



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Reference: Applicability of Social Security Coverage to

Dear

This is in response to your request for general information regarding the applicability of Social Security coverage to the firefighters of . We understand that the firefighters participate in their own mandatory firefighter pension system, which was established after the effective date of the State's Section 218 Agreement.

The first step in determining whether social security coverage applies to state and local government employees is to ascertain whether such employees are covered by a Section 218 Agreement. A Section 218 Agreement is a voluntary agreement between a state and the Social Security Administration pursuant to the provisions of Section 218 of the Social Security Act to provide social security coverage for state and local government employees. The Social Security Administrator in each state is responsible for determining whether employees are covered under the state's Section 218 Agreement. If state and local government employees are covered under a Section 218 Agreement, their wages are subject to social security taxes, irrespective of whether or not the employees are members of a retirement system.

Along with your request for information, you provided us with a letter dated from the . The letter is in response to a "request for a determination as to whether the position of firefighter is covered under federal-state Section 218 Agreement "Agreement". The letter concludes in pertinent part: "Consequently, , as State Social Security Administrator, finds that the firefighters are, and since have been, properly covered for Social Security under Section 218 Agreement."

Your request for information cites Publication 963, Federal-State Reference Guide (Guide), which provides a comprehensive reference source for social security and Medicare coverage and Federal Insurance Contributions Act (FICA) tax withholding issues. Chapter 1, under the heading FICA Status (Section 218 and Non-Section 218 Coverage) specifically provides that “[f]or Section 218 coverage questions, contact your State Social Security Administrator (see list in Chapter 7).” Chapter 7 of the Guide, entitled State Social Security Administrators, identifies the contact as: Social Security Administrator,

Please note also that the Guide provides that states are prohibited from terminating coverage under a Section 218 Agreement on or after April 20, 1983. (Chapter 4-1 – Termination of Agreements).

A Memorandum of Understanding Between the Social Security Administration and the Internal Revenue Service for State and Local Government Compliance Issues (MOU) entered into in 2002 provides additional guidance. Section 3 of the MOU concerns the respective responsibilities of the Social Security Administration and the Internal Revenue Service. In this regard, the Social Security Administration is charged with “[m]aintaining and executing Section 218 Agreements and Modifications to such agreements; [and] [d]etermining the coverage status of state and local government employees covered under a state’s Section 218 Agreement and modifications thereof....” Pursuant to the terms of the MOU, the Social Security Administration has responsibility for determining coverage under Section 218 Agreements. We have enclosed a copy of the MOU for your reference.

You note that the firefighters are covered pursuant to the State’s Section 218 Agreement and are also covered under a retirement system. Internal Revenue Code (Code) section 3121(b)(7)(F) provides that service for a political subdivision or instrumentality thereof is considered employment for Federal Insurance Contributions Act (FICA) taxes if the individual is not a member of a “retirement system”. However, to the extent that an individual is covered under a Section 218 Agreement, this “retirement system” exception to the general rule is not available.

We hope this information is helpful to you. If you have any other questions regarding this matter, please call (ID #) of my staff can be reached at

Sincerely,

Lynne Camillo
Employment Tax Branch 2
Associate Chief Counsel/Division Counsel
(Tax Exempt & Government Entities)

Enclosure:
Memorandum of Understanding