## INTERNAL REVENUE SERVICE

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The Honorable Debbie Stabenow United States Senator 243 West Congress Street Suite 550 Detroit, MI 48226

Attention: Bridget Johnson

Dear Senator Stabenow:

The tax law imposes FICA taxes on wages, which includes all payments made as remuneration for employment, unless specifically excluded from FICA coverage. Employment for FICA purposes means any service, of whatever nature, an employee performs for the person employing him. In *Social Security Board v. Nierotko*, 327 U.S. 358 (1946), the Supreme Court interpreted the term "service" broadly under the Social Security Act (the benefits legislation corresponding to FICA) to mean not only work actually done, but the entire employer-employee relationship for which compensation is paid to the employee by the employer. The same words used in the FICA and the Social Security Act are presumed to have consistent meanings, provided that such consistency serves the distinct purposes of the statutes, namely, tax collection and provision of benefits.

The tax regulations provide that the name used to describe the remuneration is immaterial. The tax regulations also generally provide that remuneration constitutes wages even though the relationship of employer and employee no longer exists at the

time paid. Thus, the fact that a payment is called a severance incentive payment or is made after termination of employment does not change its characterization as wages.

Additionally, the Federal Circuit court case we believe referred to is *North Dakota State University v. United States*, 22 F.3d 599 (8<sup>th</sup> Cir. 2001). The case involved, in part, payments to professors for relinquishing formal tenure rights. The IRS issued an Action on Decision (AOD) on December 31, 2001, to explain the IRS' position on university faculty early retirement payments.

In this AOD, the IRS disagrees with the Eighth Circuit's decision that early retirement payments made by a university to its tenured faculty members for the relinquishment of their tenure rights were not wages and, therefore, not subject to FICA taxes. The AOD further states that the IRS recognizes the precedent this decision establishes for cases appealable to the Eighth Circuit and, therefore, will follow the decision for cases that have the exact facts within that circuit. However, the AOD also states that the IRS will continue to litigate its position that the decision is erroneous in cases having different facts in the Eighth Circuit and in all cases in other circuits. indicates in the materials provided that he is not within the jurisdiction of the Eighth Circuit. We have enclosed a copy of this AOD that you can forward to him.

I hope this information is helpful.	Please call	or me at	if
you have any questions.			

Sincerely,

Janine Cook Branch Chief, Employment Tax 1 Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities)

Enclosures (2)