



SOCIAL SECURITY

TEH2B

March 18, 1998

Mr. Scott McDonald  
789 Neal Drive  
Gurley, Alabama 35748

Dear Mr. McDonald:

This is in response to your letter to the Commissioner concerning Social Security numbers for your children.

The Social Security Act does not require a person to have a Social Security number (SSN) to live and work in the United States, nor does it require an SSN simply for the purpose of having one. However, if someone works without an SSN, we cannot properly credit the earnings for the work performed.

Other laws require people to have and use SSNs for specific purposes. For example, the Internal Revenue Code (26 U.S.C. 6109 (a)) and applicable regulations (26 CFR 301.6109-1(d)) require an individual to get and use an SSN on tax documents and to furnish the number to any other person or institution (such as an employer or a bank) that is required to provide the Internal Revenue Service (IRS) information about payments to the individual. There are penalties for failure to do so. The IRS also requires employers to report SSNs with employees' earnings. In addition, people filing tax returns for taxable years after December 31, 1994, generally must include the SSN of each dependent.

The Privacy Act regulates the use of SSNs by government agencies. They may require an SSN only if a law or regulation either orders or authorizes them to do so. Agencies are required to disclose the authorizing law or regulation. If the request has no legal basis, the person may refuse to provide the number and still receive the agency's services. However, the law does not apply to private sector organizations. Such an organization can refuse its services to anyone who does not provide the number on request.

We hope you find this information helpful. If you have further questions, you may call our toll-free number, 1-800-772-1213. Our representatives will be glad to help you.

Sincerely,

Charles H. Mullen  
Associate Commissioner  
Office of Public Inquiries



## SOCIAL SECURITY

TEH2A  
PD3962

November 17, 2004

Ms. Michelle [REDACTED]  
[REDACTED]  
Laytonville, California [REDACTED]

Dear Ms. Hill:

This is in reply to your letter to Commissioner Barnhart concerning mandatory participation in the Social Security program.

You asked whether an American citizen is required by law to obtain a Social Security number. The Social Security Act does not require a person to have a Social Security number to live and work in the United States. However, other laws do require people to have and use Social Security numbers for specific purposes.

Participation in the Social Security program is mandatory with respect to the payment of Social Security taxes, regardless of the citizenship or place of residence of either the employer or the employee. People generally cannot voluntarily withdraw from or terminate their participation in the Social Security program.

Similarly, people cannot withdraw the Social Security taxes that they have already paid. This is true regardless of the number of Social Security credits earned or whether benefits are payable. The Social Security taxes that employees and employers pay on workers' earnings are not placed in an individual worker's account but are pooled in special funds from which benefits are paid to eligible workers and their families. However, people will not receive benefits unless they voluntarily apply for them at the time they become eligible.

The authority for mandatory participation in the Social Security program and for the collection of Social Security (FICA) taxes comes from the Internal Revenue Code. Section 3101(a) of the Code states:

OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.--In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment . . .

Section 3102(a) of the Internal Revenue Code states: "The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. . . ."

(A similar provision, imposing Social Security taxes on the income of self-employed persons, is found in section 1401 of the Internal Revenue Code.)

If you have any questions about the Internal Revenue Code or the collection of Federal taxes, including Social Security taxes, you should contact the officials of the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224.

It should be noted also that the Supreme Court has already decided the constitutionality of the entire Social Security system, as established by the Social Security Act, and mandatory individual participation in the system. It held that the Social Security Act was constitutional not long after the law's enactment in the 1930s. In a more recent decision (*United States v. Lee*, 455 U.S. 252), the Court upheld the constitutionality of the provision of the law requiring employers to withhold Social Security taxes from employees' wages and to pay taxes to the Internal Revenue Service. The provision is constitutional even when such withholding or payment conflicts with the employer's or employee's religious or other beliefs.

Sincerely,

A handwritten signature in cursive script that reads "Annie White".

Annie White  
Associate Commissioner  
Office of Public Inquiries

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