



November 11, 2010

Judges Appear Reluctant on Medical Residents Tax Issue

Several Supreme Court judges appeared reluctant to reverse the IRS decision to have medical residents pay Social Security tax. The issue stems from the dilemma of whether medical residents who are undergoing their training in teaching hospitals are considered employees of the hospital or students in their medical courses. The medical residents are given allowances and residency facilities during the period of their training.

The lawyer for the Mayo Clinic on this matter, Theodore B. Olsen, put forth his contention that medical students are not employees because they attend lectures, do laboratory work and spend most of their time studying and therefore should be considered students. Olsen urged the judges to reject the IRS requirement as arbitrary.

Generally, full-time students who work are not required to pay Social Security taxes but legal clerks and tradesmen apprentices are not exempted. In 2005, the IRS in its rule stated that medical residents are full-time employees and not students.

Chief Justice John Roberts said this situation is very much like the situation of an apprentice who is both an employee and a student. He went on to say, "The only way you can draw the line between an employee and a student is to have somebody say, 'This is going to be the line' and if anybody is

going to say it, it ought to be the IRS”.

There are about 100,000 medical residents in the country at present. If they are taxed, they would contribute about \$700 million annually to the nation's coffers, no small amount by any means. The Social Security tax is 12.4% of wages and is borne equally between the employer and employee. For a medical resident earning \$50,000 in allowances, it would mean the employer and the resident pay \$3,100 each.

Olsen argued that the IRS rule is arbitrary because it has had the effect of taxing a student who works 40 hours a week while exempting another who works 39 hours. Therefore, Olsen put forth that the consideration should be whether the primary purpose of the activity in the hospital is educational or vocational.

Some of the Supreme court judges are against Olsen's argument because they feel that earning \$50,000 a year is enough to show that a person is an employee. On the other hand, other judges feel that the reason behind enrolling as a medical resident should be the key factor. If the reason is to obtain an education, then residents should be considered students but if the reason is to earn a living, then let them be deemed employees.

A decision on this matter is expected to be made in the High Court by next June.