 2000. The temporary regulations do not change the rules for filing forms W-2 with the Social Security Administration.

You may view the temporary regulations that were published in the February 14, 2001, issue of the Federal Register on the IRS web site at <ftp.fedworld.gov/pub/irs-regs/td8942.pdf>.

The IRS will accept comments on these temporary regulations. The NCSSEA solicits you and your employers' comments and will compile and submit these on behalf of the nation's state administrators.

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2001 Annual Conference

The 2001 conference will officially convene on Sunday, July 29, 2001 (some committee meetings will be held on July 28th) and will conclude August 1, 2001. It will be held at the DoubleTree Hotel (San Diego at Mission Valley).

This annual conference provides State Social Security Administrators and other state officials the opportunity to communicate with federal Social Security Administration (SSA) and Internal Revenue Service (IRS) officials on issues of mutual interest.

The 2001 annual NCSSEA conference will include the following topics (listed in random order):

- ◆ Congressional actions, or anticipated actions, that could affect state and local FICA and coverage/benefits.
- ◆ Discussion of perceived roles and responsibilities of State Administrators, NCSSEA, IRS, and SSA. Discussion of constraints on performance of those roles and responsibilities and how those can be overcome.
- ◆ Electronic filing and wage reporting changes being implemented by SSA.
- ◆ Organizational changes within the IRS and how they will affect state and local government employers, SSA, and State Social Security Administrators.
- ◆ Divided coverage referenda process and legislative changes being proposed to allow all states to conduct divided coverage referenda.
- ◆ New State Social Security Administrators (and their staff) orientation.
- ◆ New conference attendee orientation (for state and federal officials and guests).
- ◆ Status on the SSA's scanning and database development projects.

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- ◆ Information sharing issues and concerns (between/among SSA, IRS, NCSSSA, and State Administrators), including the status of the Memorandum of Understanding between SSA and IRS.
- ◆ Status of universal Social Security and Medicare initiatives, i.e., applicability to all public employees.
- ◆ Revision of the Federal-State Reference Guide (IRS Pub. 963); third edition to be published during 2001, including an overview of the principal changes being made to the Guide.
- ◆ Continuation of coverage issues, including misclassifications and reclassifications of, for example, police and firefighters
- ◆ Expansion of electronic information dissemination by SSA, including creation of an “ambassador program,” I-SPOUSE (electronic projection of a spouse’s benefits), creation of a website to provide training and customized information for state and local governments (with a state to partner with SSA and serve as a pilot site).
- ◆ Anticipated revision of the PEBES (Personal Earnings and Benefit Estimate Statement), due to Congressional action changing how the rate of return is computed.
- ◆ Various IRS and IRS/Counsel-related matters, including: 457 Plans, sheltered workshops, medical students, rehired annuitants, salary reductions, pickups, mandatory contributions, shift differential, overtime, discharge settlements, back-pay agreements (issues, concerns, and requirements applicable to each of these areas).

- ◆ Retirement plans (concerns and problems resulting from different definitions and treatment by SSA and IRS).
- ◆ “Medicare Forum” (Medicare-only coverage, Medicare Exemption, Medicare-only referenda, health insurance coverage and cost implications as the “baby-boomers” reach retirement age, self-funded health plans in bankruptcy, and so forth.)
- ◆ SSA and IRS education and outreach efforts and future plans.
- ◆ Dissolutions, predecessor/successor entities (Section 218 Agreement) issues and concerns.
- ◆ SSA Division of Coverage and Support and SSA Office of Central Operations (including regional office administration) (relationship between the two offices and how State Administrator issues and concerns can best be addressed).

We also plan to have a “**communications exhibit**” **room** where SSA, IRS, and NCSSSA (and individual states) can display videos, Internet sites, publications, and so forth. That room will either be established in a separate meeting room during the conference or as part of the **Hospitality Room**, which will be available to all NCSSSA attendees and guests from Saturday afternoon, July 28th, through Tuesday evening, July 31st.



See you at
the Conference!

Committee Assignments

COMMITTEE	CHAIRPERSON	MEMBERS
Administrator's Handbook	Dawn Evans (CA)	Charmaine Wallace (OK), Marshall Barnes (NC), Bob North (IA), Linda Guffey (IA)
Audit	Darrick Tokuda (HI)	Harry Wales (WY), Mike Hutchinson (WV), David Breckenridge (OH), Ardary Taylor (AR)
Constitution & By-Laws	Kay Gouyton (AK)	Linda Guffey (IA), Wayne Godwin (WA), Janet Parker (AK), Vicki Smith (TX), Robert Westmoreland (TX)
Government Affairs	Daryl Dunagan (KY) & Dave Barrow (CA)	Steve Lortz (NE), MaryAnn Motza (CO), Don Rohan (AZ), Marie Ryan (PA)
Hospitality	Dale Ferron (WI)	Mike Hutchinson (WV), Marie Ryan (PA), Sharon Shubert (ID), Ken Marzion (CA)
Internet Communications	Teresa Commeau (NH)	Barry Fasion (VA), Dale Ferron (WI), Carol Ochsner (AK), Linda Yelverton (LA)
Legislative	Nick Merrill (IL)	Russell Graves (OK), Steve Lortz (NE), Sarabeth Snuggs (FL), Darrick Tokuda (HI), Vicki Smith (TX)
Membership	Charmaine Wallace (OK)	Teresa Commeau (NH), Carolyn Fry (TX), Lucien Hill (LA), Chuck Severn (ID), Linda Yelverton (LA)
Nominating	Doug Peterson (SD)	Daryl Dunagan (KY), Nick Merrill (IL), Don Rohan (AZ), Steve Lortz (NE)
Program	Maryann Motza (CO)	Charmaine Wallace (OK), Dawn Evans (CA), Linda Yelverton (LA), Steve Delaney (OR), Don Rohan (AZ), Doug Peterson (SD)
Research & Information	Steve Delaney (OR)	Kay Gouyton (AK), Wayne Godwin (WA), Robert Westmoreland (TX), Darrick Tokuda (HI), David Breckenridge (OH)
Resolution	Robin Righter (WV)	Mary Smith (TN), Carolyn Fry (TX), Marie Ryan (PA), Ardary Taylor (AR)
Time & Place	Barry Fasion (VA)	Dale Ferron (WI), Nick Merrill (IL), Teresa Commeau (NH), Daryl Dunagan (KY), David Barrow (CA)
New Ad Hoc Committee	Maryann Motza (CO)	
SSA/IRS/NCSSSA Roles and Responsibilities Workgroup	Barry Fasion (VA), Teresa Commeau (NH)	

Executive Committee

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Trust Funds Gain Additional Year of Solvency

Social Security Administration recently announced that this year’s report by the Social Security Board of Trustees indicates that the Social Security long-range financial projections have improved since last year’s report. That is the Social Security program will remain solvent until 2038—one year later than reported last year. The Board of Trustees Report states that the Social Security programs “. . . continue to face substantial challenges in the not-too-distant future that need to be addressed. . . .Social Security needs to be reformed and strengthened at the earliest opportunity.” Read the SSA news release on this issue.

www.ssa.gov/pressoffice/2001trustees.htm

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