

**Congress of the United States**  
**Washington, DC 20515**

November 28, 2016

Ms. Carolyn Colvin  
Acting Commissioner  
Social Security Administration  
6401 Security Blvd.  
Baltimore, MD 21235-0001

Dear Ms. Colvin:

Cathay Pacific Airways (“Cathay”) is an employer of U.S. citizens, with employees based in San Francisco. It has recently claimed that as a “non-American” employer, the provisions of Social Security law do not apply to its operations. It appears that Cathay Pacific is relying in whole or in part upon Internal Revenue Code Section 3121(b)(4). We write to clarify the impact of this provision on Cathay’s obligation to its employees and on the employees’ rights to participate in Social Security programs.

Specifically, on September 21, 2016, Cathay notified its U.S. citizen employees that it would no longer withhold certain payroll taxes from employee checks or contribute the employer portion of these payroll taxes. It indicated that sums withheld from employees in 2016 would be remitted to employees. Sums from 2013, 2014 and 2015 could also be returned at the employees’ discretion, and if they were not, there would be no guarantee that those years would count towards future benefits. Withholdings from before those time periods would not be affected since those tax years are ‘closed.’ An explanation of this matter, from the perspective of Cathay, is enclosed with this letter.

We were troubled by the fact that Cathay’s U.S. citizen employees may no longer be able to participate in the Social Security and disability systems, as well as in California’s unemployment and disability systems. There are several foreign airlines operating at San Francisco International Airport with thousands of employees. If Cathay’s interpretation of the law is correct, it could potentially impact these employees.

Social Security provides critical protections for U.S. citizens. Employees of Cathay had an understanding that they would receive this protection when they began working for Cathay. The actions by Cathay potentially expose its U.S. citizen employees to unexpected severe economic hardship upon retirement or their inability to work.

We respectfully request that the Social Security Administration review this situation to determine if Cathay Pacific’s interpretation of Social Security participation by its U.S. citizen employees is correct. We also respectfully request an explanation of the law or laws that may permit or require such an action by the employer.

The airline asserts that it is prohibited from collecting employment taxes from affected employees. It would appear that Cathay believes that it cannot collect employment taxes from employees who voluntarily wish to participate in Social Security and similar programs and that the airline itself cannot voluntarily agree to participate in the Social Security program on behalf of its U.S. citizen employees.

Please confirm whether Cathay's claims are true and whether there is a provision for voluntary participation either upon the request of the employee or the company.

- If Cathay's interpretation is correct and it is compelled to withdraw from the collection and payment of Social Security taxes, is there any provision of federal law that compels an employer to affirmatively notify prospective employees that they will not be earning Social Security credit if they agree to accept employment with the employer?
- Is there any requirement that an employer such as Cathay must establish a substitute for the Social Security retirement system?
- Is any prohibition of participation by foreign companies, under specified circumstances, limited to airlines or are there other types of companies that also cannot participate? In addition, are foreign accounting and legal firms, etc., exempt?

Thank you for your consideration of our concerns and questions. If the interpretation of Cathay Pacific is correct, then we may consider introducing legislation on this matter. If there are any questions about our request, your staff may contact either Brian Perkins, at 650-342-0300 or Miriam Goldstein, at 202-225-3531, and Ellen Baron, at 202-224-2629. Thank you for your prompt response.

Sincerely,



Jackie Speler  
Member of Congress



Dianne Feinstein  
United States Senator

Enclosures: Cathay Pacific documents related to employment taxes

cc: Cathay Pacific  
Attn: Deborah McConnochie  
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