



SOCIAL SECURITY

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July 28, 2003

Ms. Margaret D. Edwards
739 Dalbey Drive
Las Vegas, New Mexico 87701

Dear Ms. Edwards:

This is in reply to your letter to Commissioner Barnhart concerning mandatory participation in the Social Security program.

You asked whether an American citizen is required by law to obtain a Social Security number in order to earn a living. The Social Security Act does not require a person to have a Social Security number to live and work in the United States. However, other laws do require people to have and use Social Security numbers for specific purposes.

Participation in the Social Security program is mandatory with respect to the payment of Social Security taxes, regardless of the citizenship or place of residence of either the employer or the employee. People generally cannot voluntarily withdraw from or terminate their participation in the Social Security program.

Similarly, people cannot withdraw the Social Security taxes that they have already paid. This is true regardless of the number of Social Security credits earned or whether benefits are payable. The Social Security taxes that employees and employers pay on workers' earnings are not placed in an individual worker's account but are pooled in special funds from which benefits are paid to eligible workers and their families. However, people will not receive benefits unless they voluntarily apply for them at the time they become eligible.

The authority for mandatory participation in the Social Security program and for the collection of Social Security (FICA) taxes comes from the Internal Revenue Code. Section 3101(a) of the Code states:

OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.--In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment . . .

Section 3102(a) of the Internal Revenue Code states: "The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. . . ."

(A similar provision, imposing Social Security taxes on the income of self-employed persons, is found in section 1401 of the Internal Revenue Code.)

If you have any questions about the Internal Revenue Code or the collection of Federal taxes, including Social Security taxes, you should contact the officials of the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224.

It should be noted also that the Supreme Court has already decided the constitutionality of the entire Social Security system, as established by the Social Security Act, and mandatory individual participation in the system. It held that the Social Security Act was constitutional not long after the law's enactment in the 1930s. In a more recent decision (*United States v. Lee*, 455 U.S. 252), the Court upheld the constitutionality of the provision of the law requiring employers to withhold Social Security taxes from employees' wages and to pay taxes to the Internal Revenue Service. The provision is constitutional even when such withholding or payment conflicts with the employer's or employee's religious or other beliefs.

Sincerely,

A handwritten signature in cursive script that reads "Annie White".

Annie White
Associate Commissioner
Office of Public Inquiries