

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802-4210
(562) 951-4411

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To: Human Resource Directors
Payroll Managers

From: Cathy Robinson, Assistant Vice Chancellor
Human Resources Administration

Subject: **CSU Withholding Requirements for Individuals with F, J, M or Q Immigration Status When Tax Residency Status Changes From Nonresident to Resident Alien**

We are writing to address tax withholding requirements for individuals present under F, J, M or Q immigration status when tax residency status changes from nonresident to resident alien. Nonresident aliens holding F, J, M or Q visas are not considered employees for tax purposes and therefore are not subject to social security and medicare (FICA) taxes. Nonresident alien employees with qualifying appointments may participate in the CalPERS retirement plan. However, once their status changes to resident alien for tax purposes, FICA (if a CalPERS retirement plan participant), or participation in a retirement program for part-time, temporary or seasonal employees, applies. This memorandum provides processing guidelines for this situation.

Background Information:

States generally are excluded from coverage of the Social Security Administration (SSA). States can participate voluntarily in social security by agreement with SSA. The State of California entered into a participation agreement with the SSA, known as a Section 218 Agreement. Once a state enters into such an agreement, it cannot terminate the agreement on its own. Social security participation is mandatory.

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At the CSU, generally, employees who participate in a CalPERS retirement plan also participate in social security (except for public safety employees). In 1990, the Omnibus Budget and Reconciliation Act (OBRA) required that employees who do not participate in CalPERS must participate in either social security or another CSU retirement plan. At the CSU, employees not eligible to participate in CalPERS are enrolled in the University of California Defined Contribution Plan (UCDC) or the Department of Personnel Administration Part-Time Seasonal Temporary Retirement Plan (DPA PST) plan in lieu of social security.¹ Specific program participation is based upon employment category, appointment, classification and other appropriate factors.

General Retirement Participation Exclusion for part-time, seasonal and temporary employees: One of the exceptions to the mandatory OBRA retirement plan coverage includes “authorized non-resident aliens with F or J visas or M teaching visas.” This general exclusion is based on Internal Revenue Code (IRC) Section 3121(b)(19) which excludes from the definition of “employment” for tax purposes: “Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M) or (Q), as the case may be.”

The UCDC and DPA PST retirement plans exclude nonresident aliens who are not considered “employed” for FICA tax purposes. However, since resident aliens are subject to FICA tax, if they are not eligible to participate in CalPERS retirement, they must participate in either the UCDC or DPA PST retirement plan, as appropriate, in lieu of social security, plus medicare.

Actions in Progress:

It is anticipated that the number of employees affected by these requirements will be minimal; however, the following administrative and system changes are now underway:

- √ Modifications to the State Controller’s Office (SCO) system audits for PIMS Retirement Coding Item 505 are in progress, since currently employees with an F, J, M or Q noncitizen status (PIMS Item 825) are precluded in the system from all retirement codes other than “N” or “00”. Campuses are required to submit such transactions to the SCO (Personnel Payroll Services Division – Campus CSU Audits Liaison) for processing until the SCO advises us that the system audit has been modified.

¹ The Federal Omnibus Budget Reconciliation Act (OBRA) of 1990 requires that part-time, seasonal, or temporary public employees who are not members of a retirement system be covered either by a qualified retirement plan or by social security. Refer to Technical Letter/Benefits 2003-26 <http://www.calstate.edu/HRAAdm/pdf2003/TL-BEN2003-26.pdf>.

- √ Retirement Account Code “NO” is available as a retirement account code (PIMS Item 505) for CSU use. This code allows for the withholding of FICA tax exclusive of CalPERS retirement.
- √ Revisions to the CSU PIMS Manual are available for reference.

Other Related Considerations:

- √ ***Retroactivity to January 1st:*** The IRC requirement to withhold FICA tax retroactively to the beginning of the tax year in which an individual’s tax residency status changes to resident alien is applicable to state employers. However, since employees not eligible for CalPERS retirement must participate in the part-time, seasonal, temporary employee retirement plan in lieu of social security, the general requirement to retroactively withhold FICA to January 1 of a given year will not be the general rule in all cases.
- √ ***Social Security and Medicare Tax:*** Both the employee and the CSU contributes 6.2% of salary (up to an annual maximum) into social security and 1.45% of salary into medicare. If the social security and/or medicare tax is retroactive to January 1, a date prior to the effective date of CalPERS or UCDC or PST Plan participation, the campus must process the appropriate retirement account code to collect that portion of social security and/or medicare tax that is due prior to the pay period in which the retirement plan participation is effective.
- √ ***Effective Dates for UCDC or PST Retirement Participation:*** The effective date to withhold for UCDC or PST retirement plan participation commences at the beginning of the pay period in which tax residency status changes. Since the UCDC and PST plans are in lieu of social security, the IRC requirement for retroactive withholding (of FICA) to January 1 of a given year does not pertain to the effective date for retirement plan enrollment. Only the medicare portion of FICA must be withheld retroactively in this instance. The affected individual contributes 7.5% of salary into the UCDC or PST retirement plan. Employees are eligible to receive retirement refunds one year after separation from State service. Refer to the respective retirement program plan for additional information.
- √ ***CalPERS Membership:*** The effective date for CalPERS membership and FICA tax withholding may not always coincide. An employee’s appointment may qualify for CalPERS membership in a pay period that differs from the effective date that the individual has a change in tax residency status. FICA tax must be withheld retroactively to January 1 of the respective calendar year in which tax residency status changes to resident alien.
- √ ***Impact of Residency Status Changes:*** Residency status changes will have some impact on retroactive withholding requirements for social security and/or medicare taxes. Providing advance notification will be helpful for affected individuals not familiar with this requirement.
- √ ***Coordination of Retroactive Tax Payments with the SCO:*** When an employment history record is updated to subject an employee to social security/medicare with a retroactive effective date, Payroll Operations will establish agency collection accounts receivable for the social

security/medicare amounts that the employee owes. Campuses will be notified of the accounts receivable by the SCO accordingly. Refer to the SCO's payroll procedures manual (PPM) for additional information in this regard.

- √ ***Retirement Program Plan Participation vs. Nonresident Alien Tax Status:*** Once an employee qualifies for retirement program participation, subsequent eligible appointments typically remain qualified for continued retirement plan participation. Note, however, that an employee's tax residency status impacts retirement program participation, regardless of the appointment qualification. This rare instance would be applicable, for example, to individuals who may return to CSU's employ with a change in tax residency status upon re-entry to the United States (e.g., from resident alien back to nonresident alien for tax purposes).

Withholding Requirement Examples:

- √ A fulltime student on an F-1 visa whose tax residency status changes to resident alien works during the summer recess period in a student "Bridge" classification (code 1874). Employment in the 1874 class code subjects the individual to DPA-PST retirement program participation. PIMS Retirement Account Code Item 505 = "TM." When the fulltime student works during the academic year in the Student Assistant classification (code 1870), the student FICA exemption pursuant to IRC 3121[b][10] remains in effect even though the tax residency status remains "resident" alien for tax purposes.
- √ A part-time Lecturer (class 2358) on a J-1 visa meets the criteria for membership in the DPA-PST retirement program when his tax residency status changes to resident alien in May during the Spring term. PIMS Retirement Account Code Item 505 = "TM" effective at the beginning of the pay period when the tax residency status change occurs. In this instance, the campus must first process PIMS Retirement Code Item 505 = "NM" effective January through April pay periods to collect that portion of medicare tax due based upon wages paid since January 1 of that year before entering code "TM" effective May pay period.
- √ A part-time Lecturer on a J-1 visa is appointed at a half-time timebase. At the beginning of the third consecutive semester (Fall 2004), the Lecturer qualifies for CalPERS membership. Three situations that could have occurred prior to qualifying for CalPERS membership include the following:
 - **Situation #1:** If the Lecturer's tax residency status changed to resident alien in June 2004 during the Spring semester (the second consecutive semester), PIMS Retirement Account Code Item 505 would change from "N" (None) to "TM" (DPA-PST) effective June pay period. In this instance, the campus would first process PIMS Retirement Code Item 505 = "NM" effective January through May 2004 to collect that portion of medicare tax due based upon wages paid since January 1 of that year, and then process Item 505 = "TM" effective June pay period.
 - **Situation #2:** If the Lecturer's tax residency status changed to resident alien in September 2004 (the third consecutive semester), PIMS

Retirement Account Code Item 505 would change from “N” to “08” (CalPERS) effective September 2004 pay period. In this instance, the campus must first process PIMS Retirement Code Item 505 = “NO” effective January through August 2004 to collect that portion of FICA tax due based upon wages paid since January 1 of that year.

- **Situation #3:** If the Lecturer’s tax residency status changes to resident alien in March during the Spring 2005 semester, PIMS Retirement Account Code Item 505 would change from “00” to “08” effective at the beginning of the pay period in which the tax residency status change occurred. (As a reminder, the employee’s CalPERS membership was effective September 2004; however, FICA was not withheld due to the employee’s nonresident alien tax status.) In this instance, the campus must first process PIMS Retirement Code Item 505 = “NO” effective January and February 2005 to collect on that portion of FICA tax due based upon wages paid since January 1 of that year before establishing Item 505 = “08” effective March 2005 pay period.

As a reminder, this guideline is specific to employee compensation paid through the state payroll system. Campuses remain responsible for ensuring nonresident alien tax compliance requirements are met, regardless of how a payment is generated. Inquiries regarding tax residency status should be directed to your campus counsel, campus tax consultant, or other appropriate personnel.

Payroll administrative inquiries may be directed to Human Resources Administration at (562) 951-4411. Campus processing inquiries should be directed to the respective campus’ State Controller’s Office CSU Audits Liaison. This technical letter is also available on Human Resources Administration’s Web page at: <http://www.calstate.edu/HRAdm/memos.shtml>. Thank you.

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