

Cynthia Bower
IRS Reference #0143075196
IRS Letter Number LTR0062C
Re: Incorrect W2 from USDA (ARS)

This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

Exhibit 1

(Tax Letter from IRS)



P.O. BOX 9020
HOLTSVILLE NY 11742-9020

In reply refer to: 0143075196
Apr. 12, 2011 LTR 62C 3

201012 30

00000142

BODC: WI

CYNTHIA K BOWER
PO BOX 1383
KODIAK AK 99615

Taxpayer Identification Number: [REDACTED]
Tax Year: 2010
Form: W-2

Employer/Payer Name: U S DEPARTMENT OF AGRICULTURE
Employer/Payer Address: PO BOX 29310
NEW ORLEANS, LA 70189

Dear Taxpayer:

WHY WE'RE SENDING YOU THIS LETTER

We're sending you this letter since you haven't received your form shown above, needed to file your tax return.

WHAT WE ARE DOING

We're sending your employer/payer a letter asking them to send you the form shown above.

WHAT YOU NEED TO DO

If you haven't received the form shown above from the employer/payer within two weeks prior to the due date of your return, file your return using the enclosed Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

You should complete Form 4852, estimating your income and withholding tax as accurately as possible. Attach Form 4852 and other Forms W-2, if applicable, to your tax return.

If you receive the form shown above from your employer/payer, have filed your tax return, and the information differs from the information reported on your return, you must amend your return by filing Form 1040X, Amended U.S. Individual Income Tax Return. You may obtain Form 1040X and Form 1040X instructions from the Internal Revenue Service website, www.irs.gov, or by calling the Forms and Publications toll-free number 1-800-829-3676.

Apr. 12, 2011

LTR 62C 3

201012 30

00000143

CYNTHIA K BOWER
PO BOX 1383
KODIAK AK 99615

HOW TO CONTACT US

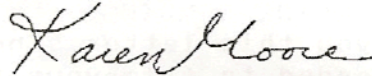
If you have any questions, please call us toll free at 1-800-829-0922.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number Hours Daytime

Sincerely yours,



Karen Moore, Dept. Mgr.
Toll Free Dept. 4, Ops. 2

Enclosure:
Form 4852

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Exhibit 2

(Form 4852)

I filed Form 4852 with my 2010 tax return, since the ARS had failed to send me the appropriate tax documents (as required by U.S. law: 26 USC 6051), and had stopped responding to my inquiries. The actual 4852 Form has been omitted here, since it contains sensitive information.

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Exhibit 3

(Tax Account Transcript)

[An IRS Agent (ID# 1000176887) recommended that I obtain this document in June 2011 to verify that the corrected W-2 Form had not been submitted by USDA *after* I filed my tax return in April.]



Internal Revenue Service

United States Department of the Treasury
PHILADELPHIA, PA 19255-1498

Tracking ID: 100101409551
Date of Issue: 06-08-2011

045354.860268.0180.004 1 AB 0.368 540



CYNTHIA K BOWER
PO BOX 1383
KODIAK, AK 99615



045354

Tax Period: December, 2010

Information about the Request We Received

In this letter, we'll report the status of the request we received.

We've enclosed the transcript or transcripts that you requested on June 8, 2011.

A transcript of account shows a summary of your tax return and subsequent actions taken. These actions could include payments, amended returns, and corrections we made to the original return due to math mistakes.

Information for current tax years is available immediately on our computer systems.

Delivery time to you depends on how you submit your request and the delivery method you select to receive the information.

If you have any questions about information contained in the transcripts or other enclosed information, please call us at the IRS telephone number listed in your local directory or at 1-800-829-0922.

Sincerely Yours,

Beth Jones, Director
Electronic Products & Svcs Support

Enclosures:
Account Transcript



Internal Revenue Service

United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Request Date: 06-08-2011
Response Date: 06-08-2011
Tracking Number: 100101409551

Account Transcript

FORM NUMBER: 1040 TAX PERIOD: Dec. 31, 2010

TAXPAYER IDENTIFICATION NUMBER:

CYNTHIA K BOWER
PO BOX 1383
KODIAK, AK 99615-1383-834



045354

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: 0.00
ACCRUED INTEREST: 0.00 AS OF: Jun. 06, 2011
ACCRUED PENALTY: 0.00 AS OF: Jun. 06, 2011

ACCOUNT BALANCE
PLUS ACCRUALS
(this is not a
payoff amount): 0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:
FILING STATUS:
ADJUSTED GROSS INCOME:
TAXABLE INCOME:
TAX PER RETURN:
SE TAXABLE INCOME TAXPAYER: 0.00
SE TAXABLE INCOME SPOUSE: 0.00
TOTAL SELF EMPLOYMENT TAX: 0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Apr. 15, 2011
PROCESSING DATE Jun. 06, 2011

TRANSACTIONS				AMOUNT
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	
150	Tax return filed 89222-129-62241-1	20112108	06-06-2011	<input type="text"/>
806	W-2 or 1099 withholding		04-15-2011	
610	Payment with return		04-18-2011	<input type="text"/>

This Product Contains Sensitive Taxpayer Data

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Exhibit 4

(Timeline and Email Threads)

Cynthia Bower
IRS Reference #0143075196
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Re: Incorrect W2 from USDA (ARS)

EXHIBIT 4

Timeline and Email Threads

27 February 2011

I emailed Ted Nykiel, the supervisor of the USDA Agricultural Research Service (ARS) Pay and Leave staff (ted.nykiel@ars.usda.gov) to request tax documentation of my EEOC-mediated settlement award (which was paid to me by the agency in August 2010).

28 February 2011

Ted Nykiel forwarded my email to ARS Human Resources Assistant, Ashley Randall (Ashley.Randall@ars.usda.gov). However, I emailed them both a clarification of my request, (i.e. I wanted a corrected W-2 Form, not a 1099, due to the wage-based nature of my EEOC claim). Ms. Randall emailed contact information (301 504-1300) for the Budget and Fiscal Officer, Kim Parks. I called Ms. Parks, who promised to email me more information.

2 March 2011

Kim Parks (Kim.Parks@ars.usda.gov) emailed that she had left a message for the 1099 help desk at the National Finance Center regarding the issuance of a 1099 form. I requested a corrected W-2, since the EEOC-mediated settlement represented compensation for a wage-based complaint.

9 March 2011 (and again on March 14th and 15th)

I emailed Ms. Parks to check their progress, but did not receive the necessary tax documents, necessitating that I prepare a Form 4852 (Substitute for W-2) for my tax return.

18 March 2011

Before submitting Form 4852, I was required to contact the IRS (1-800-829-1040). I notified them that the USDA Agricultural Research Service (PO Box 60000, New Orleans, LA, 70160, ID# 72-0564834) had sent me an incorrect W-2 form (omitting the EEOC-mediated settlement award), even though I had contacted my employer (repeatedly) for a corrected copy. The IRS issued them a letter on my behalf (Reference #0143075196, IRS Letter Number LTR0062C).

31 March 2011

I called the IRS again (ID# 1000176887, Mrs. ?Acorn?), since I had not yet received a copy of the IRS letter. Everything had been sent to my previous (incorrect) Fairbanks address, instead of Kodiak. I requested that they issue another letter to the Agency using my current address in Kodiak. I was told that the second mailing probably wouldn't arrive in time, so I should include a 4852 Form (substitute W-2) with my tax return when I file it. I was also advised to request a Tax Account Transcript from the IRS in June (to verify my record of income), so that I can file an amended return if new information was added to my tax record.

14 April 2011

I mailed my tax return (certified mail: USPS #70101870000277989781) to the Internal Revenue Service (P.O. Box 7704, San Francisco, CA, 94120-7704).

08 June 2011

I requested a Tax Account Transcript for 2010, to verify that no adjustments have been made to my tax record since I filed.



CK B <ckbower319@gmail.com>

Missing W-2 form

5 messages

CK B <ckbower319@gmail.com>

Sun, Feb 27, 2011 at 10:07 PM

To: ted.nykiel@ars.usda.gov

Bcc: ckbower <ckbower@cmug.com>

Hi,
It's tax season, and I did not receive the required W-2 and/or 1099 tax forms from the ARS.

I am one of three women research scientists in Alaska who were paid EEOC-mediated settlements in 2010 as compensation for the harassment, discrimination, and retaliation perpetrated by our male supervisor at ARS's Subarctic Agricultural Research Unit in Fairbanks, Alaska. Since the settlement is taxable, I'm hoping that you can help me obtain the correct tax forms.

I quit working for the ARS in August 2010, at which time I received instructions not to contact the (dysfunctional) Fairbanks unit, whose personnel allowed the unlawful activities against me to continue year after year (until no women research scientists remained). Consequently, I am contacting you because, according to the NFC (http://i2i.nfc.usda.gov/Contact_Us/Help_Desks/Tier2/w22.html), W-2 inquiries should be directed to the agency's Human Resources office that handles Pay, Leave, Benefits, W2, and TSP.

My settlement agreement included "pecuniary, non-pecuniary, and/or compensatory damages" based on the allegations raised in my EEOC complaint (EEOC 551-2009-00074x). Since my EEOC complaint included wage-based allegations, some of my settlement reflects lost wages, (Form W-2). Also, since I was required to terminate my ARS employment (despite no wrong-doing on my part) in order to receive any of the settlement, a (large) portion of the payment can be construed as representing front-pay, which must also be reported on my W-2.

Please send me a corrected W-2 form (and/or any other official tax records) to document the settlement money. Alternately, please let me know who I should contact to get an updated W-2 in the event that your office is not able to handle my request.

Thanks.

Cynthia Bower
PO Box 1383
Kodiak, AK 99615

Nykiel, Ted <Ted.Nykiel@ars.usda.gov>

Mon, Feb 28, 2011 at 5:53 AM

To: "Randall, Ashley" <Ashley.Randall@ars.usda.gov>

Cc: CK B <ckbower319@gmail.com>

Hi Cynthia, Ashley,

I am forwarding Cynthia's request for her w-2 to you as we discussed. Thanks.

Ted Nykiel
Supervisor, Pay and Leave Staff
301-504-4426 Phone
301-504-1493 FAX
ted.nykiel@ars.usda.gov

[Quoted text hidden]

Randall, Ashley <Ashley.Randall@ars.usda.gov>

Mon, Feb 28, 2011 at 6:06 AM

To: ckbower319@gmail.com

Hi Cynthia,

Would you like me to mail, fax or e-mail your W-2?

Thanks

[Quoted text hidden]

CK B <ckbower319@gmail.com>

Mon, Feb 28, 2011 at 7:53 AM

To: "Randall, Ashley" <Ashley.Randall@ars.usda.gov>

Cc: ted.nykiel@ars.usda.gov

Bcc: ckbower <ckbower@cmug.com>

Thanks Ashley,
I'd like my W-2 mailed, (since email isn't secure and I don't have a fax machine).

Before sending it, could you please verify that it is the "corrected"

This paragraph discusses the amount of the Settlement Award, and therefore must be redacted in accordance with the Settlement's confidentiality requirements.

My goal is to locate a W-2 (and/or 1099 Form) that lists my EEOC-mediated settlement. Without it, I cannot file my 2010 taxes with the IRS.

Thanks for whatever you can do to help me track down the appropriate tax forms.

Cynthia Bower
PO Box 1383
Kodiak, AK 99615

[Quoted text hidden]

Randall, Ashley <Ashley.Randall@ars.usda.gov>

Mon, Feb 28, 2011 at 10:51 AM

To: CK B <ckbower319@gmail.com>

Cc: "Nykiel, Ted" <Ted.Nykiel@ars.usda.gov>

Hello,

The Budget and Fiscal Officer Kim Parks would have more knowledge on how you can obtain a corrected W-2. Please contact her at 301-504-1300. I informed her of your situation and she will be more than glad to assist you.

-----Original Message-----

From: CK B [mailto:ckbower319@gmail.com]

Sent: Monday, February 28, 2011 11:53 AM

To: Randall, Ashley

[Quoted text hidden]



CK B <ckbower319@gmail.com>

1099

5 messages

Parks, Kim <Kim.Parks@ars.usda.gov>
To: ckbower319@gmail.com**Wed, Mar 2, 2011 at 10:56 AM**

Good Afternoon Cindy,

I have left a message for the 1099 helpdesk at NFC regarding the issuance of a 1099 for the payment you received last year. If I don't hear back from them tomorrow, I will contact their office again and keep you updated.

Thank you,

Kim

Kim M. Parks

Chief, Fiscal Operations Branch
Financial Management Division, AFM
GWCC 3-2206
5601 Sunnyside Avenue
Beltsville, MD 20705-5113
Phone: [\(301\) 504-1300](tel:(301)504-1300)
Fax: [\(301\) 504-4302](tel:(301)504-4302)
Email: kim.parks@ars.usda.gov

CK B <ckbower319@gmail.com>
To: "Parks, Kim" <Kim.Parks@ars.usda.gov>
Bcc: ckbower <ckbower@cmug.com>**Wed, Mar 2, 2011 at 11:47 AM**

Kim,
Thanks for the information. However, I've done some reading on the subject and I'm actually looking for a W-2 form, not a 1099. The IRS Publication #525 (Taxable and Nontaxable Income) lists Back Pay awards as taxable income that should be reported on an employee's W-2.

My settlement agreement specified "pecuniary, non-pecuniary, and/or compensatory damages" based on the allegations raised in my EEOC complaint (EEOC 551-2009-00074x). Since my EEOC complaint revolved around wage-based allegations, my settlement money can be considered compensation for lost wages, (which must be included on a W-2 Form with appropriate deductions). Also, since I was required to terminate my ARS employment (despite no wrong-doing on my part, and directly due to the ARS's refusal to separate me from my abusive supervisor despite the overwhelming evidence of his unlawful activities against all of the women research scientists in his unit), the payment might also be construed as representing front-pay, which must also be reported on my W-2. In either circumstance, a 1099 Form is not appropriate.

I appreciate that you're looking into this matter on my behalf. Please send me a corrected W-2 form documenting the settlement money as part of my earned income for 2010.

Thank you.

Cynthia Bower
CKBower319@gmail.com
PO Box 1383, Kodiak, AK 99615

[Quoted text hidden]

Parks, Kim <Kim.Parks@ars.usda.gov>

Fri, Mar 11, 2011 at 10:26 AM

To: CK B <ckbower319@gmail.com>

Good afternoon Cynthia - I have contacted the HR staff responsible for servicing Alaska and hopefully they will be able to have a new W-2 issued. I will get back to you on Monday with the status.

Thank you
Kim

[Quoted text hidden]

Parks, Kim <Kim.Parks@ars.usda.gov>

Fri, Mar 11, 2011 at 10:43 AM

To: CK B <ckbower319@gmail.com>

Good news Cynthia - I heard back from HR and they are putting in a request for a new W-2 for you.

Thank you
Kim

-----Original Message-----

From: CK B [<mailto:ckbower319@gmail.com>]
Sent: Wednesday, March 02, 2011 3:48 PM
To: Parks, Kim
Subject: Re: 1099

[Quoted text hidden]

CK B <ckbower319@gmail.com>
To: "Parks, Kim" <Kim.Parks@ars.usda.gov>
Bcc: ckbower <ckbower@cmug.com>

Fri, Mar 11, 2011 at 10:47 AM

Excellent news. Thanks for your contribution towards making that possible.

Cindy

[Quoted text hidden]



CK B <ckbower319@gmail.com>

Corrected W-2 ?

4 messages

CK B <ckbower319@gmail.com>**Wed, Mar 9, 2011 at 10:53 AM**

To: Kim.Parks@ars.usda.gov

Bcc: ckbower <ckbower@cmug.com>

Kim M. Parks
Chief, Fiscal Operations Branch
Financial Management Division, AFM

Hi Kim,

Have you had any success with NFC regarding the issuance of a corrected W-2 form (accounting for the EEOC-mediated settlement for back-pay that I received last year)? I'm approaching a deadline for submitting paperwork to my tax preparer. Could you please send me the corrected W-2 by next Monday (March 14th).

Thanks.

Cynthia Bower

CKBower319@gmail.com

PO Box 1383, Kodiak, AK 99615

CK B <ckbower319@gmail.com>**Mon, Mar 14, 2011 at 4:20 PM**

To: "Parks, Kim" <Kim.Parks@ars.usda.gov>

Bcc: ckbower <ckbower@cmug.com>

Hi Kim,

I didn't hear back from you (or NFC), so I still don't have the numbers that I need for my 2010 tax return. Please let me know if the forms are "in the mail". If not, I guess I can just file Form 4852 (Substitute for Form W-2) for now.

Anyway, thanks for trying to get this problem fixed.

Cindy

[Quoted text hidden]

Parks, Kim <Kim.Parks@ars.usda.gov>**Tue, Mar 15, 2011 at 10:33 AM**

To: CK B <ckbower319@gmail.com>

Hi Cindy,

HR is checking on the status of the W2. I hope to have an answer for you by tomorrow morning.

Thanks

Kim

[Quoted text hidden]

CK B <ckbower319@gmail.com>

To: "Parks, Kim" <Kim.Parks@ars.usda.gov>

Bcc: ckbower <ckbower@cmug.com>

Tue, Mar 15, 2011 at 10:48 AM

Thanks, Kim.

If HR can email me the actual numbers for Boxes 1-6 on my W-2, then my tax preparer can get started on my return. I don't think a mailed W-2 is going to get here in time to do me any good at this point.

But, I appreciate that someone is at least looking into the situation. Thanks.

Cindy

[Quoted text hidden]

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IRS Letter Number LTR0062C
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Exhibit 5

(The wage-based nature of my EEOC complaint requires a W-2, *not* a 1099)

EXHIBIT 5

The wage-based nature of my EEOC complaint requires a W-2, *not* a 1099

I am seeking a corrected W-2 Form from my 2010 federal employer, the USDA Agricultural Research Service (PO Box 60000, New Orleans, LA, 70160, ID# 72-0564834) so that my EEOC-mediated settlement award can be documented as income for retirement purposes.

Receipt of a W-2 Form is appropriate due to the wage-based nature of my EEOC complaint; however, the USDA, which has so far ignored my requests, may suddenly respond by issuing a Form 1099 in an attempt to diminish my retirement benefits. The following information cites U.S. laws and regulations supporting the issuance of a W-2 form.

1) USDA Awarded Taxable Settlement Money to Me

- In August 2010, during an EEOC-mediated negotiation, I signed a settlement agreement with the USDA Agricultural Research Service (ARS) that listed the monetary award as “payment of all of pecuniary, non-pecuniary and/or compensatory damages based on allegations raised in EEOC 551-2009-00074X”.

2) Tax Documentation was Not Furnished by USDA

- The USDA ARS did not provide tax forms to document my Settlement Award, in violation of:
 - U.S. Code Title 26 (section 6051), which requires an employer to furnish information returns (Form W-2, Wage and Tax Statement) to employees.
 - Entry #2 of the Settlement Agreement (negotiated between the USDA ARS and myself), which specified that “Taxes will not be taken from the amount being paid to Complainant, but the Agency will report this amount to the IRS.”
- The USDA ARS also ignored a March 18th request from the IRS (Letter Number LTR0062C, for inquiry #0143075196), thereby forcing me to file Form 4852 (Substitute W-2) with my 2010 Tax Return, instead of the correct tax documentation.

3) The USDA Award Settled a Wage-based Complaint

- The out-of-court settlement agreement, which I negotiated with the USDA Agricultural Research Service (ARS) on August 19th 2010, failed to list the particular claims that were being settled (unfair

hiring, promotion, and retention practices), nor did they allocate percentages of the award for back pay and front pay.

- The written settlement agreement listed the payment as remedying "pecuniary, non-pecuniary, and/or compensatory damages based on allegations raised in EEOC 551-2009-00074x", without specifically identifying the rights that were compromised by the Agency. In *Alexander v. Internal Revenue Service*, (72 F.3d 938, 942, 1st Cir. 1995), the court recognized the importance of determining which issues resulted in a monetary award.
- My EEOC complaint (#551-2009-00074X) stemmed from six wage-based grievances and two EEO complaints lodged against the agency.
 - **I was offered my job at lower GS and salary levels than the advertised position.** Unfair hiring practices due to gender discrimination constitute legal grounds for a plaintiff to receive back pay, (Title VII of the Civil Rights Act; The Equal Pay Act of 1963; Title 29 U.S. Code, Section 206 d).
 - **I was denied a promotion without being evaluated by objective, measurable criteria.** Settlement compensation for denial of promotion due to disparate treatment (employment discrimination) are considered to be wages, eligible for back pay, (Title VII of the Civil Rights Act; IRS Revenue Ruling 96-65).
 - **I was required to “voluntarily” resign as a condition of the Settlement Agreement despite no wrongdoing on my part.** When I met with the USDA representatives and EEOC mediator on August 19th 2010, I had no intention of losing my job that day; however, my “voluntary resignation” was written into the settlement agreement by the USDA, which suggests that a component of the settlement award represents front pay. The USDA provided no other options for me to escape the harassment, discrimination, and retaliation being perpetrated against me by my ARS supervisor, a man who had been named as a Respondent by every woman research scientist working for ARS in Alaska since he became a supervisor in 2003. I was not allowed to prepare for the separation or to mitigate the impact of sudden unemployment (at a time when the U.S. unemployment rate was 9.6%). It is now June 2011, and I am still unemployed.
 - **The entire settlement award should be considered W-2 wages from back pay and front pay.** The Lilly Ledbetter Fair Pay Act of 2009 allows back pay due to discrimination to be collected beyond three years.

- Back Pay: GS 13 for six years, (a minimum of \$64,000, plus over \$11,000 in lost pay from the local Cost Of Living Adjustment).
- Front Pay: I was a permanent USDA employee, with Superior annual performance ratings and an “h-index” (which measures scientific impact) over twice that of my GS-15 supervisor. I would likely have received an annual salary until my retirement, had it not been for the unlawful activities of my supervisor.

4.) Wage-based Settlements are Reported on a W-2 Form, (not a 1099)

- Settlements resulting from wage-based claims (e.g. back pay and front pay) are reportable by the employer to the employee (and to the Social Security Administration) on a Form W-2.
 - The nature of my Back Pay claim is USDA’s violation of:
 - Back Pay Act (5 U.S.C. § 5596(b)(1))
 - Equal Pay Act of 1963. (29 U.S.C. § 206(d))
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended by the Civil Rights Act of 1991
 - The nature of my Front Pay claim is USDA’s violation of:
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended by the Civil Rights Act of 1991
 - Equal Pay Act of 1963 (29 U.S.C. § 206(d)).

5.) W-2 Wages are Subject to Tax Withholding

- U.S. Code Title 26 (section 6051) requires an employer to furnish information returns (Form W-2, Wage and Tax Statement) to the Social Security Administration, [according to Treas. Reg. §31.6051-2(a)].
- Federal Insurance Contributions Act (FICA) tax is owed on all remuneration paid by an employer to its employees, (See IRC §§ 3101; 3111).
- Back pay is considered wages for FICA, since individuals could not be made whole unless they received social security credit and any retirement benefits that would have resulted, [according to Internal Revenue Code § 3402(a)(1); Hemelt v. United States (supra 122 F.3d at 204); and Dotson v. United States (87 F.3d 682, 5th Cir. 1996)].
- The Social Security Administration is a benefits agency and must rely on the Federal Tax Authorities of the Internal Revenue Service to enforce penalties against employers who inaccurately report wages.