

## Section 3121.—Definitions

**Federal Insurance Contributions Act (FICA); Medicare.** This ruling provides that for the continuing employment exception to the Medicare portion of the Federal Insurance Contributions Act tax to apply to service performed by an employee of a state, political subdivision, or instrumentality thereof, such employee must be a member of a retirement system pursuant to Internal Revenue Code section 3121(b)(7)(F). Rev. Ruls. 86–88 and 88–36 supplemented.

### Rev. Rul. 2003–46

The Federal Insurance Contributions Act (FICA) tax consists of an old age, survivors, and disability insurance (“OASDI”) portion and a hospital insurance (“Medicare”) portion. This revenue ruling provides guidance concerning the applicability of the Medicare portion of FICA tax under Internal Revenue Code § 3121(u)(2) to employees of state and local governments. Specifically, this revenue ruling considers the interaction between §§ 3121(u)(2)(C) and 3121(b)(7)(F) in the context of the continuing employment exception. Section 3121(u)(2) generally extends the Medi-

care portion of FICA tax to wages for service performed by employees of states, political subdivisions, and wholly owned instrumentalities thereof hired after March 31, 1986. Section 3121(b)(7)(F), enacted by section 11332(b) of the Omnibus Budget Reconciliation Act of 1990 (OBRA ’90), Pub. L. 101–508, 104 Stat. 1388, expands the definition of employment for FICA tax purposes to include service performed after July 1, 1991, by state or local government employees who are not members of a retirement system.

This revenue ruling supplements Rev. Rul. 86–88, 1986–2 C.B. 172, and Rev. Rul. 88–36, 1988–1 C.B. 343, both of which provide guidelines concerning the application of § 3121(u)(2) in a question and answer format. This revenue ruling also provides guidelines in a question and answer format. In this revenue ruling, the terms “state,” “political subdivision,” “state employer,” “political subdivision employer,” and “continuing employment exception” have the same meanings as in Rev. Rul. 86–88.

#### SERVICE ELIGIBLE FOR THE CONTINUING EMPLOYMENT EXCEPTION

Q1. Is the continuing employment exception to the Medicare portion of FICA tax available for service performed by an employee for a state employer or political subdivision employer who is not a member of a retirement system within the meaning of § 3121(b)(7)(F)?

A1. No. Under § 3121(u)(2)(C)(i), the continuing employment exception applies only to service that is otherwise excluded

from employment under § 3121(b)(7). Section 3121(b)(7) excepts from employment service in the employ of a state employer or political subdivision employer for FICA tax purposes. However, § 3121(b)(7)(F) expands the definition of employment for FICA tax purposes to include service by an employee who is not a member of a retirement system. See § 31.3121(b)(7)–2 of the Employment Tax Regulations. The House-Senate Conference Report to OBRA ’90 provides that “[t]he conference agreement extends Medicare coverage to, and applies the HI [(Medicare)] tax with respect to wages of, those employees (otherwise not already subject to the HI tax) who become subject to OASDI by reason of this provision.” H.R. Rep. No. 101–964, at 1105 (1990). Consequently, wages paid for service performed by an employee who is not a member of a retirement system for the state employer or political subdivision employer are subject to the OASDI and Medicare portions of FICA tax regardless of when the employee became employed.

Q2. Is the continuing employment exception available for service performed by an employee for a state employer or political subdivision employer who is subject to the Medicare portion of FICA tax solely because the employee is not a member of a retirement system (*i.e.*, the employee meets all the requirements of § 3121(u)(2)(C), and the employee’s service is not covered by a voluntary agreement with the Secretary of Health and Human Services pursuant to § 218 of the Social Security Act, 42 U.S.C. § 418), but who becomes a member of a retirement system after July 1, 1991?

A2. Yes. If an employee's wages are subject to FICA tax solely because the employee is not a member of a retirement system within the meaning of § 3121(b)(7)(F), and the employee subsequently becomes a member of a retirement system, then the employee's wages will cease to be subject to the OASDI and Medicare portions of FICA tax.

## EFFECT ON OTHER REVENUE RULINGS:

This revenue ruling supplements Rev. Rul. 86-88, 1986-2 C.B. 172, and Rev. Rul. 88-36, 1988-1 C.B. 343.

## DRAFTING INFORMATION

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