



REFUND CLAIM FOR FICA TAXES ON SEVERANCE PAYMENTS

Downsizing is a fact of life in today's challenging business environment and often results in severance payments to departing workers. These severance payments are included in workers' income and subject to federal income tax withholding; however, the FICA tax treatment for severance payments has been a controversial issue over the years. A bankruptcy court had ruled that severance payments were not subject to FICA tax, and a district court has recently sustained that ruling (*U.S. v. Quality Stores, Inc.*). As a result, taxpayers may be able to obtain refunds of FICA tax paid on certain severance payments to employees.

If your organization laid off employees since 2006 and paid FICA taxes on their severance pay, you may be eligible to file a refund claim (requesting a refund of FICA taxes, plus interest). Because the IRS is likely to appeal the district court's decision to the U.S. Court of Appeals for the Sixth Circuit, affected taxpayers may want to delay filing their refund claims until the earlier of two dates:

- (1) The date on which the U.S. Court of Appeals affirms the district court's decision (assuming the IRS appeals), or
- (2) The date on which the statute of limitations is close to expiring on FICA taxes paid.

Generally, the statute of limitations expires three years from the date Form 941 was filed, or two years from the date the tax was paid, whichever is later. For purposes of the period of limitations, Forms 941 for a calendar year are considered filed on April 15 of the succeeding year if filed before that date. Thus, the statute of limitations will expire for calendar 2006 filings on April 15, 2010.

If your organization paid substantial severance payments in 2006 to involuntarily terminated employees, you should file a protective refund claim (using Form 941-X) on or before April 15, 2010. If you paid substantial severance payments in 2007 through 2009, you might also consider filing protective refund claims for those years. Since there are specific requirements that must be satisfied (to be eligible for a refund claim and to "perfect" such claims), we recommend that you consult with your Wipfli tax associate.

We anticipate that the IRS will either reject refund claims or hold them in abeyance until all appeals have been exhausted. However, a timely filing of a claim will protect employers' rights in the event the district court's decision is affirmed.

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