



SEPTEMBER 2010

Medical Resident FICA Refund Claims

If you were a medical resident prior to April 1, 2005, you may be entitled to a refund of the FICA taxes that were withheld from your wages during your position as a medical resident. After years of debate and much litigation, the IRS made an administrative determination to accept the position that medical residents, prior to April 1, 2005, are not subject to the FICA tax pursuant to the “student exception”.

Background

Prior to April 1, 2005, regulations under the Internal Revenue Code provided that a student was exempt from the FICA tax on wages earned during his employment with a school, college, or university, provided that the services performed were incidental to and for the purpose of pursuing a course of study. Whether or not medical residents fit the definition of a “student” became the subject of much debate. The IRS took the position that medical residents were ineligible for the student exception to the FICA tax, however, several Courts of Appeals throughout the country disagreed.

Effective April 1, 2005, the IRS amended the regulations to provide that an employee that works at least 40 hours (i.e., full-time) for a school, college, or university is not eligible for the student exception to the FICA rules. The current position of the IRS is that this new rule bars medical residents from qualifying for the student exception. This new position has been upheld by the courts.

Despite the fact that the regulations were changed back in 2005, the status of medical residents prior to the effective date of the new regulations was still being debated. During the period of debate, many institutions that employed medical residents had filed protective refund claims for the FICA taxes paid on the wages during the periods through March 31, 2005. Earlier this year, the IRS finally decided to accept the position that wages earned by medical residents prior to April 1, 2005 were not subject to the FICA tax.

What is the FICA tax?

FICA stands for the Federal Insurance Contributions Act. There are two separate taxes that comprise the FICA tax – the Social Security portion and the Medicare portion. The total tax is imposed on the wages earned for services performed and is shared equally by both employees and employers. The employer typically remits both portions to the government.

Why are refunds being paid?

Employers of medical residents, typically hospitals and medical schools, began filing protective FICA refund claims during the 1990's pending the resolution of the debate as to whether the student exception applied to medical residents. To the extent an employer filed a claim, it was for both the employer share and the employee share of the FICA tax. The IRS did not act on these claims when they were filed – instead they were held in

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abeyance pending resolution of the issue. As stated above, the issue was ultimately resolved earlier this year in favor of the taxpayers, thus the IRS will be issuing refunds to those who filed timely refund claims.

Who is eligible to receive a refund?

Institutions that employed medical residents (and individual medical residents) that previously filed timely protective FICA refund claims are eligible to receive refunds of the previously remitted FICA tax. However, prior to the IRS issuing any refunds, all FICA refund claims are subject to verification by the IRS. Additionally, interest will be paid on the refund claims.

What do I need to do now?

To the extent that you were employed by a hospital or medical school, if they have not already contacted you, you should consider contacting them to see if they

had previously filed a refund claim under which you may be covered. Our experience has been that in many cases the institution is unable to locate the former resident.

If you are covered under a refund claim, the hospital or medical school will be coordinating your share of the refund. You will not file anything directly with the IRS. To the extent you receive a refund, the refund is not taxable to you, however, any interest you receive on the refund will be subject to taxation, regardless of whether you receive a 1099-INT reporting such amount.

If you have any questions, please do not hesitate to contact us.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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