



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Bill Posey
Member, U.S. House of Representatives
2725 Judge Fran Jamieson Way
Building C
Melbourne, FL 32940

Attention:

Dear Congressman Posey:

I apologize for the delay in responding to your inquiry dated September 26, 2013, on behalf of your constituent, . said she may qualify 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 also said that neither her residency employer nor the successor to her residency employer filed a refund claim and did not file an individual claim for refund.

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 the taxes, whichever date is later. For FICA tax refunds, the relevant return is generally the employer's Form 941. The law deems a Form 941 that an employer files before April 15 of the succeeding calendar year as filed on April 15 of the succeeding calendar year. Similarly, the law also deems any FICA tax an employer paid during this period as paid on April 15 of the succeeding calendar year [section 6513(c) of the Internal Revenue Code (Code)]. We reviewed our records and confirmed that neither , her residency employer, nor the successor to her residency employer filed a timely refund claim. Further, the deadline for filing a refund claim for periods ending before April 1, 2005, has expired. Therefore, 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.

The law excepts services students perform from FICA taxes [section 3121(b)(10) of 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.

Our long-held position is that the student FICA exception does not apply to services performed by individuals 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.

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 [Treasury Regulation section 301.6402-2(a)(1)].

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

Sincerely,

Paul J. Carlino
Chief, Employment Tax Branch 1,
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt & Government Entities)