



THE STATE OF FLORIDA
JUSTICE ADMINISTRATIVE COMMISSION

227 North Bronough Street, Suite 2100
Tallahassee, Florida 32301



Alton L. "Rip" Colvin, Jr.
Executive Director

(850) 488-2415
FAX (850) 488-8944

www.justiceadmin.org

COMMISSIONERS

Diamond R. Litty, Chair
Public Defender, 19th Circuit
Kathleen A. Smith
Public Defender, 20th Circuit
Brian Haas
State Attorney, 10th Circuit
Jack Campbell
State Attorney, 2nd Circuit

MEMORANDUM HR15-2022

To: Agency Administrators
From: Carolyn Horwich, Esq., Director of Human Resources
Subject: Hiring Nonresident Aliens
Date: September 2, 2022

New Hire Packets must contain a copy of the employee's Social Security card. There are three types of cards:

1	2	3
<p>Shows your name and Social Security number and lets you work without restriction.</p> <p>We issue it to:</p> <ul style="list-style-type: none"> • U.S. citizens; and • People lawfully admitted to the United States on a permanent basis. 	<p>Shows your name and Social Security number with the restriction, "VALID FOR WORK ONLY WITH DHS AUTHORIZATION".</p> <p>We issue it to people lawfully admitted to the United States on a temporary basis who have DHS authorization to work.</p>	<p>Shows your name and Social Security number with the restriction, "NOT VALID FOR EMPLOYMENT".</p> <p>We issue it to people from other countries who:</p> <ul style="list-style-type: none"> • are lawfully admitted to the United States without work authorization from DHS, but have a valid non-work reason for needing a Social Security number; or • need a number because of a federal law requiring a Social Security number to get a benefit or service.

Depending on the verbiage on the card, you may need to research whether the employee can lawfully work in the United States. Two websites that are helpful in making that determination are the [U.S. Citizenship and Immigration Services](http://www.uscis.gov) and the [Social Security Administration](http://www.ssa.gov). As a reminder, JAC staff cannot provide guidance regarding an employee's legal immigration or work status.

When hiring a Nonresident Alien, there may be extra steps you must take. It is important to collect and review all relevant documents at the very earliest stages when hiring such a person. This is not only to ensure the person is legally authorized to work in the United States, but also to ensure the individual is taxed in a manner consistent with their immigration status.

When you submit a card with “Valid for Work Only with DHS Authorization” on it, please provide a copy of the actual work Employment Authorization Document (“EAD”) with the packet. We request this because the EAD can contain special “terms and conditions” on it that may impact whether the employee is responsible for paying Social Security and Medicare taxes (FICA). The terms and conditions will depend on the type of Visa the individual holds.

If a Nonresident Alien meets the required criteria, they will not be required to pay FICA taxes. The attached extracted pages from the Bureau of State Payrolls (“BOSP”) Payroll Manual provide additional information regarding that scenario.

In order to be exempt from FICA taxes, and to have the correct retirement code entered in People First, any employee claiming Nonresident Alien status should have the following documents on file with the Bureau of State Payrolls Taxation section:

1. Foreign National Information Form, (DFS-A3-1941)
2. Form I-94 Arrival and Departure Record
3. Visa
4. Form I-20 Certificate of Eligibility for Nonimmigrant Student Status
5. Form I-688B Employment Authorization Document

As mentioned, your office should ensure the employee completes the appropriate documentation before or upon hire. JAC staff will forward the packet to BOSPTaxation@myfloridacfo.com. Once the documents have been reviewed by BOSP, JAC will be notified which retirement code to enter in People First for the employee. The retirement code, which is determined by the type of Visa the employee holds, is what drives whether the employee’s wages are subject to Social Security and/or Medicare taxes.

Once the filing status has been approved by BOSP, only JAC or the HR manager in your office can check that box in People First on the W-4 page:

09/03/2020	09/08/2021	Married filing jointly
04/03/2020	09/02/2020	Married filing jointly
04/02/2020	04/02/2020	Single or Married filing separately

Additional amount, if any, you want withheld from each paycheck

Additional Tax Amount

 Are you a Nonresident Alien?

IRS Directed

W-4 Signed Date

If the box is not checked, and the employee should have been exempt from having Social Security and Medicare taxes deducted from their paycheck, the refund process can take some time.

Thank you.

NONRESIDENT ALIEN TAXATION

It is the Agencies’ responsibility to notify the Bureau of State Payrolls Taxation Section that they are hiring a Foreign National or Nonresident Alien that may be exempt from some taxes. It is frequently the case that an agency hires a nonresident alien without being aware of the required documentation and separate tax rules. The Internal Revenue Code, Section 1441, Withholding of tax on nonresident aliens, provides a separate tax system with a different set of tax rules and regulations for individuals deemed to be nonresident aliens. It is important to understand that the definition of nonresident alien for tax purposes is different from that for immigration purposes. Generally, every person born or naturalized in the U.S. and subject to its jurisdiction is a citizen. All other individuals are referred to as aliens for immigration and taxation purposes. Aliens are classified as either nonresident or resident aliens. The approval of any tax exemption for refund is based on the United States Tax Treaty with the employees’ home country and IRS guidelines.

LEGEND FOR ACRONYMS USED BELOW	
DHS	Department of Homeland Security
DOS	Department of State
DSO	Designated School Official
EAD	Employment Authorization Document
SEVIS	Student & Exchange Visitor Information System
STEM	Science, Technology, Engineering and Math
USCIS	U.S. Citizenship and Immigration Services

VISA Holder Types: As a rule, the only aliens exempt from social security and Medicare taxes are F-1, J-1, M-1, and Q-1 visa holders while they are in nonresident tax status.

Note: If one of these designated visa holder changes to resident tax status during a year, he is subject to social security and Medicare taxes for the entire year on his subject wages. The agency must maintain a registry that will notify them if there is any change to the employees VISA status within the year.

F-1 Visa - Student

Individuals in the United States engaging in a full course of academic study in an accredited educational program that has been designated by DHS. (Students enrolled in vocational training are given M-1 visas.)

May participate in employment directly related to field of study by obtaining practical training authorization. There are two kinds of practical training:

- **Curricular Practical Training.** Employment that is an integral part of an established curriculum. Requires approval of DSO in SEVIS and on Form I-20. EAD not required. Employment authorization is employer specific.
- **Optional Practical Training.** Employment during or after completion of studies. The total period of employment may not exceed 12 months. Additional extension of 17 months, available to STEM graduates working for an e-Verify employer. Requires recommendation of DSO and approval by USCIS. EAD required.

J-1 Visa - Exchange Visitor: Professor, Researcher, Specialist, Trainee, Physician, Intern

Individuals in the United States as visiting researchers, professors, short-term scholars, specialists, trainees, interns, or alien physicians under the sponsorship of an exchange visitor program that has been designated by the Department of State.

May be employed “incident to status” only by the designated program sponsor or appropriate designee, and within the guidelines of the program approved by DOS, for the period of validity as stated on the DS-2019. Under limited circumstances, professors, researchers, and short-term scholars may receive compensation from other institutions with prior authorization in SEVIS from the RO or ARO of their designated program.

M-1 Visa - Vocational Student

Individuals enrolled in a vocational school or program in the United States.

May be employed for practical training following completion of studies for a maximum of six months. Must apply to USCIS for EAD. Employment must be related to field of study and recommended by DSO through endorsement of I-20.

Q-1 Visa - International Cultural Exchange Program Participants

Includes participants in an International Cultural Exchange program and participants in an Irish Peace and Training Program, and their dependents.

Employment restricted to the petitioning employer or agency through whom the status was obtained. EAD is not required. Dependents not permitted to be employed.

Agencies should be aware, nonresident aliens are subject to different tax withholding rules and reporting and liability requirements. Internal Revenue Service (IRS) Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, addresses these rules and requirements along with guidelines for resident or nonresident alien determination for taxation purposes; requirements for completing IRS Form W-4; and tax treaties applicable to nonresident aliens. IRS Publication 515 is available at <http://www.irs.gov/pub/irs-pdf/p515.pdf>.

Non-Resident Aliens must complete a W-4. On Line 3 of the W-4 they must check the single box regardless of their actual marital status. On Line 5 the NRA generally, should claim one withholding allowance. However, if the employee is a resident of Canada, Mexico, or South Korea, a student or business apprentice from India, or a U.S. national, the employee may be able to claim additional withholding allowances for their spouse and children. See Publication 519 for more information.

The Agency **must** provide the necessary documentation to the Bureau of State Payrolls, so that a determination can be made to determine the tax-exempt status that may be available and whether the employee has had payroll taxes deducted from a salary payment in error. It is the Agency’s responsibility to work with the employee to collect and provide all the necessary supporting documentation to BOSP Taxation and Reconciliation Section. The Agency must verify that all documentation is valid.

- A) Foreign National Information Form, (DFS-A3-1941)
- B) Form I-94 Arrival and Departure Record
- C) Visa,
- D) Form I-20 Certificate of Eligibility for Nonimmigrant Student Status,
- E) Form I-688B Employment Authorization Document.
- F) FICA Refund Request Form (DFS-A3-1932)

Once all the documentation has been reviewed by BOSP and the employee has met the criteria to establish exemption from certain taxes, BOSP will notify the Agency of the determination. It is then the Agencies' responsibility to make the necessary changes to the employee's retirement plan code to prevent additional taxation and retirement contribution errors.

NRA Retirement Code	NRA Retirement Code Explanation
ZX	OPS Employee with F1/J1 Visa Status
HD	Reg member F1/J1 Visas
HF	Special Risk F1/J1 Visas
ON	Optional Retirement Program F1/J1 Visa (ORP)
PD	PEORP - Reg Member F1/J1 Visa
PF	PEORP-Special Risk F1/J1 Visa

A listing of all agency NRA employees, along with corresponding retirement codes, can be monitored by viewing RDS report W**0. The asterisks represent the first two digits of your agency's organization (ORG) code. It is the agency's responsibility to monitor this report in order to comply with the IRS regulations.