

FICA Withholding on Nonresident Alien Employees (“NRAs”)

FICA taxes = OASDI/Disability-EE and FICA Med Hospital Ins/EE

J1 visa holders – exempt for 2 calendar years, ending December of year 2.

F1 visa holders – exempt for 5 calendar years, ending December of year 5.

Student FICA Exemption

Students enrolled and regularly attending classes at least ½ time are eligible for FICA exemption. For a discussion of these rules, please see the Tax Department’s website at <http://uh.edu/finance/index.htm>.

Federal Income Tax Withholding

Some NRAs from particular countries are eligible for exemption from withholding federal income taxes under income tax treaties.

MEMORANDUM

To : All College and Division Business Managers, and others

From : Linda Morrow, UH Foreign National Tax Specialist

Date : December 22, 2004

Subject : Withholding FICA on Nonresident Alien Employees (“NRAs”)

Some of the NRAs on campus may become confused as to why FICA taxes may be withheld from their January paycheck. If applicable, please help them by providing the following explanation.

The University is required to monitor the compliance of withholding FICA taxes (OASDI/Disability-EE and FICA Med Hospital Ins/EE) on NRAs. Generally, a NRA is exempt from withholding FICA based upon their visa status. Normally, a J1 visaholder is exempt for two(2) “calendar years” beginning with the year they first arrived in the United States (not “worked,” “earned money,” but “arrived”). For example, a J1 visaholder who arrives in the U.S. on December 1, 2003, will no longer be exempt from withholding FICA on January 1, 2005. His first “calendar” year will be 2003, even though he was only in the U.S. for one month of the year, and his second year will be 2004. Applying the same theoretical rules, an F1 visaholder will be exempt from withholding FICA for five(5) “calendar” years.

At the beginning of each calendar year, the University is required to identify each NRA that has exceeded the “calendar” year limit and begin withholding FICA taxes. The beginning of the year could include wages earned during the prior year if the payment is received in the following year. For example, their last year of exemption is 2004, and the NRA earns wages during December, 2004. However, they receive their paycheck for the December earnings on January 3, 2005. Since they are a cash-basis taxpayer and received the payment in 2005, the earnings are no longer eligible for exemption from withholding FICA taxes.

Some NRAs from particular countries are eligible for exemption from withholding federal income taxes under income tax treaties. The treaty rules apply only to federal income tax and do not affect FICA withholding.

For authoritative sources, the actual exemption provision can be found in Internal Revenue Code section 3121(b)(19), where it provides that the term “employment” for FICA 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 purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be.

The term of 2/5 “calendar” years is defined in Internal Revenue Code section 7701(b)(5).

The exemption discussed above is in addition to the “Student FICA Exemption” which may be applicable to NRAs and all other students. For a discussion of these rules, please see the Tax Department’s website at <http://uh.edu/finance/index.htm>.