



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

OFFICE OF
CHIEF COUNSEL

February 23, 2006

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CC:TEGE:EOEG:ET2
CONEX-105510-06

Dear _____ :

This letter responds to your October 31, 2005 inquiry to President Bush regarding a Federal Insurance Contributions Act (FICA) tax refund claim. Your letter was forwarded to this office for a reply.

You state that you are a retired _____ employee who is seeking recovery of the employee share of FICA taxes withheld from your pay as far back as _____. According to the letter from the _____ ("the City"), which was attached to your letter, you have consented to the City claiming refunds on your behalf of \$ _____, \$ _____, and \$ _____, for _____, _____, and _____ respectively. By consenting to allow the City to file a claim for refund on your behalf, you agreed to not file a claim for refund of such amounts on your own.

The Internal Revenue Service ("Service") is prohibited by law from disclosing federal tax return and return information (including claims for refunds), unless the disclosure is specifically authorized. Thus, without the City's written authorization to release such information, the Service is prohibited from providing you with any federal tax return information related to the City, even if the City filed a claim for your share of FICA taxes.

However, we can provide general information explaining the process by which an employer obtains a refund of both the employer and employee shares of overpaid FICA taxes.

When an employer determines that it has paid more than the correct amount of FICA tax, the employer may file a claim for refund or credit of the employer and employee shares of the FICA taxes. The employer must attempt to secure written consents from its affected employees authorizing the employer to seek a refund on the employee's behalf. However, an employee may file a claim for refund on their own if the employee has not received a reimbursement from the employer, and the employee has not consented to the employer claiming a refund on the employee's behalf.

Once the employer has satisfied the requirement of gathering the consents (not just the consent of one employee, but rather the consents of all affected employees) or has attempted to gather such consents, the employer must present the information to the Service. The Service must verify the validity of the claim to insure that both the amount sought for refund in the claim is accurate and that the employer has met its obligation to contact or attempt to contact all affected employees. After the review process, if the claim is valid, the Service remits both the employer and employee shares of FICA taxes to the employer, who is then responsible for disseminating the payments to the employees who consented to the employer claiming a refund on their behalf. For large employers, the process of trying to contact affected employees, gathering consents, and refunding the employee's portion of FICA, can take a long time to accomplish. We recommend contacting the City for an update on the status of any claim for refund that the City may have filed on your behalf.

We hope this information has been helpful to you. If you have any additional questions, please contact _____ of our office at _____.

Sincerely,

Marie Cashman
Special Counsel, (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)