DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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The Honorable Benjamin L. Cardin
United States Senator
Tower 1, Suite 1710
100 South Charles Street
Baltimore, MD 21201

Attention:

Dear Senator Cardin:

I am responding to your inquiry dated April 11, 2012, on behalf of your constituent, . wrote about taxing social security benefits of married individuals. In particular, he asked about the difference between the tax treatment of benefits of married taxpayers and single taxpayers.

Prior to 1983, social security benefits were not subject to income tax. The income tax treatment of social security benefits is governed by section 86 of the Internal Revenue Code (the Code). The legislative history of section 86 of the Code says the Congress believed the prior policy of excluding all social security benefits from a recipient's gross income was inappropriate. The Congress reasoned that social security benefits are similar to benefits received under other retirement systems, which the law taxes if they exceed a worker's after-tax contributions. Consequently, taxing a portion of social security benefits improves tax equity by treating more equally all forms of retirement and other income designed to replace lost wages (for example, unemployment compensation and sick pay). See S. Rep. No. 98-23, 98th Cong., 1st Sess. 25 (1983), 1983-2 C.B. 326, 328.

Under section 86 of the Code, the taxable portion of social security benefits depends on the benefit amount, the amount of other income, and the filing status. 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 (first tier threshold). The threshold amount is zero for calculating the taxability of social security benefits in the case of a married individual filing separately and living with his or her spouse during any part of the year (section 86(c)(1)(C)).

The Congress introduced the two tier system in 1993 (sometimes referred to as a graduated system) for the calculation of taxable social security benefits by adding subsection (c)(2) to section 86. The Omnibus Budget Reconciliation Act of 1993 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 (second tier threshold).

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.

An individual can choose to have income tax withheld from his or her social security benefits. For more information, can refer to the enclosed Form W-4V, Voluntary Withholding Request. If an individual chooses not to have income tax withheld from the benefits, he or she may have to make estimated tax payments during the year.

can find a detailed explanation of the taxation of social security benefits 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.

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

Sincerely,

Victoria A. Judson
Division Counsel/Associate Chief
Counsel (Tax Exempt & Government
Entities)

Enclosures (2)