



DEPARTMENT OF THE TREASURY
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OFFICE OF
CHIEF COUNSEL

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Dear :

This responds to your request for information regarding the procedures for withholding and paying taxes under the Federal Insurance Contributions Act (FICA) with respect to remuneration paid to nonresident aliens visiting the United States temporarily in B-1 visa status. Specifically, you inquired about the payment of FICA on wages received by B-1 visa holders for services performed in the United States for a foreign employer.

Generally, a citizen of a foreign country who wishes to enter the United States must first obtain a visa, either a nonimmigrant visa for temporary stay or an immigrant visa for permanent residence. A visitor entering the United States in B-1 visa status holds a permanent residence in a foreign country which he or she has no intention of abandoning and is only visiting the United States temporarily for business or pleasure. The term business refers to legitimate activities of a commercial or professional character. It does not include local employment or labor for hire. B-1 visitors cannot accept full-time, part-time or temporary employment for which they are paid by a United States institution. Visitors entering the United States in immigration categories which do not allow employment (such as B-1 visa holders) are generally not entitled to Social Security Numbers (SSNs) and, therefore, must obtain Individual Taxpayer Identification Numbers (ITINs).

FICA taxes are imposed on wages paid with respect to employment. The term "wages" means all remuneration for employment, with certain exceptions. The term "employment" includes any service, of whatever nature, performed within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either. Thus, remuneration for services performed within the United States by a nonresident alien who is temporarily visiting the United States, is subject to FICA.

Employers must file Form W-2 for wages paid to each employee from whom FICA taxes were withheld. Anyone required to file Form W-2 must file Form W-3 to transmit Copy A of Form W-2 to the Social Security Administration. Each Form W-2 must show the correct SSN for each employee. The Social Security Administration uses SSNs to record employees' earnings for future social security and Medicare benefits. Employers

are required to get each employee's name and SSN and to enter them on Form W-2. This requirement also applies to resident and nonresident alien employees. IRS forms and publications instruct employers not to accept an ITIN in place of an SSN for employee identification or for work. An ITIN is only available to resident and nonresident aliens who are not eligible for employment in the United States and need identification for other tax purposes.

Procedures do exist for employers to use when filing Forms W-2 for wages paid to employees who do not have SSNs. The instructions for Form W-2 state that the employer should "Enter zeros (000-00-0000) if Form W-2 is filed electronically or on magnetic diskette with the SSA."

Employers have a responsibility to file correct information on their employees' Forms W-2. Failure to do so may result in a penalty of \$50 per incorrect Form W-2. However, the penalty will not apply to any failure that an employer can show was due to reasonable cause and not to willful neglect.

An employer that is required to report employment taxes or give tax statements to employees must have an employer identification number (EIN). Thus, a foreign employer that pays wages to an employee for services performed in the United States must have an EIN to report employment taxes or give tax statements to employees. You have asked whether a foreign corporate employer may avoid obtaining an EIN by simply allowing its United States parent corporation to report and pay employment taxes on its behalf under the EIN of the United States parent. Although there is a procedure whereby an employer can authorize an agent to file employment tax returns on the employer's behalf using the EIN of the agent, this procedure requires both the employer and the agent to have EINs and to obtain the approval of the IRS by filing a Form 2678, Employer Appointment of Agent.

I hope this information is helpful. If I can be of further assistance, please do not hesitate to contact me at .

Sincerely,

Lynne Camillo
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Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt & Government Entities)