

COLLEGE of CHARLESTON

Policy **ALIEN TAX STATUS**

Notification of Alien Status

It is the responsibility of the employee to notify the College of Charleston as to their appropriate alien status, resident or non-resident. This will enable the College to withhold taxes from their wages in compliance with Federal regulations.

If an employee is a nonresident alien, they must furnish to the College of Charleston Office of Human Resources a Form 8233, establishing that they are a foreign person, or Form W-4 (NRA), establishing that their compensation is subject to graduated withholding at the same rates as resident aliens or U.S. citizens.

Withholding From Compensation

Ordinarily, special tax rules apply only to nonresident aliens. Tax is withheld from resident aliens in the same manner as U.S. citizens.

Wages and other compensation paid to a nonresident alien for services performed as an employee are usually subject to graduated withholding at the same rates as resident aliens and U.S. citizens. Therefore, your compensation, unless it is specifically excluded from the term "wages" by law, or is exempt from tax by treaty, is subject to graduated withholding.

Form W-4 Instructions

Employees receiving wages subject to graduated withholding are required to fill out a Form W-4. Because of restrictions on a nonresident alien's filing status, the limited number of personal exemptions a nonresident alien is allowed, and because a nonresident alien cannot claim the standard deduction, nonresident aliens should fill out Form W-4 using the following instructions instead of those notes on the Form W-4.

- Check only "Single" marital status on line 3 (regardless of your actual marital status).
- Claim only one allowance on line 5, unless you are a resident of Canada, Mexico, or the Republic of Korea (South Korea), or a U.S. national.
- Write "Nonresident Alien" or "NRA" on the dotted line on line 6. You can request additional withholding on line 6 at your option.
- Do not claim "Exempt" withholding status on line 7.

Income Entitled to Tax Treaty Benefits

If a tax treaty between the United States and a foreign country provides an exemption from, or a reduced rate of, tax for certain items of income, the Office of Human Resources should be notified of the foreign status to claim a tax treaty withholding exemption. Generally, this is done by filing a Form 8233.

Even if a Form 8233 is submitted, the College may be required to withhold tax from the employee's income. This is because the factors on which the treaty exemption is based may not be determinable until after the

close of the tax year. In this case, the employee must file Form 1040NR (or Form 1040NR-EZ if you qualify) to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty exemption.

- **Students, teachers, and researchers.** Students, teachers, and researchers must attach the appropriate statement shown in Appendix A (for students) or Appendix B (for teachers and researchers) of IRS Publication 519 to the Form 8233 and provide it to the Office of Human Resources for filing with the IRS. For treaties not listed in the appendices, the employee should attach a statement in a format similar to those for other treaties.

Alien Liability for Social Security and Medicare Taxes

In general aliens performing services in the United States as employees are liable for U.S. social security and Medicare taxes. However, certain classes of alien employees are exempt from U.S. social security and Medicare taxes as follows.

Resident aliens, in general, have the same liability for Social Security/Medicare Taxes as U.S. Citizens.

Nonresident aliens, in general, are also liable for Social Security/Medicare Taxes on wages paid for services performed in the United States, with certain exceptions based on their nonimmigrant status. The following classes of nonimmigrants and nonresident aliens are exempt from U.S. Social Security and Medicare taxes:

1. **A-visas:** Employees of foreign governments are exempt on salaries paid to them in their official capacities as foreign government employees.
 - The exemption does not automatically apply to servants of employees of such foreign governments.
 - The exemption does not apply to spouses and children of A nonimmigrants who are employed in the United States by anyone other than a foreign government.
2. **D-visas:** Crew members of a ship or aircraft may be exempt if the vessel is a foreign vessel and the employer is a foreign employer, or if the services are performed outside of the United States
 - Crew members of an American vessel or aircraft who perform services within the United States ARE subject to Social Security and Medicare taxes.
 - Crew members of an American vessel or aircraft who perform services outside the United States ARE subject to Social Security and Medicare taxes if:
 - i. the employee signed on the vessel or aircraft in the United States;
 - ii. the employee signed on the vessel or vessel outside the United States but the vessel or aircraft touches a U.S. port while he is employed thereon.
3. **F-visas, J-visas, M-visas, Q-visas:** Nonresident Alien students, scholars, professors, teachers, trainees, researchers, physicians, au pairs, summer camp workers, and other aliens temporarily present in the United States in F-1, J-1, M-1, or Q-1/Q-2 nonimmigrant status are exempt on wages paid to them for services performed within the United States as long as such services are allowed by USCIS for these nonimmigrant statuses, and such services are performed to carry out the purposes for which such visas were issued to them.
 - Exempt Employment includes:
 - i. On-campus student employment up to 20 hours a week (40 hrs during summer vacations)
 - ii. Off-campus student employment allowed by USCIS.

- iii. Practical Training student employment on or off campus.
 - iv. Employment as professor, teacher or researcher.
 - v. Employment as a physician, au pair, or summer camp worker
 - Limitations on exemption:
 - i. The exemption does not apply to spouses and children in F-2, J-2, M-2, or Q-3 nonimmigrant status.
 - ii. The exemption does not apply to employment not allowed by USCIS or to employment not closely connected to the purpose for which the visa was issued.
 - iii. The exemption does not apply to F-1, J-1, M-1, or Q-1/Q-2 nonimmigrants who change to an immigration status which is not exempt or to a special protected status.
 - iv. The exemption does not apply to F-1, J-1, M-1, or Q-1/Q-2 nonimmigrants who become resident aliens.
4. **G-visas:** Employees of international organizations are exempt on wages paid to them for services performed within the United States by employees of such organizations.
- The exemption does not automatically apply to servants of employees of such international organizations.
 - The exemption does not apply to spouses and children of G nonimmigrants who are employed in the United States by anyone other than an international organization.
5. **H-visas:** Certain nonimmigrants in H-2 and H-2A status are exempt as follows:
- An H-2 nonimmigrant who is a resident of the Philippines and who performs services in Guam;
 - An H-2A nonimmigrant admitted into United States temporarily to do agricultural labor.

Totalization Agreements

The United States has entered into agreements, called Totalization Agreements, with several nations for the purpose of avoiding double taxation of income with respect to social security taxes. These agreements must be taken into account when determining whether any alien is subject to the United States Social Security/Medicare tax, or whether any U.S. citizen or resident alien is subject to the social security taxes of a foreign country. As of this time, the following nations have entered into Totalization Agreements with the United States:

- | | | |
|-------------|---------------|------------------|
| • Australia | • Germany | • Norway |
| • Austria | • Greece | • Portugal |
| • Belgium | • Ireland | • South Korea |
| • Canada | • Italy | • Spain |
| • Chile | • Japan | • Sweden |
| • Finland | • Luxembourg | • Switzerland |
| • France | • Netherlands | • United Kingdom |

The Social Security/Medicare Tax Liability

The Code imposes the liability for social security and Medicare taxes on both the employer of, and the employee, who earns income from wages in the United States. The Code grants an exemption from social security and Medicare taxes to nonimmigrant students, scholars, teachers, researchers, and trainees

(including medical interns), physicians, au pairs, summer camp workers, and other nonimmigrants temporarily present in the United States in F-1, J-1, M-1, Q-1 or Q-2 status. The Social Security Act contains the same provision. Both code sections exempt the above-named nonimmigrants from social security/Medicare taxes for as long as these nonimmigrants are "NONRESIDENT ALIENS" in F-1, J-1, M-1, Q-1 or Q-2 status.

The IRS has published regulations which stipulate that aliens who arrive in the United States on F, J, M, or Q visas will be assumed to be "NONRESIDENT ALIENS" but only to the extent that the assumption is consistent with the residency rules of section 7701(b) of the Code. Since the social security/Medicare tax exemption for foreign students, scholars, teachers, researchers, and trainees under the Code requires that the payee be a "NONRESIDENT ALIEN", then the social security/Medicare tax exemption ceases to exist at the point the payee becomes a "RESIDENT ALIEN" under the residency rules of section 7701(b) of the Code.

Thus, to summarize, both the Internal Revenue Code and the Social Security Act allow an exemption from social security/Medicare taxes to alien students, scholars, teachers, researchers, trainees, physicians, au pairs, summer camp workers, and other nonimmigrants who have entered the United States on F-1, J-1, M-1, Q-1, or Q-2 visas and who are still classified as NONRESIDENT ALIENS under the residency rules of the Internal Revenue Code. As discussed above, this means that foreign students in F-1, J-1, M-1, Q-1 or Q-2 nonimmigrant status who have been in the United States less than 5 calendar years are still NONRESIDENT ALIENS and are still exempt from social security/Medicare taxes. This exemption also applies to any period in which the foreign student is in "practical training" allowed by USCIS, as long as the foreign student is still a NONRESIDENT ALIEN under the Code. Foreign students in F-1, J-1, M-1, Q-1 or Q-2 nonimmigrant status who have been in the United States more than 5 calendar years are RESIDENT ALIENS and are liable for social security/Medicare taxes (unless they are exempt from FICA under the "student FICA exemption" discussed below).

In a similar fashion, foreign scholars, teachers, researchers, trainees, physicians, au pairs, summer camp workers, and other non-students in J-1, Q-1 or Q-2 nonimmigrant status who have been in the United States less than two calendar years are still NONRESIDENT ALIENS and are still exempt from social security/Medicare taxes. However, foreign scholars, teachers, researchers, trainees, physicians, au pairs, summer camp workers, and other non-students in J-1, Q-1 or Q-2 nonimmigrant status who have been in the United States more than two calendar years are RESIDENT ALIENS and are liable for social security/Medicare taxes. When measuring an alien's date of entry for the purposes of determining the five calendar years or the two calendar years mentioned above, the actual date of entry is not important. It is the calendar year of entry which is counted toward the two or five calendar years respectively. Thus, for example, a foreign student who enters the United States on December 31, 1998 counts 1998 as the first of his five years as an "exempt individual."

One must bear in mind also that the Code provides one exemption from social security/Medicare taxes for foreign students and it provides another exemption from social security/Medicare taxes for all students, American and foreign. This is the so-called "student FICA exemption", and it may operate to exempt a foreign student from social security/Medicare taxes even though he has already become a RESIDENT ALIEN. For employment which occurs after April 1, 2005, Revenue Procedure 2005-11 provides instructions for determining who is eligible for the "student FICA exemption".

The IRS has issued regulations which clearly stipulate that the spouses and dependents of alien students, scholars, trainees, teachers, or researchers temporarily present in the United States in F-2, J-2, or M-2 status are NOT exempt from social security and Medicare taxes, and are fully liable for social security/Medicare taxes on any wages they earn in the United States because such aliens have not entered the United States for the primary purpose of engaging in study, training, teaching, or research. Once more,

as an aside, the immigration laws do not allow spouses and dependents in F-2 and M-2 status to be employed in the United States; but if such aliens are employed in violation of their nonimmigrant status, the IRS will not hesitate to impose both income and social security and Medicare taxes on their income.

Alien students, scholars, trainees, teachers, or researchers in F-1, J-1, M-1, Q-1 or Q-2 status who change to a nonimmigrant status other than F-1, J-1, M-1, Q-1 or Q-2 will become liable for social security/Medicare taxes in most cases on the very day of the change of status. Teachers, trainees, and researchers in H-1b status, and alien nurses in H-1a status, are liable for social security/Medicare taxes from the first day of U.S. employment, regardless of whether they are nonresident or resident aliens, and regardless of whether their wages may or may not be exempt from federal income taxes under an income tax treaty.

Foreign scholars, teachers, researchers, or trainees who arrive in the United States in O-1 status or TN status (from Canada or Mexico under the NAFTA treaty) are fully liable for U.S. social security/Medicare taxes if they are employed on the payroll of the university or other employer, regardless of whether or not they are resident or nonresident aliens unless the provisions of a Totalization Agreement relieve such aliens from liability for U.S. social security/Medicare taxes.