

## Internal Revenue Service

## Department of the Treasury

Number: **200123001**

Release Date: 6/8/2001

Index Number: 3121.02-10

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:ET2/PLR-110293-00

Date:

November 15, 2000

### Legend

Taxpayer:

University:

State:

Dear \_\_\_\_\_ :

This responds to a request dated May 15, 2000, submitted by your authorized representative for a ruling regarding whether services performed in the employ of Taxpayer by students who are enrolled and regularly attending classes at University are excepted from employment pursuant to section 3121(b)(10)(B) of the Internal Revenue Code for purposes of the Federal Insurance Contributions Act (FICA).

Taxpayer is a non-profit corporation recognized as exempt from Federal income tax in accordance with Code section 501(c)(3).<sup>1</sup> Taxpayer was organized for the purpose of erecting, maintaining, and operating a memorial building on the grounds of University in honor of University students and faculty who gave their lives in wartime service. Taxpayer's building and grounds were to be used exclusively for the social, moral, religious, literary, scientific and educational development of University students, faculty, alumni, and guests. While Taxpayer's original Articles of Incorporation have been periodically amended and restated, Taxpayer's object and purposes remain substantially unchanged.

On \_\_\_\_\_ the Internal Revenue Service (Service) issued a letter ruling concluding that Taxpayer is a supporting organization described in Code section 509(a)(3) with respect to University. Code section 509(a)(3)(A) provides that a supporting organization must be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified publicly supported organizations. Code section 509(a)(3)(B) provides that a supporting organization must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations. The Service recognizes University as a publicly supported organization.

---

<sup>1</sup> The Internal Revenue Service issued a letter ruling in granting Taxpayer an exemption from Federal income tax.

On \_\_\_\_\_ the Department of Health, Education, and Welfare entered into an agreement (Agreement) with State pursuant to section 218 of the Social Security Act (Act) extending FICA coverage to services performed by individuals in the employ of State.<sup>2</sup> University is a public university and state instrumentality whose employees—including student employees—were originally covered by the Agreement. On \_\_\_\_\_ the Department of Health, Education, and Welfare entered into Modification No. \_\_\_\_\_ with State pursuant to which “service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at said school, college, or university” was excepted from coverage under the Agreement. Consequently, effective \_\_\_\_\_ services performed by all students referred to in section 218(c)(5) of the Act were excepted from coverage under the Agreement.

Code sections 3101 and 3111 impose FICA taxes on employees and employers, respectively, equal to a percentage of the wages received by an individual with respect to employment.

Code section 3121(a) defines the term “wages” for purposes of FICA as all remuneration for employment, with certain exceptions. Code section 3121(b) defines the term “employment” for purposes of FICA as services performed by an employee for the person employing him, with certain exceptions.

Code section 3121(b)(10)(A) excepts from employment service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university.

Code section 3121(b)(10)(B) excepts from employment service performed in the employ of an organization described in Code section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of the Act. Services performed in the employ of the supporting organization must be performed by a student who is enrolled and regularly attending classes at the affiliated school, college, or university.

---

<sup>2</sup> Section 218 agreements were initially entered into between the Department of Health, Education, and Welfare and the contracting state. The Department of Health, Education, and Welfare was subsequently supplanted by the Department of Health and Human Services which, in turn, was succeeded by the Social Security Administration.

To except from employment services performed in the employ of Taxpayer by students who are enrolled and regularly attending classes at University in accordance with Code section 3121(b)(10)(B) Taxpayer must be an organization described in Code section 509(a)(3) and services performed in the employ of University by students referred to in section 218(c)(5) of the Act must not be covered under the Agreement. On \_\_\_\_\_ the Service issued a letter ruling concluding that Taxpayer is a supporting organization as described in section 509(a)(3) with respect to University. Additionally, pursuant to Modification No. \_\_\_\_\_, effective \_\_\_\_\_ services performed by all students referred to in section 218(c)(5) of the Act are excluded from coverage under the Agreement. Consequently, in accordance with Code section 3121(b)(10)(B), we conclude that services performed in the employ of Taxpayer by students who are enrolled and regularly attending classes at University are excepted from employment for purposes of FICA.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding whether students performing services in the employ of Taxpayer are enrolled and regularly attending classes at University within the meaning of Code section 3121(b)(10) or section 218(c)(5) of the Act.

The ruling contained in this letter reflects information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified the material submitted in support of the ruling request, it is subject to verification on examination. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. Additionally, a copy of this letter must be attached to any tax return to which it is relevant.

This ruling is directed only to the taxpayer requesting it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,  
Marie Cashman  
Senior Technician Reviewer  
Division Counsel/Associate Chief Counsel  
(Tax Exempt and Government Entities)

cc: