

Internal Revenue Service
Revenue Ruling

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Rev. Rul. 69-136

1969-1 C.B. 252

IRS Headnote

Payments made by employers to former employees who are actively serving in either the Armed Forces of the United States or the National Guard are not subject to FICA, FUTA, and income tax withholding; S.S.T. 406 and Em. T. 432 superseded.

Full Text

Rev. Rul. 69-136 /1/

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the positions set forth in S.S.T. 406, C.B. 1940-2, 264, and Em. T. 432, C.B. 1942-1, 238.

The question presented is whether certain payments made by companies to their former employees are "wages" for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954). The former employees have been called or have voluntarily enlisted for active military service with the Armed Forces of the United States or were called into active service with a State National Guard. The payments supplement amounts received by them from the Federal Government or from the State, as the case may be.

Situation 1. The M company's board of directors by resolution adopted a plan that provided for payments to be made to any former employee in its employ on a certain date who is called for active military service with the Armed Forces of the United States or who voluntarily enlists for such service. The payments consist of an amount equal to the difference between the total remuneration paid by the Federal Government and the salary of the person at the time he left the company's employ. If the total remuneration paid by the United States Government to the person is equal to or in excess of the salary, no payments will be made by the company. Upon the return of any of these individuals, or their release from military service, the company will make every effort to reemploy them at their former salaries but the company does not guarantee such reemployment. The company reserves the right to modify or abolish this plan and to reduce or discontinue payments thereunder at any time.

Situation 2. The O company's board of directors voted to pay employees who are called for service with the State National Guard the difference between the amount they would receive if performing services for the company and the amount they receive from the State. No services are

performed for the company by these individuals following the time of their induction into the service of the State. The employees are called for guard duty for an indefinite time.

With certain exceptions not material here, sections 3121(a) and 3306(b) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively, define the term "wages" as "all remuneration for employment." Section 3401(a) of the Code relating to the withholding of income tax contains a similar definition of "wages." The term "employment" is defined in sections 3121(b) and 3306(c) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively, to include any service, of whatever nature, performed within the United States by an employee for the person employing him, with certain enumerated exceptions.

Revenue Ruling 68-238, C.B. 1968-1, 420, holds that payments made by an employer that are equivalent to the difference between the normal wages of employees who are temporarily absent from work while serving in a State National Guard and the amounts received from the State for such services are wages for Federal employment tax purposes. In that case, the employment relationship between the company involved and its employees was not disturbed by their temporary service in the National Guard. In the instant case, however, the employment relationship between the employees and the M company and the O company was terminated when they enlisted or were called for active military service with the United States Government or for active service with the State National Guard.

Under the Circumstances, the payments made by the M company and the O company to their former employees while they are in military service with the United State Government or active service with the State National Guard are not "wages" for services performed in "employment" for the companies. These payments, therefore, are not "wages" subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act or to the Collection of Income Tax at Source on Wages.

S.S.T. 406 and Em.T. 432 are superseded, since the positions set forth therein are restated under current law in this Revenue Ruling

/1/ Prepared pursuant to Rev. Proc. 67-9, C.B. 1967-1, 576.