



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:TE/GE:EOEG:ET1:STackney
COR-114325-01



Dear 

Reference: Claims for Refund of Overpayment of Employment Taxes

This letter replies to your March 1, 2001 request for information concerning adjustments and refunds resulting from Notice 2001-14, 2001-6 I.R.B. 516. You have asked for a clarification of the procedure for claiming any adjustments or refunds available under Notice 2001-14. You have also asked for a clarification of the periods for which such relief is available.

This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service (IRS). This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

Notice 2001-14 provides that with respect to statutory options (incentive stock options described in section 422(b) of the Internal Revenue Code (Code) and options granted pursuant to an employee stock purchase plan described in section 423(b) of the Code), the IRS will not require payment of the Federal Insurance Contributions Act (FICA) tax or Federal Unemployment Tax Act (FUTA) tax upon the exercise of a statutory option that occurs before January 1, 2003. Notice 2001-14 is effective as of the date of publication -- February 5, 2001. However, employers may elect to apply the guidance to exercises of statutory options that occurred before February 5, 2001, in which case the IRS will honor otherwise allowable adjustments and claims for refund of any FICA tax or FUTA tax paid.

Notice 2001-14 was not intended to provide any special procedures governing adjustments or claims for refunds. Rather, the provisions governing adjustments or claims for refunds due to an overpayment of FICA tax or FUTA tax will apply. Note that adjustments generally are required to be made to the extent available before a refund

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may be claimed. To assist you, we have enclosed Publication 15, Circular E, Employer's Guide. We refer you to pages 23 to 26, which outline the procedures for reporting an adjustment arising from an overpayment of FICA tax and claiming any available refund. In addition, we have enclosed a copy of Form 843, the form for claiming a refund of FUTA tax, and the accompanying instructions.

Note that the entire amount of FICA tax and FUTA tax withheld may not be eligible for adjustment or refund. If the employee received wages in the tax year that exceeded the taxable wage base subject to the FUTA tax and/or Old Age, Survivors and Disability Insurance (OASDI) portion of the FICA tax for that employee for that tax year, the taxpayer is still required to pay the FUTA tax and FICA tax that would have been payable had the spread at exercise (the difference between the exercise price and the fair market value of the stock acquired) not been included in wages. Therefore, documentation supporting a claim for an adjustment or refund should demonstrate the amount of FICA tax or FUTA tax that would have been payable, had the spread not been included in wages for purposes of computing the relevant tax.

Notice 2001-14 was also not intended to provide any special retroactive period for which adjustments or refunds are available. Rather, adjustments and claims for refunds due to the guidance provided by Notice 2001-14 are available for such periods as adjustments and claims due to overpayments of FICA tax and/or FUTA tax would otherwise be available. The time periods for which such claims are available depends on the facts and circumstances of the individual taxpayer, but generally are governed by section 6511 of the Code. Section 6511 provides generally that a claim for credit or refund of an overpayment of tax in respect of which the taxpayer is required to file a return must be filed by the taxpayer within the later of 3 years from the time the return was filed or 2 years from the time the tax was paid, or if no return was filed, within 2 years from the time the tax was paid.

If you have any further questions, please contact Stephen Tackney (IRS ID # 50-18084) at (202) 622-6040 (not a toll free number).

Sincerely,

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

Enclosures (2)