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United States v. Memorial Sloan-Kettering Cancer Center

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United States v. Memorial Sloan-Kettering Cancer Center

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Running a hospital is expensive.[1] Approximately 100,000 residents are training in about 8000 medical residency programs across the United States.[2] In 2008, the federal government gave an estimated $9 billion to hospitals to support graduate medical education.[3] The national average stipend for medical residents ranges from $46,245 for a first-year resident to $60,278 for an eighth-year resident.[4] Although the salary paid to a resident is much less than that paid to a fully licensed physician,[5] hospitals across the country have attempted to reduce their costs even further by invoking the Federal Insurance Contributions Act (FICA) tax exemption for "students."[6]

In *United States v. Memorial Sloan-Kettering Cancer Center*, the Second Circuit addressed whether medical residents can invoke the FICA tax exemption for "students."[7] The Second Circuit heard this issue on appeal from *United States v. Memorial Sloan-Kettering Cancer Center*[8] and *Albany Medical Center v. United States*.[9] After examining the statutory and regulatory text, legislative history, and related case law, the court vacated both district court judgments to the extent they held "that medical residents are ineligible for the 'student exception' as a matter of law."[10] The court concluded "that the statute is unambiguous and that whether medical residents are 'students' and the Hospitals 'schools' is a question of fact, not a question of law."[11] Because the court found the statute unambiguous, it determined that an examination of the legislative history of FICA was unnecessary.[12]

This case comment contends that the Second Circuit's holding that the FICA student exception is unambiguous is the result of an improper reading of the statutory

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1. The operating expenses of Memorial Sloan-Kettering Cancer Center exceeded $2 billion in 2008 and Albany Medical Center had nearly $800 million of operating expenses in 2009. Memorial Sloan-Kettering Cancer Ctr., 2008 Annual Report 52 (2008), *available at* http://www.mskcc.org/mskcc/shared/graphics/AR_2008/pdf/MSKCC08AR.pdf; Albany Med. Ctr, 2009 Annual Report 39 (2009), *available at* http://www.amc.edu/about%20us/documents/albany_med_annual_report_2009.pdf.

2. Ass'n of Am. Med. Colls., Roadmap to Residency 1 (2007), *available at* http://services.aamc.org/publications/showfile.cfm?file=version78.pdf&prd_id=183&prv_id=222&pdf_id=78.

3. Medicare Payment Advisory Comm'n, Report to the Congress: Improving Incentives in the Medicare Program 3 (2009), *available at* http://www.medpac.gov/documents/Jun09_EntireReport.pdf.

4. Ass'n of Am. Med. Colls., AAMC Survey of Resident/Fellow Stipends and Benefits 4 (2008), *available at* http://www.aamc.org/data/stipend/2008_stipendreport.pdf.

5. Anthony Ciolli, Note, *The Medical Resident Working Hours Debate: A Proposal for Private Decentralized Regulation of Graduate Medical Education*, 7 Yale J. Health Pol'y L. & Ethics 175, 188 (2007) (specialized physicians have salaries ranging from $100,000 to $150,000).

6. *See* I.R.C. § 3121(b)(10) (2006).

7. 563 F.3d 19, 21 (2d Cir. 2009).

8. No. 06 Civ. 26, 2007 U.S. Dist. LEXIS 45609, at *1 (S.D.N.Y. Feb. 23, 2007).

9. No. 1:04-CV-1399, 2007 U.S. Dist. LEXIS 1929, at *2 (N.D.N.Y. Jan. 10, 2007).

10. *Sloan-Kettering*, 563 F.3d at 21.

11. *Id.* at 27.

12. *Id.*

and regulatory text.[13] A proper reading, along with an examination of the legislative history, clearly shows Congress's intent to make medical residents categorically ineligible for the FICA student exception. The relevant question at issue is whether medical residents are categorically ineligible for the student exception or whether eligibility should be judged on a case-by-case basis.

After graduating from medical school and receiving their degrees, prospective physicians begin the post-graduate phase of their medical educations.[14] Most states, including New York, require physicians to complete a residency program of at least one year prior to becoming eligible for a medical license.[15] Such programs receive accreditation through organizations such as the Accreditation Council for Graduate Medical Education (ACGME).[16] The ACGME requires residency programs to provide didactic and clinical education that is carefully planned and balanced with concerns for patient safety and resident well-being.[17] Residents in New York must also pass an examination administered by the state's Board of Regents and in accordance with the New York State Commissioner of Education's regulations.[18]

Plaintiff Albany Medical Center (AMC) is a private corporation that links the Albany Medical College with the Albany Medical Center Hospital (AMCH).[19] The AMCH's residency program is under the primary control of Albany Medical College,

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13. I.R.C. § 3121(b)(10) (2006) is commonly referred to as the "student exception." The student exception excludes from the definition of "employment" any service performed in the employment of an organization

> if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a *school, college, or university* and is operated, supervised, or controlled by or in connection with such 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.

Id. (emphasis added).

14. *See* Medicare Payment Advisory Comm'n, *supra* note 3, at 10.

15. N.Y. Comp. Codes R. & Regs. tit. 8, § 60.3(a) (2010); *see* N.Y. Educ. Law § 6524 (McKinney 2010). Although New York requires physicians to complete at least one year in a residency program, depending on specialty, residencies usually last between three and five years. *See* Medicare Payment Advisory Comm'n, *supra* note 3, at 10–11.

16. *Sloan-Kettering*, 563 F.3d at 21. *See* Accreditation Council for Graduate Med. Educ., Bylaws, art. II, § 2 (Sept. 14, 2009), *available at* http://www.acgme.org/acWebsite/about/ab_ACGMEbylaws.pdf ("Provide for the accreditation of programs in graduate medical education according to established standards which afford fair and equitable review of the institution and program, through the residency review process.").

17. Accreditation Council for Graduate Med. Educ., Common Program Requirements 6 (Feb. 2004), *available at* www.acgme.org/acWebsite/dutyHours/dh_dutyHoursCommonPR.pdf ("Each program must ensure that the learning objectives of the program are not compromised by excessive reliance on residents to fulfill service obligations. Didactic and clinical education must have priority in the allotment of residents' time and energy. Duty hour assignments must recognize that faculty and residents collectively have responsibility for the safety and welfare of patients.").

18. Educ. § 6524.

19. *Sloan-Kettering*, 563 F.3d at 22.

but AMC and AMCH participate in the program as well.[20] AMC's associate dean for graduate medical education directs the residency program, and faculty of Albany Medical College supervise and train the residents.[21]

Plaintiff Sloan-Kettering is made up of three entities: Memorial Hospital for Cancer and Diseases ("Memorial Hospital"), Sloan-Kettering Institute for Cancer Research ("Sloan-Kettering Institute"), and the Memorial Sloan-Kettering Cancer Center (the "Cancer Center").[22] The Cancer Center is a teaching institution affiliated with the Weill Medical College of Cornell University.[23] Staff physicians for the Cancer Center are all faculty of Cornell University.[24]

In February 2002, AMC filed a refund application for the FICA taxes it had paid on resident salaries between 1995 and 1999.[25] Because the Internal Revenue Service (IRS) did not respond to its claim within six months, in December 2004, AMC filed a complaint in the U.S. District Court for the Northern District of New York, seeking to recover a total refund of the approximately $7.3 million it had paid in FICA taxes.[26] AMC alleged that, under the Internal Revenue Code, services performed by its medical residents fall under the FICA student exception and are not subject to FICA taxes.[27] Finding the text of the statute ambiguous as to whether Congress intended medical residents to be subject to the student exception, the U.S. District Court for the Northern District of New York found it necessary to review the history behind the legislation.[28] The court noted that, in determining whether an employment relationship is subject to taxation, a court should favor an "interpretation bearing in mind the purpose of the Social Security Act and its wide breadth of

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20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Albany Med. Ctr. v. United States, No. 1:04-CV-1399, 2007 U.S. Dist. LEXIS 1929, at *2 (N.D.N.Y. Jan. 10, 2007).

26. *Id.* The total refund AMC sought was $7,321,279.52. *Id.* The refund comprised the total amount of FICA taxes AMC paid and withheld in all quarters from 1995 to 1999. *Id.*

27. *Id.* at *3–4.

> Under the Internal Revenue Code, wages earned for employment are subject to FICA taxes. *See* IRC §§ 3101(a)–(b), 3111(a)–(b). The Code defines "employment" as "any service, of whatever nature, performed . . . by an employee for the person employing him . . . ." IRC § 3121(b). However, services rendered for a "school, college, or university" by "a student who is enrolled and regularly attending classes at such school, college, or university" are not considered employment. IRC § 1321(b)(10). Therefore, services performed under the student exception and the money received therefore are not subject to FICA taxes. Plaintiff bases its refund claim on this provision.

Id.

28. *Albany Med. Ctr.*, No. 1:04-CV-1399, 2007 U.S. Dist. LEXIS 1929, at *4–5 (citing United States v. Donruss, 393 U.S. 297, 303 (1969)) ("Since the language of the statute does not provide an answer to the question before us, we have examined in detail the relevant legislative history.").

coverage."[29] Following a detailed examination of the legislative history, the court concluded that "Congress [had not] intended medical residents to qualify for the student exception,"[30] and granted the government's motion for summary judgment.[31]

Memorial Sloan-Kettering Cancer Center also filed a refund application with the IRS in which it claimed that residents were eligible for the FICA student exception.[32] In response, "[t]he IRS granted the application and refunded FICA taxes that the Cancer Center had paid between 2001 and 2003."[33] After refunding the FICA taxes, however, the government reversed its position and, in January 2006, the government sued to recover the taxes that it had refunded. The district court issued an oral decision, in which it expressed "skepticism of the Cancer Center's assertion that it did not benefit from patient services provided by residents."[34] As in the *Albany Medical Center* case, the district court "focused on the legislative history and found that Congress had intended FICA to apply to [medical] residents."[35] Persuaded by the government's argument, "[t]he court held that residents were not students and could not invoke the student exception," and granted summary judgment for the government.[36]

On appeal, the Second Circuit reversed both courts by ruling that whether medical residents qualify for the student exception is a question of fact.[37] The relevant portion of the statute exempts from FICA taxation any remuneration for a "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 . . . . "[38] Both the Southern District of New York and the Northern District of New York found the statutory and regulatory framework ambiguous on the issue, specifically, of whether medical residents are able to apply for the student exception.[39] As a result, the court began with the question of whether the statute is ambiguous.[40] The hospitals argued that the student exception is

29. *Id.* at *5–6 (citing United States v. Silk, 331 U.S. 704, 711–12 (1947); Soc. Sec. Bd. v. Nierotko, 327 U.S. 358, 365 (1946)).

30. *Albany Med. Ctr.*, 2007 U.S. Dist. LEXIS 1929, at *12.

31. *Id.* at *15.

32. United States v. Memorial Sloan-Kettering Cancer Ctr., 563 F.3d 19, 23 (2d Cir. 2009).

33. *Id.* at 23–24.

34. *Id.* at 24.

35. *Id.*

36. *Id.*

37. *Id.* at 24–25.

38. I.R.C. § 3121(b)(10) (2006).

39. *Sloan-Kettering*, 563 F.3d at 25.

40. *Id.* at 25–26. In another case, the Second Circuit properly noted, "[o]nly if we discern ambiguity do we resort . . . to canons of statutory construction . . . [and] to legislative history." Daniel v. Am. Bd. of Emergency Med., 428 F.3d 408, 423 (2d Cir. 2005) (citing United States v. Dauray, 215 F.3d 257, 262, 264 (2d Cir. 2000)).

unambiguous because the language consists of "basic, easily understood words," and thus whether medical residents are "students" is a question of fact, not a question of law.[41] The government's response to the hospitals was "that if the term 'student' has an unambiguous meaning, that meaning does not encompass [medical] residents, who are not 'students' as that term is generally used."[42] The government went on to argue that the statute is ambiguous because it does not detail the circumstances making an individual a student, and does not, on its face, answer the question of whether medical residents are students.[43]

The court then turned to case law that addressed similar issues. In *United States v. Mount Sinai Medical Center of Florida*, the Eleventh Circuit held that the statutory text was "plain" and "[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."[44]

The Sixth and Seventh Circuits have also addressed this issue. The Seventh Circuit held that the statute's silence on the specific issue of whether medical residents qualify for the student exception does not amount to ambiguity.[45] The Sixth Circuit concluded that the meaning of the word "student" is a legal issue, and the question of whether particular residents are students is a factual question.[46] The Sixth Circuit also looked to the ordinary meaning of the word "student," and the relevant Treasury Regulation, which states, "[a]n employee who performs services in the employ of a school, college, or university, as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services."[47] The court stated it needed to discern what the medical resident does for the hospitals, and under what circumstances.[48]

After evaluating the case law, the Second Circuit held that the statute was unambiguous, and that the determination of whether residents are "students," and whether the hospitals are "schools," are both questions of fact.[49] The court went on to

41. *Sloan-Kettering*, 563 F.3d at 26.

42. *Id*.

43. *Id*.

44. 486 F.3d 1248, 1252 (11th Cir. 2007).

45. *See* Univ. of Chi. Hosps. v. United States, 545 F.3d 564, 567 (7th Cir. 2008).

46. United States v. Detroit Med. Ctr., 557 F.3d 412, 418 (6th Cir. 2009).

47. *Id.* (quoting I.R.C. § 3121(b)(10) (2006)).

48. *Detroit Med. Ctr.*, 557 F.3d at 417–18 (stating that evidence that would help the court determine whether medical residents were "students" included: "how many hours a week does a typical resident spend at the hospital [and] . . . in the classroom; what other responsibilities . . . a typical resident ha[s] under the program and how much time on average do they take each week; [and] how is a typical resident's time spent at the hospital: Is it all spent providing patient care and supervising other residents and nursing [sic] providing patient care (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 . . . ?").

49. United States v. Memorial Sloan-Kettering Cancer Ctr., 563 F.3d 19, 27 (2d Cir. 2009).

state that an examination of the legislative history would not be necessary because "the statute unambiguously does not categorically exclude medical residents from eligibility for the student exception."[50] In concluding the statute was unambiguous, the court remanded both cases to their respective district courts for a "particularized review of whether [the hospital's] medical residents qualify for the student exception."[51]

The majority incorrectly concluded that I.R.C. § 3121(b)(10) unambiguously adopts a case-by-case approach for determining whether a medical resident qualifies for the student exception. The statute uses extremely general language to define the student exception.[52] Although the statute uses terms that are plain and simple, such statutory language does not necessarily imply that the statute is unambiguous. To determine if a statute is ambiguous, the court must ascertain whether the statute has an unambiguous meaning with regard to the particular dispute.[53] To be unambiguous, a statute must supply a "rule of decision fine-grained enough so that it controls the 'precise question' at issue . . . ."[54]

To answer the question of whether medical residents are categorically ineligible for the student exception, or whether eligibility should be judged on a case-by-case basis, the dissent makes clear that the question requires the court to answer two questions: First, how does the statute treat medical residents? Second, "what level of . . . eligibility for the exception is decided?"[55] Conceptually, the statute could judge medical residents by three different standards of eligibility.[56] First, residents should be treated categorically, so all are treated the same; second, residents should be grouped by

50. *Id.* at 28 (quoting *Chi. Hosps.*, 545 F.3d at 570).

51. *Id.*

52. The relevant portion of the statute's exemption from FICA taxation states that any remuneration for a "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 . . . ." I.R.C. § 3121(b)(10)(B) (2006) (emphasis added).

53. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).

54. Gen. Elec. Co. v. Comm'r, 245 F.3d 149, 154 (2d Cir. 1997) (quoting Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842 (1984)):

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, 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, 467 U.S. at 842–43.

55. *Sloan-Kettering*, 563 F.3d at 33–34 (Trager, J., dissenting).

56. The student exception statute could look at medical residents as a whole ("categorically"), by program, or as individuals. *Id.* at 34.

program, so all residents in the same program are treated the same; and third, residents can be judged individually, such that two individuals in the same program could receive different treatment according to their individual circumstances.[57] Section 3121(b)(10) fails to resolve these ambiguities. The statute fails to mention criteria for determining whether a person is a "student" or what institutions constitute a "school, college or university."[58]

The fact that the statute is open to numerous interpretations reinforces the need to examine the legislative history. The three possible interpretations of the statute illustrate the different effects that the different meanings would have on medical residents. A case-by-case resolution is fair because each program is different.[59] Case-by-case resolution also promotes fairness to different medical residents.[60] Conversely, categorical ineligibility is similarly logical because all medical residents have graduated from medical school and have earned their degrees before beginning their residencies, which requires substantial patient-care responsibilities.[61] Categorical ineligibility also promotes fairness among medical residents.[62] A case-by-case interpretation may grant an exception to a medical resident working for a hospital that is affiliated with a university, but may also deny an exception to a medical resident working for an independent or private hospital. Categorical ineligibility would treat all medical residents the same.[63] Clearly, the statute is open to multiple interpretations with different results.[64] Because of the ambiguity of the statute, the court should have looked to the legislative history to determine Congress's clear intent.[65] The court could not have ruled as it did if it had acknowledged the lack of clarity in the statute, or the possibility of different interpretations.

For the foregoing reasons, the Second Circuit should have conducted a review of the statute's legislative history. As the dissent pointed out, an analysis of the legislative history further underscores the mistake the court made in finding I.R.C. § 3121(b)(10) unambiguously includes medical residents as covered under the student exception.[66]

In 1939, Congress passed two FICA exemptions: one being the original student exception and the other being an intern exception.[67] In 1965, after an increased

57. *Id.*

58. *See* I.R.C. § 3121(b)(10); *Sloan-Kettering*, 563 F.3d at 34 (Trager, J., dissenting).

59. *See Sloan-Kettering*, 563 F.3d at 34 (Trager, J., dissenting).

60. *See id.*

61. *Id.*

62. *See id.*

63. *Id.*

64. *Id.* (citing Cohen v. JP Morgan Chase & Co., 498 F.3d 111, 116 (2d Cir. 2007)).

65. *See id.* at 29.

66. *Id.* at 34 (Trager, J., dissenting) (citing Cohen v. JP Morgan Chase & Co., 498 F.3d 111, 122 (2d Cir. 2007)).

67. Social Security Act Amendments of 1939, Pub. L. No. 76-379, § 209, 53 Stat. 1360 (1939).

number of medical residents claimed they should be exempt under the intern exception, the courts first heard the argument that medical residents should fit under the FICA intern exception.[68] The court held that any expansion of the intern exception was for Congress, not the courts, to make.[69] Later that year, Congress chose to eliminate the intern exception entirely.[70] The U.S. House of Representatives and U.S. Senate Reports, while not essential to determining congressional intent, provide valuable insight, proving Congress's clear intent to subject medical residents to FICA taxation.[71] Congress passed the student exception and intern exception simultaneously, suggesting Congress did not intend for interns to fall under the student exception. The fact that Congress repealed the intern exception further indicates Congress's intent for interns to be subject to FICA taxes.

Residents should be categorized in the same way as interns. Residents are at least as far removed from medical school as interns were in 1965.[72] If interns were not covered, medical residents should similarly not be covered. Instead of the courts deciding the meaning of the particular ambiguous language of a thirty-year-old statute, as many circuits have, Congress should speak directly to the issue if it wishes to change its previously stated intentions behind the statute and its amendments.

In *Mayo Foundation for Medical Education & Research v. United States*, a case factually similar to *Sloan-Kettering*, the Eighth Circuit analyzed the issue of whether medical residents qualify for the FICA student exception in a way that neither the majority nor dissent did in *Sloan-Kettering*.[73] The court in *Mayo Foundation* held that the medical residents' compensation for health care and patient services are subject to FICA taxes.[74] In concluding that the medical residents do not qualify for the student exception, the court relied on regulations promulgated by the Treasury Department and the IRS.[75] Adopted in 2004, the purpose for amending the regulations was to provide rules for determining whether an employee is a student for purposes of I.R.C. § 3121(b)(10).[76] The amended regulations made clear that medical residents would no longer qualify for the student exception.[77] As a general rule, the test to determine student status is as follows:

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68. St. Luke's Hosp. Ass'n. v. United States, 333 F.2d 157, 158 (6th Cir. 1964).

69. *Id.* at 164.

70. H.R. Rep. No 89-213, at 16 (1965).

71. *Id.; see also* S. Rep. No. 89–404, pt. 1, at 17 (1965).

72. *St. Luke's Hosp. Ass'n,* 333 F.2d at 162–65.

73. 568 F.3d 675 (8th Cir. 2009), *cert. granted*, 130 S. Ct. 3353 (2010).

74. *Mayo Found.,* 568 F.3d at 683.

75. Student FICA Exception, 69 Fed. Reg. 76,404 (Dec. 21, 2004) (codified at 26 C.F.R. pt. 31) ("This document contains amendments to 26 CFR part 31 under section[] 3121(b)(10) . . . . [T]he proposed regulations are adopted as amended by this Treasury decision.").

76. *Id.* at 76,405.

77. *See* Regents of the Univ. of Minn. v. United States, 2008 U.S. Dist. LEXIS 26263, at *4 (D. Minn. Apr. 1, 2008).

> Whether an employee has the status of a student performing the services shall be determined based on the relationship of the employee with the organization employing the employee. In order to have the status of a student, the employee must perform services in the employ of a school, college, or university . . . and regularly attend[] classes . . . . In addition, *the employee's services must be incident to and for the purpose of pursuing a course of study* within the meaning of paragraph (d)(3) of this section at such school, college, or university.[78]

The regulations went on to clarify what kind of work is "incident to and for the purpose of pursuing a course of study."[79]

Services performed by a full-time employee are not incident to and for the purpose of study.[80] The regulations clearly show that the number of hours worked by medical residents have an impact on their status as a student. If a resident's normal work schedule is forty hours or more per week, then the resident is a full-time employee and should not fall under the student exception.

This makes it clear that, in considering whether medical residents fall under the FICA student exception, the number of hours worked is crucial. New York regulates the number of hours worked by medical residents.[81] New York mandates that medical residents cannot work more than an average of eighty hours per week over a four-week period.[82] The ACGME has also set a cap of eighty hours per week on the number of hours worked by medical residents.[83]

The fact that these laws and regulations exist illustrates with clarity that medical residents work more than forty hours per week. The only conclusion that can be drawn from these facts is that medical residents should be considered full-time employees for the purposes of FICA taxes. Thus, medical residents are not students and do not qualify for the FICA student exception.

Sloan-Kettering presents the issue of whether medical residents should be exempt from the FICA student exception. Numerous courts have ruled on this issue and the different jurisdictions have come to various conclusions. In the next year, the U.S. Supreme Court will likely answer the question of whether medical residents qualify for the student exception when it decides *Mayo Foundation*.[84] An analysis of this

78. Treas. Reg. § 31.3121(b)(10)-2 (1999) (emphasis added).

79. *Id.* § 31.3121(b)(10)-2(d)(3).

80. I.R.C. § 31.3121(b)(10)-2(d)(3)(iii) ("The determination of whether an employee is a full-time employee is based on the employer's standards and practices, except regardless of the employer's classification of the employee, an employee whose normal work schedule is 40 hours or more per week is considered a full-time employee.").

81. *See* N.Y. Comp. Codes R. & Regs. tit. 10, § 405.4 (2009).

82. *Id.*

83. Accreditation Council for Graduate Med. Educ., Frequently-Asked Questions About the ACGME Common Duty Hour Standards (2010), *available at* http://www.acgme.org/acWebsite/dutyHours/dh_faqs.pdf.

84. *See* Mayo Found. for Med. Educ. & Research v. United States, 568 F.3d 675 (8th Cir. 2009), *cert. granted*, 130 S. Ct. 3353 (2010). The Supreme Court heard oral arguments in *Mayo Foundation* on November 8, 2010. As of the date of this case comment's publication, its decision was pending.

issue requires courts to examine statutory text, federal regulations, congressional reports, and an abundance of case law. The role of a medical resident has evolved over the years, making analysis of this issue more confusing. The correct answer to this issue, not adopted by *Sloan-Kettering*, is that medical residents do not qualify for the FICA student exception and never have.