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# Client Bulletin



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## Contract Statute of Limitations Shortened

In legislation effective September 28, 2012, Ohio's statute of limitations for bringing an action for breach of contract was shortened from 15 years to 8 years after the cause of action accrued (when the alleged breach of contract occurred). The new eight year statute of limitations only applies to cases in which the cause of action accrues on or after September 28, 2012.

## Ohio Minimum Wage Increases January 1, 2013

In accordance with the amendment to the Ohio Constitution adopted in 2006, which links Ohio's minimum wage to the increase in the Consumer Price Index, Ohio's minimum wage increases to \$7.85 an hour for regular employees and to \$3.93 an hour for tipped employees. Also effective January 1, 2013, there will be a slight change in who must pay Ohio's minimum wage as the threshold for businesses who have to pay Ohio's minimum wage increases from \$283,000 in annual gross receipts to \$288,000. Businesses with less than \$288,000 annual gross receipts will have to comply with the federal minimum wage law. The federal minimum wage, which does not adjust with changes in the Consumer Price Index, is \$7.25 an hour.

## Take a Closer Look at Employee Reimbursement Plans for Tools, Vehicle Usage and Out-of-Town Travel

In Revenue Ruling 2012-25, the IRS continues to examine employers on re-characterization plans, presumably out of concerns employers are unjustifiably reducing employee income and employment taxes. In the four situations laid out by the IRS (a cable company making tool allowances, a staffing contractor supplying travelling nurses, a construction company with workers travelling to jobsites and a cleaning company reimbursing for travel, equipment and supplies), reimbursements paid under three of the four situations were taxable according to the IRS because the employer paid the same gross amount regardless of whether expenses were incurred.

In the one situation that passed muster with the IRS, the employer reimbursed employees only when a deductible business expense was incurred, and the reimbursement was not in lieu of wages that the employee would otherwise receive.

*Continued . . .*

## Refund Possibility for FICA Taxes Paid on Employee Severances

The 6<sup>th</sup> Circuit U.S. Court of Appeals ruled against the IRS and in favor of the parent company for Quality Farm and Fleet stores on the refund of more than \$1,000,000 in FICA taxes for 1,850 former employees (\$571,127 for the employer share and \$428,998 for the former employees who consented to the pursuit of these claims).

The case started in October 2001 with the involuntary bankruptcy of Quality Stores, Inc. In agreeing with the taxpayer, the court applied a 5-part test. A substantial part of the 21-page opinion focused on statutory interpretations of “income” and “wages” and held that for purposes of federal income tax withholding, under IRC § 3402, the severance payments were “wages” subject to withholding for income taxes, but for FICA purposes, they were not “wages” and were otherwise exempt from FICA. *In re: Quality Stores, Inc.*, No. 10-1563 (6th Cir. 2012)(decided Sept. 7, 2012).

For Ohio operations (or anywhere else within the 6<sup>th</sup> Circuit) that have gone through downsizing and withheld FICA on the severance payments, contact your tax advisor to consider filing IRS Form 843 to seek a refund for all open tax years. As noted by the Sixth Circuit in its opinion, its decision conflicts with the Federal Circuit in *CSX Corp.*, 518 F.3d 1328, and will therefore likely be litigated to the U.S. Supreme Court.

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## Congratulations to the Council for Older Adults

Congratulations are in order for the Council for Older Adults for receiving Standards for Excellence re-certification by the Ohio Association of Nonprofit Organizations (OANOL) given to Ohio not-for-profit corporations that meet or exceed criteria that includes specific guiding principles and standards.

## Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.