

Supplemental Unemployment Compensation Benefits Are Subject to FICA.

In 2012, the Sixth Circuit ruled that supplemental unemployment compensation benefits (so-called SUB payments) are not wages subject to FICA under the Internal Revenue Code. *In re Quality Stores, Inc.*, 693 F.3d 605(6th Cir. 2012). The court of appeals elected not to follow the opinion of the Federal Circuit in *CSX Corp. v. United States*, 518 F.3d 1328 (Fed. Cir. 2008), which reached the opposite result. The Supreme Court has now reversed the Sixth Circuit. *United States v. Quality Stores, Inc.*, 2014 U.S. LEXIS 2213 (March 25, 2014).

First, the Court ruled that the payments fell within the statutory definition of wages under FICA as they were remuneration for employment under Section 3121(a) of the Internal Revenue Code. *Quality Stores*, 2014 U.S. LEXIS 2213, slip op. at *9-*10. This conclusion was reinforced by the fact that FICA includes an exemption for severance payments made in the context of retirement or disability. *Id.*, slip op. at *12. The Court also noted that Congress had repealed a pre-existing exemption for severance payments in 1950. *Id.*, slip op. at *13-*14.

Next, the Court turned to Section 3402(a) of the Code, which had been central to the Sixth Circuit's analysis. Here the Court rejected the argument that Section 3402(a)'s directive that all SUB payments be treated "as if" they were wages meant that none of them were, following the analysis of the Federal Circuit in *CSX*. *Id.*, slip op. at *16-*17. This conclusion was also bolstered by the context in which Section 3402(a) was adopted; Congress had adopted it to solve a problem faced by employees who received severance payments that were taxable, but exempt from withholding. *Id.*, slip op. at *18-*22.

This is, in my view, the correct result. As I indicated [previously](#), the Sixth Circuit's opinion seemed less persuasive than the Federal Circuit's approach in *CSX*.

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