

Benjamin M Pezzano

July 14th, 2023

Regarding reply to: Notice Name CP12, sent July 3rd, 2023 (copy attached)

To Whom it May Concern,

My return for tax year ending December 31st, 2022 was mailed to your office on March 15th, 2023, sent by certified mail (#7022241000349481537). This mailing of my 2022 return included (1) 1040 Return, (2) Form 4852 Substitute Form W-2s, and relevant Wage and Tax Statements (copy included). Both 4852 forms were submitted in order to correct erroneous W-2s submitted by Payer listed on Line 5, because Payer incorrectly classified my private sector earnings as "wages", and therefor, the Payer incorrectly withheld federal income tax, social security tax, and Medicare tax.

Under the "Why we changed your information" section on the subsequent CP12, it states the following: "We changed the amount claimed as federal income tax withheld on your tax return to reflect the amounts shown on Form(s) W-2, 1099, or other supporting documents". Under the "IRS calculations" for "Payments and credits", on "Income Tax withheld, Form 1040 Line 25d", the amount of \$2,493 is listed. This is an erroneous total that fails to include the FICA Surtaxes (Social Security and Medicare), which were clearly and incorrectly withheld from my earnings in 2022.

Line 25d on my 1040 showed \$7884.03 (Federal Income tax: \$2493.69 + Social Security tax: \$4369.48 + Medicare: \$1021.89). Lines 33, 34 and 35a show a total of \$7884.03. Your claimed \$2493 refund correction is incorrect - it is not the total amount due.

You are indeed correct, by your own admission, that "\$0.00 Adjusted gross income, \$0.00 Taxable income, & \$0.00 total tax" is true of my 2022 earnings. With regards to my 1040 tax return, you yourself have acknowledged the fact that I performed non-taxable activities in 2022, and therefor should have had no withholding whatsoever. I request that you uphold the law accordingly and refund the remaining \$5,391 rightfully due to me in the form of check OR direct deposit into my bank account (Routing and Account # listed on line 35b and 35d of enclosed 1040).

According to 26 USC 3503 - Erroneous Payments:

"Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded"

By admitting that I received no "wages", you agreed not only that I received nothing subject to the federal income tax, but also that I received nothing subject to the FICA surtax. The federal income tax falls on "wages" received, and the FICA surtax falls on the first \$118,500 of the same "wages".

The Supreme Court in Rowan Cos. V. United States, 452 US 247 (1981), stated the following

"The plain language and legislative histories of the relevant statutes indicate that Congress intended for it's definition of "wages" to be interpreted in the same manner for FICA and FUTA as for income tax withholding"

In summary, we are in agreement that I received no Chapter 24 "wages" 26 USC 3401(a) & therefor, also did not receive any Chapter 21 "wages" 26 USC 3121(a). Thus, I hereby request the return of the additional \$5391 of my private property you are currently withholding from me. I look forward to your reply, along with my full refund.

Sincerely,
Benjamin M Pezzano

X

