

May 28, 2008

## **A Small Victory In The Ongoing Battle Regarding Medical Residents And FICA**

The issue of whether medical residents are students for FICA tax purposes continues its uncertain path through the legal system. The most recent development has come in the form of a decision last week by a U.S. District Court, where they ruled that medical residents of the University of Minnesota are students and therefore exempt from paying FICA taxes, pursuant to 26 U.S.C. §3121(b)(10). *Regents of the University of Minnesota v. United States*, 2008 U.S. Dist. LEXIS 26263 (2008). While this ruling may feel like a victory, the Minnesota case is not binding in any other district. It will nevertheless have an impact on the ongoing battle regarding FICA refunds for nonprofit academic medical centers throughout the country.

Some of the key points that the court relied on in this case were factors that showed that the University, not the affiliated hospitals, was clearly in control of who participated in the residency program. In addition, the court in reaching its decision, relied on other factors including residents paying tuition, regularly attending lectures, taking exams, and receiving grades based on performance. The court came to this conclusion using the pre-amended definition of employee, which came after the 2005 decision (appeal pending) invalidated the IRS' amended definition of employee, which included any student whose normal work schedule was 40 hours or more. These are some of the factors that universities should continue to take into consideration as the court battles continue.

In light of this ruling, we encourage our academic medical center clients to continue to file protective refund claims. The protective refund claim is the only way to preserve the right to a potential refund while the issue makes its way through the legal system, and stay the statute of limitations on such claims. However, to our knowledge, the IRS has not issued any refunds for resident FICA payments for many years. If you have any questions or concerns regarding this recent development, please feel free to contact us.

To read the case, go to [www.aamc.org/advocacy/library/gme/university\\_of\\_minnesota.pdf](http://www.aamc.org/advocacy/library/gme/university_of_minnesota.pdf)