

March 10, 2010

If you have questions regarding the information in this alert or would like to receive further information regarding our health care department, please contact:

Jennifer L. Benedict

313.465.7326

jbenedict@honigman.com

Ann T. Hollenbeck

313.465.7680

ahollenbeck@honigman.com

Matthew R. Keuten

313.465.7510

mkeuten@honigman.com

Stuart M. Lockman

313.465.7500

slockman@honigman.com

Kenneth R. Marcus

313.465.7470

kmarcus@honigman.com

Linda S. Ross

313.465.7526

lross@honigman.com

Angela Epolito Sprecher

313.465.7540

aspriecher@honigman.com

ATTENTION TEACHING HOSPITALS: GOOD NEWS ON FICA

On March 2, 2010, the Internal Revenue Service (IRS) announced its administrative determination to accept the position that medical residents are exempt from Federal Insurance Contributions Act (FICA) taxes based on the student exception for tax periods ending before April 1, 2005. This determination is estimated to result in \$7,000,000 in refunds to teaching hospitals. [Click here for the news release.](#)

Battle between the IRS and the 375 teaching hospitals in the United States has continued for over 10 years concerning whether FICA tax is due on payments to medical residents. Teaching hospitals and residents have argued that medical residents are students and fall within the student exception to FICA. In litigation over the years, the courts' findings have swung back and forth between favoring the government and favoring the taxpayer. The IRS determination provides that 100% of withholdings for Social Security taxes for these students should be refunded for the period before the revised IRS regulations took effect on April 1, 2005 to those teaching hospitals that filed claims for refunds.

In 2005 regulations, the IRS restructured IRC Section 3121 to provide that medical residents are categorically ineligible for the student exception. Thus, periods covered by the 2005 regulations are not open to refund. The IRS will undoubtedly continue to dispute taxpayer arguments that the tax was improperly paid and collected during that time frame.

ACTION STEPS

1. Check the status of your claim for refund and verify it is within the scope of the relief the IRS intends to administer. If it has expired or was not timely filed, or if the IRS takes the position that your claim is not entitled to relief, contact us to discuss your options for equitable and other claims against the IRS.
2. Analyze your claim and calculate your expected refund from the IRS.
3. Consider your process for refunding the portion due to medical residents:
 - a. Establish procedures for contacting former medical residents; and
 - b. Create a protected account/trust to hold refunds (be mindful of state escheat laws).

We are available to assist you in completing any of these important action steps. Please contact Ann Hollenbeck, Ken Marcus or any other member of our Health Care Department.