



Possible Refunds of FICA Tax Paid on Severance Payments Protective Refund Claims Due April 15, 2010 For 2006

Client Advisories

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A new case may require speedy action to protect your rights to recover FICA taxes paid on severance payments in 2006. In *Quality Stores, Inc. v. US*, 2010-1 USTC 50,250 (W.D. Michigan, Feb. 23, 2010), the Court held that severance payments made to employees pursuant to an involuntary separation are not subject to FICA taxation.

If you have paid FICA tax on severance pay for 2006, you should consider filing protective refund claims for that year. The statute of limitations on filing the claim for credit for refund is 3 years from April 15 following the year in which the relevant quarter falls or the year ends, or 2 years from the date the tax was paid, whichever is later.

Therefore, if your company paid FICA on qualifying severance payments to employees in 2006, you must file your claim for refund by April 15, 2010. For 2007, 2008 or 2009, you have the option to ask for the money or to ask that the refund be credited to current returns, but there is no pressing need to file a claim at this time for those years. It is unlikely the IRS will grant any refunds, unless and until the appeal process plays out, but you must file timely for 2006 or you will lose any right to a refund for 2006.

If you need further information or assistance in completing the refund process for 2006, please call Gerry Rigby in the Philadelphia Office (215-279-9684).

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