

IRS quick to deny FICA protective refund claims under *Quality Stores* Decision

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The Quality Stores court decision held that severance payments are not subject to FICA tax



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Since the *Quality Stores* decision, the IRS has been quick to deny protective refund claims filed outside of the 6th Circuit for FICA taxes dealing with severance related supplemental unemployment compensation benefits paid in the 2006 tax year. These protective refund claims were filed in response to a Michigan District Court holding that certain involuntary severance payments were not subject to FICA taxes, *United States v. Quality Stores, Inc.*, 2010 U.S. Dist. LEXIS 15825 W.D. Mich. Feb. 23, 2010.

In addition to denying *Quality Stores* claims filed by employers outside the Sixth Circuit, the IRS is also examining claims filed in the Sixth Circuit more closely.

Moving forward, what are the options for those claimants who have been denied? Employers who have received denials can: (1) wait for a resolution, (2) pursue administrative remedies, or (3) initiate court proceedings.

There is a two-year statute of limitations on employers who wish to file a refund suit, but it may be prudent to wait for potential appellate resolution of the *Quality Stores* case. Employers can wait for up to 20 months before deciding whether to file an administrative appeal. This approach may enable the employer to monitor additional legal development to help determine a course of action. Lastly, an employer can submit an appeal based on the decision in the *Quality Stores* case during the 30 days described in the disallowance notification letter.

Please contact a member of the True Partners' Team for assistance.

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