

N(39)000-4

August 5, 1998

## Information Reporting

**Subject:** With Respect to Election Workers      **Cancellation Date:** February 1, 1999

The purpose of this Notice is to announce the Service's position on the issue of information reporting with respect to election workers. The issue may arise in connection with the Service's state and local government employment tax compliance initiative.

The Office of Chief Counsel has determined that the requirements for information reporting applicable to election workers from whose wages FICA tax is not withheld are found in Code section 6041(a), not section 6051(a). As a result, no reporting is generally required for election workers earning less than \$600 annually. (According to information furnished by the National Conference of State Social Security Administrators, a typical election worker may earn \$100 or less per day.)

Although election workers are common-law employees, their earnings are generally not subject to FICA taxes: Code section 3121(b)(7)(F)(iv) excludes services of election workers from the definition of "employment" for FICA purposes if their remuneration is less than \$1,000 in a calendar year. Therefore amounts less than \$1,000 paid to election workers are not "wages" for FICA tax purposes because, under section 3121(a), the term "wages" means all remuneration for "employment."<sup>1</sup> Section 3401(a) excludes election workers' earnings from income tax withholding because fees paid to a public official are excluded from the definition of "wages" subject to income tax withholding. Section 31.3401(a)-2(b)(2), Employment Tax Regulations, states that amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections are "in the nature of fees paid to public officials" and therefore are not subject to income tax withholding.

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<sup>1</sup>The dollar threshold at which FICA applies may be lower if the election workers are covered by an agreement under section 218 of the Social Security Act (section 218 agreement). In any case in which FICA tax is withheld from an election worker's compensation, the compensation is reportable under section 6051(a) and regulations thereunder. The reporting requirement under section 6051(a) applies to all compensation.

The key question is whether section 6051(a) or section 6041(a) governs. Although section 6051(a) generally governs payment of wages, it does not require reporting of payments which are not subject to FICA tax or Federal income tax withholding. Similarly, the regulations under section 6051(a) deal solely with wages subject to withholding of income tax, section 31.6051-1(a), and wages subject to FICA tax, but not withholding, section 31.6051-1(b).

In contrast, the regulations under section 6041(a) contain a specific provision that applies to persons, such as election workers, who are not subject to income tax withholding. Section 1.6041-2(a)(1) states that payments of wages not subject to income tax withholding must be reported on Form W-2 if the total of such payments and the amount of the employee's wages subject to income tax withholding, if any, aggregates \$600 or more in a calendar year. Therefore, if the employee's wages subject to income tax withholding equal zero, the employer is required to file Form W-2 if wages not subject to withholding equal \$600 or more in a calendar year.

In summary, there is no information-reporting requirement for election workers who earn less than \$600 per year unless FICA tax is withheld from their earnings pursuant to a section 218 agreement. Reporting on Form W-2 is required under section 6041(a) for election workers who earn \$600 or more per year but who are not subject to FICA withholding. FICA tax is required to be withheld for election workers who earn \$1,000 or more per year, and reporting for these workers is required under section 6051(a).

If you have questions concerning the application of these rules, please contact Elizabeth Edwards at (202) 622-6040, or your regional state and local compliance coordinator. A list of these regional coordinators is attached.

\_\_\_\_\_/s/\_\_\_\_\_  
SARAH HALL INGRAM  
Associate Chief Counsel  
(Employee Benefits and Exempt Organizations)

Attachment

## **Regional State and Local Compliance Coordinators**

Northeast Region - Diane Mirabito (212) 264-8012 ext. 424

Southeast Region - Roy Allison (404) 331-1201

Midstates Region - Judith Picken (312) 886-9225 ext. 337

Western Region - Helene Winnick (415) 744-9228