

# Preventing Social Security Tax Withholding and Recovering Social Security Tax Wrongly Withheld

International Student and Scholar Services  
2120 Mesa Vista Hall  
MSC06 3850 1 University of New Mexico  
Albuquerque, NM 87131-1056  
Phone (505) 277-4032 ♦ Fax (505) 277-1867  
Email [iadvisor@unm.edu](mailto:iadvisor@unm.edu) Web: [iss.unm.edu](http://iss.unm.edu)

## I. Overview

If you are a foreign student or scholar on an F-1 or J-1 visa, and if you are also a non-resident alien for federal income tax purposes<sup>1</sup>, you are exempt from social security (FICA) taxes (including Medicare tax) on income earned in the United States.

If you are an F or J visa holder who is considered a resident alien for tax purposes, your wages are subject to social security (FICA) and unemployment (FUTA) taxes on the same terms which apply to U.S. citizens. J-2 and H visa holders, whether resident or nonresident are also subject to social security tax. Social Security tax and benefits apply to U.S. permanent residents on the same basis as U.S. citizens.

Regardless of immigration or tax residency status, income from the following is NOT subject to social security tax:

- Services performed by an enrolled student for the school he/she regularly attends during the school year.
- Services performed for state or local government, unless an agreement with the federal government is involved
- Services performed for a foreign government
- Services performed for an international organization

## II. Preventing Social Security Tax Withholding

Employers are frequently unaware of this provision of the social security tax law. This handout, which includes citations of the relevant law, should help you demonstrate to an employer that as a non-resident F-1 or J-1 student or scholar you are exempt from social security taxes.

Section 3121(a-c)(19) of the Internal Revenue Code defines and discusses “wages”, “employment” and “employee” and Section 3121 (b)(19) specifically explains how F and J visa holders are exempt stating that the term “employment” for FICA (social security) tax purposes will not include:

Service which is performed by a nonresident alien individual for the period he is temporarily present in the U.S. as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purposes specified in subparagraph (F), (J), (M), or (Q), as the case may be.

***To qualify for the tax exemption of Section 3121(b)(19), an individual must:***

### **1. Be a nonresident alien for income tax purposes**

As mentioned earlier, F-1 or J-1 students usually become residents for federal tax purposes after five years in the U.S.; J-1 scholars usually become residents after two years, including any prior time spent as F-1 or J-1 student/scholar. *Note: individuals who are residents for tax purposes because they hold the green card or meet the substantial presence test<sup>2</sup> are not exempt under section 3121 (b)(19)*

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<sup>1</sup> F-1 or J-1 students usually become residents for federal tax purposes after five years in the U.S.; J-1 scholars usually become residents after two years, including any prior time spent as an F-1 or J-1 visa holder.

<sup>2</sup> The substantial presence test formula is available on IRS site at:  
<http://www.irs.gov/businesses/small/international/article/0,,id=96352,00.html>

**2. Be the holder of an F, J, M or Q visa** Visa status is documented on the I-94

**3. Perform services to carry out the purpose of his/her visa**

This is documented through the specific visa type since individuals are only permitted to work and earn income for activities directly related to the primary purpose of the issuance of their visa category. For instance, F-1 students may work on-campus without special authorization and off-campus with appropriate employment authorization (OPT or CPT). J-1 scholars are permitted to earn income while they are in the US pursuing his/her activity (research, teaching, etc).

*Note: dependents of F, J, M or Q visa holders are not eligible for exemption from social security (FICA) & Medicare taxes.*

## **II. Recovering Social Security Tax Wrongly Withheld**

### Employer Agrees to Refund Taxes Wrongly Withheld

Occasionally social security tax is withheld in error. If your employer has already withheld social security taxes from you, you should ask the employer to refund the taxes to you. The employer can deduct the amount refunded to you from the company's next social security tax payment to the Internal Revenue Service and no further action is required from you.

### Employer Does Not Agree to Refund Taxes Wrongly Withheld

If your employer is unable to stop withholding or refund social security taxes wrongly withheld, you can obtain a social security tax refund from the Internal Revenue Service (a process that can take more than six months). Prepare the follow documents and mail the application to the IRS to regain wrongly withheld social security taxes:

1. Completed IRS Form 843, "Claim for Refund and Request for Abatement" (available from IRS; see below)
2. Completed IRS Form 8316, "Information Regarding Request for Refund of Social Security Erroneously Withheld on Wages Received by a Non-Resident Alien on an F, J, or M visa type" (available from IRS; see below)
3. Copy of passport
4. Copy of visa
5. Copy of your W-2 Form(s)
6. Copy of your most recent nonresident income tax return (if available)
7. Copy of your I-94 Form
8. Copy of your I-20 or DS-2019 Form – front & back
9. Copy of your permission to work in the U.S. (EAD card, CPT authorization, if applicable)
10. A written statement from your employer showing the amount of refund requested and the amount (if any) reimbursed by the employer. If you cannot obtain such a statement, you must verify that you have contacted your employer and that the employer was unable to assist you with the refund

IRS Forms can be downloaded at: <http://www.irs.gov/formspubs/index.html>

### Mailing Instructions

Make a copy of your application and mail all above documents via courier to return receipt to the  
IRS at:

**Department of the Treasury  
Internal Revenue Service  
Ogden, UT 84201-0005**

\*Do not mail this application with your annual Federal Income Tax Returns