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Presenters:

Susan Caldwell, University of Georgia

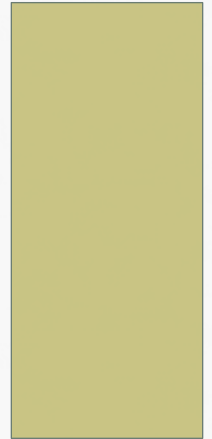
Linda Dunbar, Oklahoma State University

Dahlia M. French, Esq. , Vanderbilt University

Douglas Podoll, Georgia Institute of Technology

NUTS & BOLTS: INTERNATIONAL TAX

FOR PERSONS IN F-1 & J-1 STATUS



REGULATORY AUTHORITIES & RESOURCES

- Income tax regulations that govern the taxation of payments to non-resident aliens; (Treasury/IRS)
- Information on taxation of foreign students & scholars is at <http://www.irs.gov/businesses/small/international/article/0,,id=96431,00.html>
- Immigration regulations regarding employment of and payments to foreign scholars and students; (USCIS/ICE/SEVP)
- Federal and State labor regulations requiring compliance with Fair Labor Standards Act.

FICA

SOCIAL SECURITY & MEDICARE TAXES

- Persons in F-1 and J-1 nonimmigrant status are exempt from FICA (social security and Medicare taxes) on wages as long as the employment is permitted by USCIS and is related to the purposes for which the visas were issued.
- Exempt Employment includes:
 - **On-campus student employment up to 20 hours a week (40 hour during summer vacations)**
 - **Off-campus student employment allowed by USCIS.**
 - **CPT/OPT on or off campus including permissible self-employment.**
 - **Employment as professor, teacher or researcher.**
 - **Employment as a physician, au pair, or summer camp worker**
- Limitations on exemption:
 - **The exemption does not apply to employment not allowed by immigration regulations or to employment not closely connected to the purpose for which the visa was issued.**

FICA RULES FOR J-1 SCHOLARS, TEACHERS, RESEARCHERS, TRAINEES & PHYSICIANS

- J-1 Scholars, Teachers, Researchers, Trainees and Physicians and other non-students in J-1 status are considered NRA-TP and exempt from FICA taxes for the first two calendar years of their presence in the USA.
- After the two calendar year period, they become RA-TP and subject to FICA withholding unless they depart the USA in less than 183 days.

Measuring a Calendar Year:

- When measuring an alien's date of entry for the purposes of determining the five calendar years or the two calendar years mentioned above, the actual date of entry is not important. It is the calendar year of entry which is counted toward the two or five calendar years respectively. For example, a foreign student who enters the United States on December 31, 1998 counts 1998 as the first of his five years as an "exempt individual."

FICA RULES FOR F-1 & J-1 STUDENTS

- F-1 and J-1 students are exempt from FICA taxes as long as they can be classified as Nonresident Aliens for Tax Purposes (NRA-TP). F-1 and J-1 students are NRA-TP for the first 5 calendar years of presence in the USA. This is called the **International Student FICA Exemption**.
- The international student exemption applies to income earned throughout the calendar year, including income earned during summer breaks and school holidays.
- The FICA exemption also applies to any period in which the foreign student is engaged in authorized OPT or CPT as long as the foreign student still meets the Nonresident Alien definition.
- After the first 5 calendar years F-1 and J-1 students will become RA-TP but may still be exempt from FICA, as long as they remain in bona fide student status. This exemption is called the **Domestic Student FICA Exemption**.
- The domestic student exemption applies only if the student employee is enrolled and regularly attending classes at a school, college, or university where s/he is employed. It doesn't apply to income earned during periods where the student is not enrolled and regularly attending classes (or receiving academic instruction --- e.g. an archeological dig with professor).
- If the student is not taking classes and only working (CPT, OPT), the exemption does not apply.
- In general, the domestic student FICA exemption applies to employment which continues during normal school breaks of 5 weeks or less provided that the student is eligible to enroll in classes for the first academic period following the break.
- F-1 and J-1 students who are NRA-TP are also exempt from self-employment FICA taxation.

SUBSTANTIAL PRESENCE RULE

- Persons are considered to be RAs if they meet the substantial presence test for the calendar year. A specific formula is used to determine substantial presence and the international tax office will do this analysis.
- The general rule in applying the Substantial Presence Test to certain persons in F-1 and J-1 status is that you do not count the days where the person was an exempt individual as it pertained to their immigration status. (e.g.. 5 years (F-1, J-1 students) ; 2 years (J-1 non-students))
- The term "exempt individual " does not refer to someone exempt from US. tax, but to anyone in a visa category that exempts them from counting days of presence in the U.S.
- Even if an F-1 or J-1 passes the substantial presence test it is still possible to be treated as a nonresident alien.
 - **The closer connection exception available only to students**
 - Student must show s/he does not intend to reside permanently in the United States;
 - has substantially complied with the immigration laws and requirements relating to his student nonimmigrant status;
 - has not taken any steps to change his nonimmigrant status in the United States toward becoming a permanent resident of the United States; and
 - has a closer connection to a foreign country than to the United States
- The burden of proof is on the student to prove these four factors and student must file the necessary tax form to claim this status.

INCOME TAX TREATIES

- The USA has income tax treaties with various foreign countries. Under these treaties, residents of foreign countries are taxed at a reduced rate, or are exempt from U.S. income taxes on certain types of US source income. These reduced rates and exemptions vary among countries and specific items of income.
- If the treaty does not cover a particular kind of income, or if there is no treaty between the USA and a particular foreign country, residents or citizens of that foreign country pay taxes on US income pursuant to IRS' NRA Tax Tables.
- An individual must have an Individual Taxpayer Identification Number (ITIN) or Social Security Number (SSN) to apply for a tax treaty benefit.
- Employee must also provide employer with certain tax forms to request the tax treaty benefits.
- Employer is not required to apply any tax treaty benefits unless the appropriate forms are received. The employer cannot apply the tax treaty benefits unless the employee submits the Form 8233.
- The individual can claim tax treaty benefits when filing the annual tax return. Income tax return for the NRA is filed on the 1040NR or 1040NR-EZ.

TAX FILING REQUIREMENTS

FORMS 1040NR & 1040NR-EZ

- Nonresident aliens who have to report income must use Form 1040NR or 1040NR-EZ.
- Individuals who must file a 1040NR or 1040NR-EZ normally receive their tax reporting forms just after January 31st (W-2) or March 15th (1042-S) each year.
- Individuals who will receive both a 1042-S and W-2 should wait until the 1042-S is received to file their tax return (and avoid having to file an amended return).
- The tax filing deadline is April 15th (unless that day falls on a weekend, federal or DC holiday).

TAX FILING REQUIREMENTS

FORM 8843

- All nonresident alien individuals are required to file Form 8843 to affirm that they wish to maintain their nonresident alien or “exempt” status (for substantial presence purposes).
- Form 8843 should be attached to Form 1040NR or Form 1040NR-EZ.
- Individuals who do not have to file a tax return (no reportable income) should still file Form 8843. Persons with no reportable income must file form 8843 by June 15th.
- The nonresident alien and dependent family members (spouses and minor children) must each file a separate Form 8843.

TAX COMPLIANCE SOFTWARE

- Managing international tax is a lot of work and we strongly recommend that institutions consider purchasing international tax compliance software.
- Two companies: Thomson Reuters (Windstar) and Arctic International (Glacier). Software captures all necessary immigration data and provides substantial presence reports; tax treaty reports and the appropriate IRS forms.
- Both companies also have tax filing preparation software for persons filing Forms 1040 NR, 1040NR-EZ and 8843. (TR Windstar – Foreign National Tax Resource); (Arctic International – Glacier Tax Prep.)
- Your international population would greatly appreciate having tax filing software and the institution will see a significant reduction in workload versus using a manual process.
- Software may also integrate with other institutional databases.

HOT TOPICS & UPDATES

ITIN & THE DSO/ARO

Individual Taxpayer Identification Number (ITIN)

- ITIN is used by for persons who cannot obtain an SSN. (e.g. International visitors receiving honorariums; international students receiving taxable scholarship, fellowships, etc.)
- IRS will allow international students who are enrolled in SEVP/SEVIS institutions to get ITINs under a streamlined procedure.
- The DSO/ARO/PDSO/RO will need a letter certifying that photocopies of the passport and immigration documents are correct and verifying the immigration status of the international student.
- International student's derivative family members can use this process also.

See, [http://www.irs.gov/uac/Newsroom/Special-Instructions-for-Student-and-Exchange-Visitor-Program-\(SEVP\)-Institutions](http://www.irs.gov/uac/Newsroom/Special-Instructions-for-Student-and-Exchange-Visitor-Program-(SEVP)-Institutions) for Special Instructions for SEVP Institutions.

See, <http://www.irs.gov/uac/Newsroom/Sample-of-Certification-Letter> for Sample of Certification Letter for SEVP Institutions

QUESTIONS?

