



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John F. Tierney
Member, U.S. House of Representatives
17 Peabody Square
Peabody, MA 01980

Attention:

Dear Congressman Tierney:

This letter is in response to your inquiry dated September 18, 2009, on behalf of your constituent, . He wrote about the status of a refund claim for Medicare tax paid on remuneration for services performed by thirteen employees of the .

While in general we cannot discuss the specific facts of taxpayers tax liabilities the materials submitted suggest that the refund claim for Medicare tax is based on a court opinion that is not yet final, *Regan v. United States*, 421 F.Supp.2d 319 (D. Mass 2006). That case involves refund claims based on section 3121(u)(2)(C) of the Internal Revenue Code (also known as the continuing employment exception to Medicare). Under the continuing employment exception to Medicare, wages paid to certain state and local government employees hired before March 31, 1986, are not subject to Medicare tax as long as the employees remain continuously employed by the same government employer. The court in *Regan* rejected the government's argument that the abolition of the county governments in Massachusetts, and subsequent transfer of the county employees to state employment interrupted the continuity of employment so as to render the continuing employment exception to Medicare inapplicable to the transferred employees who were eligible for the exception before the transfer. Therefore, the court held that those employees did not need to pay Medicare tax on their wages.

In general when tax liabilities are the subject of litigation the ultimate resolution occurs after the court enters final judgment and any decision with respect to possible appeal finalized. While we certainly understand your constituent's frustration as to the

passage of time, our understanding is that the District court in *Regan* has not yet entered a final judgment in the case. For this reason, issuing refunds of tax is premature.

I hope this information is helpful. If you have any questions, please contact me at

or at .

Sincerely,

NANCY J. MARKS
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)