Hold the *Mayo*: (Even) More Deference to IRS Regulations

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Mayo Foundation for Medical Education and Research, SCt, 2011-1 USTC ¶50,143 (2011), involves the seemingly narrow question of whether stipends paid to Mayo's medical residents were subject to FICA (Social Security) tax. Yet the bigger and broader issue may end up affecting all taxpayers and tax advisors. Anyone dealing with the IRS and Treasury regulations on *any* topic should take notice. The question whether FICA tax applied to the stipends to residents turned on the validity of regulations. Those regulations provided that an employee can be treated as a student only if the services he provides are *incidental* to the course of study. Plus, the educational aspect of the relationship must predominate over the service aspect. Finally, anyone working 40 hours or more a week is simply outside this rule, *presumed* to be performing services that are *not* incidental to his course of study.

All for One

The Supreme Court was unanimous in *Mayo*, underscoring how big a victory this case is for the IRS. In 2007, a district court had held that a portion of the regulations invalid, noting that they were only interpretive regulations. [*See Mayo Foundation*, DC-MN, 2007-2 USTC ¶50,577, 503 FSupp2d 1164 (2007).] Such regulations—many of us thought—were quite different from so-called legislative regulations. The latter gave the IRS and the Treasury an express grant of authority to cover a particular topic.

The Eighth Circuit Court of Appeals reversed the District Court and said these FICA regulations were valid, teeing up the question for the Supreme Court. [*See Mayo Foundation*, CA-8, 2009-1 USTC ¶50,432, 568 F3d 675 (2009).] In what can only be called a sweeping opinion, the Supreme Court held that

these Regulations represented a reasonable construction of the underlying Code section. It underscored the test of deference set forth in *Chevron U.S.A, Inc*, 467 US 837 (1984).

The Court in *Chevron* had ruled that an interpretive regulation is valid if it implements a congressional mandate in a reasonable manner, and if it "harmonizes with the plain language of the statue, its origin, and its purpose." Does that sound broad, permissive, even *laissez faire*? It sure does.

The Court in *Mayo* admitted that some of its opinions had stated the regulations promulgated by the IRS pursuant to a general grant of authority were entitled to less deference. But the arguably wide-open *Chevron* standard now applies with full force in the context of tax law.

New Challenge?

Challenging an IRS regulation is never easy, but with a double portion of *Mayo*, it will now be even harder still.