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Supreme Court Rules Severance Payments are Subject to FICA

As we recently reported in the *theHRBenefitsAuthority* on [March 11, 2014](#), the U. S. Supreme Court was expected to issue a ruling this year in *United States v. Quality Stores Inc.* on whether certain severance benefits are FICA taxable “wages.”

This morning, the Court ruled against the taxpayer in this case, marking the end of employers’ FICA refund claims, which the government estimated to total over \$1 billion.

Background. In 2012, the U.S. Court of Appeals for the Sixth Circuit held in *Quality Stores* that severance benefits paid in connection with a reduction in force or similar event generally are not FICA taxable “wages.” This ruling conflicted with the long-held position of the IRS that severance benefits generally are considered “wages” subject to FICA tax, unless the benefits are linked to an employee’s receipt of government unemployment benefits.

Supreme Court Ruling. This morning, the Supreme Court reversed the Sixth Circuit and held that the severance payments at issue in *Quality Stores* are FICA taxable under their view that the law broadly defines wages under FICA. Under this ruling, severance plan payments are subject to FICA withholding, unless the payments are structured to fit into an exemption created by the IRS in revenue rulings. These IRS rulings generally provide that severance benefits are exempt from FICA only if the benefits are made in periodic payments (*i.e.*, not paid in a lump sum) and are directly linked to an employee’s receipt of government unemployment benefits.

Effect on Refund Claims. Unfortunately, the Supreme Court’s ruling ends FICA tax refund claims based on the *Quality Stores* case. This means that previously filed protective refund claims (or appeals of claim disallowances) will likely be denied by the IRS. Additionally, unless severance benefits fall into the IRS’s exemption described above (which most do not), there is no reason for employers to file FICA tax refund claims for severance paid in 2010 or later.

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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