



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable James Matheson  
U.S. House of Representatives  
Washington, DC 20515

Attention:

Dear Mr. Matheson:

This letter responds to your inquiry dated May 05, 2011, on behalf of [redacted] filed a lawsuit for a refund of Federal Insurance Contributions Act (FICA) taxes on wages it paid for services that medical residents performed for periods ending before April 1, 2005. [redacted] is working with the Department of Justice to resolve the lawsuit and asked when the IRS will pay its 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.

[redacted] has filed timely refund claims. 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 IRS verification 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, this administrative decision entitles many employers to refunds over a ten-year period resulting in over forty claims (one for each quarter) the IRS must process for many employers. We will process all refund claims of an employer at one time. The law provides that we will pay interest on the refunds [section 6611 of the Code].

I understand \_\_\_\_\_ concern with the timeline for processing the 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)