



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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CC:TEGE:EOEG:ET1:STackney
COR-106030-01



Dear [REDACTED]:

This letter is in response to your January 23, 2001 correspondence concerning the application of employment taxes to incentive stock options (ISOs) described in section 422 of the Internal Revenue Code (Code). Specifically, you have asked whether the Federal Insurance Contributions Act (FICA) tax, Federal Unemployment Tax Act (FUTA) tax, and Federal income tax withholding obligations are applicable upon a disqualifying disposition of stock acquired pursuant to the exercise of an ISO.

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2001-1, 2001-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. We are, however, able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and are furnishing general information, which we hope will be helpful to you.

In response to your questions, we have enclosed a copy of Notice 2001-14, 6 I.R.B. 516, published on February 5, 2001. This notice provides that the Service will not enforce application of the FICA tax, FUTA tax or Federal income tax withholding upon the exercise of an ISO that occurs on or after the publication date of the notice and before January 1, 2003, or upon the disposition of stock acquired pursuant to such an exercise (regardless of whether the disposition is a qualifying or a disqualifying disposition). Notice 2001-14 further provides that employers may elect to apply the relief retroactively to support a claim for adjustment or refund that would otherwise be available.

In your correspondence you also requested information about obtaining refunds of any FICA taxes paid in error. An employer must fulfill certain procedural requirements in order to receive a refund of the employer and employee portions of FICA tax.

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Generally, the employer has a duty first to make adjustments reflecting any overpayments of FICA tax, to the extent possible, as a condition to receiving a refund of any remaining overpayments of FICA tax. For more information concerning the adjustment and refund process, we have enclosed Publication 15, Circular E, Employer's Tax Guide. You may obtain copies of any of the forms and instructions referenced in that publication at the Internal Revenue Service web site, www.irs.ustreas.gov.

We hope this information has responded to your questions. If you have any further questions, please contact Stephen Tackney (#50-18084) at (202) 622-6040.

Sincerely,

Michael A. Swim
Chief, Employment Tax Branch 1
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures (2)