



Social Security Coverage and Reporting

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In this Newsletter you will find:

- * Relief to schools as they begin 2008/2009 school year
- * Keeping Good Tax Records
- * New Income Tax Exclusion for Volunteer Firefighters and Emergency Responders
- * Will KY House Bill 1 of 2008 affect future employment tax responsibilities?
- * Fire District Audit Results

Relief to Schools as They Begin 2008/2009 School Year

The IRS Tax Exempt and Government Entities Division released news in the Employee Plans News an article directly related to schools. The Treasury Department and the IRS released Notice 2008-62 in advance of the forthcoming Code §457(f) proposed regulations to provide relief to schools as they begin their 2008/09 school year.

The use of a 12-month pay period that spans two calendar years for employees that actually work for 9 to 10 months results in compensation earned in one year being deferred to a second year.

The notice establishes criteria which, if met, excludes arrangements in which school employees are compensated on a 12-month pay period in lieu of the 9 or 10-month actual work period from being considered as deferred compensation and, therefore, not subject to the rules under Code §457(f) and 409A.

In fact, the notice provides that this arrangement would not result in deferred compensation as long as the employee earns less than \$186,000.

Under the notice, stretching an employee's annual compensation over a period which goes into a subsequent tax year will not constitute deferred compensation for purposes of §457(f) and 409A as long as the arrangement does not:

Continued on page 2

- 1) defer payment of any compensation beyond the last day of the 13th month following the beginning of the service period (generally in Kentucky school boards do not defer payment into the 13th month) and
- 2) defer from one taxable year to the next taxable year the compensation payment of more than the applicable 401(k), 403(b), and 457(f) deferral limit in effect for the calendar year in which the service begins (\$15,500 for 2008).

Generally, school boards in Kentucky will not have to worry about 409A.

Keeping Good Tax Records

In a tax emergency, would you be ready? Well—organized records not only help you prepare your tax return, but they also help you answer questions if your return is selected for examination or prepare a response if you are billed for additional tax.

Fortunately, you don't have to keep all tax records around forever. Normally, tax records should be kept for three years, but some documents — such as records relating to a home purchase or sale, stock transactions, IRA and business or rental property — should be kept longer. If you are an employer, you must keep all your employment tax records for at least 4 years after the tax becomes due or is paid, whichever is later.

If you are in business, there is no particular method of bookkeeping you must use. However, you must clearly and accurately show your gross income and expenses. The records should substantiate both your income and expenses.

Publication 552, Recordkeeping for Individuals, provides more detailed information on individual record keeping requirements.

Publication 583, Starting a Business and Keeping Records, and Publication 463, Travel, Entertainment, Gift, and Car Expenses, provide additional information on required documentation for taxpayers with business expenses.

These publications can be downloaded from <http://irs.gov> or ordered by calling 800-TAX-FORM (800-829-3676).

Actually, there is a wealth of free tax information on the IRS Web site, <http://irs.gov>. It's not just about recordkeeping. Individuals and businesses can find answers to almost any question about federal taxes on the web site. Helpful links found at the top of the home page will take you directly to topics centered on Individuals, Businesses, Charities and Non-Profits, Government Entities, Tax Professionals, the Retirement Plan Community and Tax Exempt Bonds.

New Income Tax Exclusion for Volunteer Firefighters and Emergency Responders

By Stewart Rouleau, FSLG Senior Analyst

The Mortgage Forgiveness Debt Relief Act of 2007 contained an important provision affecting firefighters and other emergency responders who receive local tax benefits or other benefits for volunteer services. This provision was further clarified by the Heroes Earnings Assistance and Relief Tax Act of 2008.

What are the New Benefits?

The new law provides that volunteer firefighters and emergency responders may exclude certain benefits from income provided on account of the performance of volunteer services.

Property Taxes

A common practice in many jurisdictions is to provide volunteers with reductions or abatements of state or local property taxes in recognition of work performed. Because this represents a benefit received in exchange for services performed, under prior law this represents compensation and gross income for Federal tax purposes under Internal Revenue Code section 61. Beginning January 1, 2008, volunteers who perform services for a qualified volunteer emergency response organization may exclude the value of property tax abatements from Federal gross income. These amounts are also excluded from social security and Medicare (FICA) tax.

Other Benefits

In general, reimbursements for expenses are included in the income of the volunteer unless they are made under the provisions of an accountable plan. An accountable plan requires that an employee timely account for all reimbursements and return any excess amounts. See Publication 15, Employer's Tax Guide.

The new law provides that the value of other benefits that qualifying volunteers receive (such as reimbursements for expenses or equipment allowances), up to \$30 for each month of service during a calendar year may be excluded from income for income tax, social security and Medicare purposes. The new law does not require that these payments be made under an accountable plan. If the volunteer performs services in each month of the year, the maximum exclusion for these benefits is 12 x \$30, or \$360 per year.

Who Is Eligible?

Individuals who perform services for qualified volunteer emergency response organizations are eligible for these benefits. A "qualified volunteer emergency response organization" for this purpose is an entity that is organized and operated to provide firefighting or emergency medical services for persons in the state or political subdivision. The \$30 per month exclusion

Continued on page 4

applies to amounts not otherwise excludable as reimbursements received under an accountable plan. For more information on accountable plans, see section 5 of Publication 15-B.

No Double Benefit

Property taxes are generally deductible as itemized deductions, but any amounts excluded under these provisions may not be included on Schedule A as deductible taxes.

When Can the Exclusion Be Taken?

The exclusion is available for tax years 2008, 2009, and 2010.

Further Information

The IRS expects to issue further guidance on the implementation of this law in the near future. Visit www.irs.gov/govts for updated information.

Will KY House Bill 1 of 2008 affect future employment tax responsibilities?

Two new changes that came about as a Result of House Bill 1 of 2008 could affect employment tax responsibilities for employers. They are the changes impacting hazardous duty positions and those returning to work (referred to as rehired annuitants in this newsletter).

KRS 61.592 has been amended to change the definition of hazardous duty positions in CERS. In addition to the amended definition, KRS 61.592 (2) (b) requires that any CERS employer desiring to provide hazardous duty coverage for employees who begin participating in CERS on or after September 1, 2008.

What happens if the CERS employer decides not to pursue providing hazardous duty coverage for employees? They would participate in CERS as non-hazardous, but would the positions be covered for Social Security? Some local government entities excluded certain police and firefighters from participating in Social Security in their Section 218 Agreement while in hazardous CERS. Would these police and firefighters be covered for Social Security in non hazardous positions under the Section 218 Agreement for the entity?

The answer is: (drum roll please) – maybe. It will depend on the language in the original modification and possible subsequent modifications if applicable. It may be an entity will need to conduct a referendum to cover the new police and fire fighters under non-hazardous. How will you know what to do?

Contact James Driver at james.driver@ky.gov or 502-564-6888 to explore the options.

Continued on page 5

What happens if an entity rehires a CERS member who served in a position excluded from Social Security? Since the employee does not pay into retirement as a rehired annuitant, will the rehired annuitant pay into Social Security since they are not participating in retirement and are hired into a position normally excluded from participating in Social Security? In other words, will they participate in Social Security under Mandatory FICA laws of 1991 since they are not contributing to a retirement plan?

In many instances the answer will be “no”, they will not participate in Social Security. The rehired annuitant would not fall under the Mandatory FICA laws of 1991, but to be sure, please contact James Driver. Each situation is unique and will need clarification!

Fire District Audit Results

We have been spreading the word that the IRS is increasing the compliance reviews on all political subdivisions. Two years ago we began informing fire districts that the IRS would be spending time on their compliance issues. We are attaching an article that discusses a recent IRS compliance review of a fire district. Remember, this could apply to any governmental entity.

http://www.portlandtribune.com/news/story.php?story_id=121804761496804800

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