



True Alert

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File Protective FICA Refund Claims for 2006 Year by April 15, 2010

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



On February 23, 2010, the U.S. District Court for the Western District of Michigan held in the *Quality Stores* case that the taxpayer was entitled to a \$1 million refund in overpaid FICA taxes on severance payments. This decision should cause employers to reconsider whether protective FICA refund claims related to severance payments should be filed. The deadline to file FICA refund claims for 2006 severance payments is April 15, 2010.

This question was seemingly resolved in *CSX v. United States*. In 2002, the U.S. Court of Claims concluded that involuntary severance payments were exempt from FICA taxes if they qualified as “supplemental unemployment compensation benefits” (“SUP”) as defined for income tax withholding purposes. This decision prompted voluminous claims by taxpayers for refunds of FICA taxes paid related to severance payments. The IRS responded by suspending such claims for refund pending appeal and final outcome of the *CSX* decision.

In 2008, the Federal Circuit Court of Appeals for the Federal Circuit reversed the lower court’s decision, which resulted in the IRS’s denial of suspended claims. The IRS continues to issue notices of claim denials for FICA refunds. Now, in light of the *Quality Stores* decision, employers should consider filing protective FICA refund claims.

Please contact us to discuss how this decision might apply to your particular facts and circumstances.

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