



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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Dear _____,

We are responding to your letter dated March 14, 2025, which requested information about the applicability of Federal Insurance Contributions Act (FICA) taxes on individuals working as trainees in the United States under a J-1 visa for more than two years.

According to your letter, you possess a J-1 visa and are authorized to be employed in an approved training program in the United States. You further represent that you have been working in the United States for more than two years and that you are currently a tax resident of a foreign country, _____, with which the United States maintains an income tax treaty. You state your belief that as a nonresident alien authorized to work in the United States under J-1 status, your employer should not withhold FICA taxes from your wages for the duration of your training in the United States. However, you also state that your employer believes that the FICA tax exemption is limited only to the first two years in J-1 visa status.

Although we cannot provide a response specific to your facts, we can provide the following general information which we hope will be helpful.

Generally, if you work as an employee in the United States, you must pay FICA taxes, which consist of Social Security tax and Medicare tax. These taxes, in general, are imposed on payments of wages for services performed as an employee in the United States, regardless of citizenship or residence of either the employee or the employer. See section 3121(b) of the Internal Revenue Code (IRC).

However, there are exceptions to this general rule. One exception is in IRC sec. 3121(b)(19), which provides that services performed by a nonresident alien individual for the period he or she is temporarily present in the United States under certain subparagraphs of section 101(a)(15) of the Immigration and Nationality Act (Title 8 USC sec. 1101(a)(15)), as amended, are not treated as employment. Section 101(a)(15)(J) of the Immigration and Nationality Act provides for the program under which J-1 visas are issued.

Treasury Regulation sec. 31.3121(b)(19)-1(a)(1) provides that a nonresident alien individual working in the United States under a J-1 visa is deemed to be a nonresident alien individual for purposes of FICA withholding. However, the regulation goes on to say this “does not apply to the extent that it is inconsistent with [IRC] section 7701(b) and the regulations under that section.”

IRC sec. 7701(b) defines when an individual may be classified as a resident or nonresident for U.S. income tax purposes. IRC sec. 7701(b)(1)(A) provides that an individual will be treated as a U.S. resident if he or she is lawfully admitted for permanent residence, makes a first-year election, or meets the substantial presence test.

The lawful permanent residence test is a Green Card test that rests on whether an individual has been lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with U.S. immigration laws during a calendar year. Treasury Regulation sec. 301.7701(b)-1(b).

The first-year election is a special rule that allows certain nonresident aliens who relocate to the United States during the year to elect to be treated as U.S. residents for the entire year if certain requirements are met under IRC sec. 7701(b)(4). This typically applies when a nonresident individual is likely to be treated as a resident alien for U.S. tax purposes in subsequent years.

The substantial presence test found in IRC sec. 7701(b)(3) provides that an individual will be classified as a resident based on the number of days present in the United States measured over a three-calendar-year period. However, certain individuals and days of presence in the United States are excluded from counting towards this total. An individual present in the United States is an exempt individual on any day that they are a foreign trainee. IRC sec. 7701(b)(5)(A)(ii).

A trainee for IRC sec. 7701(b)(5)(C) exemption purposes is an individual who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15) (J) of the Immigration and Nationality Act (other than as a student) and who substantially complies with the requirements of being admitted. Under IRC sec. 7701(b)(5)(E), an individual may maintain this foreign trainee exemption status for any two-calendar-year period of the previous six calendar years. IRC sec. 7701(b)(5)(E)(i) and IRC sec. 872(b)(3) allow this foreign trainee exemption status to be extended to any four-calendar-year period in the previous six calendar years if a foreign employer

pays the compensation to the foreign trainee while she is temporarily present in the United States and maintains her visa status.

Consequently, foreign trainees, temporarily present in the United States and remaining in nonimmigrant status for less than two years using J-1 visas are generally treated as nonresident aliens under the residency rules of IRC sec. 7701(b) and are exempt from FICA taxes. However, such an individual may lose that status, should his or her time in the United States exceed two years.

You next ask whether a U.S. income tax treaty may affect your status with respect to FICA taxes.

In general, the text of a U.S. income tax treaty determines its applicability, while its explanatory documents, such as its U.S. Treasury technical explanation, provide helpful discussion and interpretive guidance on its provisions. Additionally, the “General Scope” or “Personal Scope” article (often the first article of a U.S. income tax treaty) can provide helpful information on its terms and general applicability.

U.S. income tax treaties generally only apply to residents of one or both contracting states. Therefore, to determine whether a treaty potentially applies to in your case, you should consult the U.S. income tax treaty with the country of which you believe you are a resident (or the country from which you derive income if you are a U.S. resident). In particular, you should consult the “Residence” article (or the equivalent article) of such treaty, since special rules often apply to individuals who are residents under the domestic laws of both contracting states. Additionally, the tax at issue must be one to which the treaty applies. This information is typically found in the “Taxes Covered” article of the treaty. Generally, if Social Security tax is excluded from the types of taxes covered by an income tax treaty, the treaty may not apply to change the outcome specified under domestic U.S. tax law regardless of whether an individual satisfies the residency requirement of the treaty.

We cannot state in this general information letter, due to its scope, whether a U.S. income tax treaty (e.g., the [Income Tax Treaty](#)) may be applicable in this case. However, you may find it helpful to view the IRS’s webpage on income tax treaties at: [United States income tax treaties – A to Z](#). Additionally, the IRS has other publications that you may find helpful on the topic of residence and FICA withholding at: [Publication 519 – U.S. Tax Guide for Aliens](#) and [Publication 515 – Withholding of Tax on Nonresident Aliens and Foreign Entities](#).

Finally, you ask about what effect a totalization agreement may have with respect to FICA tax liability. In general, a resident alien of the United States pays Social Security tax in the country in which he or she is working. If applicable, an individual may be able to claim an exemption from United States Social Security taxes by providing a Certificate of Coverage from the other country to his or her employer. We cannot state in this general information letter whether a totalization agreement may be applicable in this case. However, the IRS hosts a webpage containing information regarding totalization agreements at: [Totalization Agreements | Internal Revenue Service](#). The

Social Security Administration has additional information at: [General Overview | International Programs | SSA](#).

This letter has called your attention to certain general principles of law. It is intended to provide general guidance for determining how to comply with applicable law and has no binding effect on the Internal Revenue Service. See Rev. Proc. 2026-1, §2.04, 2026-1 IRB 1 (Dec. 29, 2025). To obtain a binding written letter ruling, you should consider a submission of a letter ruling request. The procedures to submit a letter ruling request can be found in Rev. Proc. 2026-1. If you have any additional questions, please contact our office at _____ (not a toll-free number).

Sincerely,

Sydney L. Gernstein
Branch Chief
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(Employee Benefits, Exempt
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