

INTERNAL REVENUE SERVICE

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CONEX 143401-03/CC;TEGE:EOEG:ET1

[REDACTED]

Attention [REDACTED]

Dear Senator Levin:

This letter is in response to your inquiry (copy enclosed) dated July 11, 2003, on behalf of your constituent, [REDACTED], a retired professor. [REDACTED] states that he seeks assistance in obtaining a refund of FICA taxes that [REDACTED] his former employer, deducted from a retirement payment that [REDACTED] made to him in 2001 and which taxes were paid by [REDACTED] to the IRS. [REDACTED] also states that [REDACTED]

[REDACTED] filed a claim for refund of these FICA taxes along with other claims for refunds for other FICA taxes that relate to similar retirement payments made by [REDACTED] during each of the years 1998 through 2001. He further informs us that the IRS is treating the claims for refunds inconsistently; that is, the IRS accepted [REDACTED] claim for refund filed for the earlier 1998 tax year and refunded the FICA taxes that [REDACTED] paid for that year, but denied [REDACTED] claims for refunds for the later 1999 through 2001 tax years.

We thank you for your inquiry. We are always happy to provide assistance to your office that addresses a taxpayer's concerns. In this matter, [REDACTED] concerns essentially relate to refund claims filed by another taxpayer, [REDACTED]. Due to disclosure and privacy laws, we are prohibited from providing specific tax or taxpayer information regarding a taxpayer's case to anyone other than the taxpayer or the taxpayer's authorized representative. However, to assist you, we can provide some useful general information.

In general, there are numerous reasons why the IRS can deny a taxpayer's refund claim for a particular tax year when the IRS has previously accepted a similar refund claim by that same taxpayer for an earlier tax year. Such reasons include that the taxpayer failed to file the later claims within the required period of limitations applicable to those claims; there has been a change in the law adverse to the taxpayer; or there was an erroneous

refund made by the IRS on the refund claim submitted for the earlier tax year. In all cases, when the IRS does deny a refund claim, it will provide written notice to explain the appeal rights and procedures that are available for a taxpayer to protest the denial of its claim for refund. If the taxpayer does not agree with the IRS' denial of its claim for refund, the taxpayer can elect to assert its rights and follow the procedures available to the taxpayer to protest the IRS' denial of its claim for refund.

We note that [REDACTED] cites to the ruling of the United States Court of Appeals for the Eighth Circuit in the *North Dakota State University* case as support for the refund claims that [REDACTED] filed. With regard to this case, the IRS issued an Action on Decision on December 31, 2001, in order to help taxpayers understand the IRS' position with regard to that judicial decision.

The AOD sets forth that the IRS disagrees with the Eighth Circuit's decision. The AOD further states that the IRS recognizes the precedential effect of the decision to cases appealable to the Eighth Circuit and, therefore, that it will follow the decision with respect to cases that have the exact facts within that circuit. However, the AOD also states that the IRS will continue to litigate its position that the decision is erroneous in cases having different facts in the Eighth Circuit and in all cases in other circuits. [REDACTED]

[REDACTED] indicates in the materials provided that he [REDACTED] within the jurisdiction of the Eighth Circuit. We have enclosed a copy of this Action on Decision that you can forward to [REDACTED].

I hope this information is helpful. Please call me at [REDACTED]

[REDACTED]
if you have any questions.

Sincerely,

Catherine E. Livingston
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosures (2)