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January 2, 2015

Mr. Phil Simon
Council on International Educational Exchange
300 Fore Street
Portland, ME 04101

Re: J-1 Visa Holders and Social Security Numbers

Dear Phil:

We respond to your request to review the present IRS regulations surrounding the issuance of Social Security numbers to J-1 visa holders and whether they may commence work prior to being assigned a number or issued a card. I am pleased to report that the current (2014) regulations are essentially the same as previous regulations on this issue.

The Federal Insurance Contributions Act ("FICA"), specifically 26 U.S.C. § 3121(b)(19) (2014), continues to exempt nonresident J-1 visa holders from paying Social Security and Medicare taxes. This, of course, assumes that the J-1 visa holder maintains this immigration status throughout the period of employment and that the employment itself is one of the exempt categories of employment under the relevant statutes. If the holder's immigration status changes, or if the employment ceases to be in an exempt area of employment, such taxes would be due from the date of the status change.

Holders of J-1 visas are not required to pay FICA taxes, but IRS regulations require all employees who are subject to the withholding of income tax from wages to obtain a Social Security number. 26 C.F.R. § 31.6011(b)-2(a)(1)(ii). In this regard, J-1 visa holder employees are no different from other employees in an employer's business.

All employees, including J-1 visa holders, who are subject to withholding of income tax must make an application for a Social Security number through Form SS-5 if they do not already have one. If the employee does not already have a number, the employee must file a Form SS-5 with supporting documentation on or before the seventh day of employment (or on the date of termination of employment, if earlier). 26 C.F.R. §§ 31.6011(b)-2(a)(1)(ii) and (a)(2).

Given that the Department of Homeland Security validates the identity documents submitted by J-1 visa holders with the Form SS-5, there can be an administrative delay in obtaining a Social Security card and number. Thus, employers should be advised to inform the J-1 visa holders of their obligation to file Form SS-5 with supporting documentation at the earliest possible opportunity.

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The IRS regulations pertaining to the submission of Social Security numbers for employment are the same for J-1 visa holders as they are for U.S. resident citizen employees. If the Social Security card and number are provided to the employee prior to the beginning of employment, the employee should show the card to his or her employer. 26 C.F.R. § 31.6011(b)-2(b)(1)(i). If the employee has been issued a number, knows it, but the card is not available, the employee is to give his or her employer the number and name as it exists on the card. 26 C.F.R. § 31.6011(b)-2(b)(1)(ii).

If the employee has applied for a number but it has not been issued, the employee should furnish a copy of the receipt from the Social Security Administration. 26 C.F.R. § 31.6011(b)-2(b)(1)(iii). If the employee is unable to furnish a number or a receipt, the employee shall furnish to the employer “a statement in writing, signed by the employee, setting forth the date of the statement, the employee’s full name, present address, date and place of birth, father’s full name, mother’s full name before marriage, and the employee’s sex, including a statement as to whether the employee has previously filed an application on Form SS-5 and, if so, the date and place of such filing.” 26 C.F.R. § 31.6011(b)-2(b)(1)(iv). The employee can provide the employer a copy of the Form SS-5 if previously submitted (since it contains the same information) but submission of this copy to the employer does not relieve the employee from submitting the Form SS-5 to the Social Security Administration for approval.

If the employee has a card but does not show it to the employer when required, the employee shall “promptly thereafter” show it to the employer. Likewise, if the employee has applied for a card at the time of employment, once the card is received by the employee the employee shall “promptly” show the card to the employer. 26 C.F.R. § 31.6011(b)-2(b)(2).

If no number has been received at the time W-2 wage reports are due, the employer’s reports should be submitted in the following manner:

- For Paper Filers: If the employee has applied but no number has been received at the time of filing, enter “Applied For” in Box a.
- For Electronic Filers: If the employee has applied but no number has been received in time for filing, enter all zeros (i.e., “000-00-0000”) in the field for the Social Security number.

See generally <http://socialsecurity.gov/employer/hiring.htm>. If the employee has presented proof of an application, the employer should note the employee’s name as it exists on the application, the expiration date of the proof of application, and the issuing office address. 26 C.F.R. § 31.6011(b)-2(c)(3)(i). If the employee submitted a copy of the Form SS-5 or a statement, the employer should attach a copy of the Form or statement to the W-2. 26 C.F.R. § 31.6011(b)-2(c)(3)(ii). If the employee has not or cannot submit the above-described documents, then the employer – with certain exceptions for household or agricultural employees – should submit with the employer’s reports its own written statement (signed along with the notation “*Employer*”)

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including the same information (to the best of the employer's knowledge) required by the employee statement discussed above. 26 C.F.R. §§ 31.6011(b)-2(c)(3)(iii) and (c)(4).

Once the employee has received a card and number and has shown the same to his or her employer, the employer can file a Corrected Wage and Tax Statement (Form W-2c) to show the correct number.

Please feel free to call to discuss any open questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. Gould', with a long horizontal flourish extending to the right.

Rodney E. Gould

REG:dlc