



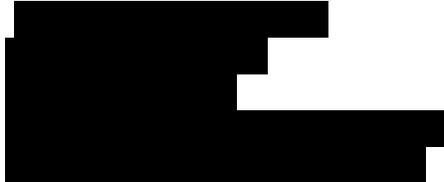
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Dear [REDACTED]:

I apologize for the delay in responding to your inquiry. This is an information letter in response to your inquiry regarding the procedures that employers may use to obtain the necessary employee supporting statements for an employer's refund claim of employee taxes. Specifically, you ask whether an employer can request and obtain the necessary "written statement" from an employee, as required under Procedures and Administration Regulation section 31.6402(a)-2(a)(2), from an employee in an electronic submission (e.g., e-mail).

Internal Revenue Code section 6402(a) provides that in the case of an overpayment, the Secretary, within the applicable period of limitations may credit the amount of such overpayment (including any interest allowed thereon) against any liability of the person who made the overpayment and, subject to certain restrictions, refund any balance to such person.

Section 31.6402(a)-2(a)(2)(i) of the regulations provides that every claim by an employer for a refund or credit of employment taxes under Code section 3101 or section 3201 collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to the allowance of the refund or credit.

Section 31.6402(a)-2(a)(2)(ii) of the regulations provides that if the claim relates to employee taxes collected in a year prior to the year for which the credit or refund is claimed, the employer must also include a statement that it has obtained from the employee a written statement (a) that the employee has not claimed a refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (b) that the employee will not claim a refund or credit of such amount.

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Under regulations sections 31.6402(a)-2(a)(2)(i) and (ii) the employer is required to retain the written statements received from the employees as part of its record.

Generally, as a condition to receiving a refund of the employer and employee portion of Federal Insurance Contribution Act (FICA) taxes, an employer has a duty to first “adjust” the employee portion of FICA taxes. See Atlantic Department Stores, Inc. v. United States, 557 F.2d 957 (2d Cir. 1977). Revenue Ruling 81-310, 1981-2 C.B. 241, provides that at a minimum the employer must notify its employees of the overpaid employee FICA tax and request their consent to filing a refund claim on their behalf.

To satisfy the requirements in regulations section 31.6402(a)-2(a)(2) the employer must receive either a written consent under section (a)(2)(i) of the regulations or a written statement under section (a)(2)(ii) of the regulations. The Service has not issued any guidance indicating that some form of electronic receipt from an employee may be substituted for the required written document.

We appreciate your suggestions and comments on possible standards and safeguards that could be utilized to insure the authentication of electronic statements and consents from employees. Your comments will be most useful in our determination of whether to issue further guidance in this area.

If you have any questions, please contact me or [REDACTED]
[REDACTED]

Sincerely,

Joseph W. Spires
Acting Chief, Employment Tax Branch 1
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)