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Justices Reluctant to Let Medical Residents Skip Taxes

By [MARTIN VAUGHAN](#)

WASHINGTON—Several Supreme Court justices appeared reluctant Monday to overturn an Internal Revenue Service requirement that medical residents pay Social Security taxes.

Arguing before the court on behalf of the Mayo Clinic, lawyer Theodore B. Olson urged the court to reject the IRS rule as arbitrary. He argued that like other students, medical residents attend lectures, perform laboratory work and are focused primarily on learning.

More on the Court



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Full-time students who work are generally exempt from Social Security taxes, but law clerks and tradesman apprentices are not. In a 2005 rule, the IRS said medical residents are full-time employees, not students.

Chief Justice John Roberts said the case touched on a "very familiar situation of an apprentice who is both an employee and a student."

"The only way you can draw the line" between an employee and a student, said Chief Justice Roberts, "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."

The financial stakes for teaching hospitals and for the government are significant. There are currently about 100,000 medical residents nationwide. Social Security taxes on the residents' wages would bring in around \$700 million annually, according to court papers.

The Social Security tax equals 12.4% of wages. Half of the tax is paid by the employer and half by the employee. For a medical resident earning a \$50,000 stipend, that represents \$3,100 paid by the resident and \$3,100 paid by the hospital.

Justice Sonia Sotomayor repeatedly tested Mr. Olson's claims that the residents are primarily students, not employees.

"You don't think receiving \$50,000 or \$60,000 a year is enough to make you an employee of someone?" she asked Mr. Olson.

Mr. Olson argued that the IRS rule is arbitrary, because it has the effect of exempting from Social Security taxes a student who works 39 hours a week, while taxing a student who works 40.

Rather, Mr. Olson said, the IRS should focus on whether the primary purpose of the activity is educational, or whether it is to earn a livelihood.

His argument appeared to find some sympathy from Justice Samuel Alito. "In general, why do medical students become residents?" Justice Alito asked Justice Department lawyer Matthew D. Roberts, who argued the case on behalf of the government. "Are they enrolled in the program to make money...or do they want additional education?"

The case comes before the high court after a lower court upheld the IRS rule. A decision is expected by next June.

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