

# Tax Tip



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## FICA Refund Opportunity for Employers

A Michigan District Court recently created a tax refund opportunity. The court concluded that severance payments to terminated employees are not taxable wages for Federal Insurance Contributions Act (FICA) purposes.

Generally, payments made by an employer to an employee upon the involuntary termination of employment are wages subject to FICA. However, the court decision in the United States vs. Quality Stores Inc. concluded that the taxpayer may be entitled to IRS refunds for the FICA taxes paid on severance payments.

But are all severance payments treated the same and eligible for the potential refund? An appeal of the Michigan District Court decision is likely. This may mean that only severance payments made under Supplemental Unemployment Benefit (SUB) plan would be FICA exempt. A SUB plan is an arrangement in which a trust fund receives employer contributions to cover all eligible employees.

Until the dust settles, employers should review their severance payments, and file for at least a protective refund claim prior to any statute of limitation expiration. Generally, a taxpayer may file a claim for a tax refund within 3 years from the time their tax return was filed with the IRS or 2 years from the time the tax was paid to the IRS, whichever period is the last.

If you have any questions please contact our Tax Services Group:

609.520.1188  
[Taxbriefs@withum.com](mailto:Taxbriefs@withum.com)

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