



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

December 15, 2005

Number: **INFO 2005-0216**
Release Date: 12/30/05
UIL: 61.30-03

CC:ITA:B04
GENIN-149291-05

Dear _____ :

Thank you for your letter to Commissioner Everson dated September 19, 2005, in which you seek our assistance regarding whether waivers of a salary increase by elected state officials would be effective for federal tax purposes. I discussed this matter by telephone with your General Counsel, _____, on December 1, 2005.

As I indicated to _____, the federal tax treatment of a salary waiver by an elected official depends on the legal effect of such waiver in the jurisdiction in which the official serves. That is, if applicable law prohibits an elected official from making a legally effective waiver of salary, the full amount of the salary is includible in gross income for federal tax purposes. For example, in Revenue Ruling 56-126, the Internal Revenue Service concluded that a member of Congress who returns a portion of his salary to the United States Treasury must include the full amount of his salary in gross income. We reached this conclusion because, according to a ruling of the Comptroller General, a Congressman's salary is payable at the rate specified by law and must be so paid in full. The ruling also concludes that the Congressman may take a charitable contribution deduction to the extent permitted by law for the portion of the salary returned to the Treasury.

On the other hand, if _____ law does not preclude a waiver of salary, then the situation is distinguishable from Rev. Rul. 56-126. In such a case, a waiver of a salary increase by an elected official can be effective for federal tax purposes and can result in the exclusion of the salary increase from gross income to the extent of the waiver.

I hope this information is helpful. If you need more specific guidance on this matter,

please contact me so that we can discuss how we can best respond to your specific questions. I can be reached at .

Sincerely,

Donald T. Rocen
Deputy Chief Counsel (Operations)