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### Protective Claims Due by April 15th for FICA Tax Refunds on Severance Paid in 2010

As the U.S. Supreme Court considers whether certain severance benefits are subject to FICA taxes, employers should consider whether they will seek a refund of FICA taxes on the amount of employee severance benefits paid in 2010. Employers have until **April 15, 2014** to file a refund claim to secure their right to a possible refund on FICA taxes on benefits paid in 2010.

**Background.** As we have previously reported in the *theHRBenefitsAuthority* on [November 1, 2012](#) and [March 13, 2013](#), the U.S. Court of Appeals for the Sixth Circuit held in *United States v. Quality Stores Inc.* that severance benefits generally are **not** FICA taxable “wages” so long as (i) the payments are due to an employee’s involuntary separation from employment, and (ii) the payments result directly from either (A) a reduction in force, (B) the discontinuance of a plant or operation, or (C) other similar conditions. The *Quality Stores* decision conflicts with the position of the IRS and a prior ruling by the U.S. Court of Appeals for the Federal Circuit that severance benefits generally are considered “wages” subject to FICA tax, unless linked to an employee’s receipt of government unemployment benefits.

**Supreme Court Review.** The Supreme Court heard oral arguments in *Quality Stores* in January, and the Court’s ruling is expected later this year. If a majority of the justices agree with the Sixth Circuit, this would mean that payments under many employers’ severance plans would not be considered “wages,” which would entitle employers and their former employees to refunds of FICA taxes on severance paid in 2010 and later years.

**Filing a Refund Claim.** There generally is a 3-year statute of limitations on tax refund claims. Employers who paid a substantial amount of FICA taxes on qualifying severance payments in 2010 may wish to preserve their rights to a refund by filing a *protective refund claim* by the April 15, 2014 deadline.

A protective claim generally requires that an employer complete an amended FICA tax form (Form 941-X) and a narrative explaining (i) the basis of the refund, and (ii) the contingency affecting the claim (the pending Supreme Court opinion). If the Supreme Court rules favorably later this year, employers would be allowed to “perfect” the protective claim by finalizing the amount of the refund and making a reasonable effort to obtain necessary consents and waivers from former employees. Employers then also could seek refunds for FICA taxes paid in the years after 2010.

**Contact Information.** For more information on the availability or preparation of a FICA tax refund claim, please contact [David Putnal](#) (404.888.8836), [Glenn Infinger](#) (404.888.8845), [Andrew Overway](#) (404.888.8858) or [Jared Beckerman](#) (404.888.8857).

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