

April 2010

TAX BULLETIN

FICA Tax on Supplemental Unemployment Compensation Benefits Paid

As a result of a recent favorable District Court decision, (*United States v. Quality Stores, Inc.*), you may be entitled to a refund of FICA taxes paid on supplemental unemployment compensation benefits (severance) paid. These payments must be taxable to the employee and made to an employee under the criteria specified in Internal Revenue Code Section 3402(o):

- Pursuant to a plan to which the employer is a party,
- Because of an employee's involuntary separation from employment (permanent or temporary), and
- Where the payments resulted directly from a reduction in force, the discontinuance of a plant or operations, or other similar conditions.

If you paid significant benefits meeting these criteria, and paid and withheld FICA taxes on these payments, you should consider identifying the amounts, obtaining employee acknowledgments/consents and filing claims for refunds of FICA taxes paid by the employer and withheld from employees.

The IRS is expected to appeal the *Quality Stores* case and will not act on these claims until it is resolved. However, protective claims should be filed (before April 15, 2010 for 2006 payments) to stop the running of the statute of limitations until the matter is resolved. If you would like any assistance in preparing a protective claim, please call your Wolf representative.