

December 7, 2012

**Re: Second Request - Notice of opportunity to participate in Medical Resident FICA Refund Claims for periods 1997 through 1<sup>st</sup> quarter of 2005**

Dear Sir or Madam,

This letter is a **SECOND REQUEST** and includes important information about certain taxes you paid during your medical residency, which may be refundable to you should you choose to participate in the refund claim filed by University Hospital of Cincinnati, Inc. (UHI). When the first request letter went out, the due date was originally set (allowing 45 days to consent) and that date has since expired. The mailing was done with a UC Health logo on the outer envelope and the letter was on UC Health letterhead. You have not yet returned a consent, thus we are making a second attempt to reach you, through Deloitte Tax LLP, a professional services firm that is assisting us in this matter. We are now allowing an additional 30 days for you to reply. A consent form must be received by **January 7, 2013**, in order to be included in the claim. To participate in the refund claim, you must take timely actions outlined in this letter. If you choose to take no action, taxes paid by you will not be refunded under this claim.

As you may know, UHI filed claims (MR claims) for refund of social security and Medicare taxes paid pursuant to the Federal Insurance Contribution Act ("FICA") on wages earned for services performed by medical residents for certain tax periods ending before April 1, 2005.

As has been previously reported, since 2005 UHI and the United States have been in litigation concerning the extent to which FICA taxes must be paid on stipends provided to medical residents enrolled in programs sponsored by UHI. After some initial court proceedings, UHI and the United States engaged in efforts to settle the dispute. While the parties were in the process of finalizing that settlement, the IRS announced it had made an administrative determination to accept the position that medical residents are generally excepted from FICA. The government has agreed to detailed terms in a settlement offer made by UHI. On December 15, 2011, a Stipulation and Order of Settlement and Dismissal was signed by Judge Beckwith to effectuate the settlement offer. While the litigation has been concluded, the government is still in the process of transferring its files and jurisdiction of this matter to the IRS in Ogden, Utah, which will handle the administrative procedures in accordance with the procedures applicable to all taxpayers seeking medical resident FICA refunds as set forth in IRS Pub. 4843-A. This letter is the beginning of the IRS administrative process. Because certain matters are outside of our control, we cannot be certain when refunds will be received for residents who wish to participate. The settlement agreement applies to eligible residents who participated in a residency program at UHI and were paid wages during the tax years 1997 through the 1<sup>st</sup> quarter of 2005.

Wages paid prior to January 1, 1997, were paid by the University of Cincinnati, and those refunds were addressed in a separate refund consent process.

After we perfect our MR claim(s), the IRS will verify the amount of the MR claim(s) and begin issuing refunds plus statutory interest if applicable. **We cannot receive a refund of the FICA taxes that were withheld and paid on your behalf unless we have your written consent. If you do not consent to have UHI obtain your refund, you may be precluded from receiving any refund of the FICA taxes withheld and paid on your behalf** because the time period for filing an individual claim for refund with the IRS may have expired.

SOME RESIDENTS MAY HAVE PROVIDED A CONSENT DURING A PROCESS CONDUCTED MANY YEARS AGO. IRS Pub. 4843-A sets forth the preferred consent format utilized herein. You must represent under penalties of perjury that you are aware your social security benefits could be impacted if you participate in this refund claim. PLEASE USE THIS CONSENT FORM AND DO NOT ATTEMPT TO RELY ON AN OLDER CONSENT YOU MAY HAVE SUBMITTED.

If you consent, UHI will collect your FICA tax refund, plus applicable statutory interest that it receives on your behalf from the IRS and remit the refund directly to you. Due to procedural issues, there are claims for some years (1998, 1999, 2000 and 2001) that may not be eligible for interest from the IRS in full or in part. UHI may remit interest it earned, if any, while the contested funds were in UHI's possession during litigation. Such receipt and distribution of tax and interest is anticipated to take several months, perhaps even more than a year, as UHI must make reasonable effort to obtain consents, and prepare the documentation required by the IRS with respect to these claims. The IRS will review the submission before the claim is processed for refund and may seek additional information or modifications. The FICA tax refund is not taxable; however, the interest on the refund is taxable to you whether or not you receive a Form 1099-INT, Interest Income. UHI is required to file Form 1099-INT with the IRS and furnish a copy to you if we pay you interest of \$600 or more in a calendar year.

In addition, if you consent to participate in the MR claim(s), UHI will file Form W-2c, *Corrected Wage and Tax Statement*, with Social Security Administration (SSA), and furnish a copy to you for each tax year for which you receive a refund of FICA taxes. In most cases, Form W-2c will show a reduction in your earnings for social security coverage purposes in an amount equal to all the wages you were paid for services performed as a medical resident. Social security benefits are based on your earnings over your working lifetime. Accordingly, based on your personal circumstances, a refund could have a detrimental effect upon disability, survivors, or retirement benefits that you, or your family, are receiving or may seek to receive in the future. If you want information about the effect on your social security benefits, you should contact SSA directly at 1-800-772-1213 (toll free). If you call or visit a Social Security office, please have this letter with you. It will help SSA answer your questions. You might want to review your social security record before and after your refund has been processed. You can use your current Social Security Statement or you can request a copy of your Social Security Statement at the following website: <http://www.ssa.gov/mystatement>.

To consent to receive your share of the refund from UHI, you must complete the enclosed consent form and send it to UHI as indicated at the bottom of the consent form. Your consent form must be sent by e-mail or fax, or be postmarked, no later than **January 7, 2013** (THE "MAILING DEADLINE") to be considered timely. **If you do not consent or if your consent form is not received within five (5) business days after the Mailing Deadline, you will not be able to participate in the refund claim.**

You will receive an emailed confirmation of your consent within 10 business days of receipt.

**Please submit your consent form only once, do not send unsolicited duplicate consents.** If you have not received your expected confirmation of receipt within 10 business days, you may send an inquiry via email to [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com).

If you have already claimed and received a refund or credit for FICA taxes that were withheld from medical resident wages, or if you filed an individual refund claim for such FICA taxes and that claim is still pending with the IRS, then we will not be able to file your MR claim for the year(s) that you received a refund or credit or have a pending refund claim. This restriction does not apply if you filed a refund claim and it was rejected by the IRS. If we can file your MR claims for some years, but not others, check your consent form as "Yes" for the years you are eligible and leave blank any years for which you are not eligible.

If you consent to be part of UHI MR claim(s) and the IRS determines that you are ineligible for a refund because you already received a refund based on an individual claim you filed, the IRS will not refund your share to us and this information may be disclosed to us.

If you were part of a residency program outside of UHI, only the portion of the refund paid by UHI can be claimed. Please consult the other institution(s) in the event they are filing a FICA refund claim as well.

## **NAME CHANGE OR DEATH**

If your name has changed since your residency, please provide legal documentation as to your name change (e.g. marriage certificate, divorce decree, etc.) with your signed consent form.

If you are the personal representative of a deceased resident, please provide a copy of the death certificate as well as legal documentation as to your authority to represent the estate of the deceased resident.

This additional documentation should be submitted as an attachment to your completed consent form.

#### **DIRECT GENERAL QUESTIONS ON THIS INITIATIVE TO DELOITTE TAX LLP**

Neither UHI, nor Deloitte Tax, can advise you whether or not you should consent to participate in the refund claim, nor can we provide you with tax, legal, accounting or financial advice. We encourage you to discuss questions about your particular situation with your tax preparer or other personal financial advisor.

It is unclear how long it will take the IRS to refund FICA taxes to us. As a result, we do not know how long it will take for FICA refund payments to be made to consenting residents. This process may take several months, perhaps even more than a year. We thank you in advance for your patience as we finalize these refund claims.

**For general procedural questions on this initiative that are not answered through the enclosed frequently asked questions, you may contact Deloitte Tax LLP by email at [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com).**

#### **ADDRESS UPDATES**

If your address as shown on this consent letter is incorrect, please provide your current address on your returned consent form. If you move after your consent form is submitted, and before you receive a refund check, send address updates to Deloitte Tax LLP by email to [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com). Please note that all requests to change your mailing address must include the last four digits of your Social Security number so that we can verify that the request is coming from you.

Please note that keeping your address information current is your responsibility. Failure to provide your current address could result in delay of delivery of your refund check or return of your check as undeliverable. Remember that this refund process may take more than a year to resolve.

If you have any questions about this letter, please contact Deloitte Tax LLP at [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com).

Very truly yours,

Andrew T. Filak, MD  
Senior Associate Dean  
University of Cincinnati College of Medicine

Thomas R. Kromer  
Tax Director  
Deloitte Tax, LLP

**University Hospital of Cincinnati, Inc.**  
**\*\* CONSENT FORM – MEDICAL RESIDENT FICA TAX REFUND CLAIM \*\***

**Indicate updates to name/address here:**

My signature herewith affirms my acknowledgement and consent to participate in the refund claim for FICA taxes withheld from residency wages for the noted period during which I was enrolled in this medical residency program. Select **ONLY ONE** of the following:

- [ ] **I consent** to the Social Security and Medicare tax (FICA) refund filed or to be filed on my behalf for **all applicable years** during which I was a resident.
- [ ] **I consent** to the Social Security and Medicare tax (FICA) refund filed or to be filed on my behalf for **only noted years** indicated herein during which I was a resident. [Check the appropriate box(es), as applicable]

1997 [ ]	1998 [ ]	1999 [ ]	2000 [ ]	2001 [ ]
2002 [ ]	2003 [ ]	2004 [ ]	2005 1 <sup>st</sup> quarter [ ]	

- [ ] **I do not consent.**

For each year of consent, I represent that (1) I have not claimed and will not claim refund or credit from the IRS for such over collected FICA taxes from wages paid for my performance of services as a medical resident, or, if I have, that claim has been rejected, (2) I did not receive a FICA tax refund or credit, due to earnings in excess of the Social Security wage base on my Federal Income Tax return (e.g. Form 1040), and (3) I understand that my Social Security earnings record will be corrected to reflect reduced wages as a medical resident for tax years for which I receive a refund. I understand that removing these wages could affect my eligibility for, or the amount of, future Social Security benefits.

Under penalties of perjury, I declare that I have examined these statements and to the best of my knowledge and belief they are true, correct and complete.

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Signature

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Date

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Residency Program Name

**Ex: Pediatrics, Gynecology, Surgery, etc.**

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Social Security Number (**Required**)

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Daytime phone number (In case we have questions)

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Email address (**Required for confirmation**)

**MUST BE SENT BY E-MAIL OR FAX, OR BE POSTMARKED, NO LATER THAN January 7, 2013.**

Please keep a copy of your signed consent form for your records. Return your signed consent form, along with any required legal documentation for name changes or death, to **ONE** of the following (in order of preference):

- Email at [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com)
- Fax at: 614-233-6264
- Mail at:  
UHI, Inc.  
c/o Deloitte Tax LLP  
220 W. Main Street, Ste 2100  
Louisville, KY 40202

**NOTE:** If your address as shown on this Consent Form is not current, provide your correct current address with this consent form. If you move after your consent form is submitted, and before you receive a refund check, such address corrections should be directed to Deloitte Tax LLP by email to [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com)

**UHI, Inc.**  
**Frequently Asked Questions**  
**About Medical Resident FICA Refund Claims**

**I. General Information**

**1. Who is Deloitte Tax LLP?**

Deloitte Tax LLP is a professional service provider that is assisting UHI with the medical resident FICA refund claim process. Much of the official correspondence from UHI to you, and from you to UHI related to this claim will be handled by and through Deloitte Tax LLP.

**2. 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 share.

**3. Why are FICA refunds being paid to medical residents and their employers and why has this taken so long to resolve?**

Under an untested position that medical residents are excepted from FICA tax as *students* under 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 may apply to a student at a school, college or university who is also an employee of that school, college or university.

As this position had not been applied to medical residents before and the IRS was not refunding such claims by asserting that medical residents were employees (and not students), there was considerable uncertainty as to whether the *student exception* would prevail. Lawsuits filed by institutions seeking to enforce FICA refund claims were vigorously fought by the Department of Justice, with mixed results. As the possibility of eventual FICA refund claim payments became more probable, UHI began filing refund claims as well. The IRS alleged it erroneously paid some refund claims to UHI and the government initiated litigation to recover those refunds. Information is available for UHI to pursue claims for the years 1997 through the 1<sup>st</sup> quarter of 2005.

Wages paid prior to January 1, 1997, were paid by the University of Cincinnati, and those refunds were addressed in a separate refund consent process.

For those years/quarters that an employer filed a refund claim, the claim includes two parts; the first part is the employer's FICA tax, and the second part is the employee's FICA tax (for consenting medical residents only). In some cases, individual medical residents filed their own claim for the employee share of the FICA tax. The IRS held the claims in suspense because there was a dispute as to whether the student FICA exception applied. The IRS has made an administrative determination to accept the position that medical residents are excepted from FICA taxes for tax periods ending before April 1, 2005, when new IRS regulations went into effect. The litigation between UHI and the government caused additional procedural delays to effectuate a settlement, dismissal and transfer of the case to the IRS for administrative processing.

**4. Who is eligible to receive a refund?**

Institutions that employed medical residents and individual medical residents are eligible to receive refunds if they are covered by timely filed FICA refund claims. Institutions can be covered under FICA refund claims they filed themselves. Individual medical residents can be covered under FICA refund claims they filed themselves or under claims filed by the institutions that employed them. These refund claims are subject to the same requirements that apply to all FICA refund claims including verification by the IRS of the amount of the claim and applicable payment of interest.

**5. 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.

#### **6. How would this initiative impact my benefits from the Social Security Administration?**

Whether an employee's social security benefits (either current or future) will be reduced on account of removing wages from his or her social security earnings record will depend on the employee's personal circumstances. A refund could have a detrimental effect upon disability, survivors, or retirement benefits that you, or your family, are receiving or may seek to receive in the future. If you want information about the effect on your social security benefits, you should contact SSA directly at 1-800-772-1213 (toll free). If you call or visit a Social Security office, please have this letter with you. It will help SSA answer your questions. You might want to review your social security record before and after your refund has been processed. You can use your current Social Security Statement or you can request a copy of your Social Security Statement at the SSA website: <http://www.ssa.gov/mystatement>.

#### **7. If I do not consent, will my FICA wages be affected?**

At this time, the IRS is indicating that residents who consent and obtain a refund are to receive a W-2c reporting reduced FICA wages. Recent IRS and SSA materials indicate **residents who do not consent** (and thus receive no refund) will not have a W-2c filed reporting adjusted (reduced) social security earnings.

### **II. Refund Application Procedures**

#### **8. What must I do in order to be included in UHI FICA refund claim for training that I received prior to April 1, 2005?**

The letter included in this mailing provides detailed instructions on how to participate in UHI's refund claim. If you wish to participate please read the materials thoroughly, complete and sign the Consent Form, and return the signed Consent Form as indicated on its face. Reply options, in order of preference, are (1) email, (2) fax, and (3) hardcopy mail.

#### **9. If I consent, when will I get my money?**

Residents who consent to participate in the refund claim should not expect to receive their refund check from UHI until several months (or even more than a year) after consenting. This is because there are multiple procedural steps that must be undertaken by UHI and the government after the consents are received and before UHI is able to remit the refunds to the residents (i.e. filing final refund claims, review and processing by the government, and allocation of applicable interest to individual residents).

#### **10. What is the process that UHI must follow in order for me to obtain my refund?**

The IRS has instituted a process for all institutions that have pending refund claims to follow. Each claim must proceed through the following steps:

- Offer residents opportunity to participate in the refund claim.
- Once the consent period is closed, then the final claim calculations must be completed and IRS schedules and attachments prepared for each quarter of each year for which a claim is being submitted.
- Once submitted to the IRS, claims will be put in a queue for IRS review and approval. During this review period, the IRS will likely ask for sample supporting documentation.
- Once the IRS approves the MR claims, it is expected to take at least four (4) weeks for the IRS to issue such refund checks to UHI
- Once refund checks are obtained from the IRS, post claim administration steps are performed (i.e. allocating applicable interest to the medical residents, issuing individual checks, and preparing Form W-2c, and 1099-INT).

It will take several months to complete this process and will be largely dependent upon how long the IRS takes to review the UHI refund claims for all such years.

### **III. Miscellaneous**

#### **11. Whom should I contact if I have questions regarding this initiative or to update my contact information?**

For general procedural questions on this initiative that are not answered through the attached frequently asked questions, you may contact Deloitte Tax LLP by email at [UHIFICA@deloitte.com](mailto:UHIFICA@deloitte.com).

#### **12. Will I receive interest on my refund?**

Generally, yes. The IRS will pay statutory interest when refunding these taxes and you will receive your proportional share, if applicable. Interest in excess of \$600 will generally be reported on Form 1099-INT as required by the IRS. However, for part or all of some years (1998, 1999, 2000 or 2001), the IRS paid a refund or credit to UHI which it later disputed resulting in litigation. The IRS will not pay interest during the periods it did not possess the taxes. UHI will remit and report interest it earned, if any, on any disputed funds it held during litigation.

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Please note that until you hear from us otherwise, you will be personally responsible for keeping your address information up to date and the refund process may take more than a year to resolve. Failure to do so could cause any refund checks to you to be undeliverable, and ultimately cancelled (whether by escheat, return to IRS, or otherwise voided).