

February 5, 2014 www.mcvpr.com

EMPLOYEE BENEFITS ALERT

Employer's Deadline to File Protective Refund Claim for 2010 FICA Taxes Paid on Severance Payments

On September 7, 2012, the Sixth Circuit Court of Appeals held in U.S. v. Quality Stores, 693 F.3d 605 (6th Cir. 2012), that severance payments made as part of an involuntary employment termination are not taxable wages for purposes of Medicare and Social Security withholding under the Federal Insurance Contributions Act ("FICA"). In Quality Stores, the Court of Appeals affirmed a decision of the Western District Court of Michigan affirming, in turn, a decision by the U.S. Bankruptcy Court to the effect that severance payments made by a Chapter 11 debtor-corporation to its employees on involuntary employment termination constituted supplemental unemployment compensation benefits not taxable as wages for FICA tax purposes.

The characterization of the payments by Quality Stores as supplemental unemployment compensation was made by reference to the definition under the U.S. Internal Revenue Code Section 3402(o) of certain payments other than wages (1) made to employees; (2) pursuant to a plan adopted by the employer; (3) because of the employees' permanent separation from employment; (4) resulting directly from a workforce reduction; and (5) included in the employees' gross income for federal income tax purposes.

The United States Supreme Court agreed to review the decision by the Court of Appeals in Quality Stores, supra. Thus, if the United States Supreme Court ultimately upholds the decision in Quality Stores to the effect that supplemental unemployment compensation benefits should not be considered wages for FICA tax purposes, employers may be able to file (for the open years) tax refund claims for FICA taxes paid and withheld on such payments.

Affected employers should be aware that April 15, 2014 is the due date for filing a protective refund claim for FICA taxes paid on a 2010 employment tax return. The protective refund claim may be filed through the use of Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund.

If you have any questions or would like our assistance regarding this matter, you may contact any of the following members of our Employee Benefits Practice Team:

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