



Legal Opinion L-2001-03
January 26, 2001

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TO : Nancy Z. Marks
Chief of Calculation Analysis and Systems
Through: Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Stock Options and Work Deductions

This is in reply to your memorandum of January 10, 2001, regarding an employee-annuitant who received stock options after his retirement and his annuity beginning date. You advise that the Social Security Administration posted earnings for the employee for 1997 and 1998. These earnings are attributable to the employee's exercise of stock options awarded him when he was employed. He ceased work in 1992 and advises that he also has received or will receive proceeds from the exercise of stock options in 2000 and 2001. The employee's PIA 1 has been recomputed based on the earnings posted for 1997 and 1998. You inquire whether work deductions, attributable to the stock options, apply to the employee's annuity for 1997 and 1998 and, if not, whether the PIA recomputation based on those earnings should be removed.

Income from the exercise of stock options awarded as compensation would be considered wages under the Social Security Act, at least as to the difference between the price of the stock and its fair market value. See section RS 02505.240B.71 of the Social Security Administration's Program Operations Manual System (POMS), where it is stated to "Count as wages the difference between the fair market value of stock at the time the option is exercised and the option price. Count these in the period the option was granted." Under section 404.429(d) of the social security regulations, wages are presumed to be paid for services rendered in the year of payment. However, in this case, consistent with POMS section RS 02505.240B.71, this presumption is rebutted, and the wages attributed to the exercise of the options would be attributable to the period when the employee was granted the options. Accordingly, the employee is entitled to a PIA recomputation based on the income from the exercise of stock options, but that income would not cause work deductions to be applied to his annuity.