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April 15th Deadline Approaching for FICA Tax Refunds on Severance Pay

Due to a recent federal appellate court decision, employers that paid employee severance benefits in recent years may be entitled to a refund of FICA taxes paid on the amount of these benefits. However, due to the three-year statute of limitations on refund claims, employers must seek a refund on FICA taxes paid in the year 2009 by April 15, 2013.

The Quality Stores Case. As we reported in the November 1, 2012 issue of *theHRBenefitsAuthority*, [Employers May Be Entitled To FICA Tax Refunds On Severance Pay](#), the U.S. Court of Appeals for the Sixth Circuit recently held in *United States v. Quality Stores Inc.* that severance benefits are generally not FICA taxable “wages” so long as the payments are due to an employee’s involuntary separation from employment and the payments result directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions. This decision is contrary to the long-held position of the IRS that severance benefits are generally considered “wages” subject to FICA tax unless the benefits are made in periodic payments directly linked to an employee’s receipt of government unemployment benefits.

In October, the government filed a petition for a rehearing of the case by a larger panel of the Sixth Circuit, which was denied in January. The government will have until early April to decide whether it will appeal the Sixth Circuit’s decision to the U.S. Supreme Court.

Filing a Refund Claim. In the meantime, employers who paid a substantial amount of FICA taxes on qualifying severance payments since 2009 may wish to seek a refund from the IRS.

Although filing a refund claim may be a somewhat lengthy process (e.g., the employer must seek a refund of the employee portion of FICA and make a reasonable effort to obtain consents and waivers from these employees), an employer may instead preserve its right to a refund relating to the 2009 tax year by filing an administratively simple **protective refund claim** by the April 15, 2013 deadline.

A protective claim generally requires that an employer complete an amended FICA tax form (Form 941-X) and a narrative explaining the basis of the refund and the contingency affecting the claim. In this case, an employer’s right to a refund will be contingent on an appeal of the Quality Stores case to, and subsequent disposition by, the U.S. Supreme Court.

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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