

Application of Quality Stores Supreme Court Decision to Claims for Refund of Employment Taxes

Announcement 2015-08

PURPOSE

The purpose of this announcement is to provide guidance on the application of the decision in United States v. Quality Stores, Inc., 134 S. Ct. 1395 (2014), to claims for refund of employment taxes paid with respect to severance payments.

BACKGROUND

On March 25, 2014, in Quality Stores, the Supreme Court held in a unanimous 8-0 decision that the severance payments at issue in the case were wages subject to Federal Insurance Contributions Act (FICA) tax. The United States Court of Appeals for the Sixth Circuit had previously held that the payments were not wages for FICA purposes. In re Quality Stores, Inc., 693 F.3d 605, 616 (6th Cir. 2012). The Supreme Court's decision was consistent with the conclusion reached by the Federal Circuit in CSX Corp. v. United States, 518 F.3d 1328 (Fed. Cir. 2008), which held that severance payments were both wages for FICA tax purposes and compensation for Railroad Retirement Tax Act (RRTA) tax purposes.

In the years leading up to the Supreme Court's decision, the Internal Revenue Service (Service) received claims for refund of FICA, RRTA, and Federal Unemployment Tax Act (FUTA) taxes paid with respect to severance payments from over 3,000 taxpayers. Consistent with its position in the litigation, the Service

disallowed all such claims for refund from taxpayers located outside of the jurisdiction of the Sixth Circuit. Many of these taxpayers submitted a request to appeal the disallowed claim for refund to the IRS Office of Appeals. The Service suspended action on these appeal requests pending the resolution of the Quality Stores litigation. The Service also suspended action on the claims for refund filed by taxpayers located within the Sixth Circuit's jurisdiction pending the resolution of the Quality Stores litigation.

Under Revenue Ruling 90-72, supplemental unemployment compensation benefits that are linked to the receipt of state unemployment compensation and satisfy certain other requirements are excludable from wages for FICA, FUTA, and income tax withholding purposes, and are excludable from compensation for RRTA tax purposes. In Quality Stores, the parties agreed that the payments at issue did not satisfy the requirements for the narrow exclusion from FICA tax contained in Revenue Ruling 90-72. Accordingly, the Supreme Court did not address whether the exclusion from FICA taxes set forth in Revenue Ruling 90-72 for certain payments linked to state unemployment benefits is "consistent with the broad definition of wages under FICA." Quality Stores, 134 S. Ct. at 1405. Revenue Ruling 90-72 continues to be in effect.

APPLICATION OF QUALITY STORES SUPREME COURT DECISION

Claims for refund of FICA, RRTA, or FUTA taxes paid with respect to severance payments that do not satisfy Revenue Ruling 90-72.

As a result of the Supreme Court's holding in Quality Stores and the consistent position of the Federal Circuit in CSX, the Service will disallow all claims for refund of FICA or RRTA taxes paid with respect to severance payments that do not satisfy the

narrow exclusion contained in Revenue Ruling 90-72. This includes all claims for refund that were held in suspense pending the resolution of Quality Stores and claims filed by taxpayers located within the Sixth Circuit's jurisdiction. Since the definition of wages contained in section 3121(a) of the Internal Revenue Code is generally the same as the definition of wages in section 3306(b) with respect to the FUTA, the Service will also continue to disallow claims for refund of FUTA taxes paid with respect to such severance payments.

Appeal requests relating to disallowed claims for refund of FICA, RRTA, or FUTA taxes.

The Service will take no further action on the appeal requests that were suspended pending the resolution of Quality Stores. The Service fully disallowed the claims for refund that are the subject of these appeal requests. Following the Supreme Court's unanimous ruling that the severance payments at issue were wages for FICA purposes, there is no basis for taxpayers to appeal the disallowance to the IRS Office of Appeals with respect to that issue.

APPEAL REQUESTS RELATING TO OTHER ISSUES

If a taxpayer's claim for refund for which an appeal was requested included an additional or different basis for the claim for refund (such as a claim for refund of FICA tax paid on certain fringe benefits) or concerned payments that satisfied the requirements of Revenue Ruling 90-72, the taxpayer should contact Laird MacMillan at (651) 726-1473 (not a toll-free call) for information regarding how to proceed with the appeal request for that portion of the disallowed claim. If the taxpayer does not contact

the Service, the Service will take no further action on the appeal request. As stated in the disallowance letter sent to taxpayers claiming a refund, the two-year period during which the taxpayer may file suit in a United States district court or the United States Court of Federal Claims began on the date the disallowance letter was mailed by certified or registered mail. The filing of an appeal request did not suspend that time period for filing suit.

DRAFTING INFORMATION

The principal author of this announcement is Melissa L. Duce of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact Melissa L. Duce at (202) 317-6798 (not a toll-free call).