Think You Can't Save on FICA Taxes? Think Again.
SUB-Pay Plans Are the Only IRS-Approved Solution to Save on FICA Taxes

Following the landmark US Supreme Court decision in *United States v. Quality Stores, Inc.*, many companies have surmised wrongly that the ruling eliminates the opportunity for FICA tax savings in severance programs. It is true that a direct consequence of the ruling was that more than $1 billion in FICA tax protective refund claims filed by employers across the country were not and will not be paid. However, under the Court's ruling, Supplemental Unemployment Benefits ("SUB-Pay") Plans complaint with IRS Revenue Ruling 90-72 remain valid. Simply put, traditional severance plans are FICA-taxable, and SUB-Pay Plans are not.

Companies planning future downsizings due to acquisitions, restructurings, or economic conditions need to reevaluate their severance strategies in light of the *Quality Stores* decision in order to maximize tax benefits to both their company and their employees.

How Can You Start Saving on FICA Taxes?

Employers can modify their existing severance program by implementing a SUB-Pay Plan and supplementing the receipt of their former employee's amount of state unemployment insurance ("UI") benefits thereby reducing their severance costs by as much as 45% (or more). In addition, the same SUB-Pay benefits are exempt from employer FICA, FUTA and SUTA taxes and employee FICA taxes. SUB-Pay Plans are particularly beneficial to companies planning future downsizings due to acquisitions, restructurings, seasonal employment or economic conditions. As with severance plans, once a SUB-Pay Plan is established it can continue to be used indefinitely for any involuntary staff reductions.

SUB-Pay benefits are linked to the receipt of state UI benefits which, pursuant to the IRS's administrative position going back to the 1950s, is not subject to FICA or FUTA taxes. Companies that implement and operate a SUB-Pay Plan that complies with IRS Revenue Rulings are able to receive an immediate and guaranteed FICA tax savings. Plans that comply with these rulings are not only still recognized at the federal level, but they're also recognized at the individual state level too.

Today, successful SUB-Pay Plans follow a particular pattern. Workers are eligible for SUB-Pay benefits if laid off by the company, either in an involuntary permanent or temporary reduction in force or in a temporary layoff. These payments are contingent upon workers remaining eligible for state UI benefits. Employees leaving the company voluntarily or who are discharged for misconduct are not eligible for SUB-Pay benefits. Finally, SUB-Pay benefits must be periodic and cannot be made as a lump sum.

Save 7.65 Percent in FICA Payroll Taxes

Implementing a SUB-Pay Plan, rather than continuing to utilize a traditional severance plan, can significantly reduce severance costs and provide tax savings to displaced workers. A SUB-Pay Plan can save a company 7.65 percent in severance costs from FICA payroll tax savings on the separation payments, as well as federal and state unemployment tax savings, depending upon the state, the employer's experience rating, and the time of year that the reduction in force occurs.

A SUB-Pay Plan also can save a company 45% or more of total severance costs by supplementing the separation payments with state UI benefits the former employees are eligible to receive. For example, if an employee's pre-layoff wage was $1,000 a week and the state UI benefit is $500 a week, the company pays only $500 a week in separation pay to keep the employee at the pre-layoff wage and saves 7.65% in

FICA tax too. Also, because SUB-Pay benefits must be made on a periodic basis, there is predictability to the process that can be a significant benefit to the company's cash flow.

There are a number of significant benefits to the employee as well. The downsized employees receive 7.6% more net income and get a regular income for the duration of their separation plan. Contrast this with lump-sum severance payments that, when added to employee year-to-date compensation, may elevate the employee into a higher tax bracket. Because SUB-Pay Plans are paid on a periodic basis, the former employee is provided with steady income during their reemployment transition, and may be relieved of the additional tax burden associated with lump-sum severance payments.

Only One IRS-Approved Solution

In light of the Court's ruling, the only way to get a guaranteed FICA tax savings is to have a SUB-Pay Plan that is compliant with IRS rulings. Employers can reduce unnecessary lay-off costs tomorrow by implementing a SUB-Pay Plan today.

About the Author

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About Total Management Solutions

Total Management Solutions (TMS) is a trusted advisor to Fortune 1000 and mid-sized US companies, helping them change, manage and administrate their corporate severance plans. Through our Supplemental Unemployment Benefit ("SUB-Pay") Plans, we help companies reduce the high cost, stress and burden associated with implementing employee severance plans resulting from a merger, acquisition, business realignment or economic downturn. With a SUB-Pay Plan, our clients typically save 45% or more of traditional severance costs, while providing more separation benefits to laid-off employees.

With over 25 years of experience, TMS is the pioneer and only company solely dedicated to the design, implementation and administration of SUB-Pay Plans. Each SUB-Pay Plan is customized to meet your company's financial and cultural requirements and is supported by a management team of experts in SUB-Pay Plans, sophisticated technology and unparalleled customer service. Once the SUB-Pay Plan is designed and implemented, TMS manages the day-to-day aspects of the plan administration for you, while our personal service provides displaced employees with full support services from our in-house Client Service Support Center.

We literally own the URL www.subpay.com. To learn how a SUB-Pay Plan can help your company save money, please visit our web site at www.subpay.com or contact us at (800) 464-7755.