



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**IN SECOND-LARGEST REFUND IN CITY HISTORY,
INTERNAL REVENUE SERVICE SETTLES
SOCIAL SECURITY TAX CASE FILED BY NEW YORK CITY;
CITY EMPLOYEES AND THE CITY TO SHARE REFUND OF OVER \$280 MILLION**

***CRAVATH, SWAINE & MOORE, LLP, ASSISTS AS PART OF
THE NEW YORK CITY LAW DEPARTMENT'S PUBLIC SERVICE PROGRAM***

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New York, Nov. 8, 2006 – New York City Corporation Counsel Michael A. Cardozo announced today that the City and the Internal Revenue Service (IRS) have settled a lawsuit pending since July 2003 involving a claim of wrongful Social Security and Medicare contributions (called the “Social Security tax”) imposed on certain members of the City’s uniformed services. As a result, the IRS will be refunding \$140 million to approximately 73,000 individual city employees and another \$140 million to the City.

“We are very pleased that, because of this suit, the IRS recognized that these taxes were wrongfully imposed,” said Cardozo. “In what is the second-largest tax refund in City history, the IRS has now agreed to repay the City and its employees this very substantial sum.” (Previously, the largest refund occurred in the early 1990s and was for about \$500 million.)

The lawsuit had sought a judgment awarding a refund of both the employer’s and employees’ share of the Social Security tax paid for the years 1989 through 1998 on Line-of-Duty-Injury (“LoDI”) payments made for a period of six months or less to eligible uniformed members of the City’s Correction, Fire, Police and Sanitation Departments who:

- 1) were injured in the line of duty and
- 2) were out of work on authorized “LoDI” leave as a result of that injury.

The City’s suit contended that the IRS had no authority to require Social Security withholding on these LoDI payments, because they were the equivalent of workers’ compensation payments, which are exempt from Social Security tax withholding.

In the settlement announced today, the IRS agreed that the affected employees and the City will each be reimbursed for all Social Security taxes paid on LoDI payments received for a period of six months or less during the period 1989 through 2005, plus interest from the date payment was made. (LoDI payments made for a period of more than six months were deemed by the IRS to be exempt from Social Security taxes under a separate statutory provision and thus were not part of this claim.) The total amount of the refund is estimated to be over \$280 million.

The law does not permit the IRS to make payments of the employees’ share – \$140 million (representing the Social Security taxes withheld from employees’ line-of-duty injury payments plus interest) – directly to

employees where the employer files a claim on their behalf. Instead, the IRS will remit to the City the employees' share of the refund, but only for those employees who submit signed consent forms permitting the City to claim a refund on their behalf. The City's Office of Payroll Administration ("OPA"), has worked closely with the Law Department in pursuing these refunds, and will shortly be contacting the approximately 73,000 affected employees directly with details on how to collect their refund. Additional information can also be found on OPA's website: www.nyc.gov/payroll. Each employee's individual refund will depend on the number of times that employee collected LoDI payments for six months or less during the years involved. Therefore, amounts could range from a small number to many thousands of dollars each. The City does not anticipate receiving these refunds from the IRS until July or August 2007 at the earliest.

Karen M. Griffin, a Senior Counsel in the Appeals Division of the New York City Law Department, and John E. Beerbower, a Litigation Partner with Cravath, Swaine & Moore, LLP, served as co-counsel on the case, with assistance from Cravath Associate Radu Lelutiu. Cravath, Swaine and Moore, LLP, volunteered in 2003 to assist in the litigation phase of the case as part of the Law Department's Public Service Program.

Corporation Counsel Cardozo expressed gratitude to those members of his staff, who pursued these refund claims since 1992, and specially recognized the efforts of the Cravath attorneys, whom he stated "both donated their time and played an integral role in obtaining this favorable outcome for the City and its employees." Corporation Counsel Cardozo further stated, "This settlement is yet another example of the benefits the City obtains through public/private sector collaboration – a key initiative of this Administration."

Firms in the Public Service Program have donated more than \$35 million in legal services since the program's inception in 2002. Cravath Partner John Beerbower noted: "We are pleased to have been able to assist the City and its employees in this matter. The results achieved attest to the value of the Public Service Program, where outside legal talent is appropriately matched with the City's needs."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed at www.nyc.gov/law.

Cravath, Swaine & Moore LLP is one of the leading law firms in the world, with a long-established reputation for top-tier legal work. The Cravath firm, founded in 1819, has about 500 lawyers, including 79 partners, and maintains offices in New York and London. One of Cravath's key tenets is its "emphasis on the quality of its legal work." Its goal is to be "the firm of choice for clients with the most demanding transactions and cases" and its practice has "been at the center of many of the most important business and financial transactions in the world." Its web site address is: www.cravath.com.

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