



Social Security Tax Withholding

U.S. employers are required to withhold Social Security and Medicare taxes from wages earned in the U.S. Individuals in F-1, J-1, M-1 or Q-1 status are exempt from these withholding as long as they are considered non-resident aliens for tax purposes.

Preventing Social Security Tax Withholding

Employers are frequently unaware that F-1 students are exempt from the Social Security tax law. Citations of the relevant law included in this document 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
F-1 or J-1 students usually become residents for federal tax purposes after five years in the US; J-1 scholars usually become residents after two years, including any prior time spent as an F-1 or J-1 student/scholar.
2. Be the holder of an F, J, M or Q visa
Visa status is documented on the I-94 document.
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 their activity (research, teaching, etc.).

Recovering Wrongly Withheld Social Security Taxes

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.



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When Your Employer Does Not Agree to Refund Wrongly Withheld Taxes

In case 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 (IRS), a process that can take more than six months.

Prepare the following 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*
2. Completed IRS Form 8316, *Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa*
3. Copy of your W-2 Form(s)
4. Copy of your most recent nonresident income tax return (if available)
5. Copy of your I-94 document
6. Copy of your I-20 or DS-2019 Form – all pages
7. Copy of your permission to work in the U.S. (EAD card, CPT authorization, etc.)
8. 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/>

Mailing Instructions

Mail all above documents via courier with receipt to the mailbox listed in the Form 843 Instructions. Keep a copy for your records. As well, *do not mail this application with your annual Federal Income Tax Returns.*