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The Honorable John Cornyn
United States Senator
Occidental Tower
5005 LBJ Freeway
Suite 1150
Dallas, TX 75244-6199

Attention:

Dear Senator Cornyn:

I am responding to your inquiry dated March 23, 2009, on behalf of your constituent, . wrote about increasing the first tier threshold amount for taxing social security benefits.

Income Tax Treatment of Social Security Benefits

The income tax treatment of social security benefits is governed by section 86 of the Internal Revenue Code (the Code).

Prior to 1983, social security benefits were not taxed. In 1983, the Congress taxed up to 50 percent of social security benefits for taxpayers whose modified adjusted gross income plus 50 percent of social security benefits exceeded $25,000 for an individual or $32,000 for a married couple filing a joint tax return. The 1993 Omnibus Budget Reconciliation bill introduced the two tier system (sometimes referred to as a “graduated” system) for the calculation of taxable social security benefits. This bill taxed up to 85 percent of social security benefits for taxpayers whose modified adjusted gross income plus 50 percent of social security benefits exceeded $34,000 for an individual or $44,000 for a married couple filing a joint tax return. Accordingly, the taxable portion of social security benefits depends on the benefit amount, the amount of other income, and the filing status.

Calculation of Taxable Portion of Social Security Benefits

Taxpayers must include a portion of the social security benefits they receive in gross income and these benefits are taxable if the recipient's "provisional income" exceeds certain threshold levels [section 86 of the Code]. The term "provisional income" describes the sum of modified adjusted gross income and one-half of the social security benefits reported to the taxpayer on Form SSA-1099. The Code does not define the term "provisional income" but the legislative history of section 86 refers to the term. See H. Rep. No. 103-111, 103d Cong., 1st Sess. 654 (1993), 1993-3 C.B. 167, 230.

To determine the amount of taxable social security benefits, the taxpayers must first determine their adjusted gross income. Generally, the lower a person's adjusted gross income (and thus their provisional income), the lower the portion of social security benefits, if any, that will be taxed. For this purpose, adjusted gross income does not include any of the social security benefits reported on Form SSA-1099.

Second, taxpayers must calculate their modified adjusted gross income by adding the items below to their adjusted gross income:

- Exclusions for income on savings bonds used to pay higher education expenses under section 135
- Exclusions for amounts paid under an adoption assistance program of the employer under section 137
- Deductions for interest on qualified educational loans under section 221
- Exclusions applicable to citizens or residents of the United States living aboard under section 911
- Exclusions for income from sources within possessions of the United States under section 931
- Exclusions for income from sources within Puerto Rico under section 933
- Tax-exempt interest the taxpayer received or accrued during the taxable year

Third, taxpayers must add 50 percent of their social security benefits to the modified adjusted gross income to determine provisional income. If the provisional income exceeds $25,000 for single taxpayer and $34,000 for a married couple filing a joint tax return, up to 50 percent of the social security benefit may be taxable. If the provisional income exceeds $32,000 for single taxpayer or $44,000 for married couple filing a joint tax return taxpayers filing jointly, up to 85 percent of the social security benefits may be taxable. The taxable amount depends on how much the provisional income exceeds the thresholds.

A detailed explanation of the taxation of social security benefits is available in the enclosed Publication 915, *Social Security and Equivalent Railroad Retirement Benefits*.

The publication contains worksheets for calculating the taxable portion of social security benefits.

Threshold Amounts

Under section 86 of the Code, married taxpayers filing jointly with provisional income above $34,000 (first tier threshold), but not above $44,000, include up to 50 percent of social security benefits in income. Married taxpayers filing jointly with provisional income above $44,000 (second tier threshold) include up to 85 percent of social security benefits in income.

The first tier threshold amounts were determined in 1983 when Congress first enacted section 86. The second tier threshold amounts were determined in 1993 when Congress added subsection (c)(2) to section 86. Section 86 of the Code does not include any basis or method for adjusting the threshold amounts. Accordingly, the threshold amounts are statutory and the Congress would need to enact legislation to change them.

I hope this information is helpful. If you need further information, please contact me or at .

Sincerely,

By:
Janine Cook
Chief, Employment Tax, Branch1
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure