

Brett W. Lackey & Tori A. Martindale-Lackey

August 22, 2023

Department of the Treasury

Internal Revenue Service

Kansas City, MO 64999-0010

Certified Mail #: 7018 1130 0000 9577 4829

Regarding IRS Notice CP21B Dated August 14, 2023 and Received August 18, 2023.

To Whom it May Concern:

On August 18, 2023 we received IRS Notice CP21B (copy attached) dated August 14, 2023 regarding a partial refund of our 2022 tax withholdings. We received \$10,955.79 (via direct deposit) as shown in the screenshot taken from our account statement below:

AUG 02

IRS Treas 310 Tax Ref XXXXX2545200909 080223

\$10,955.79

To date, we have received \$18,391.15 (\$7,435.36 + \$10,955.79) of the total \$27,188.64 due to us as a refund of overpayments during tax year 2022.

As alluded to above, we are still owed a balance of \$8,797.49 to reach our full refund amount of \$27,188.64 ( $\$27,188.64 - \$7,435.36 - \$10,955.79 = \$8,797.49$ ). We do not agree with the IRS's changes to our 2022 Form 1040 adjusting our total federal income tax withheld as written in Notice CP21B, nor do the IRS's calculations found in our Account and Tax Return Transcripts properly reflect the withheld amounts we provided on our 2022 1040 filing and subsequent correspondence with the IRS.

In Notice CP21B, you have suggested that we requested a change to our 2022 Form 1040 'amount of total federal income tax withheld' to equal \$10,776.59. This number is incorrect and not what we entered on our 1040 filing. The correct amount submitted by us on Form 1040 line 25d is \$27,188.64, which is the sum of lines 7(e), 7(h), 7(i) from submitted Form 4852 Substitute W-2 and line 8(f) from Form 4852 Substitute 1099-R ( $\$10,775.92 + \$7,333.87 + \$1,715.18 + \$7,363.67 = \$27,188.64$ ) respectively. We provided this same information and supporting documents to the IRS a second time in

our response to LTR12C that was delivered to your office on May 3, 2023 via Certified Mail #7022 3330 0001 0446 9277.

Our 1040 filing, Form 4852 Substitute W-2, Form 4852 Substitute 1099-R, and all relevant correspondence with the IRS since March of this year are in your records and all constitute sufficient evidence and support of our claim. *We have so far received \$18, 391.15 of the aforementioned refund amount and are herein requesting the remainder of the refund in the amount of \$8,797.49.*

Your proposed change correctly acknowledges that everything withheld from us under the provisions of Chapter 24 of 26 USC (and denominated “federal income tax” withheld on forms such as W-2’s and 4852s) constitutes an overpayment, and by the same token acknowledge that we received no statutorily-defined “wages” upon which a tax can have arisen.

By virtue of those same facts, it is beyond dispute that everything withheld from us under the provisions of Chapter 21 of 26 USC (denominated on forms W-2 and 4852 as “Social Security tax withheld and Medicare tax withheld) also constitute overpayments (or amounts that **should not have been withheld**), since what are (or are not) “wages” for purposes of Chapter 24 are (or are not) also the “wages” upon which withholding under Chapter 21 can arise. See *Rowan Co. s v. United States*, 452 US 247 (1981).

If no Chapter 24 “wages” were received—as you have twice acknowledged to be the case —then no Chapter 21 “wages” can have been received. Under these circumstances and the provisions of 26 USC § 3503, you are required to return to us **all amounts withheld under Chapter 21 as well as the amount withheld from us under Chapter 24.**

We trust that considering our proper calculations, facts, and illuminations presented, the IRS will *promptly correct their records* to reflect the data we provided on our 1040 tax return for 2022, and *equally as promptly refund the remaining \$8,797.49 due to us in full.*

Thank you for your time and swift action.

Respectfully,

Brett W. Lackey & Tori A. Martindale-Lackey