

Part I

Section 6041.--Information at Source.

(Also §§ 3121, 3401, 6051)

26 CFR 1.6041-2: Return of information as to payments to employees.

(Also § 1.6041-1)

Rev. Rul. 2000-6

ISSUE

How do the information reporting requirements of §§ 6041(a) and 6051(a) of the Internal Revenue Code apply to election workers?

FACTS

Election workers are individuals who are generally employed to perform services for state and local governments (governments) at election booths in connection with national, state, or local elections. Governments typically pay election workers a set fee for each day of work. Election workers' wages are includible in gross income as compensation for services. Section 61(a)(1). An individual employed as an election worker may also perform services for the government in another capacity.

A state and the Social Security Administration may agree to extend social security coverage to services of employees of the state or its political subdivisions under § 218 of the Social Security Act (§ 218 agreement). A § 218 agreement may cover the services of election workers. If so, the § 218 agreement may specify the level of fees the election workers must receive to be entitled to coverage. Information about a state's § 218 agreement can be obtained from the State Social Security Administrator.

Situation 1: Government A pays V \$200 in a calendar year for services as an election worker. A does not employ V in any other capacity. The services of A's election workers are not covered by a § 218 agreement. V is not covered by a retirement plan maintained by A.

Situation 2: Government B pays W \$200 in a calendar year for services as an election worker. B does not employ W in any other capacity. The services of B's election workers are covered by a § 218 agreement if their remuneration is \$100 or more in a calendar year. W is not covered by a retirement plan maintained by B.

Situation 3: Government C pays X \$1,100 in calendar year 2000 for services as an election worker. C does not employ X in any other capacity. The services of C's election workers are not covered by a § 218 agreement. X is not covered by a retirement plan maintained by C.

Situation 4: Government D pays Y \$200 in a calendar year for services as an election worker. D also employed Y in another capacity, in which Y earned wages of \$300 that are subject to income tax withholding. The services of D's election workers are not covered by a § 218 agreement. Y is not covered by a retirement plan maintained by D.

Situation 5: Government E pays Z \$200 in a calendar year for services as an election worker. E also employed Z in another capacity, in which Z earned wages of \$500 that are subject to income tax withholding. The services of E's election workers are not covered by a § 218 agreement. Z is not covered by a retirement plan maintained by E.

LAW

Taxes under the Federal Insurance Contribution Act (FICA) apply to "wages" as defined in § 3121(a). That section provides that the term wages includes only remuneration for "employment." Section 3121(b)(7)(F)(iv) provides that the services of an election worker are not employment for FICA purposes if the worker's remuneration is less than \$1,000. For calendar years beginning on or after January 1, 2000, the amount is indexed for inflation. The applicable amount for the year 2000 is \$1,100. Because service performed by an election worker for calendar year 2000 for an amount less than \$1,100 is excluded from employment for FICA purposes, that amount is not wages for FICA purposes unless covered under a § 218 agreement.

Similarly, section 3121(u)(2)(B)(ii)(V) provides that the services of an election worker are not employment for purposes of the Medicare tax portion of the FICA if the worker's remuneration is less than \$1,000 in a calendar year. For calendar years beginning on or after January 1, 2000, the amount is indexed for inflation. The applicable amount for the year 2000 is \$1,100. For services performed before January 1, 1995, the § 3121(u)(2)(B)(ii)(V) exclusion was for remuneration of less than \$100. Rev. Rul. 88-36, 1988-1 C.B. 343, A2, provides that an election worker is subject to

Medicare tax unless the remuneration paid to the worker in a calendar year is less than \$100.

Section 3401(a) provides that, for purposes of income tax withholding, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer. Section 31.3401(a)-2(b)(2) of the Employment Tax Regulations states that amounts paid to precinct workers for services performed at election booths are “in the nature of fees paid to public officials” and not subject to income tax withholding.

Sections 6041(a) and 6051(a) both impose a duty to file information reports of compensation paid to workers.

Section 6041(a) provides:

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... of \$600 or more in any taxable year ... shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Under § 1.6041-1(b)(1) of the Income Tax Regulations, the term “all persons engaged in a trade or business,” as used in § 6041(a), includes organizations the activities of which are not for the purpose of gain or profit.

The general rule stated in § 1.6041-1(a)(2) is that the required return is made on Forms 1096 and 1099, except that § 1.6041-1(a)(2)(ii) provides that compensation paid to an employee by an employer shall be reported on Forms W-3 and W-2 under the provisions of § 1.6041-2 (relating to return of information as to payments to employees).

Under § 1.6041-2(a)(1), payments of wages not subject to income tax withholding must be reported on Form W-2 if the total of those payments and the amount of the employee's wages subject to income tax withholding, if any, is \$600 or more in a calendar year. For example, if a payment of \$700 was made to an employee and \$400 thereof represents wages subject to withholding under section 3402 and the remaining \$300 represents compensation not subject to withholding, such wages and

compensation must both be reported on Form W-2. If the employee has no wages subject to income tax withholding, the employer is required to file Form W-2 for that employee if payments to that employee equal \$600 or more in a calendar year.

Section 1.6041-2(a)(1) provides that, at the election of the employer, components of amounts required to be reported on Form W-2 pursuant to this subparagraph may be reported on more than one Form W-2. Thus the amounts paid to an individual for services as an election worker may be reported on a separate W-2 from amounts paid to the individual for service in another capacity, even though the amounts are aggregated to determine whether reporting applies.

Section 6051(a) imposes a reporting requirement on the following two categories of payors of remuneration:

Every person required to deduct and withhold from an employee a tax under section 3101 [employee FICA tax] or 3402 [income tax withholding], ... or every employer engaged in a trade or business who pays remuneration for services performed by an employee

Section 6051(a) does not require reporting of compensation that is not subject to withholding of FICA tax or income tax.

Section 6051(c) provides that the Secretary may prescribe by regulations the reporting of additional items. No regulations requiring employers to furnish additional information have been published.

ANALYSIS

Compensation of an election worker is not subject to income tax withholding. Sections 3401(a) and 31.3401(a)-2(b)(2). If an election worker's compensation is less than \$1,100 for calendar year 2000, it is generally not subject to FICA tax. Sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V). However, under a state's § 218 agreement, an election worker's compensation may be subject to both the old-age, survivors and disability insurance (OASDI) and the Medicare portions of the FICA tax at a level below \$1,100 for calendar year 2000.

Section 6041(a) applies to payments of compensation that are not subject to withholding of FICA or income tax. If an election worker's compensation is not subject to withholding of FICA tax, the § 6041(a) reporting requirement applies to payments that aggregate \$600 or more in any taxable year. Under § 1.6041-2(a)(1),

compensation subject to income tax withholding is taken into account in determining whether the \$600 reporting requirement applies.

Section 6051(a) requires reporting of compensation subject to either FICA tax or income tax withholding. No reporting is required by §§ 6051(a) and 31.6051-1(a) and (b) for items of income that are not subject to withholding of FICA tax or income tax. If an election worker's compensation is subject to withholding of FICA tax, reporting is required by § 6051(a), regardless of the amount of compensation.

HOLDINGS

The reporting requirements applicable to governments that employ election workers are as follows:

Situation 1: Neither FICA tax nor income tax withholding applies to the \$200 paid to V. The reporting requirements of § 6041(a) apply. Because V earns fees that are less than \$600, Government A is not required to issue Form W-2 to V.

Situation 2: FICA tax, but not income tax withholding, applies to the \$200 paid to W because the fees exceed the \$100 threshold in the § 218 agreement. Government B must follow the reporting requirements of § 6051(a), reporting on Form W-2 the fees of \$200 and the FICA tax withheld.

Situation 3: FICA tax, but not income tax withholding, applies to the \$1,100 paid to X for calendar year 2000. Government C must follow the reporting requirements of § 6051(a), reporting on Form W-2 the fees of \$1,100 and the FICA tax withheld.

Situation 4: Neither FICA tax nor income tax withholding applies to the \$200 paid to Y for services as an election worker, but the \$300 payment is subject to income tax withholding. Government D must follow the reporting requirements of § 6051(a), reporting on Form W-2 the \$300 payment and the income tax withheld. Section 6041(a) does not require reporting of the \$200 payment because the total of the two payments is less than \$600 for the calendar year.

Situation 5: Neither FICA tax nor income tax withholding applies to the \$200 paid to Z for services as an election worker, but the \$500 payment is subject to income tax withholding. Government E must follow the reporting requirements of §§ 6041(a) and 6051(a), reporting on Form W-2 both the \$200 and the \$500 payments and the amount of income tax withheld.

EFFECT ON OTHER REVENUE RULING(S)

This ruling modifies Rev. Rul. 88-36, A2, to reflect the increase in the amount of remuneration applicable for purposes of the Medicare tax exclusion under § 3121(u)(2)(B)(ii)(V), currently \$1,100 for calendar year 2000.

DRAFTING INFORMATION

The principal author of this revenue ruling is Elizabeth Edwards of the Office of Chief Counsel (Employee Benefits & Exempt Organizations). For further information regarding this revenue ruling, contact Elizabeth Edwards at (202) 622-6040 (not a toll-free call).