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Medical Residents FICA Litigation: Supreme Court Hears Challenge to IRS Regulations

Yesterday, the Supreme Court heard oral argument in *Mayo Foundation for Medical Education and Research v. United States*, No. 09-837. At issue is the validity of an IRS regulation that makes medical residents categorically ineligible for the so-called “student exception” to FICA taxes. The regulation was enacted by the IRS after years of litigation regarding whether medical residents – and the academic medical centers that train them – are exempt from paying FICA taxes on medical resident stipends. Mayo prevailed on its initial challenge to the regulations in federal court in Minnesota, but the 8th Circuit reversed, upholding the regulations’ validity.

Under the old IRS regulations, which apply to tax years prior to April 1, 2005, employees (and their employers) are exempt from paying FICA taxes if the employer is a “school, college, or university,” and the employees are “students” enrolled in and “regularly attending classes.” Numerous federal circuit courts held that “[w]hether a medical resident is a ‘student’ and whether he is employed by a ‘school, college, or university’ are separate factual inquiries that depend on the nature of the residency program in which the medical residents participate and the status of the employer.” *United States v. Mount Sinai Medical Ctr. of Fla., Inc.*, 486 F.3d 1248, 1252 (11th Cir. 2007); *United States v. Memorial Sloan-Kettering Cancer Ctr.*, 563 F.3d 19, 28 (2d Cir. 2009) (quoting approvingly the passage from *Mount Sinai*). Importantly, even stand-alone teaching hospitals can qualify as a “school, college, or university” for the purpose of providing residency training, and a number of such institutions asserted successful refund claims against the government. Rather than continue to litigate the issue on a case-by-case basis, the IRS announced earlier this year that it would allow refunds on all pre-2005 FICA tax claims.

If the Supreme Court reverses the 8th Circuit’s ruling, then academic medical centers will be eligible to seek refunds for FICA taxes paid after 2005. Because tax refund claims generally are subject to a three-year statute of limitations, institutions that have not yet preserved their claims can still apply for refunds going as far back as 2007. The IRS may choose to litigate post-2005 refund claims, allow the claims, or seek a legislative “fix” from Congress. Regardless of the outcome, there is little downside for institutions to preserve their refund claims in advance of the Supreme Court’s ruling, which is expected by June.

If you have any questions concerning the issues raised in this alert, please contact the authors of this alert, [Brent Powell](#), [Philip Mohr](#), or [Michael Montecalvo](#), or any of our other experienced [Hospital Medical Resident FICA attorneys](#).

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