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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR SI ZIRKLE
DIRECTOR, OUTREACH, PLANNING AND REVIEW
T:GE:ITG

FROM: Will E. McLeod
Assistant Chief, Employment Tax Branch 1
CC:TEGE:EOEG:ET1

SUBJECT: Clarification of FUTA Legislation

This is in response to your request for help in settling more FUTA questions generated by the Consolidated Appropriations Act of December 21, 2000. We have reviewed the five scenario questions you have presented and provide our answers based on our interpretation of the FUTA legislation.

1. Tribe X is located in State Z, and has always been a full participant in the state unemployment program, and fully paid annual SUI liabilities. However, Tribe X never filed Form 940 and never made any FUTA tax payments. Are they liable for delinquent Forms 940 for years prior to 2000?

Answer: No. Tribe X's liability for delinquent Forms 940 for any open tax years is eliminated because (1) the services were rendered before December 21, 2000, and the FUTA tax on such services were unpaid; and (2) Tribe X has been a participant in the state unemployment program and has fully paid its annual state unemployment tax liabilities.

2. Same facts as #1, except the Service filed Substitutes for Return for Form 940 for Tribe X. The Service has secured some payments on the accounts, but the tax was not fully satisfied as of December 21, 2000. Can the outstanding balance as of December 21, 2000, be abated?

Answer: Yes. Unpaid assessments for years prior to year 2000 can be abated if the Indian tribal government meets the transition rule requirements. Since Tribe X satisfied the transition rule requirements as shown above in question #1, Tribe X is entitled to have the unpaid assessments abated.

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3. Tribe Y is located in State Q and has never filed Forms 940 or participated in the state unemployment program. They contact State Q about making retroactive reimbursement for any benefits, and State Q advises them that there is no liability since there is no record of benefits ever being paid. Are they liable for delinquent Forms 940 for years prior to 2000?

Answer: No. Tribe Y is not liable for delinquent Forms 940 for years prior to 2000. The state reimbursement requirement requires that the tribe be in compliance with the state either by paying the state unemployment tax or by reimbursing the state for benefits paid for services attributable to the tribe. If no benefits were paid, then the Tribe Y has no liability to the state, and Tribe Y is not liable for delinquent Forms 940.

4. Same facts as #3, except the Service filed Substitutes for Return Form 940 for Tribe Y. The Service has secured some payments on the accounts, but the tax was not fully satisfied as of December 21, 2000. Can the outstanding balance as of December 21, 2000, be abated?

Answer: Yes. Tribe Y's outstanding liability as if December 21, 2001 can be abated. Since Tribe Y satisfied the transition rule requirements as shown above in question #3, Tribe Y is entitled to have the unpaid assessments abated.

5. A tribe is on an installment payments agreement for FUTA taxes from 1995 through 1998. The tribe stopped making monthly payments in January 2001 and still owes money. The tribe paid timely for year 2000 FUTA taxes. Does the tribe still have to pay off the old deficiency? If not, can they ask for a refund for the FUTA taxes paid for years previous to 2000?

Answers: No. The Indian tribal government does not have to pay the deficiency as long as the tribe satisfies the transition rule requirements. The IRS may abate unpaid FUTA taxes for all open tax years. Tribes cannot receive a refund of FUTA taxes paid for years prior to 2000 under the terms of the law. Refunds can only be made for 2000 to tribes that met the transition rule requirements.

If you have any questions regarding our answers, please call me or Kyle Orsini of my staff at (202) 622-6040.



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cc: Bill Jegl