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Thomas J. Sadowski
Director

November 21, 2008

Mr. Michael J. Astrue
Commissioner, Social Security Administration
922 Altmeyer
6401 Security Boulevard
Baltimore, MD 21235-6401

Mr. Douglas Shulman
Commissioner, Internal Revenue Service
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Dear Sirs:

As State Social Security Administrator for the State of Missouri I am writing to seek your assistance.

Over the past four years our office has worked closely with your regional offices regarding 218 Agreements for Missouri public schools regarding issues that arose as a result of a 2004 IRS audit of a Missouri school district. The audit led to an SSA determination that Missouri public schools had incorrectly stopped withholding and paying Social Security taxes for a number of school district positions. Per SSA, this was not a change in law or interpretation; these positions should have been covered continuously from the time the district signed its 218 Agreement.

As a result of that audit and with the assistance of the regional offices we developed a letter for the schools explaining the impact of that audit result. We also met with the Missouri Department of Elementary and Secondary Education (DESE) and the Public School Retirement System (PSRS) to review this issue before mailing the letters.

We sent those letters to all impacted school districts on October 22, 2008.

On November 18, 2008, I met with DESE, PSRS and various educational associations to review this issue. Enclosed is a copy of my presentation.

As you will note, the IRS regional office agreed to not begin further audits of Missouri school districts until periods beginning on or after July 2009. While we appreciate this action it has become abundantly clear that this will still not allow enough time for Missouri school districts to begin conforming to the guidance we now have from SSA and IRS. We also are involved in research and obtaining necessary documents for determinations on a number of questioned positions. It is doubtful that this process can be completed by next July in order to provide official guidance to the districts.

As you might expect we have had a lot of feedback and comments on this issue. It is my belief that both SSA and IRS are seeking to enforce laws and regulations in a fair and reasonable manner and that all of us just want to get it right, even if some might feel negatively impacted by the outcome.

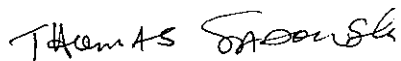
Therefore, I am asking your offices to suspend any enforcement actions until we have sufficient time to ensure that the school districts can comply. Based on comments from the education associations, I believe a delay until July 2010 would be welcome and appropriate.

Among the issues that need to be addressed are:

- Clarify the guidance on what positions are subject to SS coverage (This may be complicated because some districts signed their 218 Agreements at different times and Missouri law changed during this time).
- In many cases, there is not a readily available record of what positions existed in a district at the time the district signed their 218 Agreement. Thus, it may not be clear what positions are in an absolute coverage group.
- Positions may have changed since the 218 Agreement was signed and new positions may also have been created.
- SS coverage applies to the position and some individuals occupy more than one position. There are numerous instances where part of a person's pay is subject to SS and some is not, for example, a teacher who also drives a bus. School district payroll systems are not set up to handle this situation and they need time to find a reasonable solution.
- Missouri school districts typically sign contracts with their employees beginning in February. Unless and until districts and employees know what positions may now be subject to SS, they cannot make an informed decision on signing a contract.
- There are a number of other situations involving Missouri schools, such as Career Ladder, that need to be evaluated.
- There currently is no process in place to help Missouri schools evaluate whether a position is now subject to SS and whether a formal SSA determination is needed. We have begun developing this process but it will take time to get SSA's concurrence and ensure that districts understand how to use it.
- As State Administrator, I believe it is my responsibility to provide clear guidance on whether or not a position is subject to SSA to ensure that school districts appropriately withhold and are not later found to be noncompliant. In many cases obtaining this guidance will require a formal determination by the SSA regional office.
- It is not clear what the process is for appealing a determination of a regional office. In order for us to ensure that the guidance we receive and pass on to the schools has been approved at the highest level, there may be times it is necessary to avail ourselves of your administrative appeal process.

I look forward to working with your offices on these issues and I await your expeditious response.

Sincerely,



Thomas J. Sadowski, MPA, CGFM, CPA
Director of Accounting
State of Missouri

Enclosure

Cc: Mr. Michael W. Grochowski, Region VII Commissioner
Ms. Nanette M. Downing, Director, IRS/ FSLG
Mr. Dan Wiseman, IRS/FSLG Midwest Area Manager
Mr. Larry Schepker, Missouri Office of Administration, Commissioner