



American Payroll Association

Government Relations • Washington, DC

May 29, 2015

Internal Revenue Service
CC:PA:LPD:PR (Notice 2015-15)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20224
Submitted via e-mail to: Notice.Comments@irs.counsel.treas.gov

Re: Notice 2015-15

Ladies and Gentlemen:

The American Payroll Association (APA)¹ thanks the Service for the opportunity to comment on the proposed revenue procedure concerning employee consents that are used by an employer to support a claim for refund for overpaid FICA or RRTA taxes. The APA commends you for your effort to improve the process by permitting employers to request, obtain, and retain consents in an electronic format. The APA also appreciates your work to provide additional guidance to define “reasonable efforts” in relation to the attempt to secure an employee’s consent.

The APA supports the proposed revenue procedure to allow for electronic consents and believes that the proposal also advances the IRS’s goal “of making the process more efficient while protecting the interests of employees.” The proposal should streamline the process for employers that choose to seek consents in an electronic format, while also allowing the continued use of a paper format for employers that do not wish to change their procedures. While supporting the move to allow electronic consents, the APA recommends that the revenue ruling should not be applicable in the case of “employer-only” FICA refund requests.

Employer-Only Filings

Section 2 of the revenue procedure specifically states that it is not applicable to overpayments of the Additional Medicare Tax. This is because an employee may claim a refund of overpaid tax via a Form 1040 or 1040X, while an employer may only make a claim for refund if the employer did not withhold

¹ The APA is a nonprofit association of over 20,000 payroll professionals who process payroll for approximately 17,000 employers throughout the 50 states, the District of Columbia and the U.S. territories. Our membership also includes representatives of large, medium, and small payroll service providers who are responsible for processing payroll for an additional 1.5 million employers. In total, the APA represents those professionals responsible for paying an aggregate total of one-third of the private sector workforce.

The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

the overpaid Additional Medicare Tax from the employee's wages. The APA suggests expanding the scope of the exclusion to include all situations where "employer only" filings are used to claim a FICA refund. For instance, if a successor employer fails or is unable to recognize a predecessor employer's tax contributions in the year of the succession, the employer will use a 941-X in the following year to recover the excess FICA taxes. This results in a similar situation to the Additional Medicare Tax where the employee will recover excess FICA taxes via the Form 1040 filing and the employer will file for a refund of taxes that it has overpaid. The APA suggests that the revenue ruling should not apply in instances of "employer only" filings, as well as in the case of the Additional Medicare Tax.

Reasonable Efforts

The APA appreciates the Service's efforts to provide guidance on what constitutes "reasonable efforts" to obtain an employee's consent. The procedure provides clear steps that an employer must take to qualify as having made reasonable efforts, including an initial request and required follow-up steps, if the initial request is undeliverable. One concern involves the required request for the employee to acknowledge receipt of the electronic request. Because not all e-mail systems are the same an employee may not know how to use a "voting" button. It may be more effective to simply ask for a written reply message from the employee.

The APA strongly supports the IRS's proposal to expressly allow for the use of electronic consents in the FICA refund process. The new procedure should allow employees, employers and the Service to complete the refund process in a more efficient manner while protecting the rights of the individual taxpayer.

If you have any questions, please contact Curtis Tatum, whose contact information is provided below.

Sincerely,

Rebecca Harshberger, CPP
Co-chair, Government Relations Task Force, Subcommittee on IRS Issues
American Payroll Association

Karen Salemi, FLMI, CPP
Co-chair, Government Relations Task Force, Subcommittee on IRS Issues
American Payroll Association

Curtis Tatum, Esq.
Senior Manager, Payroll Information Resources
American Payroll Association
(202) 248-4650
ctatum@americanpayroll.org