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The Honorable Jeff Miller  
Member, U.S. House of Representatives  
4300 Bayou Boulevard, Suite 13  
Pensacola, FL 32503

Attention:

Dear Congressman Miller:

I apologize for the delay in responding to your inquiry dated December 30, 2009, on behalf of one of your constituents. Specifically, you asked about the process to correct Federal Insurance Contributions Act (FICA) tax and income tax (collectively, employment tax) overwithholding errors after the close of the tax year in which an employer paid wages to an employee.

Whether an employer can correct employment tax overwithholding errors after the close of the tax year in which the payment of wages occurred depends on when the employer discovered the error and on the type of tax needing correction, that is, whether it is an overcollection of FICA tax or income tax withholding.

Generally, if an employer overcollects employment tax from an employee and discovers the error within the period of limitations on credit or refund [section 6511 of the Internal Revenue Code (Code)], the employer may correct the error by either making an interest-free adjustment [section 6413 of the Code], or by filing a claim for refund [section 6402 of the Code] before the period of limitations on credit or refund expires. The regulations under sections 6413 and 6402 of the Code establish the procedures for making interest-free adjustments and claims for refund.

Employers make the correction using Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund. Form 941-X is a dual purpose form used both for making interest-free adjustments and claims for refund to correct employment tax errors. The Instructions for Form 941-X provide further information on how to correct employment tax errors.

An employer can correct an overwithholding error using the interest-free adjustment process. The employer must first repay or reimburse the employee for the overcollected amount. An interest-free adjustment for an overcollection of income tax withholding can only be made if the employer discovers the error and repays or reimburses the employee within the same calendar year as the payment of the wages. However, an employer can correct an overpayment of income tax withholding due to an administrative error even if the employer did not discover the error until after the employer filed the return and did not repay the employee within the calendar year [section 31.6413(a)-2(c)(2) of the Employment Tax Regulations]. An administrative error involves the inaccurate reporting of the amount withheld. When making a correction using the interest-free adjustment process, the employer must file Form 941-X before the 90<sup>th</sup> day before the period of limitations on credit or refund expires. See the Instructions for Form 941-X for more information.

An employer can also correct an overwithholding error using the claim for refund process. The employer must first repay or reimburse the employee for the overcollected amount or obtain the employee's consent to the filing of a refund claim. However, an employer can only claim a refund of overpaid income tax withholding if the employer did not actually withhold the amount from the employee [section 6414 of the Code]. See the Instructions for Form 941-X for more information.

Form 941-X requires the employer to certify that it has filed or will file the required Form W-2, Wage and Tax Statement, or Form W-2c, Corrected Wage and Tax Statement. Employers must furnish employees with Form W-2 showing, among other information, the total amount of wages and amount deducted and withheld as tax [section 6051 of the Code]. Employers must also furnish employees with a corrected statement, that is, Form W-2c, for a prior calendar year to show the correct amount of wages if the amount shown on a previously furnished Form W-2 was incorrect [section 31.6051-1(a) of the Employment Tax Regulations].

I hope this information is helpful. If we may be of further assistance, please contact me or \_\_\_\_\_ of my staff at \_\_\_\_\_.

Sincerely,

Janine Cook  
Branch Chief, Employment Tax Branch 1  
(Exempt Organizations/Employment  
Tax/Government Entities)  
(Tax Exempt & Government Entities)