



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

OFFICE OF THE CHIEF COUNSEL

May 16, 2011

Number: **2011-0058**
Release Date: 6/24/2011

CC:TEGE:EOEG:ET2
CONEX-118685-11

UIL: 3121.02-10

The Honorable Mark E. Udall
United States Senator
801 8th Street, Suite 140A
Greeley, CO 80631

Attention:

Dear Senator Udall:

This letter responds to your inquiry dated April 22, 2011, on behalf of your constituent, . said she qualifies 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 asks about the length of time it may take for the IRS to process her refund.

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 for 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.

Our long-held position is that the student FICA exception does not apply to services that individuals performed as medical residents. However, in the wake of extensive litigation, we made an administrative determination on March 2, 2010, 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 new regulations clarifying this issue went into effect.

As a result of this administrative determination, institutions that employed medical residents and the individual medical residents are eligible to receive refunds if covered under a timely filed FICA refund claim. Institutions can be covered under FICA refund claims they filed. Individual medical residents can be covered under FICA refund claims institutions filed on their behalf or under FICA refund claims filed they filed themselves.

indicates that her residency employer filed timely refund claims on her behalf. We intend to pay these claims as soon as possible. However, these claims are subject

to the same procedural requirements that apply to all FICA refund claims employers file, including certifications on the employee share of the FICA tax, and verification by the IRS of the timeliness and the amount of the claim.

We have taken steps to make this refund process as efficient as possible. These steps include processing all medical resident FICA refund claims in one location and coordinating information with the Social Security Administration. In addition, we will process all refund claims of an employer at one time. Even though an individual resident may be entitled to a refund for a few years, the employer may be entitled to a refund for a ten-year period. The law provides that we will pay interest on the refunds [section 6611 of the Code].

I understand _____ concern with the timeline for processing her refund. Given the large number of claims we must process as well as the number of steps involved, we are processing the refunds as quickly as possible.

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

Sincerely,

Paul Carlino
Branch Chief, Employment Tax Branch 1 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)