

RE: Potential FICA Tax Refund Claim for House Staff who Trained at PENN
Between January 1, 1995 and March 31, 2005

Many inquiries have been received from current and former house staff on how one can receive a refund of FICA tax previously paid while a resident or clinical fellow at PENN. This interest stems from a court case decided in favor of the University of Minnesota in 1998 that ruled its house staff were "students" and, therefore, were exempt from the payment of FICA taxes. On March 2, 2010, after nearly 15 years of litigation, the Internal Revenue Service ("IRS") announced that it would concede that medical residents qualify for the student FICA exception for taxable quarters ending before April 1, 2005. This memorandum provides some general information regarding this matter, as well as information regarding PENN's activities with respect to this matter.

Background

FICA taxes are imposed on wages received by individuals with respect to employment. Section 3121(b) of the Internal Revenue Code (IRC) defines "employment" as any "service" performed by an "employee" for the person employing him or her, with enumerated exceptions. Section 3121(b)(10) of the IRC provides an exception from FICA tax on account of payments made for services to "a student who is enrolled and regularly attending classes" at the school, college or university where he or she is employed (the "student FICA exception").

In 1998, the U.S. Court of Appeals for the Eighth Circuit, in *State of Minnesota v. Apfel*, held that stipends paid to University of Minnesota medical residents in 1995-96 were not subject to FICA tax as a result of the student FICA exception. Since the decision of the Eighth Circuit in 1998, other U.S. Courts of Appeals have rendered decisions regarding medical residents' eligibility for the student FICA exception and all have held that medical residents are or could be eligible for the student FICA exception.

On March 2, 2010, after extensive litigation on the matter, the IRS made an administrative determination to accept the position that medical residents were not subject to FICA taxes based on the student exception for tax periods ending before April 1, 2005, when new IRS regulations went into effect. The IRS indicated in its announcement on March 2, 2010 that it would contact organizations that timely filed medical resident FICA tax refund claims for periods prior to April 1, 2005 within 90 days. The IRS contacted PENN in a letter dated May 25, 2010 outlining the procedures necessary to be performed prior to obtaining a refund.

PENN's Medical Resident FICA Tax Refund Claims

PENN filed, by the appropriate IRS deadlines, "protective" refund claims for the FICA taxes paid with respect to medical residents and clinical fellows at PENN for the taxable periods from January 1, 1995 through March 31, 2005. The applicable refund procedures

allow PENN, with your consent, to file for a refund on your behalf for your share of the refundable FICA taxes. Such refund claims included language covering both the employer and employee share of FICA tax.

PENN is in the process of "perfecting" these refund claims in accordance with the information that the IRS provided in its Letter 4608 dated May 25, 2010. To properly complete the FICA tax refund claims under the applicable refund procedures, PENN is required to make a good faith effort to contact the individual residents and fellows included in its claim and request their consent to allow PENN to coordinate and also seek to obtain the house staff member's portion of the FICA contributions in question on his/her behalf. PENN is currently in the process of obtaining up-to-date contact information for all house staff potentially eligible for FICA tax refunds that did not respond to our initial consent package mailing of 9/25/2009. (i.e., who were residents between January 1, 1995 through March 31, 2005) in order to obtain such individual's consent to join PENN's refund claim.

You are under no obligation to consent to a refund of your share of FICA taxes when you were a resident. However, if you do not give your consent, it may not be possible for you to seek a refund on your own behalf because of the expiration of the statute of limitations regarding submitting refund claims (e.g., individual and institutional FICA tax refund claims for the taxable period ended March 31, 2005 must have been timely filed by April 15, 2009). You should consult your tax professional if you have further questions regarding this issue. For this reason, we recommend that house staff consent to joining PENN's existing claims.

For this reason, it is critical that PENN's house staff program graduates inform PENN of their current address and every time they move. Please take the time to confirm now that PENN has your correct current address. Address information may be emailed to FICA@exchange.upenn.edu.

If you are granted a refund, PENN will issue you a Form W-2c, *Corrected Wage and Tax Statement*, for each calendar year in which you are entitled to a refund. None of the amounts reflected on the Form W-2c will result in additional taxes to you. However, the Form W-2c will reflect a reduction in your earnings for Social Security benefits purposes. Whether Social Security benefits that you are receiving currently or in the future are impacted by a reduction of wage credits as a result of the refund depends on your particular facts and circumstances. These questions can be addressed by the Social Security Administration ("SSA") at your local SSA office.

You will also be entitled to interest on your refund amount. The interest paid by the IRS on your share of the FICA tax refund is subject to tax in the year it is received. You will be provided a 1099-INT if more than \$600 in interest is paid in the calendar year. You should contact your tax professional for more information on this subject and to discuss your specific tax situation.

If you have any questions about the foregoing information, you may email us at FICA@exchange.upenn.edu. Include your name, last four digits of your social security number

(for privacy purposes, do not provide your entire social security number), telephone number, and years of residency or fellowship in your email message. Your inquiry will be answered by email as soon as possible. We will also update this webpage with frequently asked questions and any additional information as the claim filing process progresses.