



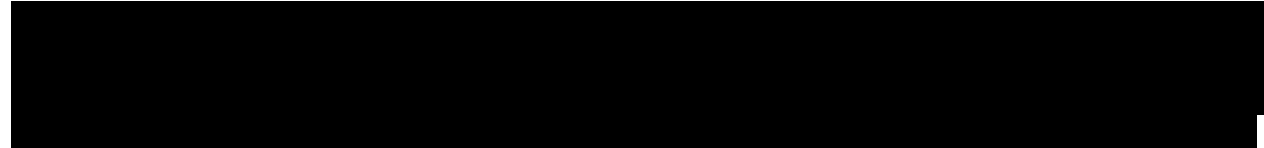
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 22, 2002

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GENIN-151530-02
CC:TEGE:EOEG:ET2



Dear Ms. [REDACTED]:

I apologize for the delay in responding to your inquiry dated August 20, 2002, requesting that we determine whether services performed by foreign students admitted into the United States on M-1 visas are subject to social security and medicare taxes under the Federal Insurance Contributions Act (FICA).

As a general matter, apart from the procedure for issuing a formal opinion, as described in Revenue Procedure 2002-1, 2002-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. Revenue Procedure 2002-1 sets forth procedures for requesting private letter rulings. If you wish to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2002-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope will be helpful to you.

FICA taxes are imposed on "wages", defined in Code section 3121(a) as including "all remuneration for employment" with certain specific exceptions. FICA taxes are imposed on both the employee and the employer. There are two parts to FICA taxes: old-age, survivors, and disability insurance tax (OASDI) and hospital insurance tax. Old-age, survivors, and disability insurance tax, also known as social security tax, is imposed under Code sections 3101(a) and 3111(a). Hospital insurance tax, also known as medicare tax, is imposed under Code sections 3101(b) and 3111(b).

Code section 3121(b) provides that the term "employment" means any service by a citizen or resident of the United States performed in the United States. Code section 3121(b)(19), however, provides that services performed by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under sections 101(a)(15)(F), (J), (M), (Q) of the Immigration and Nationality Act, do not constitute employment if the services are performed to carry out a purpose for which

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the individual was admitted. Social security and medicare taxes should not be withheld or paid on remuneration for such services.

This exemption from social security and medicare taxes also applies to employment performed under Curricular Practical Training and Optional Practical Training, on or off campus, by foreign students in F-1, J-1, M-1 or Q nonimmigrant status as long as the employment is authorized by the Immigration and Naturalization Service.

However, if the alien is considered a resident alien, their pay is subject to social security and medicare taxes even though the alien is still in one of the nonimmigrant statuses mentioned above. This rule also applies to taxes under the Federal Unemployment Tax Act (FUTA).

For example, suppose that an individual enters the United States with a valid M-1 visa to pursue a Master's degree as a full-time student. While in school, the student begins employment at a retail store. Such employment is outside the student's original visa authorizations. Although the student maintains his or her M-1 nonimmigrant status, because the student is employed outside of his or her original visa authorizations while in school, the student is treated as a resident alien and wages paid to the student are subject to social security and medicare taxes.

The rules for withholding of tax on nonresident aliens are set forth in IRS Publication 515, a copy of which is enclosed for your information. We have also enclosed a copy of IRS Publication 519, which contains information on resident and non-resident status, the tests for residence and the exceptions to them.

I hope the information provided is helpful. If we can be of further assistance, please contact [REDACTED] at [REDACTED]

Sincerely,

LYNNE CAMILLO
Chief, Employment Tax Branch 2
Division Counsel/Associate Chief
Counsel
(Tax Exempt and Government
Entities)

Enclosures:
As stated