

ID: CCA\_2010092908390970

Number: **201041044**

Release Date: 10/15/2010

Office:

UILC: 3402.00-00, 6521.01-00

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**From:**

**Sent:** Wednesday, September 29, 2010 8:39:16 AM

**To:**

**Cc:**

**Subject:** 3402(d) abatement

The abatement provision of IRC § 3402(d) may apply, but only with respect to the income tax withholding. If the taxpayer pays the FICA tax, the employee may be entitled to a refund of the portion of the SECA tax he paid that exceeds his share of the FICA tax. If the statute of limitations period has expired for the employee's Form 1040, the mitigation provision of IRC § 6521 may still permit the employee to correct the erroneous treatment and get a credit or refund of the SECA tax to the extent it exceeds his share of the FICA tax.