

FICA REFUND CLAIMS
FREQUENTLY ASKED QUESTIONS

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Introduction

The New York and Presbyterian Hospital (the “Hospital”) is the successor by merger of two former hospitals which employed the individuals enrolled in ACGME accredited programs (collectively, the “Medical Residents”) at what are now known as the Hospital’s Weill Cornell Campus (the “NYP/Weill Cornell Residency Program”) and its Columbia Campus (the “NYP/Columbia Residency Program”). Since the merger, the Hospital now employs the Medical Residents in both the NYP/Weill Cornell and NYP/Columbia Residency Programs.

The Hospital filed protective Medical Resident Federal Insurance Contribution Act (“FICA”) refund claims with the Internal Revenue Service (“IRS”) (the “FICA Refund Claims”) for Social Security and Medicare taxes paid on wages earned by eligible Medical Residents for certain tax periods ending before April 1, 2005. During this period, many Medical Residents also independently filed their own individual FICA Refund Claims directly with the IRS. These FICA Refund Claims were based on a controversial and unsettled position, disputed by the IRS, that Medical Residents were exempt from FICA tax as students under the Internal Revenue Code’s “student exception” and there was considerable uncertainty as to whether this exception would ever be applied to Medical Residents. At the time, the Hospital, like other similarly situated institutions across the country, viewed the prospects of prevailing as remote.

Following the IRS’s determination in March 2010 that it would allow certain FICA Refund Claims for tax periods prior to April 1, 2005, the Hospital retained Deloitte Tax LLP to assist it in the submission and settlement of FICA Refund Claims, and to solicit consent forms (the “Consent Forms”) authorizing the Hospital to act on their behalf in obtaining the refunds for periods for which the Hospital had filed FICA Refund Claims. The Consent Forms required Medical Residents to certify, among other things, they had not already filed an individual FICA Refund Claim directly with the IRS.

During 2011, the Hospital submitted “perfected” FICA Refund Claims to the IRS. Following receipt of the perfected FICA Refund Claims, the IRS proceeded to determine the eligibility of these claims and, if claims were accepted and approved, to verify the amounts to process refunds plus statutory interest. The IRS has accepted perfected FICA Refund Claims for all years filed by the Hospital except tax years 2003 and 2004. Excluding FICA Refund Claims filed directly by individual Medical Residents, where the IRS pays refunds directly to the Medical Residents, the IRS has recently completed its processing of the Hospital’s perfected FICA Refund Claims and has remitted the refunds to the Hospital for distribution for most of the quarters claimed. One quarter has not yet been paid by the IRS and is pending. The Hospital is in the midst of processing the refunds it has received for distribution to eligible Medical Residents and expects that process to be completed by July 31, 2013.

For additional information, we provide answers to the following frequently asked questions:

1. What are FICA taxes?

FICA stands for the Federal Insurance Contributions Act. FICA taxes consist of two separate taxes, Social Security and Medicare taxes that are paid on wages earned for services performed. Employers withhold and pay their employees’ share of the FICA taxes and also pay the employer’s share.

2. Why are FICA refunds being paid to Medical Residents and their employers?

Based on a controversial and unsettled position that Medical Residents were exempt from FICA tax as students under an exception in Internal Revenue Code section 3121(b)(10), some employers (typically hospitals and medical schools) and individual taxpayers (Medical Residents) began filing FICA Refund Claims in the 1990’s. This exception is

referred to as the “student exception” and had been applied to a student at a school, college or university who was also an employee of that school, college or university. As this exception had not been applied to Medical Residents before, and the IRS was denying such claims by asserting that Medical Residents were employees (and not students), there was considerable uncertainty as to whether the student exception would ever be applied to Medical Residents, and the Hospital, like other similarly situated institutions across the country, at the time viewed the prospects of prevailing as remote. Lawsuits filed by institutions seeking to enforce FICA Refund Claims were vigorously opposed by the Department of Justice with mixed results. During this period of uncertainty, certain, but not all, hospitals and Medical Residents filed FICA Refund Claims, which were either denied outright or held in suspense for years by the IRS.

In March 2010, the IRS announced that it had made an administrative determination to accept the position that Medical Residents are exempt from FICA taxes for tax periods ending before April 1, 2005, when new IRS regulations went into effect. *See IR-2010-25, available at <http://www.irs.gov/uac/IRS-To-Honor-Medical-Resident-FICA-Refund-Claims>.*

3. What is the significance of April 1, 2005?

On April 1, 2005, new regulations regarding the student FICA exception became effective. One part of these regulations states that an employee who works 40 hours or more (full-time employee) for a school, college or university is not eligible for the student exception. This part of the regulations excludes Medical Residents from the student exception. Therefore, claims for years after April 1, 2005 cannot be brought.

4. Who is eligible to receive a refund?

Institutions that employed Medical Residents and individual Medical Residents may be eligible to receive refunds if they are covered by timely filed FICA Refund Claims. An institution's FICA Refund Claim would include two parts: the first part is the employer's FICA tax, and the second part is the employee's FICA tax. Individual Medical Residents can be covered under either (i) FICA Refund Claims they filed themselves individually or (ii) FICA Refund Claims filed by the institutions that employed them. All FICA Refund Claims are subject to additional eligibility requirements promulgated by the IRS, including, among other things, verification of the amount of the FICA Refund Claim and timeliness.

5. As an individual enrolled in an ACGME accredited program, am I eligible for a FICA tax refund pursuant to the Hospital's FICA Refund Claims?

The Hospital believes that individuals it employed who were enrolled in an ACGME accredited program should be eligible for a FICA tax refund for the eligible years in which the Hospital filed FICA Refund Claims, provided such individuals provided timely Consent Forms to the Hospital as described in FAQ #8 below and did not file their own individual FICA Refund Claims.

Please note that individuals employed by an institution other than the Hospital (i.e., Weill Cornell Medical College or Columbia University College of Physicians and Surgeons) are not included in the FICA Refund Claims filed by the Hospital. You should contact the institution which is listed as your employer in your relevant W2s regarding any possible FICA tax refunds.

6. What years are included in the Hospital's FICA Refund Claims?

The Hospital filed protective FICA Refund Claims for the NYP/Columbia Residency Program for calendar years 1995 and 1997 through March 31, 2005. Therefore, FICA taxes paid during calendar years 1995 and 1997 through March 31, 2005 may be eligible for refunds.

The Hospital did not file protective FICA Refund Claims for the NYP/Columbia Residency Program for calendar year 1996. However, Medical Residents may be eligible for a refund for 1996 if they personally filed a timely FICA Refund Claim with the IRS.

The Hospital also filed protective FICA Refund Claims for the NYP/Weill Cornell Residency Program for calendar years July 1, 2001 through March 31, 2005. Therefore, FICA taxes paid during calendar years July 1, 2001 through March 31, 2005 may be eligible for refunds.

The Hospital did not file protective FICA Refund Claims for the NYP/Weill Cornell Residency Program for calendar years 1995 through June 30, 2001. However, Medical Residents may be eligible for a refund for 1995 through June 30, 2001 if they personally filed a timely FICA Refund Claim with the IRS.

Below is a chart summarizing the Hospital's FICA Refund Claims:

The Hospital's FICA Refund Claims				
Tax Years Covered by FICA Refund Claims	Date FICA Refund Claim Mailed	Last Date to File FICA Refund Claim	Filed on behalf of NYP/Columbia Residency Program	Filed on behalf of NYP/Weill Cornell Residency Program
1995	April 15, 1999	April 15, 1999	Yes	No
1997	March 29, 2001	April 15, 2001	Yes	No
1998	April 5, 2002	April 15, 2002	Yes	No
1999	April 10, 2003	April 15, 2003	Yes	No
2000	April 4, 2004	April 15, 2004	Yes	No
2001	April 4, 2004	April 15, 2005	Yes	No: 1/1/2001 – 6/30/2001 Yes: 7/1/2001 – 12/31/2001
2002	April 4, 2004	April 15, 2006	Yes	Yes
2003*	April 6, 2006	April 15, 2007	Yes	Yes
2004*	April 6, 2006	April 15, 2008	Yes	Yes
2005	April 10, 2009	April 15, 2009	Yes	Yes

*Please be advised that the IRS has held that it will not honor the Hospital's FICA Refund Claims for the calendar years 2003 and 2004 because it alleges it did not receive these timely filed protective claims from the Hospital. The Hospital is appealing this decision and will update the website as events develop. The IRS has confirmed receipt of the original protective FICA Refund Claims for all of the Hospital's other protective filings. Please note the IRS's decision does not affect any FICA Refund Claims for calendar years 2003 and 2004 individual Medical Residents personally filed with the IRS. If you filed your own FICA Refund Claims in these years, we suggest you consult your tax advisor. If you have any questions regarding filing your own FICA Refund Claims, please refer to the FAQs published by the IRS at <http://www.irs.gov/Charities-&Non-Profits/Questions-and-Answers-about-Medical-Resident-FICA-Refund-Claims>.

7. Why did the Hospital file protective FICA Refund Claims in some years but not in others?

In 1999, the Hospital entered into a settlement agreement with the IRS concerning unrelated tax issues. As part of that settlement agreement, the IRS required the Hospital to agree not to file protective FICA Refund Claims in relation to the NYP/Weill Cornell Residency Program for calendar years 1995 through June 30, 2001. Given the IRS's position on disallowing such claims consistently until 2010 and the Hospital's view at the time of the remote likelihood that FICA Refund Claims would ever be allowed, the Hospital consented to the IRS's demand. Due to this same considerable uncertainty as to whether the student exception would ever be applied to Medical Residents, the Hospital also decided not to file protective FICA Refund Claims in relation to the NYP/Columbia Residency Program for calendar year 1996. The Hospital's decisions in those years did not preclude Medical Residents from filing on their own behalf. If you filed your own FICA Refund Claims in any years, we suggest you consult your tax advisor. If you have any questions regarding filing your own FICA Refund Claims, please refer to the FAQs published by the IRS at <http://www.irs.gov/Charities-&-Non-Profits/Questions-and-Answers-about-Medical-Resident-FICA-Refund-Claims>.

We understand that many Medical Residents in fact did file protective FICA Refund Claims on their own behalf, and such FICA Refund Claims were not affected by the Hospital's situation.

8. What did I have to do in order to be included in the Hospital's FICA Refund Claims submitted for tax years prior to April 1, 2005?

If you were covered by the Hospital's protective FICA Refund Claims, you were mailed a letter on or by October 15, 2010 with detailed instructions about how to participate in

the Hospital's FICA Refund Claims (the "Consent Notice"). To participate, the Consent Notice explained you were required to complete, sign and return the Consent Form (no longer available). The deadline to return the Consent Forms has now passed.

9. What if I did not receive a Consent Form?

The Hospital sent Consent Forms to Medical Residents in its employ solely in those years in which the Hospital made a previous protective FICA Refund Claim filing. Therefore, the Hospital did not send Consent Forms to (i) NYP/Columbia Residency Program Medical Residents in its employ solely in 1996 or (ii) NYP/Weill Cornell Residency Program Medical Residents in its employ solely in 1995 through June 30, 2001 because it had not filed a protective FICA Refund Claims for these years with the IRS and the IRS, therefore, would not accept perfected FICA Refund Claims from the Hospital for these years. The Hospital's decisions in those years did not affect timely filed FICA Refund Claims by individual Medical Residents who had filed their own FICA Refund Claims.

10. If I consented, when will I get my money?

The IRS has recently approved payments for the Hospital's perfected FICA Refund Claims referenced in FAQ #6 for all of following quarters:

1995: Quarters 1-4

1997-1999: Quarters 1-4

2000: Quarters 1-3

2001-2002: Quarters 1-4

2005: Quarter 1

Payments are expected to be distributed by July 31, 2013 to qualifying Medical Residents who timely submitted the Consent Form.

The IRS has approved but not yet paid Quarter 4 of tax year 2000. These payments will be made promptly upon receipt of these funds from the IRS by the Hospital.

The IRS has disallowed the FICA Refund Claims from all quarters of 2003 and 2004 on the asserted basis it did not receive the Hospital's timely-filed FICA Refund Claims for those years. The Hospital is appealing this decision. If the Hospital is successful in its appeal, these payments will be made promptly upon receipt of these funds from the IRS by the Hospital.

11. What if I failed to return my Consent Form to the Hospital?

If you did not return your Consent Form pursuant to the instructions in the Consent Notice, your claim was not included in the Hospital's perfected FICA Refund Claims and you will not receive a refund. However, if you did not return the Consent Form because you had separately filed your own timely FICA Refund Claim, your failure to return the Consent Form would not affect your ability to obtain a refund.

12. How do I know if I was included in the Hospital's FICA Refund Claims?

Subject to approval by the IRS, you are included in the Hospital's FICA Refund Claims if you returned your Consent Form to Deloitte Tax LLP and received a confirmation of receipt from them. If you are not sure if Deloitte Tax LLP received your Consent Form, please contact Deloitte Tax LLP by email at NYPFICA@deloitte.com.

13. If I was included in the Hospital's FICA Refund Claims, what will be my individual refund?

The amounts of individual refunds have not yet been calculated. Once the amounts are known, refund checks will be printed and mailed expeditiously, along with applicable federal tax forms, as needed.

14. Can a FICA Refund Claim still be filed for any periods before April 1, 2005?

No. The period of limitations for filing a claim for tax periods before April 1, 2005 has expired. On April 17, 2013, the IRS clarified that neither Medical Residents nor their employers can amend prior FICA Refund Claims because the last date such claims could be filed was April 15, 2009. Moreover, the IRS stated that if a Medical Resident was not included on an employer's timely-filed perfected FICA Refund Claim, for whatever reason, the IRS is no longer authorized to pay additional FICA refunds. *See* <http://www.irs.gov/Charities-&-Non-Profits/Questions-and-Answers-about-Medical-Resident-FICA-Refund-Claims>.

15. Will I receive interest on my refund?

Yes. The IRS will pay statutory interest when refunding these taxes. Interest in excess of \$600 will generally be reported on Form 1099-INT as required by the IRS.

16. What is the process that the Hospital must follow in order for me to obtain my refund?

The IRS instituted a process for all institutions that have pending FICA Refund Claims. Each FICA Refund Claim must proceed through various steps. Once the IRS approves the FICA Refund Claims, it may take several months or longer for the IRS to issue such refund checks to the Hospital. After the IRS issues refund checks to the Hospital, the

Hospital's post-claim administration work (i.e., allocating interest to the medical residents, issuing individual checks, and preparing Forms W-2c and 1099-INT) then commences. This process can also take several months.

17. Who should I contact if I have questions regarding this initiative or to update my contact information?

Each Medical Resident's personal tax situation is different. We encourage you to discuss questions about your particular situation with your tax preparer or other personal financial advisor. For general updates, please visit our website regularly.

You are personally responsible for keeping your contact information up to date with Deloitte Tax LLP by email at NYPFICA@deloitte.com. Failure to do so could cause any refund checks to you to be undeliverable, and may ultimately be acquired permanently by the state of your last known residence.

If you have any questions, you may contact the IRS at 1-800-919-1703 or visit its website, which provides more information. See <http://www.irs.gov/Charities-&-Non-Profits/Questions-and-Answers-about-Medical-Resident-FICA-Refund-Claims>.

Please do not contact the Hospital directly. General inquiries can also be sent to Deloitte Tax LLP by email at NYPFICA@deloitte.com.