

29 de julio de 1998

Administración
Central
Universidad de
Puerto Rico

Circular Num.99-03

FUNCIONARIOS Y EMPLEADOS A CARGO DE LA ADMINISTRACION Y
LAS FINANZAS UNIVERSITARIAS

**DESCUENTOS DE CONTRIBUCIÓN AL SEGURO SOCIAL Y MEDICARE
(FICA)**

Oficina de
Finanzas



Le incluyo copia del informe 98-3, emitido por la Asociación Nacional de Oficiales de Colegios y Universidades (NACUBO, por su siglas en inglés), el cual contiene la publicación Número 98-16 del 16 de enero de 1998 del Interval Revenue Service (IRS) relacionada a los descuentos de contribución al Seguro Social y Medicare (FICA) de los estudiantes a jornal, ayudantes de cátedra y/o asistentes de investigación y preparación de tesis están exentos del pago de "FICA".

El IRS nos informa que no se le descontará contribución a los estudiantes con carga académica de 6 o más créditos. Esto aplica a graduandos y subgraduados que estén trabajando. No hay límite de horas de trabajo, esto quiere decir, que pueden trabajar más de 20 horas semanales.

Los pagos que reciben los estudiantes como ayuda para la investigación y preparación de la tesis requerirá para la obtención del grado en determinada materia que su labor es requisito de adiestramiento. Los pagos que reciben los estudiantes como ayuda económica no constituyen ingresos tributables.

Los estudiantes matriculados durante el verano que trabajen no se le descontará contribución alguna y solo aplicará a cinco (5) semanas exentas. Aquellos estudiantes que no estén estudiando, si trabajan más de cinco (5) semanas se le descontará.

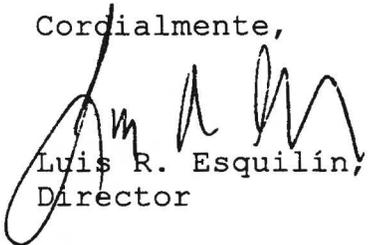


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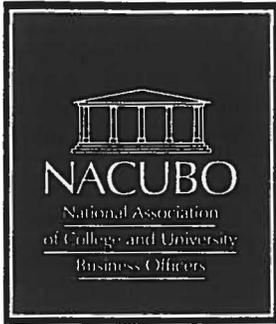
En adición, le informamos que los pagos a asistentes de investigación que su labor no es requisito de estudios, los pagos a estudiantes que sean contratos a jornal por la Universidad de Puerto Rico en sus horas libres o en el verano, los pagos que reciben los estudiantes que trabajan bajo el Programa de Estudio y Trabajo y los pagos a estudiantes que participan como ayudantes de cátegra son considerados bajo la Ley como una remuneración por servicios prestados y, por ende, tributables.

Cordialmente,



Luis R. Esquilín, CPA
Director

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NACUBO

Advisory

Report 98-3

February 23, 1998

IRS Issues New Student FICA Guidelines

Revenue Procedure 98-16 Published on January 16, 1998

This report was prepared by Bertrand M. Harding Jr., an attorney specializing in higher education tax issues. Harding also serves as counsel to the Student FICA Coalition.

A copy of IRS Rev. Proc. 98-16 is included in this report.

On January 16, the IRS issued its long-awaited new guidelines setting forth the standards that it will use to determine whether student-employees are eligible for the so-called student FICA exception. These new guidelines are set forth in Revenue Procedure 98-16 (Rev. Proc. 98-16).

Background

The Internal Revenue Code imposes a tax that was enacted as part of the Federal Insurance Contributions Act (FICA) on both employers and employees with respect to wages paid to employees. The code, however, contains a number of different exceptions to the FICA tax, one of which exempts services performed for a college or university by a "student who is enrolled and regularly attending classes" at the institution.

For many years, there was no specific IRS interpretation or standard to be met for a student-employee to qualify for the FICA tax exception. In 1993, the IRS issued some informal guidance in the form of a technical advice memorandum (TAM) to one institution. The TAM essentially said that an undergraduate student-employee had to be a full-time student and could not work more than 20 hours a week to qualify for the exemption from FICA. Because many institutions classify undergraduate students as full-time if they are enrolled for at least 12 credit hours, the criteria presented in the TAM came to be known as the "12/20 rule." Even though this IRS guidance only applied to one institution, many IRS agents applied the 12/20 rule when conducting audits at other colleges and universities.

In 1994, the University of Michigan and Indiana University organized a group of about 30 schools (known as the Student FICA Coalition) to convince the IRS that the 12/20 rule was contrary to the underlying statute. In addition to these institutions, NACUBO and other higher education associations took an active role in the coalition's efforts. As part of a submission to the IRS, the coalition proposed regulations to replace the 12/20 rule. After almost four years of negotiations, the IRS issued Revenue Procedure 98-16, which, for the most part, contains the guidelines that the coalition had recommended.

The provisions for determining qualification for the student FICA exception outlined in Rev. Proc. 98-16 are not exclusive. Rather, they serve as safe harbors, which means that the IRS will not challenge any claimed student FICA exception that meets these guidelines. A student employment situation that does not fall within the safe harbors set forth in the guidelines will be examined based on all the facts and circumstances of the case.

Highlights of Revenue Procedure 98-16

1. Half-time Students Qualify — While the previous informal IRS guidance required that the student-employee be a full-time student, the new guidelines require that the student only be enrolled on a half-time basis. For example, if an institution defines a full-time student as one who is taking at least 12 credit hours, a student-employee taking 6 or more credit hours is eligible for the exception. The guidelines contain definitions of both “half-time undergraduate students” and “half-time graduate students.” In addition, a student-employee who is enrolled on less than a half-time basis can still qualify if the individual needs less than 6 hours to graduate and is enrolled for only those credit hours.
2. No Work Hour Limitation — Unlike the previous guidance which said that the student FICA exception was not available to a student (even a full-time student) who worked more than 20 hours a week, the new guidelines impose no limit on hours worked.
3. Career Employees Ineligible — The IRS position is that the student FICA exception should not be available to full-time employees of the institution who may also be enrolled in classes at the institution. (This was part of the rationale for imposing the previous 20-hour work week restriction). To ensure that such employees are not able to use the exception, the new guidelines are not applicable to “career employees.” The guidelines define a “career employee” as one who meets any one of the following tests: (i) eligible to participate in the institution’s section 403(b) or other retirement plans, (ii) eligible to receive tuition waiver benefits, or (iii) classified as a career employee by the institution. There are two important aspects to this “career employee” definition. First, while employees who are eligible to participate in a section 403(b) plan are generally considered to be career employees, if the individual is only able to make salary reduction contributions to the plan, and does not receive and is not eligible to receive employer-matching contributions, that person will not be treated as a career employee. Second, the tuition waiver criterion does not apply to graduate teaching or research assistants, and the fact that these persons may receive tuition waivers does not mean that they will be classified as career employees. Finally, the guidelines state that this definition of a “career employee” is not exclusive, and that an institution may be able to demonstrate that an individual should not be classified as a career employee for other reasons.
4. Status Determined at End of Drop-Add Period — Whether a student meets the “half-time” test should be made at the end of the drop-add period. This determination may be adjusted thereafter at the institution’s option. Determination of “student” status for periods before the end of the drop-add period is made based on the number of hours for which the student is registered and enrolled.
5. Students Working Immediately Before and After Academic Term — It is common for student-employees to begin working shortly before classes begin for an academic term and to continue to work until shortly after the academic term ends. The guidelines say that services performed during all payroll periods of a month or less that fall either wholly or partially within the academic term are eligible for the student FICA exception. For example, if a student-employee worked during a payroll period that began on August 16 and ended on August 29, the person would be eligible for the student FICA exception on wages earned during this two-week period even if classes did not begin until August 27.
6. Summer Term and Other Breaks — The IRS has long taken the position that a student who works for the institution during the summer months, but is not enrolled for summer school classes, is not eligible for the student FICA exception. The new guidelines

reaffirm that position. Prior to the issuance of Rev. Proc. 98-16, there was a question about the position of the IRS regarding work performed by student-employees during other breaks in the academic term, for example, breaks between semesters. The guidelines resolve this question by saying that the student FICA exception will continue to apply as long as the break is 5 weeks or less, provided that the student was otherwise eligible for the exception on the last day of classes preceding the break, and was eligible to enroll in classes in the academic period following the break.

7. Guidelines Do Not Apply to Certain Categories — The guidelines specifically exclude from coverage post-doctoral students and fellows, as well as medical residents and interns. For these persons to be exempt under the student FICA exception, they must qualify under the facts and circumstances test.
8. Ph.D. Candidates — The guidelines do not specifically mention how individuals who are enrolled in a Ph.D. program will be treated. Therefore, if these individuals qualify under the “half-time graduate student” test, they should be eligible for the FICA exception. If not, they would be subject to a facts and circumstances test.
9. Anti-Abuse Rule — The guidelines contain an “anti-abuse” rule. It gives the IRS broad authority to ignore the new tests set forth in the guidelines if it appears that the institution is “inappropriately” applying the guidelines to “manipulate” or “mischaracterize” the relationship between the institution and the student-employee. The anti-abuse rule would come into play, for example, if an institution attempted to avoid FICA tax by purposefully converting research laboratory workers from career to non-career status and requiring them to enroll in a 6-hour certificate program granting them academic credit for their work in the laboratory. In this example or in similar situations, the IRS has the authority to ignore the guidelines and make a determination based on all the facts and circumstances of the case.
10. Effective Date — The guidelines contain no effective date and therefore are theoretically applicable on both a prospective and retroactive basis.

Revenue Procedure 98-16

The following is the complete text of Rev. Proc. 98-16, released on January 16, 1998.

Information Contacts

For more information regarding Revenue Procedure 98-16, contact Neil D. Shepherd of the Office of Assistant Chief Counsel (Employee Benefits & Exempt Organizations), Internal Revenue Service, at 202-622-4606.

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Internal Revenue Procedure 98-16

Part III

ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS

26 CFR 401: EMPLOYMENT TAXES.

(ALSO PART I, SECTIONS 3121; 31.3121(B)(10)-2.)

SECTION 1. PURPOSE

This revenue procedure sets forth generally applicable standards for determining whether service in the employ of certain public or private nonprofit schools, colleges, universities, or affiliated organizations described in section 509(a)(3) of the Internal Revenue Code (the Code) performed by a student qualifies for the exception from Federal Insurance Contributions Act (FICA) tax provided under section 3121(b)(10) of the Code (Student FICA exception). These standards are intended to provide objective and administrable guidelines for determining employment tax liability. The Student FICA exception standards were developed in response to requests for guidance by many public and private nonprofit institutions of higher education.

SECTION 2. SCOPE

.01 Institutions of higher education typically distinguish between career employees and student employees. Sections 5 and 6 of this revenue procedure contain generally applicable standards for determining whether or not services performed by career employees and student employees are eligible for the Student FICA exception.

.02 The standards contained in this revenue procedure do not apply to employees who are postdoctoral students, postdoctoral fellows, medical residents, or medical interns because the services performed by these employees cannot be assumed to be incidental to and for the purpose of pursuing a course of study.

.03 The standards contained in this revenue procedure do not constitute the exclusive method for determining whether the Student FICA exception applies. Thus, for example, if the standard for qualifying for the exclusion described in section 6 of this revenue procedure is not met, whether or not service in the employ of a school, college, university, or affiliated organization described in section 509(a)(3) of the Code will qualify for the Student FICA exception will depend on consideration of all the facts and circumstances.

SECTION 3. BACKGROUND

.01 Sections 3101 and 3111 of the Code impose social security and Medicare taxes (FICA taxes) on employees and employers, respectively, equal to a percentage of the wages received by an individual with respect to employment.

.02 Section 3121(a) of the Code defines "wages" for purposes of FICA taxes as all remuneration for employment, with certain exceptions. Section 3121(b) of the Code defines "employment" as services performed by an employee for an employer, with certain exceptions.

.03 Section 3121(b)(10) of the Code excepts from the definition of employment services performed in the employ of a school, college, or university (whether or not that organization is exempt from income tax), or an affiliated organization described in section 509(a)(3) of the Code, if the service is performed by a student who is enrolled and regularly attending classes at that school, college or university. Remuneration for services excluded from the definition of employment under section 3121(b)(10) of the Code is not subject to FICA taxes.

.04 Section 31.3121(b)(10)-2 of the Employment Tax Regulations provides that whether an employee has the status of a student is determined on the basis of the employee's relationship with the school, college, or university for which the services are being performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at the school, college, or university has the status of a student in the performance of those services. Employment that is not incident to and for the purpose of pursuing a course of study does not qualify for the exception. If the employee does perform services as an incident to and for the purpose of pursuing a course of study and, therefore, has the status of a student, the amount of remuneration for services performed by the employee, the type of services performed by the employee, and the place where the services are performed are immaterial for purposes of the Student FICA exception.

.05 Section 218 of the Social Security Act (the Act), 42 U.S.C. section 418, allows states to provide Social Security coverage for services performed by students for the public school the student is attending under agreements established with the Social Security Administration. If a state has exercised its option under section 218 of the Act to provide for coverage of student services, section 3121(b)(10) of the Code provides that those services will not qualify for the Student FICA exception.

SECTION 4. INSTITUTIONS OF HIGHER EDUCATION

.01 The standards contained in this revenue procedure apply to institutions of higher education. For purposes of this revenue procedure, the term "institution of higher education" includes any public or private nonprofit school, college, university, or affiliated organization described in section 509(a)(3) of the Code that meets the requirements set forth in Department of Education regulations at 34 C.F.R. section 600.4 (1997), as amended from time to time, and that is accredited or preaccredited by a nationally recognized accrediting agency as defined in the Department of Education regulations at 34 C.F.R. section 600.2 (1997).

.02 Services for other institutions may also be eligible for the Student FICA exception. Thus, for example, services performed by a student for a secondary school may be eligible for the Student FICA exception. Whether or not services for other institutions, such as secondary schools, qualify for the Student FICA exception is determined based on the facts and circumstances of each case.

SECTION 5. STANDARDS APPLICABLE TO CAREER EMPLOYEES

.01 Services performed by career employees are not eligible for the Student FICA exception under the standard in section 6 of this revenue procedure because their employment cannot generally be considered to be incident to and for the purpose of pursuing a course of study. However, a career employee may be eligible for the Student FICA exception, based on consideration of all the facts and circumstances.

.02 For purposes of this revenue procedure, the term "career employee" is defined as any individual performing services for an institution of higher education who --

- (1) is eligible to participate in any retirement plan described in section 401(a) of the Code that is established or maintained by the institution, or would be eligible to participate if age and service requirements were met;
- (2) is eligible to receive an allocation of employer contributions other than contributions described in section 402(g) of the Code under an arrangement described in section 403(b) of the Code, or would be eligible to receive such allocations if age and service requirements were met, or if contributions described in section 402(g) of the Code were made by the employee;
- (3) is eligible for reduced tuition (other than qualified tuition reduction under section 117(d)(5) of the Code provided to a teaching or research assistant who is a graduate

student as described in section 7.03 of this revenue procedure) because of the individual's employment relationship with the institution; or

(4) is classified by the institution of higher education as a career employee.

.03 If an individual performs services in multiple job positions, the individual will be deemed a career employee with respect to all of the positions if the individual is a career employee in any one or more of the job positions.

SECTION 6. STANDARDS APPLICABLE TO UNDERGRADUATE AND GRADUATE STUDENTS

.01 An individual who is a half-time undergraduate student or a half-time graduate or professional student and who is not a career employee will qualify for the Student FICA exception under this revenue procedure with respect to services performed at or for institutions of higher education in which they are enrolled or at affiliated organizations described in section 509(a)(3) of the Code. Services performed by a student for any other employer do not qualify for this exception.

.02 An individual is deemed to be a half-time undergraduate or half-time graduate or professional student if the individual is not a career employee and is an undergraduate or graduate student who is in the last semester, trimester, or quarter of a course of study requiring at least two semesters, trimesters, or quarters to complete and is enrolled in the number of credit or unit hours needed to complete the requirements for obtaining a degree, certificate, or other recognized educational credential offered by that institution of higher education even if enrolled in less than half the number required of full-time students.

.03 The determination of student status should be made at the end of the drop-add period and may be adjusted thereafter at the institution of higher education's option. The determination of student status for payroll periods ending before the end of the drop-add period may be based on the number of semester, trimester, or quarter hours being taken at the end of the registration period for that semester, trimester, or quarter.

.04 If an individual is described in section 6.01 or 6.02 of this revenue procedure, services performed by the individual are eligible for the Student FICA exception with respect to all services performed during all payroll periods of a month or less that fall wholly or partially within the academic term.

.05 The Student FICA exception does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks (including summer breaks of more than five weeks), other than services described in section 6.04. See Rev. Rul. 72-142, 1972-1 C.B. 317, and Rev. Rul. 74-109, 1974-1 C.B. 288. However, the Student FICA exception applies to employment which continues during normal school breaks of 5 weeks or less during which the individual is not eligible for the Student FICA exception pursuant to section 6.01 of this revenue procedure provided that the individual qualifies for the Student FICA exception pursuant to section 6.01 of this revenue procedure on the last day of classes or examinations preceding the break and is eligible to enroll in classes for the first academic period following the break.

.06 If the standards of this revenue procedure are met (and section 8 does not apply), the amount of remuneration for services performed by the employee, the type of services performed by the employee, the place where the services are performed, and the number of hours worked by the employee are immaterial. If the services performed by a student otherwise described in section 6.01 or 6.02 are covered under an agreement pursuant to section 218 of the Act, the Student FICA exception does not apply.

.07 For provisions relating to domestic service performed by a student in a local college club, or local chapter of a college fraternity or sorority, see section 31.3121(b)2-1.

SECTION 7. DEFINITIONS

For purposes of the standard contained in section 6 of this revenue procedure, the following definitions must be used.

.01 Undergraduate student.

The term "undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. section 674.2 (1997).

.02 Half-time undergraduate student.

The term "half-time undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. section 674.2 (1997).

.03 Graduate or professional student.

The term "graduate or professional student" means a student who --

- (1) is enrolled at an institution of higher education for the purpose of obtaining a degree, certificate, or other recognized educational credential above the baccalaureate level or is enrolled in a program leading to a professional degree;
- (2) has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and
- (3) is not a postdoctoral student, postdoctoral fellow, medical resident, or medical intern.

.04 Half-time graduate or professional student.

The term "half-time graduate or professional student" means an enrolled graduate or professional student, as defined in section 7.03 of this revenue procedure, who is carrying at least a half-time academic workload at an institution of higher education as determined by that institution according to its own standards and practices.

SECTION 8. ANTI-ABUSE RULE

The standards in this revenue procedure must be applied in a reasonable manner, consistent with the purpose of excluding from employment only services that are performed as an incident to and for the purpose of pursuing a course of study at a school, college or university. See section 31.3121(b)(10)-2(c). If the standards are inappropriately applied in a manner that conflicts with this underlying purpose so as to manipulate or mischaracterize the nature of the relationship between an employee and an institution of higher education, resulting in the improper avoidance of payment of FICA taxes, then whether the Student FICA exception applies will be determined on the basis of all the facts and circumstances, rather than on the basis of the specific standards set forth in sections 5 and 6 of this revenue procedure. For example, the standards would be inappropriately applied through the manipulation of the relationship between employees and the institution of higher education if a university claimed that the Student FICA exception applied to research laboratory workers, who had been career employees, but were converted to non-career status and required to enroll in a certificate program granting six credit hours per semester for work experience in the laboratory. As another example, if an individual who was not a student worked for a university on a full-time basis for many years, in a job generally performed by non-students (but nonetheless failed to meet the literal definition of career employee), and then enrolled at the university for six credit hours of course work per semester while continuing the full-time work in the same job, it may not be appropriate to apply the standards of this revenue procedure to conclude that the individual's work has become incident to and for the purpose of pursuing a course of study solely because the individual enrolled for this course work. In both of these examples, whether the work is performed incident to and for the purpose of pursuing a course of study must be determined on the basis of all the relevant facts and circumstances.