

## TAX ALERT

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**January 8, 2014**

### **Severance Wages May be Considered for F.I.C.A. Tax Refunds: The Quality Stores Court Case**

Dear Friends & Clients:

If your organization or entity made severance payments to former employees in 2010, it may be wise to file a claim for refund of F.I.C.A. taxes with the Internal Revenue Service by April 15, 2014.

The United States Supreme Court is hearing arguments this month on the question of whether payments made by employers under a severance plan were subject to F.I.C.A. taxes as wages. The United States Sixth Circuit Court of Appeals decided in *U.S. v. Quality Stores, Inc.*, 693 F.3d 605 (6th Cir. 2012), that wages paid under a severance plan due to a reduction in workforce were not wages subject to F.I.C.A. taxes. The payment must have been paid to an employee who was subject to a severance plan relating to their permanent or temporary separation from employment due to a reduction in force or discontinuance of a plant or operations. The payments must have been included in the employee's gross income, as well. This decision is contrary to both IRS rulings and the decision by the Federal Circuit Court of Appeals in an earlier case, *CSX Corp. v. U.S.*, 518 F.3d 1328 (Fed. Cir. 2008).

Employers, including those in California, operating outside of the 6th Circuit (Kentucky, Michigan, Ohio and Tennessee) must file a protective claim, necessary to keep the statute of limitations open, by completing and filing Form 941-X's for quarterly payments made in 2010 or any subsequent year. With respect to payments made in 2010, Form 941-X must be filed on or before April 15, 2014. Form 941-X for each quarter for which a refund is sought must be accompanied by Form 8275, Disclosure Statement and a cover letter explaining the circumstances of the protective claim. If the taxpayer in Quality Stores, Inc. prevails before The Supreme Court, an actual claim for refund must be filed. The actual refund claims must indicate whether the employer is requesting a refund on behalf of former employees and obtain former employees' written consent. If former employees cannot be located, the employer may file a refund claim solely for the employer's share of F.I.C.A.

Please contact Rich Ruvelson, Tax Principal at [rruvelson@greenhassonjanks.com](mailto:rruvelson@greenhassonjanks.com) or 310.873.1675 or Farshad Yashar, Tax Partner at [fyashar@greenhassonjanks.com](mailto:fyashar@greenhassonjanks.com) or 310.873.1619 for assistance or with any questions you might have.

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