

***U.S. v. Quality Stores, Inc.: Certain Severance Payments Not Subject to FICA<sup>1</sup>***

Severance pay is generally taxable income to the recipient. The FICA treatment of severance payments has been a subject of contention. Both the employer and the recipient usually incur FICA taxes related to the severance payments. However, a recent Michigan district court case held that certain severance payments are not subject to FICA. As a result, employers that have made severance payments related to reductions in work forces may have the opportunity for a refund of the FICA taxes they incurred related to those payments. You should note that the Federal Circuit and a district court in South Carolina have held similar payments to be taxable under FICA.

If you are in the western district of Michigan and have paid or received supplemental unemployment compensation benefit (SUB) payments, you should review whether FICA taxes were remitted on those payments. You may request refunds for those amounts based on this decision. The IRS has not yet appealed the Michigan case, but is likely to do so given the rulings in other jurisdictions. It is unclear how the Sixth Circuit will hold if the case is appealed, and the IRS will likely wait until the Michigan case is fully appealed before it issues refunds. Your Baker Tilly advisor can provide more information about the potential refund amount, the cost of preparing such refund requests, and the likelihood of recovery.

If you are outside of the western district of Michigan and have paid or received SUB payments, you should consider whether you might benefit from filing a protective claim for refund. If a taxpayer in your jurisdiction prevails, or if the IRS acquiesces at a later date, your refund claim for otherwise-closed tax years will be preserved. We encourage you to discuss these matters with your Baker Tilly tax advisor.

<sup>1</sup> *U.S. v. Quality Stores, Inc.*, 105 AFTR 2d 2010-533 (2/23/10).

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