

# The Kentucky Division of Social Security *...leading the way*

State Government Edition

<http://sssa.state.ky.us>

## Federal Income Tax Withholding on Nonresident Aliens

### Overview

In general, if you pay wages to nonresident aliens, you must withhold income tax, unless excepted by regulations, as you would for a US citizen. Income tax withholding from the wages of nonresident aliens is, however, subject to the special rules shown below. You must also give a Form W-2 for these wages to the nonresident alien and file it with the SSA.

**Form W-4** When completing Form W-4 nonresident aliens are required to:

- Not claim exemption from income tax withholding.
- Request withholding as if they are single, regardless of their actual marital status.
- Claim only one allowance (if the non resident alien is a resident of Canada, Mexico, Japan, or Korea, he or she may claim more than one allowance).
- Request an additional income tax withholding amount, depending on the payroll period, as follows:

Payroll Period	Additional Withholding
Weekly	7.60
Biweekly	15.30
Semimonthly	16.60
Monthly	33.10
Quarterly	99.40
Semiannually	198.80
Annually	397.50
Daily or Miscellaneous (each day of the payroll period)	1.50

**Note:** Nonresident alien students from India are not subject to the additional income tax withholding requirement.

### FICA Tax Withholding on Non-Resident Aliens

The FICA status of a nonresident alien depends on the coverage applicable to the state agency, the visa type, the purpose for which the alien entered the US and the length of time the alien has been in the US.

Generally, the following visa types are excluded from FICA taxes, both social security and medicare: "F", "J", "M" and "Q". All visa holders with other visa classifications are usually subject to FICA tax withholding.

Additionally, foreign students with visa types "F-1", "J-1", "M-1" and "Q-1" who have been in the US more than 5 calendar years are generally subject to FICA tax withholding. Foreign scholars, teachers, researchers, trainees and other non-students with visa types J-1 or Q-1 who have been in the US more than two calendar years also are generally subject to FICA withholding. A state agency must, however, look to the coverage applicable to each employee's position.

See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*, and Pub. 519, *U.S. Tax Guide for Aliens*, for exceptions to these general rules.



## Adoption Benefits

Amounts paid or expenses incurred by an employer for qualified adoption expenses under an adoption assistance program are not subject to income tax withholding and are not reportable in box 1 of the Form W-2. These amounts are, however, subject to social security and medicare taxes, if the employee is covered, and must be reported in box 3 and box 5 of the Form W-2. This includes adoption benefits paid from a section 125 (cafeteria) plan, but does not include adoption benefits forfeited from a cafeteria plan.

Also, the total amount must be reported in box 13 of the Form W-2 with code T.

An employee who receives reimbursement or payment that does not qualify for exclusion from gross income, or only partially qualify, must make an appropriate adjustment on Form 1040 to include in gross income the taxable portion of the reimbursement. In addition, the employee may need to make an adjustment to his or her income tax withholding (on Form W-4) or make estimated tax payments to avoid penalties for underpayment of tax on the taxable portion of the reimbursement.

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*The Commonwealth of Kentucky does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the providing of services and will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.*

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## Board Members May Be Employees for Federal Tax Purposes

State board members are considered officers and therefore employees of the Commonwealth for federal employment tax purposes. Wages paid these employees should be reported, at the end of each calendar year, on Form W-2, not Form 1099.

The federal employment taxes are those imposed by the Federal Insurance Contribution Act (FICA) and the Collection of Income Tax at Source on Wages (federal income tax).

### **Board Members and Federal Income Tax Withholding**

Section 3401(c) of the Internal Revenue Code (Code), pertaining to the Collection of Income Tax at Source on Wages, defines the term "employee" as including an officer, employee or elected official of the United States, a state or any political subdivision thereof.

Section 31.3401(c)-1(a) of the Employment Tax Regulations provides that the term "employee" includes officers and employees, whether elected or appointed, of a state or political subdivision thereof.

Accordingly, an appointed board member of the Commonwealth is an employee within the meaning of section 3401(c) of the Code and section 31.3401(c)-1(a) of the regulations. The member's compensation is subject to federal income tax withholding and Form W-2 reporting.

### **Board Members and FICA Withholding**

Services performed in the employ of the Commonwealth, for most state employees, are covered for social security and medicare purposes pursuant to the Commonwealth's Section 218, social security coverage agreement. This includes those appointed members of the Commonwealth's various boards, authorities and commissions.

Section 3121(d)(4) of the Code defines the term "employee" as any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act. Section 218(b)(3) of the Social Security Act defines the term "employee" as an officer of a state or political subdivision.

KRS 61.420(3) defines an employee covered under a section 218 agreement as any person in the service of the Commonwealth or a political subdivision and shall include all persons designated officers including those which are elected and those which are appointed.

Contact the Kentucky Division of Social Security to inquire about the appropriate coverage for any state employee, state board member or contract employee.

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