
Student FICA Tax Exemption

Reason for Policy

This document provides guidelines, based on the Internal Revenue Code, and IRS regulations and directives, for determining whether a student's service in the employ of the SUNY DMC (**collectively** to be referred to as **College** in this document) qualifies for an exemption from FICA taxes imposed on wages.

Overview

Social Security and Medicare (FICA) taxes do not apply to services performed by students employed by a school, college, or university where the student is pursuing a course of study. Whether employees are students for this purpose requires examining the individual's employment relationship with the college to determine if employment or education is predominant in the relationship. If the employee is enrolled and regularly attending classes at the college in pursuit of an educational credential as their primary purpose for being here, FICA taxes will not apply to compensation (**note:** the exemption is not applicable to employees who are taking classes at another institution).

The **College** will make student FICA determinations based on [Revenue Procedure 2005-11](#) safe harbor guidelines, as discussed in the next section. Students who meet these guidelines will be treated as exempt from FICA taxes, while those student employees who do not meet these guidelines will be subject to FICA taxes on their wages.

Background

FICA (Federal Insurance Contributions Act) taxes are imposed on all wages paid or received with respect to employment. Employers are required to withhold FICA from the wages of an employee and pay a matching contribution, subject to certain limitations. Payments to employees for services are generally subject to FICA tax unless an exemption from the tax is provided in an IRS Code.

[Section 3121\(b\) \(10\)](#) of the Internal Revenue Code sets forth an exemption from FICA tax for employees of schools, colleges or universities who are enrolled and regularly attending classes at those institutions. However, all student employees do not qualify for the FICA tax exemption. It is only for those student employees who provide services that are **“incident to and for the purpose of pursuing a course of study” and whose educational relationship with the school predominates over the person's employee relationship.** IRS regulations set forth a broad “facts and circumstances” test that should be used in determining whether a student employee qualifies for the student FICA exemption. This means you review all pertinent information, in addition to IRS regulations, in order to determine if the student employee qualifies for the FICA exemption.

In addition to its regulations, the IRS issued [Revenue Procedure 2005-11](#), which sets forth certain **“safe harbor”** tests that, if met, will deem the student employee to be exempt from FICA tax. This means that if a student employee qualifies under these safe harbor rules, the person will be treated as exempt from FICA tax without the necessity of looking to the “facts and circumstances” test. The IRS recognizes that it may be possible for an individual to not meet the Revenue Procedure 2005-11 safe harbor tests and still qualify for the student FICA exemption by looking at the facts and circumstances surrounding the student's employment. As a general rule, the policy of the **College** will be to make student FICA determinations based on [Revenue Procedure 2005-11](#) safe harbor guidelines; that is, those student employees who meet these guidelines will be treated as exempt from FICA tax, while those student employees who do not will be subject to FICA tax on their wages.

Criteria for Student FICA Tax Exemption per IRS Safe Harbor

- 1. General Standards:** Under [Revenue Procedure 2005-11](#) safe harbor rules, a wage payment made by the college to an individual will qualify for the student FICA exemption if the individual:
 - is at least a half-time undergraduate student or at least a half-time graduate or professional student,
 - is not a full-time employee of the college,
 - is not a “professional employee” and
 - is not a career employee eligible to receive certain employment benefits or participate in certain employment benefit plans (e.g. vacation, sick leave, 403(b), etc.)
- **Student enrollment status:** A student employee must be enrolled and regularly attending classes at a school, college, or university at which the student-employee is employed.

A half-time undergraduate, graduate, or professional student is deemed to be enrolled if he/she is carrying a half-time academic load, as determined by the College Registrar. The per-semester course loads that qualify the student for the FICA tax exemption under safe harbor rules are as follows:

For SUNY DMC, the fall/spring semesters and summer terms are as follows:

- *Undergraduates:* 6 or more credit hours.
- *Graduates and professional students:* 6 or more credit hours.

In addition, traditional classroom activities are not the sole means of satisfying this requirement. For example, research activities under the supervision of a faculty advisor to complete the requirements for a Ph.D. degree may constitute a “class” under the regulations. Therefore, students enrolled in master’s thesis research and preparation, or dissertation research and preparation will qualify for the student FICA exemption. Furthermore, the **College** regards Teaching Assistants, Research Assistants and Graduate Student Assistants to be enrolled as full-time students. Finally, an employee must be pursuing a course of study towards a degree in order to have the status of a student.

- **Full-time employees:** Regardless of the **College’s** classification, any employee whose normal work schedule is 37.5/40.0 hours or more per week will be treated as a full-time employee.
- **Professional employees:** Under [Revenue Procedure 2005-11](#), a student who is a professional employee does not qualify for safe harbor protections. While Graduate Assistants and Research Project Assistants may qualify as professional employees under this standard and thereby not meet the [Revenue Procedure 2005-11](#) safe harbor test, the **College** will treat such student employees as eligible for the student FICA exemption **under the facts and circumstances test**, provided that the person’s normal work schedule is not 37.5/40.0 or more hours per week. Notwithstanding, students hired into faculty positions, regardless of the number of scheduled hours per week, will not qualify for the student FICA exemption in that assignment or any other faculty or student assignment.
- **Employment benefits:** A student employee does not qualify for the safe harbor rules under [Revenue Procedure 2005-11](#) if the employee is eligible to receive one or more of the following benefits:
 - vacation, paid holiday, and paid sick leave benefits;
 - participation in an Internal Revenue Code §401(a), §403(b), or §457 (a) retirement plan;
 - reduced tuition (other than qualified tuition reductions for Teaching Assistants and Research Assistants under IR Code section 117(d)(5)); or
 - benefits under Internal Revenue Code §79 (life insurance), §127 (qualified educational assistance), §129 (dependent care assistance program), or §137 (adoption assistance).

While some **College** students are eligible to receive one or more of these benefits, the **College** will nevertheless treat such student employees as eligible for the student FICA exemption under the facts and circumstances test, provided the students' normal work schedule is not 40 or more hours per week.

2. **Graduating Students:** A student who is less than half-time will still meet the safe harbor guidelines if the student is graduating. That is, an individual who is in the last semester or term of a course of study and is enrolled for the number of credit hours needed to complete the degree requirements will still be regarded as at least a half-time student, even if the student is enrolled in less than half the number of credit hours required of full-time students.
3. **School Breaks:** An individual working for the **College** during the summer or during other school breaks of more than 5 weeks, but who does not have the status of a student during this period, as defined in this policy, is **not eligible** for the student FICA exemption on wages paid during the period. The student FICA tax exemption does apply to school breaks of 5 weeks or less (for example, winter and spring breaks) provided the individual is a continuing student. In order to be eligible for the FICA tax exemption during school breaks of 5 weeks or less, the individual must qualify for the FICA tax exemption on the last day of the semester or term preceding the break and be eligible to enroll for classes in the first semester or term following the break.
4. **Other Employee Groups:** According to [Revenue Procedure 2005-11](#), the safe harbor guidelines are not available for those employees who are postdoctoral students or postdoctoral fellows because the services performed by these employees cannot be assumed to be incidental to and for the purpose of pursuing a course of study. Thus, payments to postdoctoral associates are not eligible for the student FICA exemption.
5. **FICA Status of Foreign Nationals:** Students, researchers, or scholars temporarily present in the U.S. on F1, J1, M1, or Q1/Q2 visas are usually exempt from FICA taxes as long as they are considered "nonresident aliens" for income tax purposes (note: it would not be normal for SUNY DMC to have a student on either an M1, Q1, or Q2 visa) . Other rules regarding the number of calendar years a visa holder is considered to be a nonresident alien pertain to each visa and can impact whether the student FICA exemption is appropriate.

Contact for Questions / Clarifications:

Payroll Department

(718) 270-1139 or

E-mail

Payroll@downstate.edu

Frequently Asked Questions – FICA Taxes

What is FICA?

FICA is the abbreviation for Federal Insurance Contributions Act taxes which, along with Medicare taxes, are withheld from employee paychecks and matched by employers. FICA is the means by which social security is funded. If taxed, 6.2% of your gross wages plus an equal amount paid by the **College** will be paid into social security and be utilized in determining your benefit upon retirement. There are maximum limits, adjusted annually, for which a person's wage is subject to the FICA tax.

What is Medicare Tax?

Medicare taxes are the means by which Medicare is funded. If taxed, 1.45% is withheld from your paycheck and an equal amount matched by employers. There is no annual limitation on wages subject to Medicare taxes.

Are Students exempt from the FICA and Medicare Taxes?

The IRS provides an exemption from FICA and Medicare taxes for students paid by the colleges and universities in which they are enrolled. There are regulations that define who is a student and, therefore, eligible for the exemption from these taxes.

How many credits do I have to take to be considered a student under the student FICA exemption?

IRS rules require that students be "enrolled and regularly attending classes." The number of credits you need to be taking at the **College** is determined by whether you are an undergraduate or graduate student and the academic semester in which you are enrolled. The following chart shows the number of credits that you must take to be considered a student for purposes of the exemption. Determination of student status is made each semester and that determination is monitored for each payroll.

FICA CHART OF MINIMUM CREDIT HOURS AND MAXIMUM HOURS WORKED			
STUDENT STATUS	Minimum Credits Per Semester (Note 1)		Maximum Weekly Hours of Work to Remain Exempt (Note 3)
	Fall/Spring	Summer (Note 2)	
Undergraduate	6	6	20
Graduate School Student	6	6	20
Professional School Student	6	6	20
Advanced Masters Candidate Working on Thesis or Dissertation	1	1	20
Ph.D. Candidate Working on Thesis or Dissertation	1	1	20

Notes:

1. A student in their final semester (has applied for graduation), and enrolled in the number of hours needed to complete his/her graduation requirements, is still eligible for the FICA exemption, even if he/she is taking fewer credit hours than shown here.
2. Summer term is defined as all sessions within the summer term
3. The maximum hours worked is based on the aggregate hours across all payrolls (SA, RA, GA, and CWS). Setting the limit at 20 is consistent with "in good academic standing" requirements and also provides sufficient cushion versus a 40 hour work week that would make a student become and "employee" for FICA exemption purposes.

How many hours can I work and still be subject to the student FICA Exemption?

Undergraduate students, meeting the 6 credit hour requirement in the above chart may work no more than 20 hours per week in order to maintain their eligibility for the student FICA exemption. Graduate students may not work more than 20 hours per week and must be enrolled in the credit hours specified in the above chart in order to maintain their student FICA exemption.

Can a student still receive the FICA exemption if he/she is employed by both the SUNY DMC and the State?

Yes, if the total hours a student works on all the payrolls do not exceed 20. Otherwise, he/she will pay FICA taxes on all paychecks received.

☞ *Example:* A student is on the SUNY DMC payroll as a Research Aid (RA) and works 15 hours. That same student is hired by the State as Student Assistant (SA) in the University Police department and works 8 hours. The 23 total hours exceeds the **College's** 20 hour limit so FICA taxes will be assessed on **both** paychecks (RA and SA). The reason is that hours worked on all payrolls related to SUNY DMC's educational purpose are aggregated in determining whether the FICA tax exemption applies.

Cite: Per §31.3121(b)(10)-2, "services performed by certain students in the employ of a school, college, or university, **or of a nonprofit organization auxiliary to a school**, college or university...." indicates that all related entities fall under the roof of SUNY DMC (referred to as "**College**" in this document).

Will a student always pay FICA taxes if they exceed 20 hours during a week?

If a student occasionally exceeds 20 hours, the tax exemption will remain in effect. However, if exceeding 20 hours becomes a pattern, the FICA exemption will be removed and the student will be taxed.

How can a student who receives fringe benefits still be exempt from paying FICA taxes?

The **College** applies the safe harbor tests provided for in [Revenue Procedure 2005-11](#), to determine whether a student is eligible for the FICA tax exemption. An employee receiving benefits is generally not eligible. However, a "fact and circumstances" test can be applied to compare educational versus service aspects. Therefore, the **College** will treat such student employees as eligible for the student FICA exemption under the facts and circumstances test.

What if a student works at SUNY DMC but attends another SUNY school?

That student is subject to FICA deductions. The IRS necessitates that a student work on the campus that they are pursuing their degree in order to be eligible for the FICA exemption.

If an SUNY DMC appointment is set up at an FTE percentage greater than 50%, will the student have to pay FICA taxes?

Yes. A 50% FTE equates to 20 hours and that is the limit set by the **College** for which a student will be eligible for the FICA tax exemption. Anything exceeding this will result in the student being subject to FICA deductions.

If an SUNY DMC student appointment is set up at 50% but the pay rate is increased to get a student's total pay in the range of a 100% FTE appointment, will the FICA tax exemption apply?

Probably not because an "anti-abuse" rule in Section 9 of [Revenue Procedure 2005-11](#) provides the IRS with the ability to look all the circumstances to ensure that the revenue procedure is applied in a reasonable manner consistent with the intent of the regulations. This situation might give the appearance that student FICA tax exemption rules are being circumvented.