

February 5, 2013 www.mcvpr.com**LABOR & TAX ALERT*****Sixth Circuit Decision Finding that Severance Pay in Connection with a Reduction in Force is not Subject to FICA***

On September 7, 2012, the United States Court of Appeals for the Sixth Circuit, in the case of United States v. Quality Stores Inc. et al., No. 10-1563 (6th Cir. Sept. 7, 2012), held that severance payments made by Quality Stores to its employees upon their involuntary termination due to business cessation were not “taxable wages” subject to withholdings under the Federal Insurance Contributions Act (“FICA”).

According to the Court, such payments qualified as “supplemental unemployment compensation benefits” (“SUB”), which are not subject to FICA taxes. In order to qualify as a SUB payment: (i) the amount should be paid to an employee; (ii) pursuant to an employer’s plan; (iii) because of an employee’s involuntary separation from employment, whether temporary or permanent; (iv) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions; and (v) included in the employee’s gross income.

Upon petitioning for a rehearing en banc, on January 4, 2013, the Court of Appeals denied the U.S. Government’s motion. It is expected that the IRS will seek Supreme Court review.

Because there is still no final resolution of this issue, employers should consult their tax advisors on whether they may file refund claims for FICA taxes paid on severance payments that qualify as a SUB.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following Labor & Employment Law attorneys:

Alfredo Hopgood	787.250.5689	ah@mcvpr.com
Jorge A. Antongiorgi	787.250.5659	jab@mcvpr.com
María Antongiorgi	787.250.2624	maj@mcvpr.com
Anita Montaner	787.250.5652	ams@mcvpr.com
James D. Noel	787.250.5673	jdn@mcvpr.com
Miguel Palou	787.250.5686	mpe@mcvpr.com
Radamés A. "Rudy" Torruella	787.250.5679	rat@mcvpr.com

Or any of the following Tax attorneys:

Carlos E. Serrano	787.250.5698	ces@mcvpr.com
Roberto L. Cabañas	787.250.5611	rlc@mcvpr.com
Alba I. Joubert	787.250.5649	aj@mcvpr.com
Rubén Muñiz	787.250.2623	rm@mcvpr.com
Isis Carballo	787.250.5691	ici@mcvpr.com
Yamary González	787.250.5687	yg@mcvpr.com

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