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STUDENT OR EMPLOYEE? —
THE STATUS OF MEDICAL
RESIDENTS IN RELATION
TO FICA TAXES

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ABSTRACT

This article considers an issue which was resolved by the Supreme Court in the 2010 Term: the status of medical residents with respect to FICA taxes. Specifically, at issue was whether medical residents qualify as students under Section 3121(b)(10) of the Internal Revenue Code, which qualification exempts both the resident and the university/hospital residency program from paying FICA taxes. Included with analysis of the various courts’ opinions leading up to the Supreme Court decision are two brief case studies. The first focuses on an individual medical resident in the Penn State University Dermatology Residency Program, which considers whether his relationship with the program is closer to that of a student or employee. The second is a quantitative examination of randomly sampled medical residency programs within the geographic borders of various circuits. Both studies are guided by factors presented by one of the circuit courts for determining whether a medical resident qualifies as a student. I conclude, contrary to the Supreme Court, that the four circuit courts which adopted a case-by-case, facts and circumstances analysis of each medical residency program were correct in their analysis and that a practical analysis of the duties and functions of residents indicates that they are students who should be exempt from FICA taxes.

I. INTRODUCTION

The Federal Insurance Contributions Act of 1935 imposes two separate employment taxes: 1) the Old Age, Survivors and Disability Insurance (OASDI) tax and 2) the Medicare Insurance Tax. Combined, these taxes are commonly referred to as FICA taxes. Codified in Sections 3101 and 3111 of the Internal Revenue Code, FICA taxes for Social Security and Medicare are imposed on employers and employees based on wages paid (26 U.S.C. §§ 3101, 3111). Statutory rates of 6.2% for Social Security taxes and 1.45% for Medicare taxes are withheld from an
employee’s earned wages and combined with a matching payment of the same amount by the employer (26 U.S.C. §§ 3101, 3111).¹

Section 3121 defines how this employment tax is to be levied. It broadly defines “wages” as “all remuneration for employment” (26 U.S.C. § 3121(a)). The same section similarly defines “employment” using a broad brush as “any service of whatever nature” (26 U.S.C. § 3121(b)). Narrowing the scope of this definition, however, are twenty-one provisions which categorically exclude certain work from the definition of employment (26 U.S.C. § 3121(b)(1) - § 3121(b)(21)). A split arose among the federal circuits with respect to the tenth of these exclusions, Section 3121(b)(10), which carves out from the definition of employment “service performed in the employ of a school, college, or university . . ., if such service is performed by a student who is enrolled and regularly attending classes at such school, college or university” (26 U.S.C. § 3121(b)(10)). The specific issue pertaining to this statute was the validity of Treasury Regulations recently issued which per se exclude full-time employees (40 hours or more per week), and consequently medical residents, from the status of student.

This new interpretation of Section 3121(b)(10) caused considerable disruption in the medical education world—specifically as it relates to medical residents.² Initially, medical residents “presumptively” qualified as students under the exclusionary language of Section 3121(b)(10) (Rowe, 2009, p.1399). Now, the full-time employee limitation created in the new regulations clearly bars medical residents from qualifying for exemption as students. This dichotomy created a split within the circuit courts of appeals. At issue was the validity of the regulation’s full-time employee exclusion and whether it was a valid exercise of the Department of Treasury’s regulatory power. The Second, Sixth, Seventh, and Eleventh Circuits have all held the new regulations invalid on the grounds that the statutory language of Section 3121(b)(10) unambiguously expresses the will of Congress and therefore Treasury Regulations interpreting the unambiguous and common terms are invalid. The rogue among the circuits was the Eighth Circuit. In June of 2009 in the case of Mayo Foundation v. United States (2009), the Eighth Circuit upheld the new

¹ While the Medicare tax rate of 1.45% is applied against the employee’s total earned income, the Social Security tax rate of 6.2% is applied against wages up to a certain base amount. In 2010 and 2011, that amount is $106,800.

² In addition to medical residents, whether the full-time employee exclusion is upheld by the Supreme Court also has bearings on other student/employer relationships. For example, Treas. Reg §31.3121(b)(10)-2(e) provides examples of scenarios in which students are employed as university clerks, university staff, university facilities managers and teaching assistants and are not exempt from FICA taxes on account of the full-time employment exclusion from the Student FICA exception.
regulations as permissibly interpreting the statute. On January 11, 2011 the Supreme Court affirmed the Eighth Circuit’s position by upholding the full-time employee exclusion.

II. LITERATURE REVIEW

This issue has been explored by then Washington & Lee University School of Law student, Patrick Timothy Rowe, in the Washington and Lee Law Review article, “The Impossible Student Exception to FICA Taxation and Its Applicability to Medical Residents” (2009). The article, which was drafted prior to the Supreme Court’s agreeing to consider the Mayo Foundation case, takes the position that graduate medical education programs should be deemed institutions of higher education with students who are exempt from FICA taxes. Going beyond arguing for a case-by-case, facts and circumstances analysis as to whether the relationship between a medical resident and a teaching hospital qualifies for the student exception, which is the position argued for in this paper, the author contends that medical residents “should be afforded the presumption of qualification under the student exception of section 3121(b)(10)” (Rowe, P.T. (2009)).

III. LEGISLATIVE AND REGULATORY HISTORY OF SECTION 3121(b)(10)

1. THE STATUTE

Section 3121 of the Internal Revenue Code provides definitions for application of the Federal Insurance Contributions Act of 1935. Subsection (b) of Section 3121 provides definitions specifically relating to what constitutes “employment” for purposes of triggering FICA tax liability under the Act. Section 3121(b)(10) carves out a “student FICA exception” from the definition of “employment,” thus creating under the statute a scenario in which a student may render services for compensation which is not subject to FICA withholdings. This exception applies to “services performed in the employ of a school, college, or university . . . , if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university” (26 U.S.C. § 3121(b)(10)).

The student FICA exception is among the remnants of what was originally a very broad exception to the imposition of FICA taxes. Under the Social Security Act Amendments of 1939, included among those exempt from paying social security tax were all federal, state, and local government employees, including employees of universities (whether a student or not), and a majority of employees employed by tax exempt organizations (Pub. L. No. 76-379 sec. 606, §1426(b), (6) and (7) (1939)). In
1950 these broad exemptions became infeasible given anticipated social security funding requirements and were drastically curtailed, yet the student FICA exception survived (Pub. L. No. 81-734, sec. 204(a), §1426(b)(11) (1949)).

These initial exceptions, while broad in terms of eligibility, were applied narrowly, at least in the context of the student exception. Regulations issued in 1940 restricted the term “student” to those individuals who were “enrolled, regularly attended classes, and [who] received nominal remuneration.” (20 C.F.R. § 403.821(a) (1940)). Nominal remuneration was considered not to exceed $45. (20 C.F.R. § 403.82(b) (1940)). This narrow analysis, including its consideration of whether consideration was nominal, was also abandoned in 1950 in favor of a fact-driven analysis considering the circumstances giving rise to the relationship between the student and the educational institution (H.R. Rep. No. 81-1300 (1950)).

2. INITIAL REGULATIONS AND REASON FOR AMENDMENT

This facts and circumstances analysis were promulgated under Treasury Regulation Section 31.3121(b)(10)-2 and adopted a two-pronged test to determine whether the student FICA exception properly applies. The first prong considered the character of the organization, requiring that it be a “school, college, or university” (Tres. Reg. § 31.3121(b)(10)-2(b)). The second prong considered the status of the employee and mandated that the student be “enrolled and regularly attending classes at the school, college or university” (Tres. Reg. § 31.3121(b)(10)-2(b)). To determine whether the second prong was satisfied, the regulations further required that the services rendered by the student to the school, college, or university be “incident to and for the purpose of pursuing a course of study at such school, college, or university” (Tres. Reg. § 31.3121(b)(10)-2(c)).

In Minnesota v. Apfel (8th Cir. 1998), the State of Minnesota sued the Commissioner of Social Security in federal district court for a refund of FICA taxes remitted on stipends paid to medical residents at the University of Minnesota asserting that the student FICA exception applied. The district court held for the state and found that the medical residents qualified for exemption from paying FICA taxes under the student exception. The Eighth Circuit Court affirmed. Based on this precedent, medical schools around the country began suing for refunds of FICA taxes paid on their medical residents’ stipends.

As these cases made their way through the courts, with similar results in favor of the taxpayer, rather than appealing adverse holdings, the IRS amended the initial regulations issued under Section 3121(b)(10) to curtail the qualification requirements of the student exception.
3. AMENDED REGULATIONS

The amended regulations, which were published in December 2004, but did not go into effect until April 1, 2005 (Treas. Reg. § 31.3121(b)(10)-2(f)), were a direct response to the Apfel decision. The Department of Treasury conspicuously modified the initial regulations to exclude medical residents as eligible students for FICA exemption. For purposes of this study, the most significant amendment was in relation to the second prong, wherein the new regulations expanded on the “incident to” test by providing that services rendered by full-time employees (e.g. medical residents) “are not incident to and for the purpose of pursuing a course of study” (Tres. Reg. § 31.3121(b)(10)-2(d)). Thus, “regardless of the employer’s classification, “an employee whose normal work schedule is forty hours or more per week” (Treas. Reg. § 31.3121(b)(10)-2(d)) was no longer eligible for the student exception and must pay FICA taxes.

As justification for the full-time employee exclusion, the regulation created a “predominant relationship” test, under which the student exception from paying FICA taxes could only apply if “the educational aspect of the relationship between the employer and the employee is predominant” relative to the “service aspect” of the relationship (Treas. Reg. § 31.3121(b)(10)-2(d)(3)(i)). Acknowledging that this “predominance” test could be applied on a case-by-case, facts and circumstances analysis, through the full-time employee exclusion, the regulation explicitly disqualified employees whose normal work schedule is forty hours or more per week Treas. Reg. § 31.3121(b)(10)-2(d)(3)(iii).

While the IRS acknowledged the effective date of the new regulations, it took the aggressive position that hospitals filing for refunds of FICA taxes paid prior to the effective date should be denied. The grounds for the IRS’s position was that there existed a per se exclusion of medical residents from student status which applied even before the issuance of Tres. Reg. § 31.3121(b)(10)-2(d). The IRS eventually conceded the issue and issued refunds for tax years preceding the effective date.

IV. VALIDITY OF AMENDED REGULATIONS FULL-TIME EMPLOYEE EXCLUSION

1. THE STANDARD REVIEW FOR AN AGENCY’S INTERPRETATION OF A STATUTE: CHEVRON DOCTRINE

Within the context of administrative law, agencies are unique entities. All in one, they encompass the three branches of government: executive—agencies enforce
laws passed by Congress; legislative—agencies create law through regulation; and judicial—through administrative hearings, agencies interpret the law.

It was the second of these functions, the legislative power of an agency, which was ultimately at issue in each of the cases brought by various teaching hospitals around the country. Specifically, whether the Department of Treasury’s full-time employee exclusion from the student FICA exception was a proper use of its legislative power.

In *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.* (1984), the Supreme Court established the standard of review for determining the validity of an agency’s regulations. The Court created a two-part test which determined the level of deference to which an administrative agency’s interpretation of a statute it administers is entitled. The first part of the *Chevron* test asks, “whether Congress has directly spoken to the precise question at issue” *Chevron v. Natural Res. Def. Council, Inc.* (1984). If Congress’s intent is clear and unambiguous, “the court as well as the agency must give effect to the unambiguously expressed intent of Congress” (*Chevron v. Natural Res. Def. Council, Inc.* (1984)). On the other hand, “if the statute is silent or ambiguous with respect to the specific issue,” the analysis must shift to the second part of the *Chevron* test which asks whether the agency’s answer to the ambiguity is “based on a permissible construction of the statute” (*Chevron v. Natural Res. Def. Council, Inc.* (1984)). In making this determination, a court need not conclude that the agency’s interpretation was the “only one it could have permissibly adopted to uphold the construction” of the statute. Nor must it conclude that the agency’s interpretation is equivalent to how the court would have addressed the issue initially.

It is worth emphasizing at this point the significance of the first part of the *Chevron* analysis in the ultimate survival of a regulation under judicial scrutiny. Where the statute speaks directly to the issue at hand, the administrative body’s additional interpretation of the statute will be for naught and will not survive if it strays from or adds to that unambiguous meaning. The logic, of course, is that there is no need to interpret the meaning of a statute when it is already clearly understood. Conversely, if the statute is found ambiguous or without clear meaning with respect to a specific issue, it is then ripe for the administrative body’s elucidation. Moreover, having surmounted the initial hurdle of ambiguity, the agency’s interpretation of the statute will be upheld so long as it survives the less arduous hurdle of being a “permissible interpretation.”

The oddity and complexity of part one of the *Chevron* analysis is its subjective nature. Whether the meaning of the statute is clear or ambiguous is largely a determination made based on the reader’s own subjective perceptions and biases. That
being the case, it is certainly possible that reasonable minds will differ in this determination and is it not surprising to see differing outcomes when two different courts analyze the same statute.

2. ALTERNATIVE STANDARD OF REVIEW: NATIONAL MUFFLER ASSN. V. U.S.

Preceding the creation of the *Chevron* doctrine described above was an alternative doctrine for reviewing the validity of a regulation based on reasonableness. Specifically, the *National Muffler* standard of review considers, among other factors, whether the rule set forth in a regulation “harmonizes with the plain language of the statute, its origin, and its purpose” (*National Muffler Assn. v. United States* (1979)).

In effect, the *National Muffler* standard of review gives a lower level of deference to the Department of Treasury’s regulatory authority in tax cases. The Supreme Court’s decision in *Mayo Foundation* overruled *National Muffler*, a seminal conclusion to the case (*Mayo Foundation for Medical Education and Research v. United States* (2011)). That notwithstanding, for purposes of this study, whether the court applied *Chevron* or *National Muffler*, the result should have been the same: the full-time employee exclusion created by Tres. Reg. 31.3121(b)(10)-2(d) should be struck down in favor of a case-by-case facts and circumstances analysis of the relationship between the medical resident and the teaching hospital.


In 2000 and 2001, the IRS issued a refund of $2,450,177.32 to Mount Sinai Medical Center for FICA taxes paid on stipend payments to medical residents during the late 1990s. In 2002, the IRS sued Mount Sinai claiming the refund had been in error because the medical residents did not qualify for exemption from FICA taxes.

As grounds for its ruling in favor of the IRS, the district court found Section 3121(b)(10) ambiguous.

The Eleventh Circuit Court, overturning the district court’s decision (*United States v. Mount Sinai Medical Center of Florida* (S.D. Fla. 2006)) and holding in favor of Mount Sinai, found the language of Section 3121(b)(10) unambiguous. Consequently, no further interpretation was required. Explaining the lack of ambiguity, the court noted that “by its plain terms, the student exemption does not

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3 The issue in *National Muffler* was the validity of a tax regulation, while the issue in *Chevron* involved the validity of a non-tax regulation.
limit the types of services that qualify for the exemption,” and that the silence in reference to the statute’s application to medical residents does not create ambiguity (United States v. Mount Sinai Medical Center of Florida (11th Cir. 2007)). It further clarified that if Congress had wanted to make medical residents ineligible for the student exemption, it could have easily created a specific exclusion. Thus, given the lack of ambiguity in the statute’s definition of the status of “student,” there was no reason to consider additional interpretive tools.


The University of Chicago Hospital is a teaching hospital affiliated with the University of Chicago. For tax years 1995 and 1996, the hospital filed a request for refund of FICA taxes paid on behalf of its medical residents in the amount of $5,572,705. The IRS did not respond to the request and the hospital sued.

The IRS’s motion for summary judgment on the grounds that the Tres. Reg. 31.3121(b)(10)-2(d) rendered all medical residents per se ineligible for the student FICA exception was denied by the district court (The University of Chicago Hospitals v. United States (N.D. Ill. 2006)). On appeal, the Seventh Circuit affirmed the district court’s finding that the statute was not ambiguous. In so doing, it echoed the Eleventh Circuit’s rationale in Mount Sinai, holding that “there is nothing in the statute itself that categorically excludes medical residents from eligibility for the student exception” (University of Chicago Hospitals v. United States (7th Cir. 2008)). Thus, the student exception “does not preclude medical residents from attempting to bring themselves within the exemption from FICA tax liability” (University of Chicago Hospitals v. United States (7th 2008)). The court went on to say that because the statute unambiguously “does not categorically exclude medical residents from eligibility for the student exception,” the regulations promulgated under Section 3121(b)(10) are not entitled to any level of deference (University of Chicago Hospitals v. United States (7th 2008)).


The district court in this case (United States v. Detroit Medical Center, (E.D. Mich. 2006)) took the position that Section 3121(b)(10) and its corresponding regulations are ambiguous and therefore, based on legislative history, held that medical residents do not qualify as students for purposes of the student FICA exception. The medical residents in question participated in the graduate medical training and education program jointly operated between Wayne State University and
the Detroit Medical Center. At issue was $15 million which had been paid and refunded to the medical center as FICA taxes on stipends paid to residents from 1995 to 2003.

The Sixth Circuit was unwilling to patently dismiss the possibility that medical residents could qualify as students under the student exception. Refusing to rule one way or the other under the circumstances in this case, the court listed a number of facts that the district court should gather and consider on remand to determine whether the medical residents were students. Among these were: 1) the number of hours worked by a resident in a typical week relative to the number of hours spent in the classroom and 2) the type of responsibilities vested to medical residents and under what level of supervision they operated when providing patient care (United States v. Detroit Medical Center, (6th Cir. 2009)).

Most importantly, the court found that the language of the statute was clear and in no need of additional regulatory interpretation. In so doing the court implicitly acknowledged that the statute could be properly applied once the proper facts were before the court.


In United States v. Memorial Sloan-Kettering Cancer Ctr. (2d. Cir. 2009), the Second Circuit Court overturned a district court ruling that medical residents do not qualify as students on account of the lack of ambiguity in Section 3121(b)(10). In accordance with the Sixth, Seventh, and Eleventh Circuits, the court found that because the statute "expressly defines which individuals fall within the scope of the student exception," its meaning is unambiguous (United States v. Memorial Sloan-Kettering Cancer Ctr. (2d. Cir. 2009)). Thus, the IRS”s contention that, as a matter of law, medical residents are not students was once again rejected. The court concluded, as did those discussed above, that the determination of whether a medical resident is a student is a factual analysis to be made on a case-by-case basis after introduction into evidence the nature of the medical residents” relationship with the hospital.


The Mayo Foundation case was the Eighth Circuit’s chance to close the spigot of litigation it opened when it found in Minnesota v. Apfel (8th Cir. 1998) that medical residents” services fell within the student exception to the Social Security Act. In fact, the Mayo Foundation case was filed in reliance on the holding in Minnesota v. Apfel
and was one of over 7,000 claims for refund of FICA taxes filed subsequent to the Apfel ruling (Mayo Foundation for Medical Education & Research v. United States (8th Cir. 2009)). This time, however, with a tax year subsequent to the effective date of the new regulations” full-time employee exclusion from the student exception, the court found that medical residents were subject to FICA taxes.

The court’s gateway to applying the amended regulation was by means of the Chevron analysis. As to the first question, of whether Congress had spoken to the “precise question at issue,” the court found the existence of silence and thus, ambiguity, in the statute as it relates to the application of the student FICA exception to medical residents. In so doing, the court rejected the other courts of appeals” reasoning that because the statute was capable of unambiguous application based on the common and plain meaning of the words contained in the statute, its meaning is clear. To reach this conclusion the Mayo Foundation court created or acknowledged a theretofore created exception to the application of the statute within its common and plain meaning for tax cases. Mayo Foundation cited National Muffler Dealers Ass’n v. United States (1979), where the Supreme Court upheld a Treasury Regulation construing words that had a unique or uncommon meaning under the tax statute. Thus, it concluded that the statute was silent or ambiguous on the question of whether a medical resident working for the school fulltime is a “student who is enrolled and regularly attending classes” (Mayo Foundation for Medical Education & Research v. United States (2009)).

As to the second prong of the analysis, the court cited Chevron’s proclamation that “if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute” (Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc. (1984)). This relatively low bar of permissible construction was deemed satisfied by the amended regulations because they did not conflict, i.e. they harmonized with the statute, and were a reasonable interpretation.

Hence, the court found in the face of what it deemed an ambiguous statute a permissible interpretation under the amended regulations. And thus, the court that started the onslaught of litigation in the context of whether medical residents qualify for the student FICA exception, found a way to put an end to it (at least within it owns circuit).
8. THE CIRCUIT COURTS OF APPEALS CASES, DISTINGUISHING FACTS BUT NOT LEGAL OUTCOMES: THE EFFECTIVE DATE ISSUE

It is critical to acknowledge at this point that the tax years at issue in the first four cases discussed in this section expired before the effective date of Tres. Reg. 31.3121(b)(10)-2(d)’s full-time employee exclusion (which, as referenced above, was April 1, 2005). This means that the full-time employee exclusion was not in effect during those years. Contrastingly, the tax period in question in the Mayo Foundation case was subsequent to the effective date of the new regulation. However, this factual distinction in the case must be taken in the context of the legal holdings in the first four circuit court cases. That context is this: the effective date notwithstanding, there is no reason to believe that the courts’ lines of reasoning in the first four cases would have differed had the full-time employee exception been in effect during the tax years in question. The courts found that additional statutory interpretation was not necessary because understanding of the plain meaning of the term “student” was readily ascertainable. This conclusion applied to regulations in effect during the tax years in question, as well as subsequently issued regulations such as the full-time exclusion of Tres. Reg. 31.3121(b)(10)-2(d).

V. THE COURTS’ RATIONALES AND THE QUESTION OF AMBIGUITY AND SILENCE

The question post-Mayo Foundation is really one of the presences, or lack thereof, of ambiguity in the statute. It was the court’s answer to the question of ambiguity that allowed it to move to the regulatory guidance and the full-time employee exclusion. Consider the statutory language of Section 3121(b)(10) verbatim to the extent it is relevant here. Under the statute the term “employment” shall not include—

(10) service performed in the employ of—a school, college, or university, if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

This language which creates the student FICA exception does not forthrightly provide that medical residents are students. Rather it provides a statutory regime through which one can determine whether an employee qualifies for the student exception. Whether she is a medical resident or a traditional student, the individual must be a student who is enrolled and regularly attends classes. In the view of the Second, Sixth, Seventh and Eleventh Circuits, this is not an ambiguous instruction. According to the Eighth Circuit and now the Supreme Court, it is.
Take the analysis one step further and consider the distinguishing factor in the courts’ rationales that led one of them to find ambiguity and the others to find clarity. Ultimately it was whether the court was willing to find ambiguity in silence—more specifically, whether the court was willing to translate silence as to the subset category of medical residents into silence as to who qualifies as a student generally under the statute. Hence consideration of how each of the courts dealt with the issue of silence in the statute is worth closer examination.

1. ANALYZING SILENCE: AN INCLUSIONARY INTERPRETATION

The Eleventh Circuit, in Mt. Sinai Medical Center, found the statute’s silence to be inclusionary in terms of the statute’s scope and put the burden on Congress to affirmatively exclude taxpayers under the plain terms of the statute. “If Congress had wanted to make medical residents ineligible for the student exemption, it could have easily crafted a specific exclusion, . . ., which excludes medical and dental interns and residents . . .” (United States v. Mount Sinai Medical Center of Florida (11th Cir. 2007)). Thus, the silence was not an indication of ambiguity, but rather, an implied inclusion of medical residents within the scope of the student FICA exception. In the view of the court, the language of the statute was entirely clear, and if it was Congress’s intent to exclude medical residents from the student FICA exception, it was up to Congress to fix that mistake.

In University of Chicago Hospitals, the Seventh Circuit, took a similar “included, unless specifically excluded” rationale: “there is nothing in the statute itself that categorically excludes medical residents from attempting to bring themselves within the exemption from FICA tax liability” (University of Chicago Hospitals v. United States (7th Cir. 2008)). As to the question of silence in the statute, the court held that, “silence on the specific subject of medical residents does not necessarily mean it is ambiguous” (University of Chicago Hospitals v. United States (7th Cir. 2008)). Thus, under the Seventh Circuit’s analysis, the student FICA exception could apply to medical residents up and until Congress unambiguously excluded medical residents from eligibility.

The Second Circuit’s treatment of silence in United States v. Memorial SloanKettering Cancer Center (2d Cir. 2009) closely followed the Seventh’s Circuit’s rationale. The court held: “the statute expressly defines which individuals fall within the scope of the student exception: students who are „enrolled and regularly attending classes” (United States v. Memorial Sloan-Kettering Cancer Center (2d Cir. 2009)). According to the court, “this language is not ambiguous” (United States v. Memorial Sloan-Kettering Cancer Center (2d Cir. 2009)). Echoing the Seventh Circuit, the court adopted the rationale that the statute’s silence on the specific issue of whether medical
residents qualify as students under the student FICA exception did not amount to ambiguity with respect to the statute at-large.

This line of reasoning, however, is subject to scrutiny on the grounds that Section 3121(b)(10) provides a list of exclusions from the general definition of “employee” for purposes of the FICA exception. That being the case, should not the list itself be interpreted in an exclusionary manner so that all employees not specifically listed are not exempt from FICA tax? This ultimately depends on where the court focuses its analysis. If the court views the term employee broadly, and interprets all exclusions listed in Section 3121(b), including the student FICA exception, narrowly, it will likely interpret the definition in Section 3121(b)(10) to be an exclusionary one—one that is ambiguous unless specifically listed. On the other hand, if the court views the term “employee” narrowly and interprets the exclusions broadly so that those not specifically excluded from the plain terms of the list are included in the exception, the court will find medical residents exempt from FICA tax obligations with an inclusionary interpretation.

At the same time, an exclusionary rationale may be more precise in terms of judicial restraint. If the court’s role is to interpret the law by reference to the language of the statute, then the Eleventh and the Seventh Circuits’ analyses would seem to be inappropriate.

2. ANALYZING SILENCE: PLAIN AND COMMON MEANING INTERPRETATION

In Detroit Medical Center, the Sixth Circuit concluded that in the absence of a specific definition of the term “student,” the plain and common meaning of the word should apply. In light of this interpretation, the court concluded that a case-by-case analysis of a resident’s relationship with his or her teaching hospital was necessary to determine whether the services rendered by the resident qualified for the student FICA exemption.

3. ANALYZING SILENCE: AN EXCLUSIONARY INTERPRETATION

The Eighth Circuit's broad definition of silence, contrasted with the Eleventh, Seventh, and Sixth circuits, was an exclusionary one. That is, its interpretation was that if the statute does not specifically speak to the status of medical residents in relation to their qualification for the student FICA exception, it must be ambiguous on that issue and therefore, ripe for additional elucidation from relevant regulations, which exclude full-time employees from the student exception.
So, what gave rise to the differing opinions between the circuits? The underlying difference is the Eighth Circuit’s full application of the *Chevron* doctrine. Under the first prong of *Chevron*, the issue is whether, “Congress has directly spoken to the precise question at issue.” In making this determination, the Supreme Court held in *Chevron*, that “if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute” (*Chevron v. Natural Res. Def. Council, Inc.* (1984)). Thus, silence on the question of whether a medical resident working for a school qualifies for the student FICA exception was sufficient to find ambiguity and move to the regulation’s full-time exception interpretation of the underlying statute.

One might argue that the Eighth Circuit’s interpretation of the statute was ultimately correct under *Chevron*. Silence, according to *Chevron*, as it relates to a specific issue, is sufficient to then move to the underlying regulation to determine how the statute should be applied. The specific issue here was whether medical residents qualified as students for purposes of the student FICA exception, and medical residents are not mentioned at all in Section 3121(b)(10). Therefore, moving to the regulation to determine how the statute should be applied was, according to the Eighth Circuit, and subsequently the Supreme Court, proper.

But consider the application of this broad definition of ambiguity through silence: anything not addressed directly and specifically in the statute would be ripe for additional agency regulation. At that point, what purpose does the language of the statute serve except as an invitation for the Department of Treasury to tell us what the tax law really is? This line of reasoning begs the question, what if Congress wishes the statute to be the law wholly and completely, is it then Congress’s burden to address within the statute every potential application of the law? Practically speaking, it is not reasonable to expect Congress to address every conceivable set of circumstances that could potentially arise within the statute’s application. What is reasonable, however, is for Congress to create a workable statutory framework. Congress can also assume that this framework will be applied by courts when interpreting the law. Thus, the exclusionary interpretation, taken to its logical conclusion, gives any court the ability to practically disregard the statute and move to the regulations by narrowing how the issue is framed until the statute is deemed silent. Such an analysis gives the regulations too much deference and diminishes the language of the statute itself. The Supreme Court, however, was willing to accept this broad definition of ambiguity through silence. Writing for the Court, Chief Justice Roberts held that the student exception was ambiguous and therefore properly subjected to interpretive guidance from the Department of Treasury. Moreover, because that guidance was deemed to be a “reasonable construction” of the law, it would be up to Congress to override the regulation (*Mayo Foundation* (2011)).
VI. MEDICAL RESIDENTS AS STUDENTS: A PRACTICAL ANALYSIS

1. INTRODUCTORY ANALYSIS

The discussion above presents analysis of the legal question of whether a medical resident is a student for purposes of the student FICA exception. According to the Eighth Circuit and the Supreme Court, as a matter of law, medical residents are not students under the student FICA exception. The remaining courts found ultimately that medical residents were not ineligible to qualify as students under the student FICA exception, but stopped short of saying all medical residents qualify. Thus, the question in those Circuits was a question of fact—a facts and circumstances analysis—under which a medical resident was eligible to qualify as a student if he or she was enrolled and regularly attending classes, as dictated by the statute.

In a number of the cases, the courts emphasize the fact that medical school graduates cannot be licensed in their respective states without completing a one- or two-year residency. Does this not indicate at least that their education is not yet complete since they are not allowed to practice in the area in which they have received training for the previous four years?

Consider this question in light of the additional information requested in United States v. Detroit Medical Center (6th Cir. 2009). In that case, after finding that medical residents could potentially qualify for the student FICA exception, the court requested on remand that the parties answer the following questions to determine whether the medical residents were students: (1) how many hours a week does a typical resident spend at the hospital; (2) how many hours a week does a typical resident spend in the classroom; (3) what other responsibilities does a typical resident have under the program and how much time on average do they take each week; (4) how is a typical resident’s time spent at the hospital: is it all spent providing patient care and supervising other residents (or being on call to do these things), or does it include other activities, and if so, what are they and how much time do they typically take each week; (5) what role do professors play in supervising residents while they provide patient care at the Medical Center; and (6) who employs the residents (Detroit Medical Center (6th Cir. 2009)).

A case study has been performed surveying these questions in two different ways to determine whether medical residents as a practical matter are students or not. First, a current medical resident was interviewed and asked to respond to these questions. His responses are discussed below. Second, the American Medical Association’s website contains a database called FREIDA Online which provides
information for all 8,700 graduate medical education programs accredited by the Accreditation Council on Graduate Medical Education. According to its online description, the FREIDA online data are collected by an annual survey called the National GME Census which is proctored by the American Medical Association and the Association of American Medical Colleges. Data analysis in light of the first two quantitative factors dictated in Detroit Medical Center follows.

2. FACTS AND CIRCUMSTANCES ANALYSIS (INDIVIDUAL RESIDENT)

Dr. Lance D. Wood, a second-year medical resident in the Penn State University/Milton S. Hershey Medical Center Dermatology Residency Program, responded in an online interview to the questions posited by the court in Detroit Medical Center (6th Cir. 2009). With respect to hospital hours worked in a typical week, acknowledging that hours vary widely (sometimes 40 hours, sometimes 80 hours), Dr. Wood responded that dermatology residents work on average 65-70 hours per week. Comparing this figure to classroom hours, Dr. Wood indicated that he spends 5 to 10 hours per week in a classroom setting, generally participating in educational conferences in one of the hospital conferences rooms.

In addition to patient care and furthering his dermatological education, which Dr. Wood noted consume the vast majority of his time, he spends about an hour per week conducting research, but generally does not have any other demands on his little remaining time.

As to supervision and oversight, Dr. Wood explained that attending physicians oversee the big picture, but residents are ultimately responsible for their individual patients. Moreover, the attending physicians’ level of oversight corresponds with each resident’s level of experience; thus a third-year resident would have less oversight than a first-year resident. All this notwithstanding, billing for the patients’ care is based on the attending physician’s performance of such services, even though intermediately provided through a resident. Finally, Dr. Wood is employed by the Medical Center, which is a branch of the Penn State University Medical School.

Considering the facts Dr. Wood provided in relation to the Penn State University Dermatology Residency Program, does Dr. Wood’s services appear to be those of an employee or a student? Likely the two most important factors indicating the latter are the level of classroom exposure and the attending physician’s role in his training. Up to 10 hours per week are spent by Dr. Wood in an educational setting, advancing his knowledge of dermatology. This knowledge is accumulated and then applied in patient care under the supervision of an attending physician. Even more significant is that the patient is billed for care provided by the attending physician, not
the medical resident. Thus, the level of proficiency with respect to services provided is ultimately the responsibility of the attending physician and it is ultimately the attending physician who is liable for such care. This relationship between attending physicians and residents is likely the result of the fact that Dr. Wood, like other medical residents, practices medicine with a Graduate Medical Trainee License, not a license without restriction. This license by its very name suggests that Dr. Wood’s education is on-going, and he should, therefore, still be considered a student for practical, as well as for legal purposes, under Section 3121(b)(10).

3. FACTS AND CIRCUMSTANCES ANALYSIS (QUANTITATIVE)

To sample the plethora of data available on FREIDA online, ten residency programs were randomly selected from the geographic boundaries of each of the Second, Sixth, Seventh, and Eleventh Circuits, that is, those which have held that medical residents are capable of achieving the status of student based on a facts and circumstances analysis. To simplify, this analysis was limited to the internal medicine residency programs within the states of the respective circuits. Internal medicine was selected because it generally has a yearly class of forty to fifty residents, where the majority of other residency programs have five to ten positions. This, therefore, provides a broader basis for analysis in terms of overall residents surveyed. The object of this study is to apply a broad and general facts and circumstances analysis within each circuit as to the likelihood of a court finding that the medical residents within the circuit are students.

4. THE DATA

Within the geographical circumference of the Second Circuit exist sixty-nine internal medicine residency programs. A sample of ten was randomly taken. Of those, one was in Connecticut, eight were in New York, and one was in Vermont. On average, medical residents participating in these programs spent 64.8 hours per week in the hospital and an average of 7 hours per week in the classroom, for a ratio of 10.32
**TABLE 1: SECOND CIRCUIT (NY, CT, VT)**

<table>
<thead>
<tr>
<th>Name of Residency Program</th>
<th>City</th>
<th>University</th>
<th>Hours Per Week Spent In:</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Hospital</td>
<td>Classroom</td>
</tr>
<tr>
<td>Norwalk Hospital</td>
<td>Norwalk, CT</td>
<td>Yale</td>
<td>56</td>
<td>6</td>
</tr>
<tr>
<td>Bronx-Lebanon Hospital Center</td>
<td>Bronx, NY</td>
<td>Yeshiva</td>
<td>74</td>
<td>5</td>
</tr>
<tr>
<td>Albert Einstein College of Medicine (Montefiore)</td>
<td>Bronx, NY</td>
<td>Yeshiva</td>
<td>70</td>
<td>8</td>
</tr>
<tr>
<td>Albert Einstein College of Medicine (Jacobi)</td>
<td>Bronx, NY</td>
<td>Yeshiva</td>
<td>64</td>
<td>5</td>
</tr>
<tr>
<td>Kingsbrook Jewish Medical Center</td>
<td>Brooklyn, NY</td>
<td>None</td>
<td>60</td>
<td>6</td>
</tr>
<tr>
<td>Lenox Hill Hospital</td>
<td>New York, NY</td>
<td>None</td>
<td>60</td>
<td>6</td>
</tr>
<tr>
<td>New York Presbyterian Hospital (Cornell Campus)</td>
<td>New York, NY</td>
<td>Cornell</td>
<td>65</td>
<td>5</td>
</tr>
<tr>
<td>St. Luke's-Roosevelt Hospital Center</td>
<td>New York, NY</td>
<td>Columbia</td>
<td>66</td>
<td>7</td>
</tr>
<tr>
<td>New York Downtown Hospital</td>
<td>New York, NY</td>
<td>None</td>
<td>65</td>
<td>6</td>
</tr>
<tr>
<td>University of Vermont</td>
<td>Burlington, VT</td>
<td>Vermont</td>
<td>68</td>
<td>16</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td></td>
<td>64.8</td>
<td>7</td>
</tr>
<tr>
<td><strong>High</strong></td>
<td></td>
<td></td>
<td>74</td>
<td>16</td>
</tr>
<tr>
<td><strong>Low</strong></td>
<td></td>
<td></td>
<td>56</td>
<td>5</td>
</tr>
</tbody>
</table>

**TABLE 2: THE SIXTH CIRCUIT (MI, OH, KY, TN)**

<table>
<thead>
<tr>
<th>Name of Residency Program</th>
<th>City</th>
<th>University</th>
<th>Hours Per Week Spent In:</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Hospital</td>
<td>Classroom</td>
</tr>
<tr>
<td>University of Michigan</td>
<td>Ann Arbor, MI</td>
<td>Michigan</td>
<td>70</td>
<td>9</td>
</tr>
<tr>
<td>Michigan State University</td>
<td>East Lansing, MI</td>
<td>Michigan State</td>
<td>60</td>
<td>7</td>
</tr>
<tr>
<td>St. Mary Mercy Hospital</td>
<td>Livonia, MI</td>
<td>None</td>
<td>60</td>
<td>8</td>
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<tr>
<td>Akron General Medical Center/NEOUCOM</td>
<td>Akron, OH</td>
<td>None</td>
<td>68</td>
<td>10</td>
</tr>
<tr>
<td>University Hospital/University of Cincinnati College of Medicine</td>
<td>Cincinnati, OH</td>
<td>Cincinnati</td>
<td>70</td>
<td>7</td>
</tr>
<tr>
<td>TriHealth (Good Samaritan Hospital)</td>
<td>Cincinnati, OH</td>
<td>None</td>
<td>57</td>
<td>15</td>
</tr>
<tr>
<td>Fairview Hospital</td>
<td>Cleveland, OH</td>
<td>None</td>
<td>74</td>
<td>7</td>
</tr>
<tr>
<td>Mount Carmel Health System</td>
<td>Columbus, OH</td>
<td>None</td>
<td>70</td>
<td>10</td>
</tr>
<tr>
<td>Wright State University</td>
<td>Dayton, OH</td>
<td>Wright State</td>
<td>60</td>
<td>8</td>
</tr>
<tr>
<td>Mercy Health Partners/ Vincent Mercy Medical Center</td>
<td>Toledo, OH</td>
<td>Medical of Ohio/Ohio</td>
<td>72</td>
<td>8</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td></td>
<td>66.1</td>
<td>8.9</td>
</tr>
<tr>
<td><strong>High</strong></td>
<td></td>
<td></td>
<td>74</td>
<td>15</td>
</tr>
<tr>
<td><strong>Low</strong></td>
<td></td>
<td></td>
<td>57</td>
<td>7</td>
</tr>
</tbody>
</table>
TABLE 3: SEVENTH CIRCUIT (WI, IL, IN)

<table>
<thead>
<tr>
<th>Name of Residency Program</th>
<th>City</th>
<th>University</th>
<th>Hours Per Week Spent In:</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louis A Weiss Memorial Hospital</td>
<td>Chicago, IL</td>
<td>Illinois</td>
<td>55</td>
<td>10</td>
</tr>
<tr>
<td>University of Chicago</td>
<td>Chicago, IL</td>
<td>Chicago</td>
<td>70</td>
<td>4</td>
</tr>
<tr>
<td>John H. Stroger Hospital of Cook County</td>
<td>Chicago, IL</td>
<td>Rush Medical</td>
<td>60</td>
<td>6</td>
</tr>
<tr>
<td>St. Francis Hospital of Evanston</td>
<td>Evanston, IL</td>
<td>Illinois at Chicago</td>
<td>65</td>
<td>10</td>
</tr>
<tr>
<td>University of Chicago (Northshore)</td>
<td>Evanston, IL</td>
<td>Chicago</td>
<td>60</td>
<td>8</td>
</tr>
<tr>
<td>Resurrection Medical Center (Westlake)</td>
<td>Melrose Park, IL</td>
<td>None</td>
<td>70</td>
<td>10</td>
</tr>
<tr>
<td>West Suburban Medical Center</td>
<td>Oak Park, IL</td>
<td>None</td>
<td>50</td>
<td>7</td>
</tr>
<tr>
<td>Advocate Lutheran General Hospital</td>
<td>Park Ridge, IL</td>
<td>None</td>
<td>60</td>
<td>5</td>
</tr>
<tr>
<td>Southern Illinois University</td>
<td>Springfield, IL</td>
<td>Southern Illinois</td>
<td>60</td>
<td>5</td>
</tr>
<tr>
<td>Aurora Health Care</td>
<td>Milwaukee, WI</td>
<td>None</td>
<td>50</td>
<td>5</td>
</tr>
</tbody>
</table>

Average 60 7 9.50
High 70 10 17.50
Low 50 4 5.50

TABLE 4: THE ELEVENTH CIRCUIT (AL, GA, FL)

<table>
<thead>
<tr>
<th>Name of Residency Program</th>
<th>City</th>
<th>University</th>
<th>Hours Per Week Spent In:</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Alabama Medical Center</td>
<td>Birmingham, AL</td>
<td>Alabama</td>
<td>72</td>
<td>5</td>
</tr>
<tr>
<td>University of Miami School of Medicine at Florida Atlantic University</td>
<td>Atlantis, FL</td>
<td>FL Atl. / Miami</td>
<td>60</td>
<td>10</td>
</tr>
<tr>
<td>Jackson Memorial Hospital/ Jackson Health System</td>
<td>Miami, FL</td>
<td>Miami</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Mount Sinai Medical Center of Florida</td>
<td>Miami Beach, FL</td>
<td>Columbia</td>
<td>65</td>
<td>10</td>
</tr>
<tr>
<td>Orlando Health</td>
<td>Orlando, FL</td>
<td>FL/S. Fl./ FL St./Tx</td>
<td>66</td>
<td>11</td>
</tr>
<tr>
<td>University of South Florida</td>
<td>Tampa, FL</td>
<td>South Florida</td>
<td>65</td>
<td>9</td>
</tr>
<tr>
<td>Mercer University School of Medicine (Savannah)</td>
<td>Savannah, GA</td>
<td>Mercer</td>
<td>55</td>
<td>10</td>
</tr>
<tr>
<td>Medical College of Georgia</td>
<td>Augusta, GA</td>
<td>Med. Coll. of Georgia</td>
<td>60</td>
<td>5</td>
</tr>
<tr>
<td>Emory University</td>
<td>Atlanta, GA</td>
<td>Emory</td>
<td>65</td>
<td>9</td>
</tr>
<tr>
<td>Mercer University School of Medicine</td>
<td>Macon, GA</td>
<td>Mercer</td>
<td>60</td>
<td>7</td>
</tr>
</tbody>
</table>

Average 61.8 8.6 7.84
High 72 11 14.40
Low 50 5 5.00

hospital hours worked for everyone classroom hour. Among the sampled hospitals, the hospital with the highest hospital hours required 74 and the lowest required 56. The hospital with the most classroom hours required 16 and the hospital with the fewest classroom hours required only 5. The lowest ratio of hospital hours to classroom hours was the University of Vermont Program with 4.25 and the highest was Bronx-Lebanon Hospital Center Program 14.80.
Within the Sixth Circuit, the originator of the seven factors presented above, the determination of whether medical residents are students under Section 3121(b)(10) is a fact gathering expedition. Considering the quantitative factors proscribed by the Detroit Medical Center court, on average, a random sample of ten of the forty-eight internal medicine residency programs in the circuit had an average amount of time spent in the hospital of 66.1 hours and an average of 8.9 hours of classroom time each week. In terms of ratios, on average, for everyone hour spent in the classroom, a typical internal medicine resident would spend 7.85 hours in the hospital. Other data: the most arduous hospital schedule was 74 hours per week and the lowest was 57. Contrastingly, the program with the most required classroom hours required 15 hours per week while the least amount of classroom hours required was 7. With respect to ratios, the highest number of hours spent in the hospital for everyone hour spent in the classroom was 10.57 at Fairview Hospital in Cleveland, OH. The lowest ratio was 3.80 hospital hours for every one classroom hour at TriHealth (Good Samaritan) Hospital located in Cincinnati, OH.

On a random sample of ten of twenty-nine internal medicine residency programs within the Seventh Circuit’s geographic boundaries, on average medical residents spent 60 hours per week in the hospital and 7 hours per week in the classroom. The average ratio of hospital hours to classroom hours was 9.51. The most classroom hours required by any sampled hospital in the Seventh Circuit was 70; the lowest was 50. The most classroom hours required is 10; the lowest was 4. As to ratios, the highest number of hospital hours for every one classroom hour was 17.50 at the University of Chicago program; the lowest ratio was 5.50 at the Louis A. Weiss Memorial Hospital, also a Chicago hospital, but affiliated with the University of Illinois.

In total there are twenty-one internal medical residency programs within the confines of the Eleventh Circuit. Within the 10 schools sampled the average hospital hours required of residents was 61.8, while the average classroom hours required was 8.6. The highest and lowest hospital hours were 72 and 50 respectively. Comparatively, the highest and lowest classroom hours were 11 and 5 respectively. For everyone hour of classroom time, on average 7.4 hours were spent in the hospital. The lowest result considering this ratio was 5 hospital hours for every 1 classroom hour; the highest result was 7.84 hospital hours for every 1 classroom hour. The highest hospital to classroom hours ratio was at the University of Alabama’s program where 14.40 hours were spent in the hospital for every one classroom hour. The lowest ratio was 5.0 to 1 at Jackson Memorial Hospital in Miami, FL.
5. COMPARATIVE ANALYSIS

Given that this is only a partial analysis of what would be an overall examination of the facts and circumstances pertaining to medical residents and their respective programs, only broad assertions can be made with respect to the quantitative data. With these assertions regarding each of the four circuits, discussion will be given over to the status of each circuit overall based on the sampling, and specific mention will be made of teaching hospitals with particularly high or low hospital to classroom hours ratios. This analysis is based on the general premise, at least with respect to the quantitative portion of the facts and circumstances analysis, that the lower the hospital/classroom hours ratio, the more likely a medical resident will qualify as a student under Section 3121(b)(10).

The Eleventh Circuit’s sampling had the lowest average ratio of 7.84. This result is reflective of the circuit as a whole as there was no one program that pulled down the ratio due to a high number of classroom hours. For example, 7 of the 10 programs had a range of 9 to 11 classroom hours, but none more than 11. Compare this result with the next lowest average ratio of 7.85 in the Sixth Circuit. This result is largely due to one particular program, the TriHealth (Good Samaritan Hospital) program which requires a whopping 15 hours of classroom time per week compared to only 57 hospital hours, putting the TriHealth program in a very strong position with respect to earning student status under Section 3121(b)(10).

The highest ratio of hospital to classroom hours, on average, came from the Seventh Circuit where 6 of the 10 sampled programs had classroom hours in the range of 4 to 7. Most significant among those was the University of Chicago’s program whose ratio was 17.50 with only 4 classroom hours per week. This high ratio would complicate the University of Chicago program’s bid to qualify its medical residents as students and would likely require strong qualitative factors to qualify for the student exception under Section 3121(b)(10).

The Second Circuit would most certainly have had the highest average ratio were it not for the University of Vermont’s program, which had the survey-wide, second lowest ratio of 4.25 hospital hours for every classroom hour. Otherwise, within the Second Circuit, the number of classroom hours compared to programs sampled in the other circuits was sparse with 8 of the 10 programs having classroom hours within the range of 5 to 7 hours per week. While the University of Vermont’s attempt to qualify its residents as students would likely succeed with even marginal qualitative factors, a number of the other programs in the Second Circuit would struggle to have their residents fall within the student exception.
VII. CONCLUSION

Given the lack of ambiguity in the statute, the Supreme Court should have decided the issue of whether medical residents qualify for the student exception through a factual analysis considering each residency program’s relationship with its residents. As opposed to the Department of Treasury’s arbitrary full-time employee exclusion, this approach would have been a more accurate way to determine whether a resident should qualify for the student FICA exception.

APPENDIX 1: TABLE OF CASES

<table>
<thead>
<tr>
<th>Court</th>
<th>Issue</th>
<th>Date Decision Rendered</th>
<th>Tax Years in Question</th>
<th>Holding</th>
<th>Logic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighth</td>
<td>Whether the state of Minnesota was liable for unpaid FICA taxes that were attributable to stipends paid to the residents at the University of</td>
<td>6-Jul-98</td>
<td>1985-1986</td>
<td>Residents were students that qualified for the student exception, not employees of the university.</td>
<td>If your main purpose is pursuing a course of study rather than earning a livelihood, you are considered to be a student and your work is not considered employment.</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Whether medical residents were eligible for the student exception from FICA taxes found in 26 U.S.C.S. § 3321(b)(10).</td>
<td>18-May-07</td>
<td>1996-1999</td>
<td>A teaching hospital is allowed to prove that its medical residents qualify for the student exception on a case-by-case basis.</td>
<td>Whether 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.</td>
</tr>
<tr>
<td>Seventh</td>
<td>Whether residents were per se ineligible for the student exception.</td>
<td>23-Sep-08</td>
<td>1995-1996</td>
<td>The student exception unambiguously does not categorically exclude medical residents as students potentially eligible for exemption from payment of FICA taxes. Therefore, they are not per se ineligible.</td>
<td>Rather than per se exclusion, a case-by-case analysis is required to determine whether medical residents qualify for the statutory exemption from Federal Insurance Contributions Act (FICA) taxation.</td>
</tr>
<tr>
<td>Sixth</td>
<td>Whether six medical hospitals were liable for backed unpaid FICA taxes.</td>
<td>26-Feb-09</td>
<td>1995-2003</td>
<td>Medical residents were capable of qualifying for the student exception upon examination of the students’ responsibilities and the circumstances in which they do them.</td>
<td>Because the statute does not specifically define student, it is given its usual or ordinary meaning, which definition may include medical residents depending on the facts and circumstances.</td>
</tr>
<tr>
<td>Second</td>
<td>Whether post-graduate medical residents can invoke the Federal Insurance Contributions Act (“FICA”) tax exemption for “students.”</td>
<td>25-Mar-09</td>
<td>1995-1999</td>
<td>Whether residents were “students” for FICA purposes were questions of fact, not questions of law. Accordingly, a factual determination as to the residents’ qualifications for the FICA exclusion is required.</td>
<td>The language of the statute is not ambiguous.</td>
</tr>
<tr>
<td>Eighth</td>
<td>Whether stipends paid to medical residents for services provided at hospitals and clinics were exempt from FICA taxes under § 3321(b)(10) and whether full-time exclusion is a permissible interpretation of that Section.</td>
<td>12-Jun-09</td>
<td>Final three quarters of 2005</td>
<td>Regulation is a permissible construction of § 3321(b)(10).</td>
<td>The full-time employee regulation did not conflict with the plain language of the statute; regulation was consistent with the origin and purpose of the student exception as initially enacted and with Congress’s frequent expansion of Social Security coverage.</td>
</tr>
</tbody>
</table>
APPENDIX 2: DATA COMPILATION

<table>
<thead>
<tr>
<th>Geographic Boundary</th>
<th>Hours per week in Hospital</th>
<th>Hours Per Week in Classroom</th>
<th>Hospital to Classroom Ratio</th>
<th>Required Hours in Hospital Max</th>
<th>Min</th>
<th>Required Hours in Classroom Max</th>
<th>Min</th>
<th>Ratio of Required Hospital Hours to Required Classroom Hours Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Circuit (NY, CT, VT)</td>
<td>64.8</td>
<td>7.0</td>
<td>10.32</td>
<td>74</td>
<td>56</td>
<td>16</td>
<td>5</td>
<td>Vermont 4.25</td>
<td>14.80</td>
</tr>
<tr>
<td>Third Circuit (MI, OH, KY, TN)</td>
<td>66.1</td>
<td>8.9</td>
<td>7.84</td>
<td>74</td>
<td>57</td>
<td>15</td>
<td>7</td>
<td>TriHealth 3.80</td>
<td>10.57</td>
</tr>
<tr>
<td>Seventh Circuit (WI, IL, IN)</td>
<td>60.0</td>
<td>7.0</td>
<td>9.51</td>
<td>70</td>
<td>50</td>
<td>10</td>
<td>4</td>
<td>Louis A. Weiss Memorial Hospital 5.50</td>
<td>17.50</td>
</tr>
<tr>
<td>Eleventh Circuit (AL, GA, FL)</td>
<td>61.8</td>
<td>8.6</td>
<td>7.84</td>
<td>72</td>
<td>50</td>
<td>11</td>
<td>5</td>
<td>Jackson Memorial Hospital 5.00</td>
<td>14.40</td>
</tr>
</tbody>
</table>

REFERENCES


Mayo Foundation for Medical Education & Research v. United States, 568 F.3d 675 (8th Cir. 2009).


Minnesota v. Apfel 151 F.3d 742 (8th Cir. 1998).


Pub. L. No. 76-379 sec. 606, §1426(b), (6) and (7) (1939).

Pub. L. No. 81-734, sec. 204(a), §1426(b)(11) (1949).
Treasury Regulation § 31.3121(b)(10)-2.

Treasury Regulation § 31.3121(b)(10)-2(b).

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