



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

May 23, 2011

Number: **2011-0054**
Release Date: 6/24/2011

CC:ITA:B04
CONEX-115891-11

UIL: 61.00-00

The Honorable Tom Harkin
United States Senator
210 Walnut, Room 733
Des Moines, IA 50309

Attention:

Dear Senator Harkin:

I am responding to your inquiry dated April 12, 2011, on behalf of your constituent, . asks why the IRS has not processed his claim for refund of the tax that he paid on a reported sale of stock in a life insurance company.

purchased life insurance in when it was a mutual insurance company, and received an equity interest in the company. In 2001, when converted from a mutual life insurance company to a stock life insurance company, received stock in the life insurance company in exchange for his equity interest in the mutual company. When later sold this stock, he paid tax on the full amount of the sales proceeds.

As states, a court decision held that a taxpayer did not have to report income on the sale of stock received in a demutualization. (*Eugene A. Fisher, Trustee, Seymour P. Nagan Irrevocable Trust v. United States*, 82 Fed. Cl. 780 (2008), *aff'd in unpub. opinion*, 333 Fed. Appx. 572 (Fed. Cir. 2009)). Based on the *Fisher* decision, and other taxpayers filed claims for refund of tax that they originally paid on their stock sales.

The IRS does not agree with *Fisher*. The IRS view is that a taxpayer realizes income to the extent that the stock sales proceeds exceed the taxpayer's payments (cost basis), if any, for the equity interest. The taxpayer has the burden of proving the amount paid for the equity interest. Because the IRS disagrees with the *Fisher* holding, we continue to litigate the issue. (See *Dorrance v. United States*, Civil Action No. 09-cv1284-PHX-ROS (D. Arizona)).

Pending final resolution of the issue, the IRS is not issuing refunds based on the *Fisher* decision. claim protects his right to a refund until the IRS denies the

claim. may bring a refund suit after his refund claim has been pending for six months without the IRS taking action. If it is determined that is entitled to a refund, he will receive the refund plus interest.

I hope this information is helpful. If you have any questions, please contact
or me at .

Sincerely,

George Blaine
Associate Chief Counsel
(Income Tax & Accounting)