



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

OFFICE OF THE CHIEF COUNSEL

November 2, 2010

Number: **2010-0239**
Release Date: 12/30/2010

CONEX-140970-10

UIL: 3121.02-10

The Honorable Patrick J. Murphy
Member U.S. House of Representatives
414 Mill Street
Bristol, PA 19007

Attention:

Dear Congressman Murphy:

This letter responds to your inquiry dated September 27, 2010 on behalf of your constituent . stated that a colleague told her she qualified for a refund of Federal Insurance Contributions Act (FICA) taxes on wages she earned for services performed as a medical resident for periods ending before April 1, 2005. She stated her employer missed a deadline that the IRS gave to identify physicians who were members of the residency program during the time period in question.

Services students perform are excepted from FICA taxes [section 3121(b)(10) of the Internal Revenue Code (the Code)]. The student FICA exception applies only to services performed in the employ of an organization that has the status of a school, college, or university (SCU); and only if the student who performs the services is enrolled and regularly attends classes at that SCU.

On March , 20 , we made an administrative determination to accept the position that medical residents are excepted from FICA taxes based on the student exception for tax periods ending before April 1, 2005, when our new regulations went into effect.

Institutions that employed medical residents and individual medical residents are eligible to receive refunds if a timely filed FICA refund claim covers them. Institutions can be covered under FICA refund claims they filed themselves. Individual medical residents can be covered under FICA refund claims they filed themselves or under claims the institutions that employed them filed.

In general, taxpayers must file claims for credit or refund within 3 years from the time they file the return, or 2 years from the time they pay tax, whichever date is later. For purposes of FICA tax refunds, the relevant return is the employer's Form 941. The law deems Forms 941 that a taxpayer filed for any period ending with or within a calendar year which are filed before April 15 of the succeeding calendar year as filed on April 15 of such succeeding calendar year. Similarly, the law also deems any FICA tax a taxpayer paid during such period as paid on April 15 of such succeeding calendar year [section 6513(c) of the Code].

Taxpayers cannot receive refunds after the expiration of the period of limitations unless they have timely filed a claim for credit or refund before the expiration of the period of limitations [Treas. Reg. Section 301.6402-2(a)(1)].

residency employer apparently did not file a timely refund claim. The period of limitations for filing a claim for tax periods before April 1, 2005, has expired. Thus, is not eligible for a refund of the FICA taxes on wages she earned for services performed as a medical resident for periods ending before April 1, 2005.

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

Sincerely,

Marie Cashman
Special Counsel (Exempt Organizations/
Employment Tax/Government Entities)
(Tax Exempt & Government Entities)