

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

State Government Edition

<http://www.state.ky.us/agencies/finance/depts/ss/divss.htm>

Non-Overnight Travel Rules

Meal reimbursements for state employees who do not have overnight travel are a taxable fringe benefit, according to the IRS. State agencies should treat employee expense reimbursements for non-overnight travel (i.e., travel not away from home) as a taxable fringe benefit, withhold the applicable federal employment taxes and report these wages on Form W-2.

As outlined in IRS regulation 1.162-2, reimbursement of an employee's deductible business expenses that meet all IRS requirements are generally not considered a taxable fringe benefit. Those reimbursements that do not meet IRS requirements are, however, considered paid under a non-accountable expense allowance arrangement and are, therefore, considered a taxable fringe benefit.

To be an accountable plan, an employer's reimbursement or allowance arrangement must include all three of the following rules. 1) Expenses must have a business connection - that is, an employee must have paid or incurred deductible expenses while performing service as an employee of the employer. 2) An employee must adequately account to the employer for these expenses within a reasonable period of time. 3) An employee must



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Non-Resident Alien Rules

Most services performed by state employees are covered for social security and medicare. The Internal Revenue Code, however, grants an exemption from social security and medicare to nonimmigrant students, scholars, teachers, researchers and trainees temporarily present as "nonresident aliens" in the US in F-1, J-1, M-1 or Q-1 status and performing service in social security covered employment.

Since the social security and medicare tax exemption for foreign students, scholars, teachers, researchers and trainees under the IRC requires that the employee be a nonresident alien, then the tax exemption ceases to exist when the employee becomes a "resident alien".

Foreign students in F-1, J-1, M-1 or Q-1 status who have been in the U.S. less than five calendar years remain nonresident aliens. This exemption applies to any period in which the foreign student in is "practical training" allowed by the Immigration and Naturalization Service while still a nonresident alien.

Foreign students in F-1, J-1, M-1 or Q-1 status who have been in the U.S. more than five calendar years are considered resident aliens and are liable for social security and medicare taxes. Similarly, foreign scholars, teachers, researchers, trainees and other nonstudents in J-1 or Q-1 status who have been in the U.S. less than two calendar years are nonresident aliens and exempt from social security and medicare taxes, but become

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Non Overnight Travel

return any excess reimbursement or allowance within a reasonable period of time.

Internal Revenue Code Sections 62(a) and 162(a) require that ordinary and necessary business expenses be for traveling away from home for the plan to meet the business connection rule. Reimbursements for non-overnight travel do not meet the "business connection" rule and the IRS considers them made under a non-accountable plan. The IRS interprets the language in IRC 162(a)(2) of "while away from home" to require sleep or rest before any expense reimbursement is deductible as an employee business expense and therefore, nontaxable. This interpretation was upheld in a Supreme Court decision (*H.O. Correll*, Sct, 68-1, 389 U.S. 299).

Under this court decision and according to the IRS, an employee may deduct meal and lodging expenses on a business trip away from home only when (1) the trip lasts substantially longer than an ordinary day's work, (2) the employee cannot reasonably be expected to make the trip without being released from duty for sufficient time to obtain substantial sleep or rest, and (3) the release from duty is with the employer's tacit or express acquiescence or is required by governmental regulations. The employee need not be away from home for a whole day or from

dusk to dawn so long as relief from duty is long enough to get necessary sleep or rest.

An employer can maintain two arrangements, accountable and non-accountable, for an employee. Those expense reimbursements under an accountable plan are not a taxable fringe benefit. However, those reimbursements under a non-accountable plan are considered a taxable fringe benefit. State agencies should follow the FICA coverage rules applicable to an employee's coverage status for payments made under a non-accountable plan when entering taxable meal reimbursements to the UPPS system.

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Nonresident Aliens

resident aliens after two calendar years in the U.S. and, at that time, become liable for social security and medicare taxes.

When measuring the date of entry into the US the actual date of entry is irrelevant. It is the calendar year of entry which is counted. For example, a foreign student who enters the U.S. on December 31, 1999 counts the 1999 calendar year as the first of the five years as an "exempt individual".

The IRC provides one exemption from social security and medicare taxes for foreign students and a second for all students, American and foreign, who meet the conditions in IRS Revenue Procedure 98-16. This is the "student FICA exemption" and it may exempt a foreign student from social security and medicare taxes even if a resident alien.

The IRS has issued regulations which clearly stipulate that the spouses and dependents of students, scholars, trainees, teachers or researchers with F, J, M or Q status are not exempt from social security and medicare taxes.

Alien students, scholars, trainees, teachers or researchers in F-1, J-1, M-1 or Q-1 status who change to a nonimmigrant status become liable for social security and medicare taxes in most cases on the very day of the change of status. Nonresident aliens with an H visa status are liable for social security and medicare taxes from the first day of U.S. employment regardless of whether their wages may or may be exempt from federal income taxes under an income tax treaty. Foreign scholars, teachers, researchers or trainees who arrive in the U.S. in O visa status or TN visa status (from Canada or Mexico under the NAFTA treaty) are fully liable for social security and medicare taxes.

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Instructions for Withholding Federal Income Tax on Nonresident Aliens

Social security, medicare and income taxes must generally be withheld if wages are paid to nonresident aliens. (See the article beginning on page 1 for full coverage rules.) A Form W-2 must be given to the nonresident alien and a copy must be filed with the Social Security Administration. The wages are subject to FUTA tax as well.

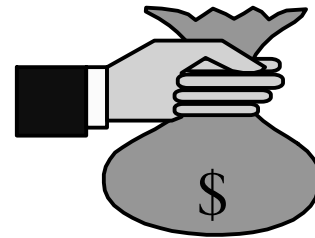
To avoid under withholding of income tax, nonresident aliens should when completing a Form W-4:

- * not claim exemption from income tax withholding,
- * request withholding as if they are single, regardless of actual marital status,
- * claim only on allowance (Nonresident aliens from Canada, Japan, Korea or Mexico may claim more than one allowance.),
- * request an additional income tax withholding amount, depending on the payroll period, as follows:

<u>Payroll Period</u>	<u>Additional Withholding</u>
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 aliens from India are not subject to the additional income tax withholding requirement.*

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.



New Social Security On-Line Retirement Planner

One of the most important things you will do in your lifetime is plan for your retirement. And it never too early to begin. Estimates of your future retirement benefits are provided in your Annual Benefit Statement. You may also obtain a more detailed estimate when you get close to your retirement date.

But what about your social security benefits when you retire? The Social Security Administration now offers Social Security Retirement Planners to let you compute estimates of your future social security benefits. You also can get important information on factors affecting your retirement benefits, such as military service, household earnings and governmental employment. The Social Security Planners can help you chart your course to a financially secure retirement.

You can access the Social Security Planners at the SSA web site at: <http://www.SSA.gov/retire>. To maintain privacy and protect records from unauthorized users, the calculators are not linked to social security earnings records. All estimates are based on your input. For your convenience, three separate options for obtaining an estimate are provided requiring different levels of input from you:

- * The *Quick Calculator* produces a rough estimate that requires only your age and current earnings.
- * The *On-line Calculator* produces a benefit estimate on past, present and project future earnings data that you have to input. (You can get the past data from your social security earnings benefit statement.)
- * The *Detailed* estimate allows you the most flexibility to customize your benefit estimate based on differing scenarios and produces a variety of estimates for both you and your family.

Social Security Full Retirement Age Now 65

The usual full retirement age for individuals retiring now is age 65. The full retirement age, starting in the year 2003, will be increased in gradual steps. See the chart below showing these increases.

Age To Receive Full Social Security Benefits

Year of Birth	Full Retirement Age
1937	65
1938	65 & 2 months
1939	65 & 4 months
1940	65 & 6 months
1941	65 & 8 months
1942	65 & 10 months
1943-1954	66
1955	66 & 2 months
1956	66 & 4 months
1957	66 & 6 months
1958	66 & 8 months
1959	66 & 10 months
1960 & later	67

President Clinton Signs “Freedom to Work Act”

President Clinton signed legislation on April 7 to allow older workers who have reached “full retirement age” for social security (currently age 65) to work after retirement and receive their full social security benefits. The “Senior Citizens’ Freedom to Work Act” was passed unanimously by Congress. Retirees can now work after age 65 without a reduction in the social security benefits.

The new law is effective retroactive to January 1, 2000. The Social Security Administration said that social security beneficiaries will receive any retroactive payments in May and the regular, unreduced, monthly benefits beginning in June. The changes will be made automatically, so there is no need to contact the SSA.

Exempt amounts under retirement earnings test	1995	1996	1997	1998	1999	2000
Under age 65 *	\$8,160	8,280	8,640	9,120	9,600	10,080
Age 65-69 for years prior to 2000	\$11,280	12,500	13,500	14,500	15,500	
Months prior to age 65 attainment **						\$17,000
Months after age 56 is attained ***						No limit

* One dollar in benefits will be withheld for every two dollars in earnings above the limit.

** Applies only for those months, in the calendar year an individual reaches age 65, prior to attaining age 65. One dollar in benefits will be withheld for every three dollars in earnings above the limit.

*** There is no limit on earnings beginning the month an individual attains age 65.

As of January 2000, the retirement earnings test has been eliminated for those age 65-69. It remains in effect for those ages 62-64. A modified test applies for the year an individual reaches age 65. **State agencies should withhold FICA from wages paid those employees performing service in covered positions, no matter the age or social security benefit status.**