

Here's how you know



# Foreign student 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 foreign employees are exempt from U.S. Social Security and Medicare taxes.

**Resident aliens**, in general, have the same liability for Social Security and Medicare Taxes that U.S. Citizens have.

**Nonresident aliens**, in general, are also liable for Social Security and Medicare Taxes on wages paid to them for services performed by them in the United States, with certain exceptions based on their nonimmigrant status.

## Nonresident alien student under F-1, J-1 or M-1 visa status

**Foreign students** temporarily present in the United States in F-1, J-1, or M-1, status for less than 5 calendar years are generally nonresident aliens under residency rules of IRC section 7701(b). These nonresident alien students are exempt from Social Security Tax and Medicare Tax on wages paid to them for services performed within the United States. To qualify for the exemption, the services performed need to be 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:
  - On-campus student employment up to 20 hours a week (40 hrs. during summer vacations).
  - Off-campus student employment allowed by USCIS.
  - Practical Training student employment on or off campus.
- Limitations on exemption:
  - The exemption does not apply to spouses and children in F-2, J-2, or M-2 status.
  - 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.
  - The exemption does not apply to F-1, J-1, or M-1 students who change to another immigration status which is not exempt or to a special protected status.

- The exemption does not apply to F-1, 1, or M-1 students who become resident aliens.

## Resident alien students

Generally, foreign students in F-1, J-1, or M-1 nonimmigrant status who have been in the United States more than 5 calendar years become resident aliens for U.S. tax purpose if they meet the “[Substantial Presence Test](#)” and are liable for Social Security and Medicare taxes. (unless they are exempt from FICA under the “[student FICA exemption](#)”).

- Student FICA Tax Exemption

Section 3121(b)(10) of the Internal Revenue Code provides another exemption from FICA (Social Security and Medicare) taxes for all students, regardless their U.S. tax residency status. Under this special exception rules, Social Security and Medicare taxes do not apply to services performed by students employed by a school, college, or university where the student enrolled at least half-time. The student’s on-campus employment must be incidental to and for the purpose of pursuing a course of study. Consequently, a foreign student who become a resident alien may be eligible for exemption if qualified. Off-campus jobs or working for other employers do not qualify. [Revenue Procedure 2005-11](#) [PDF](#) provides instructions for determining who is eligible for the “[student FICA exemption](#).”

## Totalization Agreements

The United States has entered into agreements with several nations called [Totalization Agreements](#) 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 and Medicare tax.


## Self-employment tax liability

A nonresident alien is not liable for the self-employment tax. However, once an alien individual becomes a Resident Alien under the residency rules of the Code, he or she then becomes liable for self-employment taxes under the same conditions as a U.S. citizen. It is also possible that a nonresident alien could be liable for the self-employment tax under the terms of a Totalization Agreement.

As a general rule, the immigration laws of the United States do not permit nonimmigrants to earn self-employment income in the United States. If a nonimmigrant student violates his or her nonimmigrant status and earns self-employment income in the United States, such that foreign student’s self-employment income will be subject to U.S. income tax and if he or she becomes a resident alien, is also subject to self-employment tax.

## Request refund of taxes withheld in error

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund.

If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on [Form 843, Claim for Refund and Request for Abatement](#) and [Form 8316, Information Regarding Requests for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa](#)  with supporting documents.

## Related

- [Aliens Employed in the U.S. – Social Security Taxes](#)
- [Alien Liability for Social Security and Medicare Taxes of Foreign Teachers, Foreign Researchers, and Other Foreign Professionals](#)
- [Foreign Students and Scholars](#)
- [Foreign Agricultural Workers](#)
- [Social Security Tax/Medicare Tax and Self-Employment](#)
- [Student Exception to FICA Tax](#)
- [Totalization Agreements](#)

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