

FICA Taxation and Foreign Students or Scholars

Foreign students or scholars present in the U.S. under F-1, J-1, M-1 or Q-1 immigration status may be subject to FICA/Medicare taxation if they are considered to be a resident alien for tax purposes. To find out more about tax residency, please refer to the information and IRS web site links below.

Tax Residency

Below are some excerpts from the IRS web site (www.irs.gov) where there is a web page devoted to International students and U.S. Taxation including information on tax residency and taxes:

<https://www.irs.gov/individuals/international-taxpayers/foreign-students-and-scholars>

Foreign Persons and U.S. Taxes

Under U.S. tax law, resident aliens are taxed in the same manner as U.S. citizens on their worldwide income, and nonresident aliens are taxed according to special rules. To determine if an individual is a resident alien for tax purposes or a nonresident alien for tax purposes, the IRS residency rules must be applied (Internal Revenue Code § 7701(b)).

Applying Tax Residency Rules

If you are an alien (not a U.S. citizen), you are considered a nonresident alien unless you meet one of **two tests**. You are a resident alien of the United States for tax purposes if you meet either the **green card test** or **the substantial presence test** (aka SPT) for the calendar year.

“Green Card” Test

If you are an alien with a green card, you are considered a resident alien for tax purposes.

Substantial Presence Test (SPT)

You will be considered a resident alien for tax purposes if you have been present in the U.S. for at least 31 days in the current year, *and* present in the U.S. for 183 days over the three year period that includes the current year and the prior 2 years.

The 183 days is calculated as follows:

- Count all the days present in the United States in the current year, *plus*
- 1/3 of the days present in the United States in the 1st preceding year, *plus*
- 1/6 of the days present in the United States in the 2nd preceding year

If the total is 183 days or more, you have met the SPT and are considered a resident alien.

Exceptions to Counting Days of Presence

There are exceptions to counting days of presence in the United States. One of these exceptions is called the "exempt individual" exception. The "exempt individual" exception includes students in the U.S. under an F, J, M or Q immigration status. F-1 students:

- must wait 5 calendar years before counting 183 days;

- the 5 calendar years need not be consecutive; and once a cumulative total of 5 calendar years is reached during the student's lifetime, he may never be an exempt individual as a student ever again during his lifetime;
- Quality of being an Exempt Individual applies also to spouse and child on F-2, J-2, M-2, or Q-3 visa;

Social Security and Medicare Taxation

<https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes>

<https://www.irs.gov/individuals/international-taxpayers/alien-liability-for-social-security-and-medicare-taxes-of-foreign-teachers-foreign-researchers-and-other-foreign-professionals>

Resident aliens for tax purposes have the same liability for Social Security/Medicare Taxes that U.S. Citizens have.

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

IRC Section 3121(b)(19):FICA Exception for F-visas, J-visas, M-visas, Q-visas

The following classes of nonresident aliens are exempt from U.S. Social Security and Medicare taxes:

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 non-immigrant status are exempt on wages paid to them for services performed within the United States.

Limitations on exemption:

- The exemption does not apply to spouses and children in F-2, J-2, or M-2 nonimmigrant 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, M-1, or Q-1/Q-2 non-immigrants who change to an immigration status which is not exempt or to a special protected status.
- ***The exemption does not apply to F-1, J-1, M-1, or Q-1/Q-2 non-immigrants who become resident aliens for tax purposes.***