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Rev. Proc. 80-56

1. Purpose

The purpose of this revenue procedure is to state the procedures for implementing amendments to the Internal Revenue Code that provide for an exemption from social security taxes in cases covered by certain international agreements (sometimes referred to as totalization agreements), and to state the effect that such agreements have on the income tax liability of certain employees and self-employed persons.

2. Background

.01. Section 1401(c) of the Code, relating to the Self- Employment Contributions Act (SECA), section 3101(c) of the Code, relating to the employee's share of the taxes imposed by the Federal Insurance Contributions Act (FICA), and section 3111(c) of the Code, relating to the employer's share of the taxes imposed by the FICA, were added to the Code by section 317(b) of the Social Security Amendments of 1977, 1978-1 C.B. 462, 467.

.02. These provisions grant an exemption from the social security taxes imposed by the SECA and the FICA during any period in which there is in effect an agreement entered into under section 233 of the Social Security Act, 42 U.S.C. section 433 (added by section 317(a) of the Social Security Amendments of 1977) with any foreign country to the extent the wages or self-employment income are subject under such agreement to taxes or contributions under the social security system of such foreign country.

.03. For example, assume that the United States has entered into an international social security agreement with foreign country X under section 233 of the Social Security Act. Employee A, a citizen of X, is employed in the United States by a corporation incorporated in X under circumstances that require social security payments to country X and that would ordinarily also require payment of the taxes imposed by the FICA. However, because of the agreement between the foreign country and the United States, wages paid to A may be exempt from the taxes imposed by sections 3101 and 3111 of the Code.

.04. Section 317(b)(4) of the Social Security Amendments of 1977 provides that, notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment that is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual.

.05. This provision precludes both a deduction from adjusted gross income and a credit against income tax liability under sections 164(a) and 901(b) of the Code, respectively, for taxes paid by any employee or self-employed person with respect to a period of employment or self-employment that is covered under the social security system of such foreign country under the terms of a totalization agreement between the United States and such foreign country.

.06. For example, the social security tax payments made to foreign country X in .03 above are neither allowable as a deduction under section 164(a) nor allowable as a credit under section 901(b) of the Code.

3. Exemption from SECA Taxes

.01. In order to substantiate an exemption under section 1401(c) of the Code from the taxes imposed by the SECA, the self-employed individual should obtain from a duly authorized official or agency of the foreign country involved a statement-

- (1) setting forth the individual's name, address, and taxpayer identifying number,
- (2) stating that there is in effect an agreement between the foreign country and the United States under which the self-employment income of the individual is subject to taxes or contributions under the social security system of the foreign country, and
- (3) showing the date on which the agreement commenced to apply and, if determined, the ending date.

.02. No particular form is prescribed for this statement. A copy of the statement or other suitable substantiation must be attached to the individual's federal income tax return for each year the agreement is in effect. The taxpayer should enter "Exempt, see attached statement," on the line designated for self-employment tax liability on the taxpayer's income tax return.

.03. The exemption applies to that portion of the taxpayer's net earnings from self-employment that is attributable to that portion of the taxable year that occurs on and after the effective date of the agreement. Thus, for a taxpayer using the cash receipts and disbursements method of accounting the SECA tax liability for the taxable year is determined by computing the taxpayer's net earnings from self-employment for such year without regard to the exemption and <Page 852> then eliminating any of such amount that results from an excess of income received over deductions paid by the taxpayer on and after the date the agreement becomes effective.

4. Exemption from FICA Taxes

.01. In order to substantiate an exemption from the taxes imposed by the FICA under sections 3101(c) and 3111(c) of the Code, the employer must obtain a statement issued by a duly authorized official or agency of the foreign country involved-

- (1) setting forth the employee's name, as well as the employee's address and taxpayer identifying number, if known,
- (2) setting forth the employer's name, address, and taxpayer identifying number, if any,
- (3) stating that there is in effect an agreement between the foreign country and the United States under which wages received by or paid to the employee by the employer are subject to taxes or contributions under the social security system of such foreign country, and
- (4) showing the date on which the agreement commenced to apply and, if determined, the ending date.

.02. No particular form is prescribed for this statement. It should be retained in the employer's files.

.03. The exemption from the FICA taxes applies to wages paid on and after the effective date of the agreement but not to wages paid before that date. For example, if the agreement is approved and becomes effective on November 1, the wages paid on and after that date may be exempt from FICA taxes during the time the agreement is in effect.