

December 30, 2017

Department of the Treasury
Internal Revenue Service Center
ATTN: [REDACTED]
5045 E Butler Ave
Fresno CA 93888-0034

RE: [REDACTED] - LTR0012C
BATCH: [REDACTED]
Control No. [REDACTED]
Derek Cushman - [REDACTED]
Tax Year 2016

Dear [REDACTED]

Thank you for your letter (LTR0012C) dated December 14, 2017.

Your letter claims that you are in need of more information to process my 2016 information return (and request for overpayment refund). Specifically, you are requesting a **Form W-2 Wage and Tax Statement** to support the amount of \$6,118.00 that I am requesting to be refunded to me.

Please note that my 2016 Form 1040 (Individual Income Tax Return) included **Form 4852 Substitute for Form W-2 Wage and Tax Statement**. I am herewith enclosing a copy of same for your review. There are two (2) completed forms, one for each Payer.

Please note the highlighted section of the form which reads:

Purpose of form. Form 4852 serves as a substitute for Forms W-2, W-2c, and 1099-R and is completed by you or your representatives when (a) your employer or payer doesn't issue you a Form W-2 or Form 1099-R or (b) an employer or payer has issued an incorrect Form W-2 or Form 1099-R.

I refer you to Section 10 of the Form 4852 which states: **"Explain your efforts to obtain Form W-2"**. My response is clearly set forth in the space provided in Section 10, which reads:

I notified Payer they reported BAD PAYER DATA on Form W-2. Payer did not respond. Based on my direct personal knowledge that I was NOT engaged in a taxable activity or taxable event with Payer, I dispute that I was paid "wages" as Payer's "employee" during 2016.

The space provided in Section 10 is limited, so perhaps you need more clarification as follows:

Each Payer mistakenly reported that I had been paid "wages" (as defined in Internal Revenue Code Sections 3401(a) and 3121(a)). As a result, the Payers mistakenly withheld \$6,118.00 from non-wage, non-employee, private sector receipts, and the Payers mistakenly diverted these amounts to the IRS as "income taxes".

Under the withholding and reporting requirements set forth in **26 USC § 6051**, the IRS Form **W-2 “Wage and Tax Statement”** is used as a written statement of the total amount of “wages” paid to an “employee”, as well as to report amounts deducted as various income taxes on those wages.

However, I was not an “employee” as defined in 26 USC § 3401(c), and the private sector receipts that the Payers owed to me were not “wages” as defined in Internal Revenue Code Sections 3401(a) and 3121(a). Accordingly, the information reported by the Payers to the IRS is **BAD PAYER DATA**, and the amounts withheld and forwarded by the Payers to the IRS as “Federal income tax, Social Security tax, and Medicare tax” were done so in error.

I contacted both Payers to inform them they had mistakenly reported that I had been paid “wages”, and that they had mistakenly withheld “income taxes” from non-wage, non-employee, private sector receipts, and that they had mistakenly diverted \$6,118.00 of my property to the IRS, but I received no response. It is for this reason that I included Form 4852 Substitute for Form W-2 Wage and Tax Statement as a **dispute, rebuttal, and correction** to the erroneous filings made by both Payers.

This statement and the attached Forms 4852 serve as my **dispute, rebuttal, and correction** in response to the Payers’ erroneous claims that they had paid me “wages” as their “employee”, and I am claiming a refund of these overpayments that were mistakenly withheld by the Payer and subsequently remitted to the IRS as “Federal income tax”, “Social security tax”, and “Medicare tax” totaling **\$6,118**.

Thank you for the opportunity to provide you with additional information in order for you to process my return. Based on this dispute, rebuttal, and correction to the Payers’ erroneous reporting, I hereby request that you please process my information return and refund these \$6,118 overpayments to me at your soonest.

Under penalties of perjury, I declare that I have examined these statements as well as both of the attached Forms 4852, and to the best of my knowledge and belief, they are true, correct, and complete.

Cordially,

Derek G. Cushman