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end, two changes should be made in the statute, for in its present state it is
doubtful that any attorney would jeopardize a responsible parent’s job by
seeking to garnish his wages because of the potentially counterproductive
nature of such an action. First, provision must be made for compensation to
the employer for the increased bookkeeping expense that accompanies a
continuing garnishment order. Secondly, a severe penalty should be as-
essed against discharging an employee because of a garnishment.\textsuperscript{65} Until
such action is taken, decreases in welfare expenditures and increased assur-
ance of support to dependents will never be realized, and an essential
support enforcement remedy will continue to lay dormant.

MICHAEL ANDREW HEEDY

Taxation—Part A Medicare Benefits Under
the Dependency Support Test

Section 152(a) of the 1954 Internal Revenue Code\textsuperscript{1} permits a taxpayer
to claim a qualified individual as a dependent if the taxpayer has provided
more than half of that individual’s total support during the taxable year.\textsuperscript{2}

\textsuperscript{65} In addition, although not discussed at length herein, the 20\% maximum provided by §
110-136(a) should be raised to a level that will adequately reflect the economic needs of
abandoned dependents. \textit{See} note 55 \textit{supra}. The ceiling placed on wage garnishment by the
Consumer Credit Protection Act of 1968, \textit{see} note 52 \textit{supra}, is inapplicable to garnishment

1. I.R.C. § 152(a).
2. Section 152 provides in pertinent part:
(a) \textbf{GENERAL DEFINITION}—For purposes of this subtitle, the term “dependent”
means any of the following individuals over half of whose support, for the calendar
year in which the taxable year of the taxpayer begins, was received from the taxpayer
\ldots:

(a) The father or mother of the taxpayer, or an ancestor of either,

(b) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law,
or sister-in-law of the taxpayer \ldots.

For purposes of determining whether or not an individual received, for a given
calendar year, over half of his support from the taxpayer, there shall be taken into
account the amount of support received from the taxpayer as compared to the entire
amount of support which the individual received from all sources, including support
which the individual himself supplied. The term “support” includes food, shelter,
clothing, medical and dental care, education, and the like.

\textit{Id.} The burden of proof is on the taxpayer to establish not only the amount of his or her
contribution but also that it constitutes more than half of the individual’s total support. \textit{E.g.},
Rose D. Serayder, 50 T.C. 756, 760 (1968), \textit{acq.} 1969-2 C.B. xxv; Aaron F. Vance, 36 T.C. 547,
COORDINATOR (RIA) ¶¶ A-3100 to -3120.
Under this dependency support test, some government benefits disbursed on behalf of the individual may raise troublesome analytical problems in determining whether such benefits should be included in computing the total amount of support provided the individual. Despite a Treasury regulation that directs the inclusion of social security benefits as amounts contributed by the recipient for his or her own support and the consistent treatment of other social welfare disbursements as support, clear principles for determining section 152(a) status of other government benefits have not yet crystallized. In Turecamo v. Commissioner, the United States Court of Appeals for the Second Circuit confronted the question whether Medicare hospitalization benefits paid pursuant to Part A of Subchapter XVIII of the Social Security Act (Part A benefits) should be considered support provided by the beneficiary for section 152(a) purposes. The court answered the question by concluding that Part A benefits were excludible from dependency support computations.

During most of the taxable year in question (1970), the Medicare beneficiary, Mrs. Kavanaugh, lived with the taxpayers, her son-in-law and daughter. Mrs. Kavanaugh incurred a hospital bill that year totaling $11,095.75. Part A Medicare allowances paid $10,434.75 of that bill. The taxpayers paid the balance as well as other medical expenses incurred by Mrs. Kavanaugh. In all, the taxpayers paid a total of $3,531 in medical expenses and approximately $4000 for other support items on Mrs. Kavanaugh's behalf. Mrs. Kavanaugh also received $1140 in social security benefits, which she applied toward her own support. The taxpayers, assuming that they had provided Mrs. Kavanaugh more than half her

6. 42 U.S.C. §§ 1395c to 1395i-2 (1970 & Supp. V 1975). Although Medicare is a part of the larger social security system, benefits disbursed under Medicare should be distinguished from "social security benefits." The latter term is popularly used to describe only benefits disbursed under the old-age, survivors, and disability program. id. §§ 401-432. See COMMERCE CLEARING HOUSE, MEDICARE AND SOCIAL SECURITY EXPLAINED 15 (1976).
7. 554 F.2d at 566.
8. Id. at 567.
support during the taxable year, claimed an additional dependency exemption and included the amount they spent paying Mrs. Kavanaugh's medical bills as part of their own deductible medical expenses.

The Commissioner of Internal Revenue ruled, however, that the Part A benefits paid on Mrs. Kavanaugh's behalf had to be included as part of her contribution to her own support. In so ruling, the Commissioner relied on a previous revenue ruling that prescribed this treatment of Part A benefits in accordance with traditional section 152(a) treatment of social insurance and welfare disbursements. As a result of the Commissioner's ruling, the taxpayers failed to establish that they had provided more than half of Mrs. Kavanaugh's support for the taxable year. Hence, their additional personal exemption and medical expense deduction were denied and a tax deficiency was assessed. The Tax Court subsequently overruled the Commissioner with regard to section 152(a) treatment of the Part A benefits and allowed the taxpayers' dependency claims.

In affirming the Tax Court's decision, the Second Circuit based its holding on two independent grounds. First, the court found that Part A benefits were indistinguishable for section 152(a) purposes from sums disbursed under both Part B Medicare insurance and private health insurance, which have been held excludible from dependency support computations. On this basis, it determined that Part A benefits should not be treated differently from proceeds paid under these other insurance plans. Second, the court concluded that the Part A benefits had no "economic impact" on Mrs. Kavanaugh's financial relationship with the taxpayers. In other words, the court stated, receipt of the Medicare benefits did not alter the established economic relationship between Mrs. Kavanaugh and the taxpayers.

9. Including the $10,434.75 in Part A benefits as support, the taxpayers would have provided only $7,531, approximately 40% of $19,105.75 spent in total support payments for Mrs. Kavanaugh. Disregarding those benefits for § 152(a) purposes, Mrs. Kavanaugh's total support payments amounted to only $8,671, and the taxpayers' contribution constituted well over half of that total. Id.
10. I.R.C. § 151(e) allows the taxpayer to take additional personal exemptions as deductions for qualified dependents.
11. 554 F.2d at 567. I.R.C. § 213(a) permits the taxpayer to include the medical expenses of qualified dependents in medical deduction computations.
12. 554 F.2d at 567.
14. The Commissioner, holding that Part A Medicare benefits should be treated as support under this broad social welfare rubric, stated that they were "in the nature of disbursements made in furtherance of the social welfare objectives of the Federal government" and were "not legally distinguishable" from monthly social security payments. Id.
15. See note 9 supra.
18. See text accompanying notes 39-41 infra.
19. 554 F.2d at 568.
ers, who regularly paid the bulk of her normal living expenses as well as medical expenses that she herself would otherwise have had to pay. 20

Full comprehension of *Turecamo* and its significance requires a fundamental understanding of the Medicare system. 21 Created in 1965, 22 Medicare was instituted to provide a comprehensive approach to health insurance for the aged. 23 It has been asserted that the two substantive parts of the Medicare statutory scheme, Parts A and B, provide more comprehensive and complex coverage than many of the medical insurance plans underwritten by private insurers. 24 Part A furnishes basic hospitalization insurance to all persons entitled to payments either under federal old-age, survivors, and disability insurance or under the railroad retirement system. 25 This service is paid for from a trust fund that is financed by a compulsory payroll tax on employees' wages, by an employers excise tax, and by a tax on earnings of self-employers. 26 This financing method is calculated to make the trust fund actuarially sound and self-supporting. 27 Part B 28 of the Medicare system provides supplementary health services, including payment for physicians' care. 29 Part B coverage is available to persons eligible to participate in the Part A program and to other qualified United States residents aged sixty-five or older. 30 The Part B program is financed by monthly premiums paid by the participants, 31 and by matching government contributions from the general revenues. 32 These sums are deposited into a separate trust fund. 33

Thus, both substantive parts of the Medicare system constitute hybrid forms of insurance. For instance, the Part A provisions contain elements of private health insurance—periodic payments for specified protection against

20. *Id.* at 576.
23. 554 F.2d at 571 (citing H.R. REP. No. 213, 89th Cong., 1st Sess. 2 (1965)).
27. 554 F.2d at 571 (citing S. REP. NO. 1230, 92d Cong., 2d Sess. 179 (1972); S. REP. NO. 404, 89th Cong., 1st Sess. 55-57 (1965); H.R. REP. NO. 213, 89th Cong., 1st Sess. 47-49 (1965)).
28. *Id.* at 77-80. But there are varying degrees of “publicness.” *Id.* at 86. For instance, the
31. *Id.* § 1395o (Supp. V 1975). The other qualified United States residents aged 65 or older who are eligible for Part A coverage include United States citizens and aliens lawfully admitted for permanent residence who have resided in the United States for the 5 years immediately preceding the month in which application for Part A enrollment has been made. *Id.* § 1395o(2).
33. Federal Supplementary Medical Insurance Trust Fund. *Id.* § 1395t.
risk of loss due to illness, the spreading of payments over time and over a pool of participants, and the actuarially calculated self-supporting character of the disbursements.\textsuperscript{34} On the other hand, the Part A provisions also contain elements common to social insurance or welfare—compulsory financing through designated taxes,\textsuperscript{35} the non-deductibility of those taxes,\textsuperscript{36} and government sponsorship.\textsuperscript{37} For dependency support test purposes, this mixed composition of the Part A program makes two different lines of authority relevant, one dealing with proceeds disbursed under insurance plans and the other with social insurance or welfare receipts.

As a general rule, sums spent to defray medical expenses are considered part of an individual's support.\textsuperscript{38} However, the United States Court of Appeals for the Third Circuit held in \textit{Mawhinney v. Commissioner}\textsuperscript{39} that insurance premiums, rather than the proceeds paid under a private health insurance policy, should be included in dependency support computations as the cost of medical support. The Commissioner has formally adopted this approach toward premiums and proceeds under private health insurance plans.\textsuperscript{40} Furthermore, the Commissioner has ruled that the voluntary premiums Medicare participants pay for Part B coverage, rather than the benefits disbursed under that program, should be included as support because Part B premiums "qualify as amounts paid for insurance covering medical care."\textsuperscript{41}

\textsuperscript{34} 554 F.2d at 575. Part B contains similar elements. See text accompanying notes 28-33 supra.

35. The Commissioner argued in \textit{Turecamo} that for § 152(a) purposes the compulsory participation aspect of Part A made the program distinguishable from Part B, to which participants pay voluntary premiums as in private insurance plans. 554 F.2d at 572. The Commissioner reasoned that Part A benefits should be treated as other social insurance or welfare receipts rather than as insurance proceeds under § 152(a). \textit{Id. See generally} authorities cited note 4 supra. The Second Circuit, however, relying on Congressional debates and pertinent commentary, stated that this compulsory-voluntary dichotomy does not conclusively determine the dependency support test consequences of Part A benefits. 554 F.2d at 572-73. The court found that the different funding methods reflected, among other things, Congress' "desire to guarantee the participation of those citizens sought to be protected and... recognition of the relative ease of actuarially projecting hospital costs as compared to physicians' costs." \textit{Id.} at 573 (footnotes omitted). The court also found that the unavailability of insurance coverage comparable to Part B at competitive prices "practically compelled" eligible individuals to participate in that government program. \textit{Id.} at 574.

36. The Second Circuit found that the non-deductibility of the Medicare payroll tax, in contrast to the I.R.C. § 213(e)(1)(C) deductibility of Part B premiums, was "without decisive significance." 554 F.2d at 573 n.18. "There is no necessary correlation between section 213 and sections 151 and 152." \textit{Id.} (quoting \textit{Turecamo} v. Commissioner, 64 T.C. at 728).

37. \textit{Id.} at 575.


41. Rev. Rul. 70-341, 1970-2 C.B. 31. This was the same ruling in which the Commissioner
The implicit rationale of these authorities, recognized by the Second Circuit, is that a "planned and rational relationship" between an individual and the taxpayer who regularly contributes to that individual's support will include the routine cost of maintaining medical insurance as the budgeted support cost for medical expenses. Moreover, the court observed that the average person considers "'insurance premiums plus unreimbursed payments for health care'" as his or her health costs. Under this analysis, treating large insurance payments as support distorts "economic realities."

Social insurance or welfare disbursements, on the other hand, have traditionally been treated as support under section 152(a). For example, in *Lutter v. Commissioner* the Tax Court held that state medical assistance grants and government payments to indigent parents with dependent children constituted support provided by the state. Similarly, the cost of care in a state mental institution has been treated as support. The Commissioner has also ruled that the amount received by a child under social security survivors insurance was the beneficiary's contribution to support.

It appears that the policy behind this approach to social insurance and welfare disbursements under the dependency support test has never been articulated by the courts or by the Commissioner. Indeed, treatment of government largesse as support has sometimes been an automatic reflex. Nevertheless, the common denominator among these cases and rulings provides an analytical key. The disbursements involved constitute public

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42. 554 F.2d at 576.
43. *Id.* (quoting Turecamo v. Commissioner, 64 T.C. at 730 n. 1 (Wilbur, J., concurring)).
In Rev. Rul. 64-223, 1964-2 C.B. 50, the Commissioner stated:

> Where the taxpayer or the individual is covered under a renewable term policy which provides insurance against the cost of medical care . . . , the policyholder will be considered as having furnished the care since the policyholder, under a privately financed medical insurance plan, is regarded as providing medical care for himself and the other beneficiaries of the policy.

*Id.*

44. 554 F.2d at 576.
45. *See* authorities cited note 4 *supra*.
48. Rev. Rul. 57-344, 1957-2 C.B. 112. Attributing the contribution to the beneficiary is a fiction that has been used when the payments have accrued to the beneficiary on account of specific taxes, such as a social security payroll tax, paid by the beneficiary or on his or her behalf. *See*, e.g., Rev. Rul. 74-543, 1974-2 C.B. 39 (social security benefit payments to child of disabled parent held child's contribution to his own support).
49. *See*, e.g., Roy B. Abbott, 23 T.C.M. (P-H) 171 (1954) (court included value of X-rays and medical examinations furnished free by public health authorities and value of milk furnished by township in support computations).
goods satisfying certain social wants. More specifically, the cases and rulings all indirectly involve situations in which society, through the agency of government, has provided special goods and services to certain members of society—for example, the mentally ill and children of disabled parents—whose needs have been inadequately served by the private sector. The intended beneficiaries have commonly received assistance in the form of items listed in the Treasury regulations as support. Concomitantly, the financial burdens of taxpayers with a legal obligation or a self-perceived moral obligation to support these beneficiaries have been eased. Recognition of these facts by the courts and the Commissioner may explain the traditional section 152(a) approach to government benefits, a tack that is decidedly unfavorable to the taxpayer who indirectly benefits from government disbursements and then subsequently attempts to deduct dependency claims.

Despite the Part A program's similarities to private insurance, this component of the Medicare system is a public good. Medicare was created because private enterprise had failed to provide adequate health insurance for the elderly. Contributions have in fact been made by the beneficiaries themselves or on their behalf through the payroll tax, but the Part A insurance pool is also funded through such other sources as the employers.

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50. A public good is one whose production has external or spill-over effects. D. Hyman, The Economics of Governmental Activity 73-74 (1973). In other words, public goods are goods that, if produced for any one member of society, yield benefits to other members of society. A pure public good is collectively consumed by all members of society, none of whom can be prevented from taking advantage of, or otherwise benefiting from, the particular service provided. Each member's consumption of such a good does not reduce the consumption available to other members. Id. at 74. National defense is an example of a pure public good. Efficient production of pure public goods usually requires collective action through the government. Id. at 77-80. But there are varying degrees of "publicness." Id. at 86. For instance, the quantity of a certain good may be limited, but its consumption by some members may satisfy wants of others who do not participate in consumption. See id. at 86. The provision of food and housing to the poor by private charity may satisfy the social wants of other members of society who desire that no one lack the necessities of life. A governmentally provided health service constitutes another such "quasi-public good." Id. The government may or may not produce any given quasi-public good, depending on how satisfactorily the private sector produces that good. See id. at 85-90. For the purposes of this Note, the distinction between public goods and quasi-public goods is needlessly technical. Use of the term "public good" herein will refer to any good that the government provides whenever the private sector is incapable of producing it or when the private sector provides it in a manner that is deemed unsatisfactory. See generally A. Papandreou, Paternalistic Capitalism 31-32 (1972).


54. See text accompanying note 34 supra.

55. R. Stevens & R. Stevens, supra note 21, at 50.
Thus, the cost of Part A coverage is probably borne by a larger segment of society than directly benefits under the program. This aspect of Part A makes the program distinguishable from private health insurance plans in which premiums paid by participants constitute a truly self-sufficient pool. Under these plans, individuals who pay premiums provide adequate funds collectively to enable underwriters to defray covered medical support expenses of the beneficiaries.

Nevertheless, the Second Circuit in Turecamo focused on the Part A program’s similarities to private insurance, especially the regular payments for financial protection against risk of loss. In concluding that Part A benefits, like private health insurance proceeds, were excludible from section 152(a) computations, the Second Circuit attempted to answer a question that had been left open by the Tax Court. The Tax Court had held that there was no proper basis for distinguishing Part A benefits from payments under private health insurance plans and under the Part B Medicare program. But it explicitly left open the question whether all such payments should be included as part of an individual’s support under section 152(a). This question accentuated the weakness of the line of authority holding that health insurance proceeds are excludible from dependency support computations and suggested the conceivability of the Commissioner’s reversing himself with regard to section 152(a) treatment of Part B benefits and private health insurance proceeds.

The first rationale provided by the Second Circuit went no further than the Tax Court. It merely echoed the lower court’s conclusion that the

56. See text accompanying note 26 supra.
57. It is at least theoretically possible, however, that the incidence of the employers tax is shifted to labor through the employers’ reduction of wages in response to the tax. J. PECHMAN, FEDERAL TAX POLICY 210-11 (3d ed. 1977). The economic model on which theories of this sort are based, however, assumes rational behavior in labor markets and disregards the effect of collective bargaining on wages. Id. at 211. The tax is so general and so many other factors are involved that it is impossible to prove conclusively that the incidence of the employers tax rests solely on labor. J. WINFREY, PUBLIC FINANCE: PUBLIC CHOICES AND THE PUBLIC ECONOMY 447 (1973). In reality, it is also possible that all or part of both the employers and payroll taxes is shifted to consumers. J. PECHMAN, supra at 211. Labor unions resist wage cuts and may succeed in persuading management to raise prices and wages by amounts sufficient to offset the taxes. Id.
58. Part B of the Medicare system, like Part A, also differs from private health insurance plans. Part B is a public good financed to a great extent with public funds. See text accompanying notes 31-32 supra. For instance, in 1976, 58.8% of Part B Medicare funds came from the general revenues. SOCIAL SECURITY ADMINISTRATION, U.S. DEP’T OF H.E.W., 40 SOC. SECURITY BULL., No. 4, 14 (1977). Thus, the premiums paid by Part B participants by no means provide a self-sufficient insurance pool to pay for covered medical expenses.
59. 554 F.2d at 575.
60. 64 T.C. at 728.
various payments were legally indistinguishable. In explaining its second ground, however, the court answered to its own satisfaction the question left open by the Tax Court. Relying in part on a footnote in a concurring opinion to the Tax Court's decision, the Second Circuit determined that receipt of payments under the Part A plan "interrupts but does not alter" the established financial relationship between an individual and the taxpayer who pays most of that individual's other expenses. The court recognized "that certain providers of hospital services received more in Medicare payments from the Federal government . . . than Mrs. Kavanaugh received in support from the Turecamos," but it stated that this fact did not change the "basic financial relationship" between the taxpayers and the beneficiary. On this basis, the court concluded that all health insurance proceeds, Part A benefits included, should be disregarded in dependency support computations. Thus, if only by way of dictum, Turecamo adds further legitimacy to the authorities holding that disbursements under health insurance plans do not constitute support for section 152(a) purposes.

As a matter of tax symmetry, it is at least arguable that the result in Turecamo is a good one. As overlapping components of a closely coordinated system, the two Medicare programs, Parts A and B, are nearly indistinguishable in light of economic principles. As the Commissioner has decided that benefits under Part B, like proceeds disbursed under private health plans, should not be treated as support, it might be argued that Part A benefits should be dealt with similarly. The Second Circuit, following a similar line of reasoning, marked the Commissioner's concession that Part B benefits were excludible from dependency support computations and emphasized the virtual indistinguishability of the two programs.

Regardless of this concession, the similarities between Parts A and B,

62. Compare 554 F.2d at 568-75 with 64 T.C. at 722-29.
63. See 554 F.2d at 576 (quoting 64 T.C. at 730 n. 1 (Wilbur, J., concurring)).
64. Id.
65. Id.
66. Id. at 568, 576.
67. For a discussion of these authorities, see text accompanying notes 39-41 supra.
68. See note 58 and text accompanying notes 54-58 supra.
69. 554 F.2d at 568.
70. See id. at 572-74.
71. The Commissioner's concession on the treatment of Part B benefits, regardless of its merits, did not amount to a constraint on the judicial decision in Turecamo. See 64 T.C. at 739-40 (Tannenwald, J., dissenting). The precise issue in this case involved only the § 152(a) treatment of Part A benefits. See id. at 740. Moreover, the concession came in the form of a revenue ruling. A revenue ruling issued to a taxpayer on the tax consequences of a particular transaction yields a holding with respect to that transaction only. IRS Statement of Procedural Rules, 26 C.F.R. § 601.201(1)(6) (1977). Revenue rulings are revocable and cannot be asserted to estop the Internal Revenue Service in subsequent cases. See id. § 601.201(1)(1). Hence, the
and the similarities between these Medicare programs and private health insurance,\textsuperscript{72} Part A benefits do not have to be treated as payments under private health insurance plans in the dependency support context. The Part A program certainly involves regular payments by the participants for specified protection against risk of loss, a "classic characteristic of insurance,"\textsuperscript{73} but the reasons for treating Part A benefits in accordance with traditional section 152(a) treatment of social insurance or welfare disbursements seem far more compelling. Part A insurance is different from private health insurance in one respect that is crucial for section 152(a) purposes: participants in the Part A program do not themselves provide adequate support through the amounts paid under the employees payroll tax, their "premiums," to defray the cost of covered medical expenses.\textsuperscript{74} The government in its role as underwriter provides additional financing through taxes on nonparticipants.\textsuperscript{75} This classic characteristic of social insurance or welfare is an aspect of Part A that the Second Circuit failed to deal with in \textit{Turecamo} beyond the simple recognition that the levies on nonparticipants are sources of revenue for the Part A program's trust fund.\textsuperscript{76} The strong economic bond between Part A and other government programs, the benefits of which have been treated as support, should be the determinative factor with regard to section 152(a) treatment of Part A benefits.\textsuperscript{77}

Finally, the Second Circuit's assertion that Part A benefits do not alter an individual's financial dependency on a taxpayer\textsuperscript{78} is perplexing. Medici-
care reduces an individual's dependency with regard to medical expenses in much the same way that social security benefits reduce dependency for other support expenses. It effectively eliminates not only substantial expenses that the taxpayer might otherwise have to pay but also the need to procure private health insurance for the Medicare beneficiary. The taxpayer may still pay the bulk of the Medicare beneficiary's remaining expenses, but the taxpayer's total responsibility to that person seems unquestionably to be diminished in proportion to the Medicare coverage provided by the government.

The *Turecamo* decision may be explained as a function of both the Part A program's similarity to private health insurance and the Commissioner's concession with regard to section 152(a) treatment of Part B benefits. If viewed as having such a limited holding, *Turecamo* will have little or no impact on treatment of other government disbursements under the dependency support test.\(^7\) However, by allowing exclusion of supportive government benefits with easily ascertainable cash value,\(^8\) the Second Circuit has hindered development of coherent guidelines for determining the section 152(a) status of benefits disbursed under government programs.\(^8\) The court's fixation on superficial "economic realities"\(^8\) diverts attention away from sound economic principles. It is thus conceivable that *Turecamo* could contribute to other deviations from traditional section 152(a) treatment of government benefits.

WILLIAM JOSEPH AUSTIN, JR.

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79. This case's significance may be limited even more severely. Although the Internal Revenue Service may voluntarily decide to comply with *Turecamo* in its future treatment of Part A benefits, this case does not invalidate the revenue ruling that these government disbursements constitute support. See J. CHOMMIE, FEDERAL INCOME TAXATION 15-16 (2d ed. 1973). The Second Circuit's holding in *Turecamo* merely binds the Service with respect to § 152(a) treatment of the Part A benefits in that case. See *id*. Because the Service must administer the federal income tax uniformly throughout the nation, it adheres to the view that it is bound only by Supreme Court decisions as a matter of precedent. *Id.* at 16. Thus, the Revenue Service may continue to litigate this issue.

80. See note 77 *supra*.

81. The Commissioner is equally blameworthy in this respect due to the decision that Part A and Part B benefits were to be treated differently under the dependency support test. See generally Rev. Rul. 70-341, 1970-2 C.B. 31. These two components of the Medicare system are nearly indistinguishable. See note 58 and text accompanying notes 54-58 *supra*. This close similarity dictates similar § 152(a) treatment of benefits disbursed under the two programs.

82. See 554 F.2d at 576.