AGENCIES ARE TO PLUG IN CORRECT INFORMATION IN PLACE OF RED BOLDED TEXT

July 25, 2018

Name

Address 1

Address 2

City, State Zip

Salutation:

Together, Social Security and Medicare are components of the Federal Insurance Contributions Act, or FICA. We have recently been informed that you had wages paid as FICA tax exempt which have since been determined to be FICA taxable. These wages were paid to you as noted below:

|  |  |
| --- | --- |
| Calendar Year 2016 | $123.45 |
| Calendar Year 2015 | $2,345.67 |
| Calendar Year 2014 | $2,654.32 |

The Internal Revenue Service (IRS) requires that once an employer becomes aware of a FICA tax payment deficiency, the employer must immediately correct the employee wages and remit to the IRS the employer and employee share in full. The Office of the State Comptroller (OSC) is then required to quickly begin collection from the employee the employee share that was remitted to the IRS by the Office of the State Comptroller on their behalf. Failure to quickly begin this collection of the employee share remitted to the IRS would require OSC to “gross up” the employee’s earnings, in effect causing the employee to be immediately responsible for the FICA and income tax liability of such payments and exposing the employee to interest obligations and possible penalties by the IRS for the years of non-payment. Additional detail is presented in Attachment 1.

The repayment will appear as a Deduction Code on your paycheck advice and represents ten percent of your gross pay. The repayment will begin with paycheck dated MM/DD/YYYY and end with paycheck dated MM/DD/YYYY.

If you have questions, please contact this agency’s payroll office at email and/or phone number. Thank you.

Sincerely,

Name of Agency Payroll Employee

Title

**ATTACHMENT 1**

Internal Revenue Code (“IRC”) §6205(a)(1) provides that proper “adjustments” (corrections) can be made, without interest, pursuant to Treasury Regulations. Treasury Regulation §31.6205-1(b) provides for the “adjustment” (correction) of errors in Federal Insurance Contributions Act (FICA) tax and income tax withholding. The adjustment rules are designed to provide a streamlined, interest-free correction of underpaid FICA and income tax withholdings, in cases where an employer promptly self-corrects an inadvertent error, as soon as the error is ascertained. With respect to underpaid FICA tax, an integral part of this adjustment process is the employer’s timely payment of the *full* amount of underpaid FICA tax to the IRS and the subsequent deduction of the employee’s share of the underpaid FICA from the employee’s remuneration.

This adjustment procedure for underpaid FICA taxes benefits employers and employees, by allowing them to correct an underpayment of FICA tax without paying interest to the IRS. The Treasury Regulations emphasize, however, that the employer must make the correction and pay the full underpaid tax within a prescribed time period, which is essentially within the timeframe for filing the payroll return for the period in which the error was discovered. (See Treas. Regs. 31.6205-1 (b)(2).

With respect to the subsequent deduction of the employee's share of the FICA tax from the employee's pay, if an employer pays or withholds less than the correct amount of tax, Internal Revenue Code ("IRC") section 6205(a)(l) provides that proper "adjustments" (corrections) can be made, without interest, pursuant to Treasury Regulations. Treas. Regs. 31.6205-1 (b) provides for the "adjustment" (correction) of errors in FICA tax and income tax withholding.