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Medical Residents Tax Controversy

The age-old controversy when it comes to medical residents is this – are they students or employees? The answer to that question inevitably leads to whether they pay Social Security taxes or not. The Supreme Court recently announced that it will decide on this matter.

A medical residents work at least the equivalent number of hours per week a normal employee does but also attends classes, does research, submits research papers. For their work, they receive a stipend of between \$40,000 and \$60,000 a year. The IRS has for a long time contended that these medical residents are not students. They should be taxed just like normal employees.

In 1993, Congress decided that medical residents are not required to pay Social Security taxes. In 2005, since the IRS lost its case on medical residents in court, they passed a rule that removes tax breaks from medical residents. But now that the court will soon hear the case of Mayo Foundation for Medical Education and Research v. United States, the high court will decide if the IRS had the right to pass such a ruling.

Upon graduation, most medical residents would spend 3 to 5 years in resident training or under fellowship programs. This is obligatory in order for them to obtain a license to practice medicine. The proponents of the view that medical residents are not workers subject to taxes contend that it takes many years for a medical student to be adequately and properly trained to become a doctor. And this training involves practical work and studying at the same time. Thus the time when medical residents work should be still considered part of their training.

But in a brief filed on behalf of the government by Solicitor General Elena Kagan (who is now a Supreme Court nominee), it was argued that medical residents putting in the usual 40 hours or more of work per week should be considered employees and not students and thus the IRS was right in disqualifying medical residents from tax breaks. She went on to argue that Social Security and Medicare tax (called FICA) is meant to collect contributions during an employee's career as a savings for the retirement years. Thus when Congress exempted students from paying Social Security taxes, it was only aimed at those whose employment paid so little that not taxing it does not make any significant difference in Social Security and Medicare benefits.

On the other hand, the brief filed by the Mayo Foundation and the University of Minnesota programs said all the residents' work is designed to be educational and not vocational. Thus, medical residents should be taken as students.

And so the debate continues. The Supreme Court ruling will eventually affect 8,000 residency programs and their 100,000 medical residents.

Darrin T. Mish is a veteran, nationally recognized tax attorney who has focused on providing IRS help to taxpayers for over a decade. He regularly travels the country training other attorneys, CPAs and enrolled agents on how to handle their toughest cases with the IRS. He is highly ranked among the top attorneys in the country, with an AV rating from Martindale-Hubbell and a perfect 10 on Avvo.com. Martindale-Hubbell has also honored him with a listing in their Bar Register of Preeminent Lawyers. He is a member of the American Society of IRS Problem Solvers and the Tax Freedom Institute. With clients on every continent but Antarctica, he has what it takes to solve your IRS problems no matter where you live in the world. If you would like more information about his practice and how he can help you, please call his office at (813) 229-7100 or toll free at 1-888-GET-MISH.