



CLOCK RUNNING ON POTENTIAL FICA TAX REFUNDS

Disagreeing with a longstanding position of the IRS, the Sixth Circuit Court of Appeals recently decided that certain severance payments are not subject to Federal Insurance Contributions Act (“FICA”) payroll taxes. If the Sixth Circuit’s position ultimately prevails, it may provide the basis for FICA tax refunds in significant amounts.

In *United States v. Quality Stores, Inc.*, 693 F.3d 605 (6th Cir. 2012), the parties had stipulated that “(1) [the employer] made the payments to employees; (2) pursuant to company plans; (3) because of the employees’ permanent separation from employment; and (4) resulting directly from a reduction in force or the discontinuance of a plant or operation.” From there, the Sixth Circuit concluded that the severance payments at issue were not subject to either the employer’s share or the employees’ share of FICA taxes. The federal government has until April 4, 2013, to file a petition for certiorari with the United States Supreme Court to overturn the Sixth Circuit’s decision.

Although the IRS is unlikely to allow FICA tax refund claims at this time, employers who have made payments recently to employees due to a reduction in force, closing of a plant or operation, or similar conditions should consider filing a protective refund claim before the statute of limitations expires. The statute of limitations for FICA tax payments made for 2009 will expire April 15, 2013. If the FICA tax refund claim is denied, the taxpayer should consider filing a refund suit or obtaining an extension of the time to file suit within two years of the denial. These actions will help preserve the employer’s rights pending further developments.

If you have any questions about the information contained in this Client Alert, please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below for more information.

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