

Employers Can Obtain Tax Refunds With Interest For FICA Withholding On Severance Pay

Thursday, April 15, 2010 deadline approaching

A recent federal district court decision may entitle employers to payroll tax refunds with interest. The economic downturn has caused many employers to reduce their employee headcount and make severance payments, downsizing payments, and supplemental unemployment compensation payments to workers who have been involuntarily terminated. Employers may be entitled to a refund of Federal Insurance Contributions Act (FICA) taxes withheld (with interest) as part of certain severance payments made to former employees.

In *United States v. Quality Stores, Inc.*, 2010 U.S. Dist. LEXIS 15825 (W.D. Mich. Feb. 23, 2010), a federal district court held that traditional severance payments that satisfy Section 3402(o) of the Internal Revenue Code are not wages and are exempt from FICA taxes. Employers that made severance payments and withheld FICA taxes are entitled to a refund of the FICA taxes according to the district court in *Quality Stores*. While it is likely this decision will be appealed by the IRS to the U.S. Court of Appeals for the Sixth Circuit, we recommend that employers protect their FICA tax refund rights by filing protective refund claims for severance payments made in 2006-2009.

If an employer paid severance in 2006, refund claims for those payments must be filed by April 15, 2010 to preserve the statute of limitations for that tax year.

Stevens & Lee has developed a streamlined process for filing protective refund claims for tax years 2006 through 2009 to preserve the rights of employers. Although the timing is short, protective refund claims are easy to file, typically taking only a few hours. Please contact your Stevens & Lee attorney for assistance with protecting your refund rights.

For more information, contact Charles F. Harenza at 610.478.2091 or cfh@stevenslee.com, James B. Longacre at 610.478.2293 or jbl@stevenslee.com, or Eric F. Marshall at 610.478.2092 or efm@stevenslee.com, or the Stevens & Lee attorney with whom you regularly speak.

STEVENS & LEE
Understanding Your Business Is Our Business

800.510.0274
www.stevenslee.com



The page contains a large, faint watermark that reads "www.ck12.org". The watermark is oriented vertically and is centered on the page. The text is light gray and has a low opacity, making it difficult to read against the white background.

