

Social Security and Medicare Tax Liability

An exemption from social security and Medicare taxes applies to nonimmigrant students, scholars, teachers, researchers, and trainees (including medical interns) who are temporarily present in the United States in F-1, J-1, M-1, or Q-1 status as long as they remain nonresidents for federal income tax purposes. The exemption also applies to any period in which a foreign student is in “practical training” or other off-campus employment allowed by the USCIS. Such persons are exempt from social security and Medicare taxes as long as they remain **nonresident** aliens for tax purposes. Those who become resident aliens must start paying social security and Medicare taxes.

As discussed in Lesson 1, foreign students in F-1, J-1, M-1, or Q-1 nonimmigrant status who have been in the United States over 5 years—and foreign scholars, teachers, researchers, trainees, and other non-students in J-1 or Q-1 nonimmigrant status who have been in the United States over 2 years—are normally resident aliens. If so, they must pay social security and Medicare taxes.

Federal tax regulations state that spouses and dependents of alien students, scholars, trainees, teachers, or researchers temporarily in the United States in F-2, J-2, M-2 status are **not** exempt from social security and Medicare taxes on any wages they earn in the United States. That is because they did not enter the United States for the primary purpose of engaging in study, training, teaching, or research.

As was stated earlier, U.S. immigration law does not allow spouses and dependents in F-2 and M-2 status to be employed in the United States. But if they are employed in violation of their nonimmigrant status, the IRS imposes both income tax and social security and Medicare taxes on their income.

Alien students, scholars, trainees, teachers, or researchers in F-1, J-1, M-1, or Q-1 status who change to a nonimmigrant status other than F-1, J-1, M-1, or Q-1 become liable for social security and Medicare taxes—in most cases on the day they change status.

Teachers, trainees, and researchers in H-1b status and alien nurses in H-1a status are liable for social security and Medicare taxes from the first day of U.S. employment—regardless of whether they are nonresident or resident aliens and whether or not their wages may be exempt from federal income tax under an income tax treaty.

Foreign scholars, teachers, researchers, or trainees who arrive in the United States in O-1 status or TN status (from Canada or Mexico under the NAFTA treaty) are fully liable for U.S. social security and Medicare taxes if they are employed by the university, whether they are resident or nonresident aliens.

Self-Employment Tax Liability

The Internal Revenue Code normally imposes “self-employment tax” on any self-employment income of a person in the United States. But self-employment income of nonresident aliens is exempt from this tax. Again, the exemption is lost if an alien becomes a resident.

As discussed in Lesson 1, foreign scholars, teachers, researchers, trainees, and other non-students who enter the United States on J-1 or Q-1 visas usually become resident aliens on January 1 of their third calendar year in the United States; and foreign students who enter the United States on F-1, J-1, M-1, or Q-1 visas usually become resident aliens on January 1 of their sixth calendar year in the United States.

Note: U.S. immigration law usually does not authorize nonimmigrants (such as nonresident aliens) to earn self-employment income. Thus, the question of a foreign student’s or scholar’s liability for self-employment tax does not often arise. But if a nonresident violates his or her nonimmigrant status by earning self-employment income, the IRS will impose self-employment tax on it.

FORM 843

If social security and Medicare taxes were withheld in error from pay received that was not subject to the taxes, you must first contact the employer who withheld the taxes for reimbursement. If you are unable to get a refund from the employer, file a claim for refund with the Internal Revenue Service on **Form 843, Claim for Refund and Request for Abatement**.

You must attach the following to your claim:

- A copy of your Form W-2, *Wage and Tax Statement*, to prove the amount of tax withheld;
- **Form I-797, INS Approval Notice**, is needed if you have changed your status from F-1 or J-1 to another status prior to filing the claim;
- If your visa status changed during the tax year, you should attach copies of the pay stubs that cover the period of exemption from social security taxes;
- A copy of **INS Form I-94, Arrival/Departure Record**, if you are still in the United States;
- A copy of your valid entry visa;



- **Form 8316, Information Regarding Request for Refund of Social Security Tax**, or a signed statement stating that you have requested a refund from the employer and have not been able to obtain one; and
- A copy of Form 1040NR, *U.S. Nonresident Alien Income Tax Return* (or Form 1040NR-EZ), for tax the year in question. Processing of your claim may be delayed if you submit it less than six weeks after you filed Form 1040NR or 1040NR-EZ.

In addition to the documentation listed above, foreign student visa holders should also attach the following:

- A copy of **Form I-20, Certificate of Eligibility**, endorsed by your student advisor and stamped by the Bureau of Citizenship and Immigration Services; and
- A copy of the Employment Authorization Document of your Optional Practical Training (e.g., Form I-766 or I-688B).
- If you are an exchange visitor, attach a copy of DS-2019 to your claim.

File the claim, with attachments, with the IRS where the employer's returns were filed. If you do not know where the employer's returns were filed, send your claim to the Internal Revenue Service Center, Austin, TX 73301-0215 USA.



Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes) shown on line 3,
- (b) an abatement of employment or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes (use the appropriate amended income tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s)	Your SSN or ITIN
Address (number, street, and room or suite no.)	Spouse's SSN or ITIN
City or town, state, and ZIP code	Employer identification number (EIN)
Name and address shown on return if different from above	Daytime telephone number ()
1 Period. Prepare a separate Form 843 for each tax period From / / to / /	2 Amount to be refunded or abated \$
3 Type of tax. Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related. <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise (see instructions) <input type="checkbox"/> Income	
4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: _____	

5a Interest, penalties, and additions to tax. Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)

- Interest was assessed as a result of IRS errors or delays.
- A penalty or addition to tax was the result of erroneous advice from the IRS.
- Reasonable cause or other reason allowed under the law (other than erroneous advice) can be shown for not assessing a penalty or addition to tax.

b Dates of payment ▶ _____

6 Original return. Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.

- 706 709 940 941 943 945
- 990-PF 1040 1120 4720 Other (specify) ▶

7 Explanation. Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

I am a nonresident alien student of an F-1 visa status. Section 3121 (b) (19) of the Internal Revenue Code and the regulations thereunder state that a NRA student on an F-1 visa is not liable for paying SS and MC taxes on wages for as long as he/she remains an NRA under the residency rules stated in Sect. 7701 (b) of the Internal Revenue Code. I state that for calendar year 2007, I was a NRA student and not liable for the SS and MC taxes. I hereby ask for a refund of SS and MC taxes withheld from my wages. I have asked my employer for a refund of these taxes and have been refused.

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature (Title, if applicable. Claims by corporations must be signed by an officer.) _____ Date _____

Signature (spouse, if joint return) _____ Date _____

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 10180R

Form **843** (Rev. 11-2007)



Form 8316 Rev. January 2006	Department of the Treasury - Internal Revenue Service Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa	OMB No. 1545 - 1862
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A Was the income that the Social Security taxes were withheld from directly related to your course of studies as identified by the provisions of your entry visa:

Yes No

B. If you checked "NO," the taxes were correctly withheld and you are not entitled to a refund. Do not complete the rest of this form.

C If you checked "YES," you must first try to get a refund of the Social Security taxes from your employer before filing a claim with the Internal Revenue Service. If you did this but have not been able to get a refund from your employer, please complete the remainder of this form and attach it to your claim Form 843.

1. Has your employer paid you back for any part of the tax withheld <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	2. If yes, show amount \$
3. Have you authorized your employer to claim any part of the tax as a credit or refund <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	4. If yes, show amount \$
5. Has your employer claimed any part of the tax as a credit or refund <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do not Know </div>	6. If yes, show amount \$

If you cannot get a statement from your employer concerning the above information, please tell us why in the space below.

7. Have you claimed any part of the tax as credit against, or a refund of your Federal income tax <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	8. If yes, show amount \$
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9. Name and address of employer (include street, city, State and ZIP code)

Your signature	Date
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Your telephone number (include area code)	Convenient hours for us to call
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Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us this information so that we can process your claim for refund of erroneously withheld FICA. We need to ensure that you are entitled to the refund and that your employer has not previously issued you a refund of this withholding. If you do not provide all of the information, we may not be able to process your claim. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions may be retained as long as their contents may become material in the administration of any Internal Revenue Law. Generally, tax returns and return information are confidential, as required by Code section 6103. The time needed to complete this form will vary depending on the individual circumstances. The estimated average time is 15 minutes. If you have comments concerning the accuracy of this estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, 1111 Constitution Ave. NW, Washington, DC 20224. Please do not send your order for Form 8316 to the Tax Products Coordinating Committee. Send your forms order to the IRS National Distribution Center.

STUDENT NOTES

