No. 12-1408

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

QUALITY STORES, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether severance payments made to employees whose employment was involuntarily terminated are taxable under the Federal Insurance Contributions Act, 26 U.S.C. 3101 *et seq.*

PARTIES TO THE PROCEEDING

Petitioner is the United States of America. Respondents are Quality Stores, Inc. (f/k/a Central Tractor Farm & Country, Inc.); QSI Holdings, Inc. (f/k/a CT Holdings, Inc.); Country General, Inc.; F and C Holding, Inc.; FarmandCountry.com, LLC; QSI Newco, Inc.; QSI Transportation, Inc.; Quality Farm & Fleet, Inc.; Quality Investments, Inc.; Quality Stores Services, Inc.; and Vision Transportation, Inc.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 693 F.3d 605. The opinion of the district court (Pet. App. 33a-54a) is reported at 424 B.R. 237. The opinion of the bankruptcy court (Pet. App. 55a-77a) is reported at 383 B.R. 67.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 2012. A petition for rehearing was denied on January 4, 2013 (Pet. App. 31a-32a). On March 25, 2013, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including May 3, 2013. On April 22, 2013, the Chief Justice further extended the time to May 31, 2013, and the petition was filed on that date. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent portions of 26 U.S.C. 3121(a)-(b), 3401, and 3402 are reproduced in the appendix to this brief. App., *infra*, 1a-4a. Other relevant statutory and regulatory provisions are reproduced in the appendix to the petition for a writ of certiorari. Pet. App. 84a-214a.

STATEMENT

1. The Social Security Act and related legislation establish "a comprehensive national insurance system that provides benefits for retired workers, disabled workers, unemployed workers, and their families." *Mayo Found. for Med. Educ. & Research* v. *United States*, 131 S. Ct. 704, 709 (2011). Those benefits are funded through taxes collected under the Federal Insurance Contributions Act (FICA), 26 U.S.C. 3101 *et seq*. See *Mayo Found.*, 131 S. Ct. at 709. FICA taxes are imposed on both employers and employees, and both elements of the tax are imposed on "wages" paid by an employer or received by an employee "with respect to employment." 26 U.S.C. 3101(a) and (b), 3111(a) and (b). An employee who pays taxes on "wages" under FICA generally accrues corresponding wage credits, which increase the amount of FICA-financed benefits to which he is entitled. See 42 U.S.C. 401 *et seq.*; see also 20 C.F.R. 404.1001; *United States* v. *Cleveland Indians Baseball Co.*, 532 U.S. 200, 212-213 (2001); *United States* v. *Silk*, 331 U.S. 704, 711 (1947).

Consistent with the broad remedial purposes of the Social Security program, the terms that define FICA's scope "import a breadth of coverage." *Mayo Found.*, 131 S. Ct. at 715 (citation omitted); see, *e.g.*, *Social*

Sec. Bd. v. *Nierotko*, 327 U.S. 358, 365 (1946); *Silk*, 331 U.S. at 711-712. In particular, "Congress has defined 'wages' broadly, to encompass 'all remuneration for employment.'" *Mayo Found.*, 131 S. Ct. at 709 (quoting 26 U.S.C. 3121(a)). "The term 'employment' has a similarly broad reach, extending to 'any service, of whatever nature, performed . . . by an employee for the person employing him.'" *Ibid.* (quoting 26 U.S.C. 3121(b)). This Court has explained in a related context that "'service' as used by Congress in this definitive phrase means not only work actually done but the entire employer-employee relationship for which compensation is paid to the employee by the employer." *Nierotko*, 327 U.S. at 365-366.

A predecessor to the current version of FICA specifically "except[ed]" from the basic definition of "wages" any "[d]ismissal payments which the employer [was] not legally required to make." Social Security Act Amendments of 1939 (1939 Social Security Amendments), ch. 666, § 606, 53 Stat. 1383-1384 (codified at 26 U.S.C. 1426(a)(4) (1940)). In 1950, however, Congress eliminated that exception. See Social Security Act Amendments of 1950 (1950 Social Security Amendments), ch. 809, § 203(a), 64 Stat. 525-527. The House Committee Report accompanying the bill explained that, in the absence of the exception, so long as an employee had not already earned the maximum amount of taxable "wages" for a particular year, "any payment made by an employer on account of involuntary separation of the employee from the service of the employer, will constitute wages." H.R. Rep. No. 1300, 81st Cong., 1st Sess. 124 (1949) (1949 House Report).

2. Respondents are an agricultural-specialty retailer and several affiliated companies that entered into bankruptcy proceedings in 2001. Pet. App. 2a. Both before and after the filing of a bankruptcy petition, respondents terminated thousands of their employees. *Id.* at 3a, 5a. Those employees received severance payments from respondents pursuant to two separate plans. *Id.* at 3a-4a.

Under the terms of the pre-petition severance plan, any employee who was terminated for general business reasons (like the closing of a store or a plant) received severance pay based on his job grade and management level in the organization. Pet. App. 3a; see J.A. 56. The president and chief executive officer received 18 months of severance pay; senior management executives received 12 months of severance pay; and other managers and employees received one week of severance pay for each full year of service. Pet. App. 3a; see J.A. 57-58. For each employee, the amount of the severance pay was equal to the employee's regular salary for the covered period, and respondents made the severance payments on their normal payroll schedule. Pet. App. 3a-4a; J.A. 57-58. Under the pre-petition plan, salaried employees received an average of 11.4 weeks of severance pay, while hourly employees received an average of 4.2 weeks of severance pay. Pet. App. 4a; J.A. 52.

The post-petition severance plan was designed to encourage remaining employees to defer their job searches and to dedicate their time and efforts to respondents' post-bankruptcy operations. Pet. App. 4a. To be eligible for severance pay under the post-petition plan, an employee was required to complete his last day of service as scheduled by respondents.

Ibid.; J.A. 60. For those employees who did so, executives received between six and 12 months of severance pay; full-time salaried and hourly employees who had been employed for at least two years received one week of severance pay for every full year of service (up to a maximum of ten weeks for salaried employees and five weeks for hourly employees); and salaried and hourly employees with less than two years of service received one week of severance pay. Pet. App. 4a; J.A. 52-53, 60. Each of these post-petition severance amounts was paid as a lump sum at the end of an employee's service. Pet. App. 4a. Under the post-petition plan, salaried employees received an average of 5.2 weeks of severance pay, while hourly employees received an average of 3.1 weeks of severance pay. *Ibid.*; J.A. 53.

Respondents reported the severance payments as wages on W-2 forms and withheld federal income tax. Pet. App. 5a. Respondents also remitted to the Internal Revenue Service (IRS) a percentage of the severance payments to account for both employer and employee FICA taxes. *Ibid.* Subsequently, however, respondents filed for a refund of $1,000,125 in FICA tax that they had paid as employers and that they had paid on behalf of roughly 1850 employees. *Id.* at 5a-6a. When the IRS did not allow or deny the claim, respondents filed an adversary proceeding in the bankruptcy court seeking a refund of the disputed amount. *Id.* at 6a.

3. The bankruptcy court granted summary judgment to respondents, Pet. App. 55a-77a, and the district court affirmed, *id.* at 33a-54a. The court of appeals also affirmed. *Id.* at 1a-30a.

The court of appeals' analysis, like the analyses of the district court and the bankruptcy court, focused largely on a provision, 26 U.S.C. 3402(*o*), that is not part of FICA, but instead concerns withholding of income tax. Pet. App. 8a-30a; *id.* at 43a-54a, 60a-77a. Chapter 24 of the Internal Revenue Code contains a definition of "wages" substantially similar to FICA's, see 26 U.S.C. 3401(a), and it generally requires that "every employer making payment of wages * * * deduct and withhold" income tax from those "wages," 26 U.S.C. 3402(a)(1). Section 3402(*o*), entitled "[e]xtension of withholding to certain payments other than wages," states a "[g]eneral rule" that, for purposes of Chapter 24 (and certain procedural provisions) "any supplemental unemployment compensation benefit paid to an individual * * * shall be treated as if it were a payment of wages by an employer to an employee for a payroll period." 26 U.S.C. 3402(*o*)(1)(A). The term "[s]upplemental unemployment compensation benefits" is defined to mean "amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income." 26 U.S.C. 3402(*o*)(2)(A).

Based on the parties' stipulation of certain facts,[1] the court of appeals concluded that respondents' sev-

[1] The parties stipulated that the severance payments at issue in this case "were paid because of" the employees' "involuntary separation from employment, resulting directly from a reduction in force or the discontinuance of a plant or operation"; were "not tied

erance payments fell within Section 3402(*o*)(2)(A)'s definition of "supplemental unemployment compensation benefits." Pet. App. 11a. The court also observed that, under Section 3402(*o*)(1), any payment that falls within that statutory definition "shall be treated *as if it were a payment of wages* by an employer to an employee for a payroll period." *Ibid.* (quoting 26 U.S.C. 3402(*o*)(1)) (emphasis added by court of appeals). The court of appeals found that the "necessary implication" of the italicized language was "that Congress did not consider [such] payments to be 'wages,' but allowed their treatment as wages to facilitate federal income tax withholding." *Id.* at 11a-12a (quoting 26 U.S.C. 3402(*o*)(1)). The court further reasoned that, if "supplemental unemployment compensation benefits" are "not 'wages' but are only treated as if they were 'wages' for purposes of federal income tax withholding, then [such] payments also are not 'wages' under the nearly identical definition of that term found in the FICA statute." *Id.* at 13a-14a. The court of appeals recognized that its decision conflicted with the Federal Circuit's decision in *CSX Corp.* v. *United States*, 518 F.3d 1328 (2008), which had rejected the proposition that "all payments that qualify * * * under the statutory definition in section 3402(*o*)(2)(A) are non-wages for purposes of FICA." *Id.* at 1345; see Pet. App. 20a.

SUMMARY OF ARGUMENT

FICA broadly defines the term "wages" as all remuneration received for any service by an employee.

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to the receipt of state unemployment compensation"; and were "not attributable to the rendering of any particular services" by the employees to respondents. J.A. 51-53.

See 26 U.S.C. 3121(a) and (b). The severance payments at issue in this case fit comfortably within that broad definition, which encompasses "the entire employer-employee relationship for which compensation is paid to the employee by the employer." *Social Sec. Bd.* v. *Nierotko*, 327 U.S. 358, 366 (1946). Respondents' severance payments constituted a final reward for the recipients' service as employees, and they were calculated by reference to individual employees' positions, length of service, and former salaries.

None of the statutory exceptions to FICA's expansive definition of "wages" is applicable here. Congress's deliberate decision to eliminate an exception for certain types of "dismissal payments," which had appeared in a previous version of the statute, reinforces the conclusion that "any payment made by an employer on account of involuntary separation of the employee from the service of the employer, will constitute wages." 1949 House Report 124. Respondents' severance payments also do not fall within the limited administrative exception to the statutory definition of "wages" that the IRS has carved out in a series of Revenue Rulings. See, *e.g.*, Rev. Rul. 90-72, 1990-2 C.B. 211. Rather, respondents' payments, like other types of separation-related payments, fall within FICA's basic definition of "wages," which includes all compensation based upon and arising out of the employer-employee relationship.

The court of appeals erred in construing 26 U.S.C. 3402(*o*) to require a considerably narrower construction of FICA's definition of "wages." Section 3402(*o*) is not part of FICA, but is instead an income-tax-withholding rule that requires certain types of em-

ployer-sponsored unemployment benefits to be "treated as * * * wages" for withholding purposes. Because Section 3402(*o*) applies only to the income-tax withholding context (and related procedural provisions), it cannot supersede the definitional provisions in FICA.

Even in the income-tax-withholding context, Section 3402(*o*) does not narrow the definition of "wages." Congress enacted Section 3402(*o*) following a series of administrative decisions in which the IRS had excepted certain subtypes of employer-sponsored unemployment benefits from the statutory definition of "wages" for employment-tax and withholding purposes. The provision directs that certain unemployment-benefit payments will be "treated" as "wages" for withholding purposes, *whether or not* they would otherwise be so regarded, in order to ensure that recipients will not face large income-tax liability at the end of the year. The provision does not logically imply, however, that *none* of the payments covered by the statutory definition of "supplemental unemployment compensation benefits" would otherwise qualify as "wages." The construction of Section 3402(*o*) advanced by the court of appeals and respondents has no sound basis in the provision's text or history, and it cannot justify excepting respondents' severance payments from the broad reach of FICA.

ARGUMENT

RESPONDENTS' SEVERANCE PAYMENTS ARE COVERED BY FICA

A. FICA's Expansive Definition Of "Wages" Encompasses Severance Payments Like Respondents'

To fund the Social Security and Medicare programs, FICA requires employers and employees to pay taxes on all "wages" paid by an employer or received by an employee "with respect to employment." 26 U.S.C. 3101(a) and (b); 26 U.S.C. 3111(a) and (b). FICA's expansive definitions of the relevant terms "import a breadth of coverage," *Mayo Found. for Med. Educ. & Research* v. *United States*, 131 S. Ct. 704, 715 (2011) (citation omitted), that readily encompasses the severance payments at issue here.

1. FICA defines the terms "wages" and "employment" in sweeping language. The basic definition of "wages" includes "all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash." 26 U.S.C. 3121(a). The basic definition of "employment" includes "any service, of whatever nature, performed * * * by an employee for the person employing him." 26 U.S.C. 3121(b).

The severance payments at issue here fit squarely within those definitions. Those payments were undoubtedly a form of "remuneration." That term has long been understood as effectively synonymous with payment or compensation. See, *e.g.*, *Black's Law Dictionary* 1409 (9th ed. 2009) (defining "remuneration" as "[p]ayment; compensation"); *Webster's Third New International Dictionary of the English Language* 1921 (1993) (defining "remunerate" as "to pay an equivalent to (a person) for a service, loss, or ex-

pense: recompense, compensate") (capitalization omitted); 8 *The Oxford English Dictionary* 439 (1st ed. 1933) (defining "[r]emuneration" as "[r]eward, recompense, repayment; payment, pay"). The current Treasury regulations—which are entitled to deference under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 843 (1984)), see *Mayo Found.*, 131 S. Ct. at 713—underscore the breadth of the term. Those regulations provide that a payment can constitute "remuneration" regardless of the "name by which [it] is designated," "the basis upon which [it] is paid," or "the medium in which [it] is paid." 26 C.F.R. 31.3121(a)-1(c)-(e). That expansive definition is consistent with this Court's decision in *Social Security Board* v. *Nierotko*, 327 U.S. 358 (1946), which held that an administrative award of back pay to a wrongfully discharged employee was "[s]urely * * * 'remuneration'" within the meaning of a Social Security benefits provision that defined "wages" in the same manner as FICA. *Id.* at 364; see *id.* at 362-363.

The severance payments in this case were also made in return for a "service, of whatever nature, performed" by the recipients. In concluding that the back-pay award in *Nierotko* constituted "wages," this Court explained that "'service' as used by Congress in this definitive phrase means not only work actually done but the entire employer-employee relationship for which compensation is paid to the employee by the employer." 327 U.S. at 365-366. Accordingly, by defining "employment" expansively to include "any service, of whatever nature," FICA encompasses not only compensation for an employee's performance of specific functions, but also compensation that accounts more generally for an employee's entire performance

over a period of time. That would include severance payments, which function as a parting reward for an employee's entire body of work on the employer's behalf.

As an incident of employment, severance payments are analogous to other types of payments, such as benefits (*e.g.*, vacation pay) or bonuses (*e.g.*, holiday bonuses), that would qualify as "wages" even if not tied to a specific service by the employee. See 26 U.S.C. 3121(a) (including "benefits" in the definition of "wages"); 26 C.F.R. 31.3121(a)-1(c) (recognizing that "bonuses * * * are wages if paid as compensation for employment"). Indeed, severance payments could be considered a form of benefit or bonus, paid in consideration for an employee's term of service. Like other sorts of benefits and bonuses, severance payments are commonly (but not always) negotiated in advance as part of the original contract that defines the "employer-employee relationship." See, *e.g.*, *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 545 (1964) (describing "severance pay" as a "matter[] typically covered by collective bargaining agreements"); Stewart J. Schwab & Randall S. Thomas, *An Empirical Analysis of CEO Employment Contracts: What Do Top Executives Bargain For?*, 63 Wash. & Lee L. Rev. 231, 236, 239 (2006) (explaining that severance packages are often part of top executives' contracts).

The link between severance payments and prior service is especially clear in the circumstances of this case. Respondents' severance plans provided for payments only to individuals who had been respondents' employees (and thus had performed services on respondents' behalf), and the terms of the payments were tied to particular aspects of the individual em-

ployment relationships. Pet. App. 3a-4a. The plans calculated payment amounts by reference to the positions the recipients had held within respondents' work force, the length of time they had worked for respondents, and the salaries they had earned during their periods of service. *Ibid.*; J.A. 56-60. The post-petition plan was designed specifically to compensate employees for performing additional services after respondents entered into bankruptcy, thereby providing those employees with an incentive to defer their job searches and dedicate their time and efforts to their current employers. Pet. App. 4a; J.A. 60.

It is irrelevant for FICA purposes that payments in this case were made only after the recipients' employment with respondents had ended. Payments may be "wages" under FICA "even though * * * at the time of payment, the employment relationship * * * no longer exists." *Otte* v. *United States*, 419 U.S. 43, 51 (1974). That understanding of the statute has "long and consistently" been reflected in the regulations implementing FICA. *Ibid.* Those regulations continue to provide that a payment does not lose its character as "[r]emuneration for employment" merely because "at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them." 26 C.F.R. 31.3121(a)-1(i). Severance payments therefore satisfy FICA's definition of "wages" irrespective of when the separated employee actually receives the compensation.

2. Payments that meet the basic statutory definition of "wages" are covered by FICA "unless specifically excepted." 26 C.F.R. 31.3121(a)-1(b); see 26

C.F.R. 31.3121(b)-3(b) (same for "employment"). FICA identifies particular types of remuneration that do not constitute "wages," see 26 U.S.C. 3121(a)(1)-(23), and particular types of services that do not constitute "employment," see 26 U.S.C. 3121(b)(1)-(21). See also 26 C.F.R. 31.3121(a)-1(j) (regulatory exceptions to definition of "wages"). Respondents have not contended, and the court of appeals did not hold, that the severance payments at issue here fit within any of those exceptions.

This Court has recognized, in addressing a predecessor to FICA, that "[t]he very specificity of [its] exemptions" provides an additional reason for construing the basic definitional provisions broadly. *United States* v. *Silk*, 331 U.S. 704, 711-712 (1947). In order to assure adequate funding for the social-welfare programs that are financed by taxes on "wages," Congress has enacted expansive default definitions of "wages" and "employment." See *ibid.* (observing that "the generality of the employment definitions indicates that the terms 'employment' and 'employee,' are to be construed to accomplish the purposes of the legislation") (footnote omitted). Congress has also carefully considered and precisely delineated specific exemptions for types of payments and activities it did not want to cover. See *ibid.*; see also, *e.g.*, *United States* v. *Lee*, 455 U.S. 252, 260-261 (1982) (recognizing that the "narrow" scope of a particular exemption applicable to FICA reflected congressional balancing of interests). This Court has accordingly cautioned against adopting "a constricted interpretation" of FICA's default definitional provisions, which would "make for a continuance, to a considerable degree, of the difficulties" that the "federal social security legis-

lation" was designed to "remedy," and "would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation." *Silk*, 331 U.S. at 712.

Not only the existence, but also the substance, of the specific exceptions in Section 3121(a) supports the conclusion that the severance payments at issue here are "wages." Section 3121(a)(13) excludes from the statutory definition of "wages" a limited subset of termination-related payments, namely, certain types of disability payments made "upon or after the termination of an employee's employment relationship because of * * * retirement for disability." 26 U.S.C. 3121(a)(13)(A). Such an exception would have been unnecessary if the basic definition of "wages" did not cover termination-related payments at all. See *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013) (considering Congress's enactment of a "limited exception" to a statutory rule as evidence that Congress did not intend a broader exception); *American Bank & Trust Co.* v. *Dallas Cnty.*, 463 U.S. 855, 863-864 (1983) (considering a provision's broad scope to be "reinforce[d]" by statutory exceptions that would be "superfluous" if the provision was given a narrower interpretation).

3. The history of FICA confirms Congress's intent that severance payments like respondents' be included in the definition of "wages." FICA has its origins in Title VIII of the Social Security Act, ch. 531, 49 Stat. 636 (1935). *Rowan Cos.* v. *United States*, 452 U.S. 247, 255 (1981). The 1935 Act's basic definitions of "wages" and "employment" were substantially the same as the ones in the current version of FICA. See § 811(a), 49

Stat. 639 ("The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash."); § 811(b), 49 Stat. 639 ("The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer."). Shortly after those provisions were enacted, the Treasury Department issued regulations providing that the statutory definition of "wages" included "dismissal pay." Bureau of Internal Revenue, *Employees' Tax and the Employers' Tax Under Title VIII of the Social Security Act*, 1 Fed. Reg. 1764, 1769 (Nov. 11, 1936).

In 1939, Congress amended the relevant definitional sections. See 1939 Social Security Amendments § 606, 53 Stat. 1383-1384. Although the basic definitions of "wages" and "employment" remained substantially unchanged, *ibid.*, the 1939 amendments excepted "[d]ismissal payments which the employer is not legally required to make" from the statutory definition of "wages," *id.* at 1384 (codified at 26 U.S.C. 1426(a)(4) (1940)). While that statutory exception was in effect, severance payments like those provided under respondents' pre-petition plan presumably would not have been covered by FICA.

In 1950, however, Congress repealed the exception for discretionary dismissal payments, and no such exception appears in the current version of the statute. See 26 U.S.C. 3121(a); 1950 Social Security Amendments, ch. 809, § 203(a), 64 Stat. 525-527. The subcommittee report recommending the change explained that eliminating the distinction between discretionary and required dismissal payments would "reduce the amount of record keeping required for

employers" and "remove the difficulties of deciding whether dismissal payments are taxable or nontaxable under present law." Subcomm. on Social Sec., 80th Cong., Rep. on Social Sec. Amendments 13 (Comm. Print 1948). The report further explained that "[d]ismissal payments assume a wide variety of forms," including "amounts paid because of involuntary employment termination, even where they represent payments for prior services rendered." *Ibid.*

The House Committee Report accompanying the bill that repealed the exception accordingly explained that, once the exception was eliminated, "a dismissal payment, which is any payment made by an employer on account of involuntary separation of the employee from the service of the employer, will constitute wages" unless and until the employee has received the maximum amount of taxable "wages" for a particular year. 1949 House Report 124; see *CSX Corp.* v. *United States*, 518 F.3d 1328, 1334 (Fed. Cir. 2008) ("[A]s of 1950, it was clear that all payments made by an employer on account of the involuntary separation of an employee from service constituted wages within the meaning of FICA."). On that understanding, the severance payments here—which were undisputedly "made by an employer on account of involuntary separation of the employee from the service of the employer"—are subject to FICA.

4. Treatment of respondents' severance payments as "wages" under FICA is also consistent with IRS guidance. A 1990 IRS Revenue Ruling concludes that FICA tax applies to severance payments unless, *inter alia*, the payments are "linked to the receipt of state unemployment compensation." Rev. Rul. 90-72, 1990-2 C.B. 211, 211; see 26 C.F.R. 601.601(d)(2) ("A

Revenue Ruling is an official interpretation by the [IRS] that has been published in the Internal Revenue Bulletin."). That Ruling built upon a series of prior Revenue Rulings that had addressed the circumstances in which severance payments would be treated as FICA "wages." See pp. 29-32, 34 n.5, *infra*. In this case, the parties have stipulated that respondents' severance payments "were * * * *not* tied to the receipt of state unemployment compensation," J.A. 52-53 (emphasis added), and the IRS therefore classifies those payments as "wages."

5. The court of appeals took the view (Pet. App. 9a), also embraced by respondents (Br. in Opp. 4), that this Court's decision in *Coffy* v. *Republic Steel Corp.*, 447 U.S. 191 (1980), precludes treating severance payments as FICA "wages." The court of appeals' reliance on *Coffy* was misplaced.

Although *Coffy* involved payments to laid-off employees, 447 U.S. at 198-199, the Court did not address whether those payments were FICA "wages." Instead, the disputed issue was whether those payments were "perquisites of seniority" to which a veteran returning to his civilian job was entitled under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Pub. L. No. 93-508, 88 Stat. 1578. *Coffy*, 447 U.S. at 193. Resolution of that issue turned on whether the payments were "a reward for length of service" (in which case they were covered) or "short-term compensation for services rendered" (in which case they were not). *Id.* at 197-198 (citation omitted). The Court concluded that they were the former. *Id.* at 199. Under either of those competing views, however, the payments would have been "wages" under FICA. As previously discussed, payments are generally cov-

ered by FICA so long as they arise out of the "employer-employee relationship" as a whole, even if they are not compensation for particular work "actually done." *Nierotko*, 327 U.S. at 365-366. FICA's definition of "wages" would thus encompass *both* "a reward for length of service" *and* "short-term compensation for services rendered."

The court of appeals focused (Pet. App. 7a) on two sentences in *Coffy* that characterized severance payments, including payments similar to the ones at issue here, as "'compensation for loss of jobs'" rather than "compensation for work performed." 447 U.S. at 200 (quoting *Accardi* v. *Pennsylvania R.R. Co.*, 383 U.S. 225, 230 (1966)). But while the statute at issue in *Coffy* required the Court to treat those characterizations as mutually exclusive, FICA does not. A payment can arise out of the "employer-employee relationship," *Nierotko*, 327 U.S. at 366, even if it is immediately triggered by some more particular event, such as the arrival of the holiday season (as in the case of an annual bonus) or the employee's separation (as in the case of a severance payment). Here, respondents made severance payments only to individuals with whom they had an employment relationship, and the payments were structured to reflect the nature, length, and salary conditions of that relationship. Pet. App. 3a-5a. The payments accordingly constituted "remuneration for employment," 26 U.S.C. 3121(a)—and, in particular, a "reward for length of service," *Coffy*, 447 U.S. at 199—even if they were also "compensation for loss of jobs," *id.* at 200 (citation and internal quotation marks omitted).

FICA's treatment of retirement payments underscores that a payment triggered by an employee's

separation may nevertheless qualify as "remuneration for employment." The 1954 codification of FICA excluded from the basic definition of "wages" (defined then, as now, to include "all remuneration for employment") "any payment made to an employee * * * on account of retirement." Internal Revenue Code of 1954, ch. 736, 68A Stat. 417 (26 U.S.C. 3121(a)(3) (1958)). In 1983, however, as part of an effort to enhance the fiscal health of the Social Security system, Congress repealed that exclusion. See Social Security Amendments of 1983, Pub. L. No. 98-21, Tit. III, § 324(a)(3)(B), 97 Stat. 123; H.R. Rep. No. 25, 98th Cong., 1st Sess., Pt. 1, at 2 (1983).[2] The clear implication of that repeal is that Congress intended at least some payments made "on account of retirement" to fall within the scope of FICA. See, *e.g.*, *Stone* v. *INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."). No reasonable construction of the phrase "all remuneration for employment" could include payments made on account of retirement-based separation, while excluding payments (like the severance payments at issue here) made on account of other types of separation.

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[2] The IRS regulations that implement FICA have not been updated to reflect that repeal, and thus still specify that payments made "on account of [an] employee's retirement" are not "wages." 26 C.F.R. 31.3121(a)(3)-1. In administering the law, however, the IRS recognizes that the 1983 enactment trumps the regulation.

B. The Court Of Appeals Erred In Construing 26 U.S.C. 3402(*o*), Which Is A Substantive Rule For Income-Tax Withholding, To Implicitly Narrow FICA's Definition Of "Wages"

In concluding that respondents' severance payments are not "wages" under FICA, the court of appeals relied primarily on its interpretation of 26 U.S.C. 3402(*o*). See Pet. App. 8a-30a. Section 3402(*o*) is not part of FICA, but instead appears in a section of the Internal Revenue Code that establishes the substantive rules for income-tax withholding. That is not the correct place to look for guidance in the interpretation of FICA's definitional provisions. In addition, the court of appeals' reading of Section 3402(*o*) reflects significant misunderstandings of that provision's text, history, and purpose.

1. Section 3402(o) has no bearing on FICA's definitional provisions

a. Chapter 24 of the Internal Revenue Code, which addresses collection of income taxes, contains a basic definition of "wages" similar to FICA's. Subject to certain exceptions, the term is defined to include "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash." 26 U.S.C. 3401(a). Another provision of Chapter 24 requires "every employer making payment of wages" to "deduct and withhold" income tax from those "wages." 26 U.S.C. 3402(a)(1).

A subsection of that withholding statute, entitled "[e]xtension of withholding to certain payments other than wages," establishes a "[g]eneral rule" that, "[f]or purposes of" Chapter 24 and certain procedural provi-

sions, "any supplemental unemployment compensation benefit paid to an individual * * * shall be treated as if it were a payment of wages by an employer to an employee for a payroll period." 26 U.S.C. 3402(*o*)(1)(A). The term "[s]upplemental unemployment compensation benefits" is defined to mean "amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income." 26 U.S.C. 3402(*o*)(2)(A).

The court of appeals held that the severance payments at issue in this case fall within the definition of "supplemental unemployment compensation benefits" contained in Section 3402(*o*)(2)(A). Pet. App. 11a. Based on Congress's directive that a payment meeting that definition "shall be treated as if it were a payment of wages" for purposes of income-tax withholding, the court of appeals inferred that payments covered by that definition are not *in fact* wages for income-tax-withholding purposes. *Id.* at 11a-12a. The court then concluded that such payments also could not be considered "'wages' under the nearly identical definition of that term found in the FICA statute." *Id.* at 14a.

b. The court of appeals' reliance on Section 3402(*o*) was misguided. By its terms, Section 3402(*o*) is irrelevant to the FICA definitional provisions at issue in this case. The prefatory language of Section 3402(*o*)(1) states that the rules therein—including the

rule that "supplemental unemployment compensation benefits" shall be treated as "wages" for purposes of income-tax withholding—apply "[f]or purposes of this chapter (and so much of subtitle F as relates to this chapter)." Section 3402(*o*)(1) thus applies only to Chapter 24 (income-tax withholding) and those portions of Subtitle F (matters of procedure and administration) that relate to Chapter 24. FICA, by contrast, is codified at Chapter 21 of the Internal Revenue Code.

As the Federal Circuit has explained, "Congress's decision to restrict the scope of the rule set forth in [S]ection 3402(*o*) to chapter 24 suggests that Congress did not intend that rule, or any implication that might be drawn from that rule, to be applied outside the context of income tax withholding." *CSX Corp.*, 518 F.3d at 1341. The provision does not explicitly address, and has no logical bearing on, the determination whether particular payments to terminated employees are subject to FICA. That determination is instead governed by other provisions of law. The court of appeals therefore should have construed FICA's definition of "wages" with reference to FICA's own terms, not by drawing inferences from Section 3402(*o*).

c. The enactment of Section 3402(*o*) would have been a novel, and extraordinarily indirect, way of amending FICA's definition of "wages." "[I]f [S]ection 3402(*o*) is deemed to render all [supplemental unemployment compensation benefit] payments (as defined therein) non-wages, and if the non-wage character of [such] payments (as so defined) is deemed to apply to FICA, [Section 3402(*o*)] creates a square conflict with the treatment of dismissal payments as wag-

es under FICA since 1950." *CSX Corp.*, 518 F.3d at 1341. Neither the text nor the history of Section 3402(*o*) provides any sound basis for construing it to override prior law regarding dismissal pay in that manner.

Section 3402(*o*) was enacted as part of the Tax Reform Act of 1969 (1969 Act), Pub. L. No. 91-172, § 805(g), 83 Stat. 708. Then, as now, FICA broadly defined "wages" to include "all remuneration for employment," 26 U.S.C. 3121(a) (1964), and Congress had long since repealed the exception for certain types of dismissal pay, see pp. 15-17, *supra*. If Congress had intended to exclude "supplemental unemployment compensation benefits" from FICA's definition of "wages," the natural way to do so would have been to amend the FICA definitional provisions directly. Congress did not do that. In fact, it did not even amend the definitional provisions of Chapter 24 (the income-tax-withholding chapter), which appear in 26 U.S.C. 3401.

Instead, Congress amended the *substantive* withholding rules, and included a proviso limiting the scope of the amendment to Chapter 24 and certain procedural provisions. 1969 Act § 805(g), 83 Stat. 708. In addition, Section 3402(*o*) requires not simply that certain payments be treated as "wages," but that they be treated as "a payment of wages by an employer to an employee for a payroll period." 26 U.S.C. 3402(*o*)(1). The need to determine a "payroll period," while highly relevant to the calculation of income tax to be withheld, see 26 U.S.C. 3401(b), 3402(a)(2), (b), (c) and (h)(2)-(4), has no analogue in FICA. Those aspects of Section 3402(*o*) provide additional evidence that Congress was focused on income-tax withholding,

and that the provision has no bearing on the applicability of FICA.

d. The court of appeals relied in part (Pet. App. 13a) on statements in the Senate Committee Report accompanying Section 3402(*o*). The report's description of "present law" stated that "supplemental unemployment benefits are not subject to withholding because they do not constitute wages or remuneration for services." S. Rep. No. 552, 91st Cong., 1st Sess. 268 (1969) (1969 Senate Report); see *ibid.* (stating that "these benefits are not wages"). But given the sequence of events that culminated in Section 3402(*o*)'s enactment, those statements are best understood to refer (somewhat imprecisely) to a series of IRS Revenue Rulings that had treated certain *types* of severance payments—namely, those tied to the receipt of state unemployment compensation benefits—as nonwage payments. See pp. 29-36, *infra*. To the extent those statements are viewed more broadly, as an expression of the 1969 Congress's understanding of the pre-existing statutory definitions of "wages," they are entitled to no weight because "[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation." *Bruesewitz* v. *Wyeth LLC*, 131 S. Ct. 1068, 1081 (2011).

e. The court of appeals interpreted this Court's decision in *Rowan Cos.* v. *United States*, *supra*, to contain an "instruction that the statutory term 'wages' should be interpreted consistently in the statutes governing FICA and the federal income tax." Pet. App. 19a. Nothing in *Rowan*, however, requires courts to examine the rules governing income-tax withholding in order to interpret FICA's definition of "wages."

In *Rowan*, the Court invalidated a Treasury regulation specifying that the value of meals and lodging provided to certain employees was "includable in 'wages' as defined in FICA * * * , even though excludable from 'wages' under the substantially identical definition * * * for income-tax withholding." 452 U.S. at 252; see *id.* at 253. The Court reasoned that Congress had "intended * * * to coordinate the income-tax withholding system with FICA"; that this intent reflected Congress's interest in "simplicity and ease of administration"; and that "[c]ontradictory interpretations of substantially identical definitions do not serve that interest." *Id.* at 257.

The Court in *Rowan* had no occasion to address whether a statutory provision that governs *substantive* income-tax withholding, and that by its own terms does not apply to FICA, may be construed to narrow FICA's definition of "wages." To the extent that *Rowan* is relevant at all, however, its primary rationale suggests that Section 3402(*o*) should not be so construed. The regulations at issue in *Rowan*—which treated certain payments as "wages" for FICA purposes but not for withholding purposes—were held invalid "not for defying definitional identity" between the two statutory schemes, but instead "for failing to 'serve'" Congress's "'interest [in] simplicity and ease of administration.'" *Environmental Def.* v. *Duke Energy Corp.*, 549 U.S. 561, 575 (2007) (quoting *Rowan*, 452 U.S. at 255, 257). Here, the interest in "simplicity and ease of administration" is clearly disserved by the court of appeals' holding, which precludes the IRS from treating *any* "supplemental unemployment compensation benefits" (as defined in Section 3402(*o*)(2)(A)) as "wages" for purposes of FICA, even

though Section 3402(*o*) requires that *all* such payments be treated as "wages" for purposes of income-tax withholding.

2. Payments covered by 26 U.S.C. 3402(o)(2)(A) can also be "wages"

Based on Congress's directive that a defined category of payments should be "treated as * * * wages," the court of appeals inferred that *no* payments falling within that category would otherwise be "wages." Even apart from the fact that Section 3402(*o*) does not apply by its terms to FICA, the court of appeals' reading of that provision is unsound.

a. There is no literal or logical inconsistency between (a) Congress's directive that *all* payments falling within Section 3402(*o*)(2)(A)'s definition of "supplemental unemployment compensation benefits" should be treated as "wages" for a specified purpose and (b) the conclusion that *some* such payments would properly be viewed as "wages" even if the directive did not exist. As the Federal Circuit has recognized, "[t]o say that all payments falling within a particular category shall be treated as if they were a payment of wages does not dictate, as a matter of language or logic, that *none* of the payments within that category would otherwise be wages. For example, to say that for some purposes all men shall be treated as if they were six feet tall does not imply that no men are six feet tall." *CSX Corp.*, 518 F.3d at 1342 (emphasis added).

Consider, for example, a statute requiring every "commercial vehicle" to display a certain type of permit. A subsequent amendment specifying that "any pickup truck shall be treated as if it were a commercial vehicle" would not imply that *no* pickup truck is a

"commercial vehicle." Instead, the amendment would simply reflect the legislature's decision not to distinguish, for purposes of the permit requirement, between pickup trucks that are commercial vehicles (*e.g.*, gardening trucks) and pickup trucks that are not. Similarly here, Section 3402(*o*) directs that all payments falling within the statutory definition of "supplemental unemployment compensation benefits" will be subject to income-tax withholding *whether or not* they would otherwise be "wages."[3]

b. Section 3402(*o*) does appear to reflect Congress's belief that *some* of the payments encompassed by the statutory definition of "supplemental unemployment benefits" would not otherwise be viewed as "wages" for purposes of income-tax withholding. The provision would have served no useful purpose if *all* such payments were already subject to the income-tax withholding that the provision requires. The provision's history suggests that the payments Congress had in mind were the subset of "supplemental unemployment compensation benefits" that the IRS had already determined, or might later determine, to be "income" but not "wages." By providing in Section 3402(*o*) that all "supplemental unemployment compensation benefits" would be treated as "wages" for purposes of Chapter 24, Congress assured that such pay-

[3] The court of appeals' analysis focused in part on the title of Section 3402(*o*), "Extension of withholding to certain payments other than wages." Pet. App. 12a-13a. To the extent that the title adds anything to the provision's operative text, see *Florida Dep't of Revenue* v. *Picadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (suggesting that a title can help to clarify, but cannot supersede, the operative text), it is fully consistent with a belief by Congress that *some*, rather than *all*, of the payments described in Section 3402(*o*)(2)(A), would not otherwise be viewed as "wages."

ments would be subject to income-tax withholding, thereby guarding against the possibility that recipients would face large income-tax bills when their returns became due.

IRS rulings about the scope of "wages." In the 1950s, many large industrial employers adopted plans pursuant to collective bargaining in which the employers agreed to fund trusts that would supplement state unemployment compensation benefits for workers who were terminated. See Note, *Unemployment Insurance: Supplemental Unemployment Benefit Plans*, 1962 Duke L.J. 605, 605. Those supplemental benefits depended for their effectiveness on not being considered "wages," because employees in many States were ineligible for unemployment benefits if they were receiving "wages" from employers. *Id.* at 605-607, 609-611; see I.R.S. Tech. Adv. Mem. 94-16-003 (Apr. 22, 1994).

In 1956, the IRS issued a Revenue Ruling addressing the status, for income-tax withholding, FICA, and Federal Unemployment Tax Act (FUTA) purposes, of payments made by one such plan. See Rev. Rul. 56-249, 1956-1 C.B. 488. The IRS concluded that those payments would not be considered "wages" for purposes of income-tax withholding, FICA, and FUTA. *Id.* at 488, 492. It identified eight factors supporting that conclusion, one of which was that "the amount of [such] benefit[s] * * * is based upon * * * the appropriate State unemployment compensation laws." *Id.* at 492. The IRS additionally concluded that, even though the payments were not subject to withholding, they were still "includible in the gross incomes of [the] former employees for Federal income tax purposes." *Ibid.*; see *id.* at 488.

The plan at issue in the 1956 Revenue Ruling was the result of collective bargaining, and it created a trust to make periodic payments to terminated employees. Rev. Rul. 56-249, 1956-1 C.B. at 489. Over the course of time, as supplemental unemployment benefit plans became increasingly numerous and diverse, the IRS issued additional Revenue Rulings explaining how the principles of the 1956 Revenue Ruling would apply to other types of plans. See, *e.g.*, Rev. Rul. 58-128, 1958-1 C.B. 89; Rev. Rul. 60-330, 1960-2 C.B. 46; Rev. Rul. 77-347, 1977-2 C.B. 362; Rev. Rul. 90-72, 1990-2 C.B. 211. In 1958, for example, the IRS concluded that "supplemental unemployment benefit plans which are similar in all material details" to the plan at issue in the 1956 Revenue Ruling, "except for having been unilaterally instituted by the employer" rather than "union negotiated," would also result in the payment of income, but not "wages." Rev. Rul. 58-128, 1958-1 C.B. at 90.

Congressional recognition of the IRS rulings. The IRS did not identify any explicit textual basis for concluding that these types of payments were not "wages" under the applicable statutory definitions. Given the broad and facially unqualified wording of those definitions (see Part A, *supra*), it might reasonably have been disputed whether, as an original matter, the IRS was authorized to act as it did. Congress effectively acquiesced in the IRS's approach, however, by enacting complementary legislation that took the pertinent Revenue Rulings as given and ameliorated their potential unintended consequences.[4]

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[4] In any event, any doubt as to the validity of the pertinent Revenue Rulings would simply *reinforce* the conclusion that the payments at issue in this case are subject to FICA taxation. If pay-

In 1960, Congress enacted an income-tax exemption, now codified at 26 U.S.C. 501(c)(17), for certain trusts that pay "supplemental unemployment compensation benefits." Act of July 14, 1960 (1960 Act), Pub. L. No. 86-667, § 1, 74 Stat. 534. Both the House and Senate Committee Reports accompanying Section 501(c)(17) observed that "[v]arious rulings of the Internal Revenue Service have held that * * * distributions from" trusts designed to provide supplemental unemployment benefits "are taxable to the recipients as income (although not generally subject to withholding)." S. Rep. No. 1518, 86th Cong., 2d Sess. 2 (1960) (1960 Senate Report); H.R. Conf. Rep. No. 1145, 86th Cong., 1st Sess. 4 (1959) (1959 House Report). In order "to ensure tax-free status for a broad range of trusts that were used to fund payments to employees who were laid off or who suffered reductions in employment," Section 501(c)(17) "broadly" defined the term "supplemental unemployment compensation benefits" to "include a wide range of unemployment benefits as well as benefits for related loss of employment because of sickness or accident." *CSX Corp.*, 518 F.3d at 1336 (citing 1960 Senate Report 2-3; 1959 House Report 4); see 26 U.S.C. 501(c)(17)(D).

After Section 501(c)(17) was enacted, the IRS continued to promulgate Revenue Rulings addressing the proper classification of post-separation payments. In 1960, the IRS concluded that a plan that made pay-

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ments made under the plans analyzed in the Revenue Rulings were found to be FICA "wages," notwithstanding the IRS's decision to craft a limited administrative exception for payments linked to state unemployment compensation benefits, the same would be true *a fortiori* of the payments at issue here, which were not tied to state unemployment benefits. See J.A. 52-53.

ments directly to employees, rather than through a trust, was "not sufficiently different from [the plan that] formed the basis for [the 1956 Revenue Ruling] to warrant different conclusions," and it therefore deemed the plan's direct payments to be non-wage income. Rev. Rul. 60-330, 1960-2 C.B. at 48. In 1965, however, the IRS concluded that "[l]ump sum separation and severance allowances paid to laid-off employees in the railroad industry" constituted "wages" subject to income-tax withholding, as well as "compensation" subject to taxation under the railroad industry's equivalent of FICA. Rev. Rul. 65-251, 1965-2 C.B. 395, 395.

*The enactment of Section 3402(*o*).* In 1969, Congress added Section 3402(*o*) to address a practical problem caused by the IRS's determination that some severance payments are "income" but not "wages." Because no income tax would be withheld from such payments, the recipient might face a "significant final tax payment" at the end of the year. 1969 Senate Report 268. The Treasury Department had suggested that Congress address this problem by authorizing the agency to promulgate regulations that permitted voluntary withholding. *Statements and Recommendations of the Department of the Treasury: Hearings on H.R. 13270 Before the Senate Comm. on Finance*, 91st Cong., 1st Sess. 905-906 (1969). Congress ultimately solved the problem in a somewhat different way. Section 3402(*o*) ensures that any payment falling within the statutory definition of "supplemental unemployment compensation benefits," whether or not it would otherwise be viewed as "wages," will be "treated as" such for purposes of Chapter 24, and therefore will be subject to income-tax withholding under the

pre-existing provisions that generally govern withholdings from wage payments. See 1969 Act § 805(g), 83 Stat. 708.

Section 3402(*o*)'s definition of "supplemental unemployment compensation benefits" substantially mirrors a portion of Section 501(c)(17)'s definition of the same term. Compare 1969 Act § 805(g), 83 Stat. 708 (Section 3402(*o*)(2)(A)), with 1960 Act § 1, 74 Stat. 535 (Section 501(c)(17)(D)(i)). It therefore encompasses more than just the payments specifically linked to state unemployment compensation that the IRS had treated as non-wage income in its pre-1969 Revenue Rulings. See Rev. Rul. 56-249, 1956-1 C.B. at 489; Rev. Rul. 58-128, 1958-1 C.B. at 90; Rev. Rul. 60-330, 1960-2 C.B. at 48; Rev. Rul. 65-251, 1965-2 C.B. at 395. It would have been inadvisable, however, for Congress to have attempted to incorporate the substance of the then-existing Revenue Rulings into the text of Section 3402(*o*). Had Congress taken that approach, Section 3402(*o*) might have been only a temporary solution to the problem Congress was trying to solve. If the IRS were later to determine that some new type of benefit plan was "similar in all material details" to the plan at issue in the 1956 Revenue Ruling, Rev. Rul. 58-128, 1958-1 C.B. at 90, payments under such a plan would be treated as non-wage income and therefore would not be subject to withholding, triggering a new iteration of the same problem (large income-tax liability for the recipient at the end of the year) that the 1969 law was intended to address.

Section 3402(*o*)(2)(A)'s broad definition of "supplemental unemployment compensation benefits" encompasses both the payments linked to state unemployment compensation that the IRS had historically

treated as non-wage income, and other severance payments that the IRS had viewed as "wages." By adopting that broad definition, Congress ensured that no gaps in withholding would arise if the IRS subsequently deemed additional categories of severance payments to be non-wage income. During the ensuing 44 years, all payments within the statutory definition have continued to be subject to income-tax withholding, even as the scope of the IRS's administrative exception has changed over time.[5]

So long as Section 3402(*o*) is given only the effect that its language literally dictates (*i.e.*, that "supplemental unemployment compensation benefits" as defined in the statute be subject to income-tax withholding), the breadth of the statutory definition accommodates possible refinements in IRS practice without creating anomalous results. If, in some of its applications, Section 3402(*o*) mandates withholding of income tax from payments that would *already* be subject to income-tax withholding as "wages," no practical harm is done. See *CSX Corp.*, 518 F.3d at 1340 ("[I]t was not important for Congress to define ['supplemental unemployment compensation benefits']

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[5] See Rev. Rul. 71-408, 1971-2 C.B. 340, 341 (concluding that "dismissal payments," similar to those in this case, were "wages" for FICA purposes); Rev. Rul. 77-347, 1977-2 C.B. at 363 (concluding that payments under a supplemental unemployment compensation benefit plan could fall outside FICA's definition of "wages" even when "benefits under the plan [were] not tied to the State's unemployment benefits"); Rev. Rul. 90-72, 1990-2 C.B. at 212 (concluding that the 1977 Revenue Ruling's "conclu[sion] that benefits do not have to be linked to state unemployment compensation in order to be excluded from the definition of wages for FICA and FUTA tax purposes is inconsistent with the underlying premises for the exclusion and is therefore hereby revoked").

narrowly or to distinguish between [those] payments and 'dismissal' payments, since both were treated similarly for withholding purposes."). The breadth of Section 3402(*o*)(2)(A)'s definition creates practical difficulties only if that definition is used (as the court below used it) to determine which severance payments should be treated as FICA "wages," thereby effectively expanding the IRS's limited administrative exception for payments linked to state unemployment compensation.

c. Neither the court of appeals nor respondents have offered a reasonable alternative explanation of Section 3402(*o*)'s origin or purpose that would support their interpretation of the provision. In particular, there is no plausible basis for inferring that the 1969 Congress either (1) viewed the pre-existing statutory definition of "wages" (in either FICA or Chapter 24) as *already* excluding all "supplemental unemployment compensation benefits" or (2) intended to amend the (FICA or Chapter 24) definition of "wages" to exclude such benefits.

The 1969 Congress could not reasonably have believed that *all* of the payments it defined as "supplemental unemployment compensation benefits" fell outside the existing statutory definition of "wages." As explained in Part A, *supra*, the definitional phrase "all remuneration for employment" has an expansive reach and had been construed broadly by this Court, see *Nierotko*, 327 U.S. at 365-366, by the time Section 3402(*o*) was enacted. Although some statements in Section 3402(*o*)'s legislative history referred to "supplemental unemployment compensation benefits" as non-wage income under pre-1969 law, see, *e.g.*, Pet. App. 13a (discussing legislative history), those state-

ments are better understood as imprecise references to the IRS Revenue Rulings described above, which had excepted *some* types of severance payments from treatment as "wages." Neither those Rulings nor the statutory definitions of "wages" would have led Congress to believe that "supplemental unemployment compensation benefits" were categorically uncovered.

It would be even more implausible to construe Section 3402(*o*) as an affirmative effort by Congress to narrow the pre-existing definition of "wages." Both the Chapter 24 and FICA definitions of "wages" had long been understood to cover dismissal payments. See 26 C.F.R. 31.3401(a)-1(b)(4) (1968) (specifying that, for purposes of Chapter 24, "[a]ny payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages"); pp. 15-17, *supra* (discussing FICA's longstanding coverage of dismissal pay). And Section 3402(*o*) was designed to *increase* the incidence of income-tax withholding. If Congress had intended either to *limit* Chapter 24's definition of "wages," or to *eliminate* FICA tax for the sorts of dismissal payments historically treated as "wages" under FICA, the language it used in Section 3402(*o*) would have been a remarkably oblique way of accomplishing that result. Cf. *United States* v. *Wells Fargo Bank*, 485 U.S. 351, 354 (1988) (reiterating the "settled principle that exemptions from taxation are not to be implied; they must be unambiguously proved").

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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STATUTORY APPENDIX

1. 26 U.S.C. 3121 provides in pertinent part:

Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

* * * * *

(b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agree-

ment entered into under section 233 of the Social Security Act; except that such term shall not include—

* * * * *

2. 26 U.S.C. 3401 provides in pertinent part:

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

* * * * *

3. 26 U.S.C. 3402 provides in pertinent part:

Income tax collected at source

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. * * *

* * * * *

(*o*) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term "supplemental unemployment compensation benefits" means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (wheth-

er or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income.

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