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## 2014, to Reserve the Right for a Refund of FICA Taxes Remitted on Severance Pay in 2010

Jan. 16, 2014

Payroll and human resources provider [ADP](#) has announced that it is now offering a service to help employers with refunds of FICA taxes on some types of severance pay.

ADP is partnering with a third-party tax practitioner to provide the new [Protective Claims Service](#) for some clients pending a final decision in the United States v. Quality Stores, Inc. case (the “Quality Stores” case). The U.S. Supreme Court hearing for the Quality Stores case was held January 14, 2014, but a decision may not be issued until the summer.

The outcome of the case may determine whether employers are eligible for a refund of FICA taxes remitted on certain types of severance pay made in tax year 2010 to present. Businesses that believe they may be eligible for a refund of 2010 FICA taxes — assuming a ruling by the court determines that they are entitled to one — must file a protective claim with the IRS no later than April 15, 2014, due to the statute of limitations.

ADP's Protective Claims Service includes:

Filing of 2010 tax year protective claim (IRS Form 941-X) Tracking of the claim and IRS responses Following the progress of the ongoing Supreme Court litigation Third-party tax practitioner assistance with the final refund calculation for all applicable tax years 2010-present, if applicable Assistance with outreach to qualified employees

“The United States vs. Quality Stores case decision could mean the refund of Social Security and Medicare taxes paid by employers on severance pay – which could potentially add up to a substantial sum for some businesses,” said Kerstin Nemec,

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U.S. Department of Labor, more than 175,000 employees were impacted by plant closings and mass layoffs in 2010 alone. Among the top five states impacted were California, New York, Pennsylvania, Florida and Illinois. The industries that felt the greatest impact were healthcare, transportation, banking and retail. For most taxpayers, this court case may affect FICA taxes paid in 2010 and subsequent years.

Employers who believe they may be eligible for a refund of FICA taxes can contact ADP at 855-472-5556 to learn more about the company's protective claim filing service.

### **About the United States vs. Quality Stores, Inc. case**

Litigation around the issue of FICA taxes remitted on severance pay began in 2001 when Quality Stores, Inc. declared bankruptcy and then filed a claim for a \$1 million refund with the IRS in 2002. The case has now made its way to the U.S. Supreme Court, which began hearing oral arguments on January 14, 2014. The case centers on the question of whether severance pay made as part of an employee's involuntary separation is subject to FICA taxes. If the court holds that such severance pay is not subject to FICA taxation, employers and employees may be eligible for a refund of taxes previously paid. Due to the IRS statute of limitations, only taxes paid in 2010 and later are still subject to consideration for refunds; protective claims on 2010 taxes must be received no later than April 15, 2014, and because there may or may not be a Supreme Court decision by that time, employers may want to file a protective claim as soon as possible to preserve their right to a refund should the decision allow.

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