



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

CHIEF COUNSEL

April 26, 2005

Number: **INFO 2005-0071**

Release Date: 6/30/05

CONEX-115447-05/CC:TEGE:EOEG:T2

UIL: 3121.02-10

The Honorable Mark Pryor  
United States Senator  
500 President Clinton Avenue  
Suite 401  
Little Rock, AR 72201

Attention: LaRonda Bryles

Dear Senator Pryor:

This letter replies to your inquiry of March 11, 2005, on behalf of Dr. \_\_\_\_\_, a medical resident at the \_\_\_\_\_. Dr. \_\_\_\_\_ asked why he has to pay taxes under the Federal Insurance Contributions Act (FICA) on wages he earns as a medical resident.

The issue of whether medical residents are exempt from FICA is based on section 3121(b)(10) of the Internal Revenue Code (the Code) that exempts FICA taxes from students' wages. The Code defines a student as an individual employed by a school, college, or university at which he or she is enrolled and regularly attends classes. The student FICA exception applies only to a student's services performed for an organization that has the status of a school, college, or university (SCU); and only if the student who performs the services is enrolled and regularly attends classes at that SCU.

Our longstanding position is that medical residents are not students within the meaning of section 3121(b)(10); they are full-time employees. Therefore, they are ineligible for the student FICA exception. However, in *State of Minnesota v. Apfel*, 151 F. 3d 742 (8<sup>th</sup> Cir. 1998) the Eighth Circuit held that medical residents the University of Minnesota employed in its residency programs were students as defined by the Social Security Act. Therefore, they did not need to pay FICA tax on their wages. The court in *United States v. Mayo Foundation*, 282 F. Supp. 2d 997 (D. Minn. 2003) also held that medical residents were students. Conversely, in *United States v. Mount Sinai Medical Center of Florida Inc.*, 353 F. Supp. 2d 1217 (S.D. Fla. 2005) the court accepted the IRS position and held that medical residents are not students and their wages are subject to FICA.

In light of the continuing litigation, we found we needed to provide additional guidance to clarify the student FICA issue. On February 24, 2004, we proposed amendments to the Employment Tax Regulations interpreting section 3121(b)(10) of the Code. After receiving comments and conducting a public hearing, we issued final regulations on December 21, 2004 applicable to services performed on or after April 1, 2005. The regulations provide more detailed standards for determining what is a SCU and who is a student within the meaning of section 3121(b)(10) of the Code. The regulations make clear that a medical resident by virtue of being a full-time employee is ineligible for the student FICA exception.

I hope this information is helpful. If you have additional questions or need further assistance, please contact me or \_\_\_\_\_ (Identification Number \_\_\_\_\_) at (202) 622-6040.

Sincerely,

CATHERINE E. LIVINGSTON  
Assistant Chief Counsel  
(Exempt Organizations/Employment Tax/  
Government Entities)  
Tax Exempt and Government Entities