

Todd Iveson, c/o Director TAXATION DIVISION  
C/o MISSOURI DEPARTMENT OF REVENUE  
Harry S Truman State Office Building  
301 West High Street  
Jefferson City, Missouri 65105

RESPONSE TO NOTICE OF PROPOSED CHANGES (FORM 4945)

CUSTER, DAVID R

SSN:

Tax Year: 2016

MO

Notice Number: 17101601681

Respond By: July 21, 2017

In response to your unsigned letter (FORM 4945)

It appears the DOR has chosen to disregard my rebuttal of the W-2 information returns, in order to retain my property in violation of the law. The 2016 return which was sent in contained Form 4852, Substitute for Form W-2 Wage and Tax Statement. This form is used to correct improper withholding by the payer. I have indicated on line 7 that no wages, tips, and other compensation is claimed in reference to:

26 U.S. Code § 3401(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an **employee** for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

26 U.S. Code § 3401(c) Employee

**For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.**

26 U.S. Code § 3121 - Definitions

(a) Wages

For purposes of this chapter, the term **“wages”** means all remuneration for **employment**, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include...(various Exceptions)

**(b) Employment**

For purposes of this chapter, the term **“employment”** means any **service**, of whatever nature, performed

- (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) **within the United States**, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or
- (B) outside the United States by a **citizen or resident of the United States** as an employee for an **American employer** (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include

(C) ...

(D) ...

(E) State, United States, and citizen For purposes of this chapter—

(1) State

The term **“State”** includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term **“United States”** **when used in a geographical sense** includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa...

(F) ...

(G) ...

**(H) American employer**

For purposes of this chapter, the term **“American employer”** means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a **resident** of the United States,

(3) a partnership, if two-thirds or more of the partners are **residents** of the United States,

(4) a trust, if all of the trustees are **residents** of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

The FICA is an "income" tax on "wages" paid for "employment", which is "service" performed within the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa; or outside of those places if by a citizen or resident thereof and for the United States, a U.S. possession government, or a company either owned by residents of the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the American Samoa or incorporated under their laws or those of the District of Columbia.

Argument not listed on Form 4852 but relevant in determination taxable income when or if liable is Gross Income Defined...

1. Code § 61(a) only applies to "gross income" as indicated by its title, "Gross Income Defined". Regulations 1.61-1 and -2 under § 61(a) state very clearly that said statute does not apply to compensation which may be "excluded by law." This requires us to consider all relevant provisions so as to not break the law by including in gross income that which is not allowed by the Code.
2. Since § 83 applies to everything paid for services, start there. If your services are not deductible as an amount paid, all that you received is an excess and must therefore, be included in gross income (See § 83(a)) BUT, if your services are your cost or an "amount paid" for the purposes of § 83, their FMV must be deducted.
3. To figure the basis (cost) of property obtained in connection with the performance of services, one must apply the provisions of, and the regulations promulgated under, Code § 1012 (See 1.83-4(b)(2)). Said regulation refers to property subject to regulation 1.83-1, this is the corresponding regulation to § 83(a), so it applies to all compensation for services as well.
4. Proceeding to § 1012 to determine the "basis" or cost of property received in connection with the performance of services we find;
5. 26 CFR 1.1012-1(a) general Rule. In general, the basis of property is the cost thereof. The cost is the amount paid for such property in cash or other property. So, the regulation under which the basis of property subject to § 83 must be calculated does not exclude any property, tangible or intangible.
6. 26 CFR 1.1001-1(a) "...The general method of computing such gain...[is] that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis..." (cost)

The conclusion in light of section 83 is that the only portion considered to be taxable is the gains above the adjusted basis (cost) and a person's labor is in fact their cost within the transaction of a contract for service...

With a thorough review of the statutory language provided under Title 26 subtitles A & C I have concluded that I'm not liable for income or employment tax's and therefor do not agree to your assessment. If in fact you can find any errors that contradict my assessment, kindly reference the proper statutes along with the associated regulations (**supported by law**) for my review. No further action is required by the Missouri Department of Revenue Director of Taxation or delegated subordinates of his division other than to correct its information (as I have reported to the Department of Revenue under penalty of perjury) and the return of my property for the 2016 tax years, and respond to me that the matter is now closed.

Cordially,

*David-Rae: Custer*

By David-Rae: Custer for CUSTER, DAVID R

.....

**ADDITIONAL REFERANCES ON § 83(a) § 83(a)**

1. Code § 83 applies to all compensation for services. Regulation 26 CFR 1.83-1 implements § 83(a) which applies to the common paycheck or fee and therefore applies as well.
2. Regulation 26 CFR 1.83-4(b)(2) requires that the cost of property to which 1.83-1 (above) applies is to be figured by applying the provisions of § 1012.
3. Code § 1012 permits all property to be considered to be a cost when disposed of to obtain or purchase other property. **This includes, because it does not exclude, all property, tangible or intangible, corporeal or incorporeal, every species of valuable right or interest, etc... (See Black's, "Property").**
4. With labor (property) not excluded from that which is cost under the Law, failure to deduct its FMV from gross income would therefore violate 26 CFR 1.1001-1 (a) which requires that, before recognition of gain or loss in a transfer of property, the taxpayer must be restored a sum sufficient to equal the adjusted basis (cost, see § 1011), that which remains is the taxable gain; subtract the FMV first, the worth of the property disposed of, the labor.

**CERTIFICATE OF SERVICE**

**Republic/State of Missouri** )

**Subscribed and Affirmed** )

**County of Lincoln** )



X BKC United States Postal Office, by Certified Mail # 7016 2710 0000 9498  
0992

Return Receipt Requested

\_\_\_\_\_ United Parcel Service (UPS), tracking number #  
\_\_\_\_\_

\_\_\_\_\_ Federal Express, tracking number #  
\_\_\_\_\_

\_\_\_\_\_ Other (specify):  
\_\_\_\_\_

at said City and State, one (1) complete set of **ORIGINAL/COPIED** (circle one) documents, as described in item 1 above, properly enveloped and addressed to (addressee(s) and address(es)):

#	Recipient(s)
1	Todd Iveson, Director Taxation Division, Missouri Department of Revenue Truman State Office Building, 301 West High Street, Jefferson City, Missouri, 65105
2	
3	
4	
5	

3. That I am at least 18 years of age;

4. That I am not related to David Rae Carter by blood, marriage, adoption, or employment, but serve as a "disinterested third party" (herein "Server"); and further,

5. That I am in no way connected to, or involved in or with, the person and/or matter at issue in this instant action.

I now affix my signature to these affirmations.

(Signature): Benita K Cottrell, Mailer/Server

(Printed name): Benita K Cottrell

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### NOTARY PUBLIC'S JURAT

Subscribed and sworn to (or affirmed) before me on this 11 day of Aug, 2017, by

David-Rae; Custer, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me

*Jennifer Spear*

WITNESS my hand and official seal.

Jennifer Spear  
Notary Public-Notary Seal  
State Of Mississippi  
Commissioned for \_\_\_\_\_ County  
My Commission Expires 06/30/19  
#12000002