

CCA 201634023

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Number: 201634023 Release Date: 8/19/2016 From: Sent: Tuesday, August 09, 2016 9:00:09 AM To:

Cc:

Bcc:

Subject: RE: \_\_\_\_\_ POSTF-123534-16

Hi\_\_\_\_\_

You asked whether “short-week” benefits paid to workers who work less than 36 hours in a week or who could not work due to weather are excluded from wages for purposes of FICA tax as supplemental unemployment benefits described in Revenue Ruling 90-72. You stated that under state law, an applicant for state unemployment compensation benefits must be “unemployed, able, available for, and actively seeking suitable full-time work.” Recipients of short-week benefits do not qualify for state unemployment compensation. Thus, these short-week benefits are not “linked to the receipt of state unemployment compensation” as required by Revenue Ruling 90-72. We agree with your conclusion that these “short-week” payments are not excluded from wages for purposes of FICA tax because they do not satisfy the narrow exception set forth in Rev. Rul. 90-72. Your conclusion is also consistent with PLRs 200322012 and 9734035, which stated Automatic Short Week Benefits are wages for FICA and FUTA purposes, unless the benefits are made to individuals who otherwise qualify for excludable Regular Benefits (i.e., if the Automatic Short Week Benefits immediately precede or follow a week in which an employee receives Regular Benefits).

Please let us know if you need anything else. \_\_\_\_\_