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From:
Sent: Friday, May 21, 2010 2:04:23 PM
To:
Cc:
Subject: RE: Voluntary Disclosure

You are probably familiar with the nonduplication rule in section 3121(v)(2). Under that rule, if the taxpayer fails to take amounts deferred under a NQDC plan into account as FICA wages at the time of deferral, then the amounts deferred and the income attributable to those amounts are subject to FICA upon distribution. My view is that generally we should not allow taxpayers to avoid the nonduplication rule by entering into closing agreements that "fix" their noncompliance for years that are no longer open. The regs under section 3121(v)(2) have specific guidance for how to deal with the situation where taxpayers failed to comply for some years, but actually paid FICA properly for other years. Essentially, taxpayers are supposed to pro-rate amounts distributed so that FICA is paid on only amounts attributable to periods where they failed to comply with 3121(v)(2). It's not simple, but our regs do provide a methodology for taking care of this problem, so why would we enter into a closing agreement that allows taxpayers to avoid compliance with our own regs (not to mention the nonduplication rule in the statue).

I don't have any problem with the taxpayer wanting to fix years that are still open under the statute of limitations. For this, I'm not entirely sure they need a closing agreement because taxpayers file 941-Xs to pay back taxes all the time without entering into closing agreements. I'm having difficulty understanding all of the formulas the taxpayer is using for , though.