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**From:**

**Sent:** Thursday, June 21, 2012 2:58:34 PM

**To:**

**Cc:**

**Subject:** FW: (Refund claims for FICA for Medical Residents)

You asked for guidance on an issue that has arisen in the context of refunds of overpaid FICA taxes in medical resident cases. In these cases, a hospital/employer may have filed a claim for refund of overpaid FICA tax for both its (employer) share and on behalf of consenting medical resident employees, for their share. Under the FICA refund scheme, the employer acts as a fiduciary in bringing the refund claim on behalf of consenting employees, but the refund is actually paid to the employer, who is then supposed to give the entitled employees their share.

Because the overpayment is issued in the name of the employer, under the normal systemic processing of overpayments, an overpayment applied to an employer's account would ordinarily be offset against any tax liabilities for other periods in accordance with section 6402(a). Section 6402(a) permits (does not mandate) the Service to credit the amount of any overpayment against any tax liability "on the part of the person who made the overpayment" and "shall" (subject to 6402(c)-(f)) refund the balance to such person. Thus, section 6402(a) only permits the employer share of the overpayment to be credited against that employer's tax liability for other periods. Accordingly, the IRS does not have the legal authority to offset the employees' share of an overpayment against an employer's separate tax liability.

Should such an offset occur, since the IRS would not have the legal authority to make the offset, the IRS would need to reverse the overpayment credit with respect to the employees' share. We have not found any direct authority addressing offsets of FICA tax for these types of overpayments. There is advice discussing the Taxpayer Advocate's lack of authority to order reversal of a properly made overpayment credit so the IRS could issue a refund to the taxpayer on grounds of hardship. IRS SCA 199913028; IRS SCA 200132034. (The Taxpayer Advocate does not have this authority because once the credit is made, there is no longer an existing "overpayment" which can be refunded.) In the case of an offset of employee overpayment against employer liability, however, the credit would not be proper with respect to the employees' share. The CCAs discuss the exception to the general prohibition on reversing offsets to correct a mathematical/clerical error and also discuss the IRM provisions in 21.4 which can be used to reverse/override offsets.



Please let me know if I can be of further assistance.