

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Rosalind C. Kochmanski
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(Wage and Investment)

from: Lynne Camillo
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(Tax Exempt and Government Entities)

subject: ETA Employment Tax Questions Relating to Expansion of Section 108(f)(4)

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This letter responds to your questions regarding the Expanded Tax Benefit for Health Professionals Working in Underserved Areas under section 10908 of the Patient Protection and Affordable Care Act (Affordable Care Act). This provision of the Affordable Care Act expanded the types of income from the repayment or discharge of indebtedness that are excludible from individuals' gross incomes under section 108 of the Internal Revenue Code ("the Code").

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Section 108 generally excludes from individuals' gross incomes certain types of income from the discharge of indebtedness. Relevant to your inquiry is subsection 108(f)(4), which excludes that income that individuals receive in association with payments under a National Health Service Corps Loan Repayment Program or under certain State loan repayment programs. More specifically, this subsection states that gross income does not include any amount that an individual receives under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of this Act, or, as

amended by the Affordable Care Act, under any State loan repayment or loan forgiveness program “that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas.”

The Affordable Care Act added this last portion of section 108(f)(4)—the exclusion for State loan repayment or loan forgiveness programs that increase the availability of health care services in underserved or health professional shortage areas—retroactive to 2009. This means that certain individuals who included the loan repayment or loan forgiveness amounts in their income may be entitled to refunds of taxes they paid in 2009.

Section 6402(a) of the Code contains the general authority to make refunds or credits. Under this section, in the case of any overpayment, the Service may credit the amount of such overpayment, including interest, against any internal revenue tax liability of the person who made the overpayment and shall refund any balance to such person. Other portions of section 6402 require the Service to credit overpayments against non-tax liabilities such as delinquent child support payments. Section 31.6402(a)-2 of the tax regulations provides, among other things, that any person who pays more than the correct amount of employee or employer tax under section 3101 or 3111 may file a claim for refund or claim credit of such overpayment. This section sets forth the basic requirements for claiming such refunds or credits.

For more information about this expansion of Section 108(f)(4), please see the attached IRS News Release, “Affordable Care Act Provides Expanded Tax Benefit to Health Professionals Working in Underserved Areas”, IR-2010-74, released June 16, 2010.

Responses to Specific Inquiries

Inquiry 1: Does the new subsection 108(f)(4) cover only loan forgiveness, or does it also cover loan repayment?

Answer: The new subsection 108(f)(4) covers both loan forgiveness and loan repayment.

Prior to the enactment of this provision of the Affordable Care Act in March of 2010, the exclusion provided by subsection 108(f)(4) covered only certain loan repayment programs—that is, amounts that individuals received under the National Health Service Corps Loan Repayment Program, or under certain State loan repayment programs that were eligible for funding under the Public Health Service Act.

The Affordable Care Act, however, extended this exclusion to apply also to those amounts that individuals receive under State loan repayment or forgiveness programs that are intended to increase the availability of health care services in areas that are either underserved or experience health professional shortages.

Inquiry 2: Are there sufficient procedures in place to prevent individual employees from receiving “double refunds” of FICA taxes (that is, refunds from both their employers and from the IRS)?

Answer: Yes. IRS procedures for claiming FICA tax refunds require employers and employees to coordinate with each other in order to ensure that duplicate refund claims are not filed and double refunds are not paid.

The procedures employees use to claim refunds of FICA taxes are different than the procedures used to claim income tax refunds. First, employees are encouraged to contact their employers and request that the employer seek a refund of FICA taxes on the employees' behalf. Because employers also pay a portion of FICA that is not withheld from payments to the employee, the employer will also be entitled to a refund. The employer may have other similarly situated employees who are entitled to refunds and the IRS can process a single refund claim filed by the employer more efficiently than it can process numerous refund claims filed by individual employees. If the employer refuses to seek a refund on the employee's behalf, the employee may file a refund claim using Form 843. Line 6 is where the employee explains the reason for the refund and efforts made to secure it. As discussed further below, the employee's claim for refund generally must include a statement from the employer indicating whether the employer has reimbursed any of the FICA tax to the employee or filed a refund claim for any of the employee FICA tax for which the employee is seeking a refund.

Section 31.6402(a)-2(b) of the tax regulations provides generally that an employee may file a claim for refund of FICA taxes erroneously withheld by his employer only if: (1) the employee is not reimbursed by his employer for the erroneously withheld tax, (2) the employee does not authorize the employer to file a claim for refund, and (3) the employee has not claimed the amount of overwithheld FICA taxes as a credit against his income tax liability. This section also specifies that the refund claim must include a statement by the employee which sets forth whether he has claimed any portion of the overcollection as a credit against income tax liability, and must include a statement obtained, if possible, from the employer, setting forth the extent, if any, of any overpayment which has been claimed as a refund by the employer or authorized by the employee to be so claimed. If the employer does not furnish the employee with such a statement, the employee's refund claim must set forth the facts to the best of the employee's knowledge and explain the employee's inability to obtain the statement from his employer. The failure to comply with these procedures may provide a basis for disallowing the claim.

Inquiry 3: Will the IRS notify the Social Security Administration (“SSA”) when an individual employee receives a FICA refund?

Answer: The IRS notifies SSA when the employee receives a FICA refund through their employer as a result of the employer seeking a refund on the employee's behalf. However, when the employee files an individual claim for refund on his or her own

behalf using Form 843, there is no formal process by which the IRS informs the SSA of an individual's receipt of a FICA refund.

As noted above, employees are encouraged to first contact their employers and request that they seek a refund of the employee share of FICA on the employee's behalf. Employers seeking such refunds must file an amended employment tax return (Form 941-X). Employers must file a separate Form 941-X for each Form 941 that needs to be corrected. When filing Form 941-X, the employer must certify that the employer has filed or will file the Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required. SSA receives a copy of the Forms W-2 or W-2c and is therefore on notice of the FICA refund.

If the employer refuses to seek a refund on the employee's behalf, the employee may file a FICA refund claim his or her own claim for refund of the employee share of FICA using Form 843. Under these circumstances, the employee will not receive a Form W-2 or Form W-2c from the employer, and there is no formal process by which the IRS informs SSA of the individual's receipt of a FICA refund.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Lynne Camillo or Syd Gernstein (202) 622-6040 if you have any further questions.