HRM-008 Student FICA Tax Exemption

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Contact Office Payroll Services

Oversight Executive
Vice President and Chief Financial Officer

Applies To Academic Division and the College at Wise.

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Reason for Policy

Provides guidelines, based on the Internal Revenue Code, and IRS regulations and directives, for determining whether a student's service in the employ of the University qualifies for an exemption from the *Federal Insurance Contributions Act* (FICA) taxes imposed on wages. This policy is intended to inform University employees and others about relevant tax issues; it does not constitute legal or tax advice. The University Office of Payroll Services is prohibited from giving University employees legal or tax advice.

Definition of Terms

Course of Study

Description

One or more courses the completion of which fulfills the requirements necessary to receive an educational credential granted by a school, college, or university.

Full-Time Employee

Description

An employee who is treated as such under University standards and practices, or whose normal work schedule is 40 hours or more per week.

Professional Employee

Description

An employee whose work: (a) requires knowledge of an advanced type in a field of science or learning; (b) requires the consistent exercise of discretion and judgment; and (c) is predominantly intellectual and varied in character (based on Revenue Procedure 2005-11).

Policy Statement

The University will make student *Federal Insurance Contributions Act* (FICA) determinations based on Revenue Procedure 2005-11 safe harbor guidelines. All students employed by and enrolled at the University of Virginia or the College at Wise and who meet these safe harbor guidelines will be treated as exempt from FICA taxes, while those student employees who do not will be subject to FICA taxes on their wages. Additionally, payments to clinical and other fellows, medical residents and postdoctoral research associates are not eligible for the student FICA exemption.

[Note: Payments received by students for non-employment activities such as scholarships, fellowships, traineeships, or services as an independent contractor are not subject to FICA taxes.]

1. **Background:**
   FICA taxes are imposed on all wages paid or received with respect to employment. Where an employer-employee relationship exists, employers are required to withhold FICA from the wages of an employee and pay a matching contribution, subject to certain limitations. Payments to employees for services are generally subject to the FICA tax unless an exemption from the tax is provided in the Internal Revenue Code.

   Section 3121(b) (10) of the Internal Revenue Code sets forth an exemption from FICA tax for employees of schools, colleges or universities who are enrolled and regularly attending classes at those institutions. The IRS, however, does not permit all student employees to qualify for this FICA tax exemption; rather, the agency's policy is that only those student employees who provide services that are "incident to and for the purpose of pursuing a course of study" and whose educational relationship with the school predominates over the person's employee relationship will qualify. This balancing test is reflected in revised IRS regulations, which set forth a broad "facts and circumstances" test that should be used by employers in making the determination whether a student employee qualifies for the student FICA exemption.

   In addition to its regulations, the IRS has issued Revenue Procedure 2005-11, which sets forth certain "safe harbor" tests that, if met, will deem the student-employee to be exempt from FICA tax. In other words, if the student employee qualifies under these safe harbor rules, the person will be treated as exempt from FICA tax without the necessity of looking to the "facts and circumstances" test. The IRS recognizes that it may be possible for an individual to not meet the Revenue Procedure 2005-11 safe harbor tests and still qualify for the student FICA exemption by looking at the facts and circumstances surrounding the student's employment. Revenue Procedure 2005-11 is applicable with respect to services performed on or after April 1, 2005, and supersedes the earlier safe harbor tests set forth in Revenue Procedure 98-16. As a general rule, the policy of the University will be to make student FICA determinations based on Revenue Procedure 2005-11 safe harbor guidelines; that is, those student employees who meet these guidelines will be treated as exempt from FICA tax, while those student employees who do not will be subject to FICA tax on their wages.

2. **Criteria for Student FICA Tax Exemption per IRS Safe Harbor:**
    a. **General standards:** Under Revenue Procedure 2005-11 safe harbor rules, a wage payment made by the University to an individual who (a) is at least a half-time undergraduate student or at least a half-time graduate or professional student, (b) is not a full-time employee of the University, (c) is not a "professional employee" and (d) does not receive certain specified employment benefits, will qualify for the student FICA exemption. *Note 1: In order to meet this standard, all active UVA positions must be categorized as "student" positions by UVA Human Resources. Note 2: While the IRS rules only require that a student be enrolled at least half-time to be eligible for the student FICA exemption, the Provost's Wage Authorization requires students be enrolled full-time to be eligible for student employment.*

    b. **Student enrollment status:** A student employee must be enrolled and regularly attending classes at a school, college, or university at which the student-employee is employed. In determining whether an individual qualifies as a "student" of the University, the Office of Payroll Services will rely on data in the student information system currently in use. Determination of student status is made prior to the processing of each bi-weekly payroll.

    A half-time undergraduate, graduate, or professional student is deemed to be enrolled if he/she is carrying a half-time academic load, as determined by the University Registrar. The per-semester course loads that qualify the student for the FICA tax exemption under safe harbor rules for the fall and spring semesters are as follows:
        - *Undergraduates* eligible for the FICA exemption: 6 or more credit hours.
        - *Graduates and professional students* eligible for the FICA exemption: 6 or more credit hours.

    The course loads that qualify the student for the FICA tax exemption for any of the summer terms are as follows:
        - *Undergraduates*: 3 or more credit hours.
        - *Graduates and professional students*: 3 or more credit hours.

    In addition, traditional classroom activities are not the sole means of satisfying this requirement. For example, research activities under the supervision of a faculty advisor to complete the requirements for a Ph.D. degree may constitute a "class" under the regulations. Students enrolled in masters thesis research and preparation, or dissertation research and preparation will qualify for the student FICA exemption. An employee must be pursuing a course of study towards a degree from UVA in order to have the status of a student.

    c. **Full-time employees:** Regardless of the University's classification, any employee whose normal work schedule is 40 hours or more per week is treated as a full-time employee. The employee's work schedule during academic breaks (not including summer) is not considered in determining whether the employee's normal work schedule is 40 hours or more per week.
    d. **Professional employees:** Under Revenue Procedure 2005-11, a student who is a professional employee does not qualify for safe harbor protections. While Teaching Assistants and Research Assistants may qualify as professional employees under this standard and thereby not meet the Revenue Procedure 2005-11 safe harbor test, the University will nevertheless treat such student employees as eligible for the student FICA exemption under the facts and circumstances test, provided that the person's normal work schedule is not 40 or more hours per week. Notwithstanding, students hired into faculty positions, regardless of the number of scheduled hours per week, will not qualify for the student FICA exemption in that assignment or any other faculty or student assignment.

e. **Employment benefits:** A student employee does not qualify for the safe harbor rules under Revenue Procedure 2005-11 if the employee is eligible to receive one or more of the following employment benefits:
   - vacation, paid holiday, and paid sick leave benefits;
   - participation in a Internal Revenue Code §401(a), §403(b), or §457 (a) retirement plan;
   - reduced tuition (other than qualified tuition reductions for Teaching Assistants and Research Assistants under IR Code section 117(d)(5)); or
   - benefits under Internal Revenue Code §79 (life insurance), §127 (qualified educational assistance), §129 (dependent care assistance program), or §137 (adoption assistance).

   While University students are eligible to participate in §§403(b) and 457 (a) retirement programs, the University will nevertheless treat such student employees as eligible for the student FICA exemption under the facts and circumstances test, provided the students' normal work schedule is not 40 or more hours per week.

f. **Other Safe Harbor Rules:** Revenue Procedure 2005-11 sets forth the following additional rules relating to the applicability of the safe harbor guidelines:
   1. **Graduating students:** A student who is less than half-time will still meet the safe harbor guidelines if the student is graduating. That is, an individual who is in the last semester or term of a course of study and is enrolled for the number of credit hours needed to complete the degree requirements will still be regarded as at least a half-time student, even if the student is enrolled in less than half the number of credit hours required of full-time students.
   2. **Changes in eligibility during payroll periods:** An individual's eligibility for the student FICA exemption may change during the academic year based on his/her academic pursuits and/or employment with the University. Any change in status that impacts an individual's eligibility for the student FICA exemption (e.g., reduction in credits below half-time load, withdrawal from all degree programs, or employment in a non-student position) will apply to the entire pay period in which the change occurs.
   3. **School breaks:** An individual working for the University during the summer or during other school breaks of more than 5 weeks, but who does not have the status of a student during this period, as defined in this policy, is not eligible for the student FICA exemption on wages paid during the period. The student FICA tax exemption does apply to school breaks of 5 weeks or less (for example, winter and spring breaks) provided the individual did not graduate at the end of the fall term. That is, in order to be eligible for the FICA tax exemption during school breaks of 5 weeks or less, the individual must qualify for the FICA tax exemption on the last day of the semester or term preceding the break and be eligible to enroll for classes in the first semester or term following the break.
   4. **Other Employee Groups:** According to Revenue Procedure 2005-11, the safe harbor guidelines are not available for those employees who are **postdoctoral students, postdoctoral fellows, medical residents, or medical interns** because the services performed by these employees cannot be assumed to be incidental to and for the purpose of pursuing a course of study. Thus, payments to clinical and other fellows, medical residents, and postdoctoral research associates are not eligible for the student FICA exemption.

3. **FICA Status of Foreign Nationals:**
   Both the Internal Revenue Code (26 USC 3121 (b) (19)) and the Social Security Act (42 USC 410 (a) (19)) allow an exemption from social security/Medicare taxes to alien students, scholars, teachers,

researchers, trainees, physicians, and other non-immigrants who have temporarily entered the country on F-1, J-1, M-1, Q-1, or Q-2 visas and who are classed as nonresident aliens under the residency rule. This means that foreign students in F-1, J-1, or M-1 non-immigrant status who have been in the U.S. less than 5 calendar years are considered nonresident aliens and are exempt from FICA taxes. Foreign students who have been in the U.S. longer than 5 calendar years are deemed resident aliens and are liable for FICA taxes unless qualifying for the student FICA exemption under IRC section 3121 (b) (10) previously discussed in this policy.

Similarly, foreign scholars, teachers, researchers, trainees, physicians and other non-students in J-1,Q-1 or Q-2 nonimmigrant status who have been in the U.S. less than 2 calendar years are deemed nonresident aliens and are exempt from FICA. Those foreign scholars, teachers, researchers, trainees, physicians and other non-students in J-1, Q-1, or Q-2 nonimmigrant status who have been present in the U.S. for more than 2 years are liable for FICA taxes. Foreign nationals providing employment services to the University in statuses other than F-1, J-1, M-1, Q-1, or Q-2 (for example H-1B) are subject to FICA withholding.

4. **Compliance with Policy:**
   Deviations from the requirements of this policy and associated IRS rules will impact a student's tax liability and eligibility for the student FICA exemption.

   Direct questions about this policy to Payroll Services.

Related Information

Wage Authorization for the Academic Areas
Revenue Procedure 2005-11

Major Category Human Resource Management

Next Scheduled Review Saturday, March 24, 2029

Revision History

Confirmed 3/24/26; Minor edit Section 2.b 6/9/23; Confirmed 3/23/23; Updated 2/7/20; Added Compliance section 12/2/19; Updated 11/12/19; 3/21/17; 7/7/11.

Category Cross Reference
Students and Student Programs

Supercedes Policy Text

Policy on University Payroll Taxes, Section on Exempt FICA Status of Full-Time Students & FICA Status of Foreign Nationals.

Approved By Policy Review Committee

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