



# GMS Flash Alert



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## United States - IRS Guidance on Withholding Taxes Paid by Employer

On January 14, 2022, the U.S. Internal Revenue Service (IRS) released a Chief Counsel Advice memorandum<sup>1</sup> addressing whether an employer is eligible to receive a refund of income tax withholding paid on behalf of a tax-equalized assignee on a foreign assignment in a year after the calendar year in which the employer paid the compensation to which the income taxes are attributable. The legal memorandum concludes that when an employer pays a tax-equalized assignee a stated amount of compensation and pays the federal income-tax withholding attributable to that compensation on behalf of the employee, the income taxes the employer pays to the IRS are considered withheld from the assignee, and thus may not be refunded to the employer after the calendar year in which wages are paid.

### WHY THIS MATTERS

The IRS memorandum provides insight into how the IRS views both the tax equalization process and hypothetical tax calculation commonly utilized in mobility programs. The IRS memorandum confirms that withholding based on a hypothetical tax calculation is not an “administrative error,” thus reaffirming the IRS’s longstanding view that an employer may not generally correct an over-collection of income taxes after the close of the tax year.

The IRS memorandum underscores how important it is for mobility programs to have a reasonably accurate hypothetical tax estimate and to work to correct over-payments before year-end.

### Overview of Chief Counsel Advice

This appears to be one of the first IRS memorandums to directly address the impact of global-mobility tax-compliance processes (such as the tax equalization process and the hypothetical tax calculation) on an employer’s federal income tax reporting and withholding obligations. Notably, the IRS memorandum considers whether an employer’s payment of a specific amount of income tax withholding to the IRS based on a hypothetical tax estimate is an “administrative error” when the employer determines after the end of the calendar year that the amount paid to the IRS was excessive. While

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an employer is generally not able to correct an over-payment of income tax withholding after the close of the tax year, an over-payment due to an “administrative error” may be corrected after the close of the tax year.

The IRS memorandum concludes that an employer’s payment of a specific amount of income tax withholding to the IRS based on a hypothetical tax estimate is not an “administrative error” when the employer determines after the end of the calendar year that the amount paid to the IRS was excessive. Thus, the federal income taxes withheld and remitted to the IRS may not be refunded to the employer after the calendar year in which the wages were paid.

For FICA tax, a request for refund or credit may be made in a subsequent calendar year. Prior to claiming a refund or credit for FICA tax, the employer must make reasonable efforts to repay or reimburse the employee for the employee FICA tax and to secure the employee’s consent to the allowance of the refund claim.

## FOOTNOTE:

1 [Chief Counsel Advice 202202010](#) .

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