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**MEMORANDUM**

To: All State Agency Payroll and Personnel Administrators

From:  7/1/2014  
Ricky Bejarano, Deputy Cabinet Secretary / State Controller  
Department of Finance & Administration

Date: July 1, 2014

Subject: Exemption Requirements from Social security and Medicare taxes for holders of F, J, M or Q visa

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Pursuant to the provisions of the Internal Revenue Service's Publication 15 (Circular E) and Publication 515 regarding the exception rule for withholding social security and Medicare taxes as it pertains to holders of F, J, M or Q visa, temporarily in the United States of America (U.S.), and who receives pay for services performed to carry out the purpose for which he or she was admitted to the U.S., the following three requirements must be met in order for an employer to make a determination to process a refund in the event that social security and Medicare taxes was erroneously withheld:

- The employee has a valid F, J, M or Q visa for the employment period at issue;
- The employee was a nonresident alien for income tax purposes (i.e., the employee was in the U.S. for less than 5 years); and
- The employee received pay for services performed to carry out the purpose for which he or she was admitted to the U.S.

Outlined below are recommendations for best business practices that will prevent the occurrence of the event that social security and Medicare taxes are erroneously withheld for holders of F, J, M or Q visa who are on internship with the State of New Mexico:

1. The employing agency should be cognizant of the fact that the Internal Revenue Service (IRS) requires that nonresident aliens follow special instructions when completing Form W-4, Employee's Withholding Allowance Certificate. At the top of page 1 of Form W-4, there is a notice stating "If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form." IRS Notice 1392 gives specific instructions regarding how a nonresident alien

should complete a W4. Specifically, the IRS Notice states that nonresident aliens should write "nonresident alien" or "NRA" on line 6 of the W-4 and check "single" on line 3 regardless of the person's actual marital status. Agencies should review Notice 1392 for more detailed information and instructions.

Each state agency has primary responsibility for receiving W-4 tax form data and entering this information into SHARE HCM (*see*, 6/7/2010 Model Accounting Practices Manual HR 1.1(F), page 363). Accordingly, it is the responsibility of the employing agency to ensure that an employee has correctly completed his or her W-4 and that W-4 data is correctly entered into SHARE (including any exemptions from withholding).

2. The employing agency should be aware that employees with an F, J, M or Q visa may be exempt from withholding for social security and Medicare taxes. The employing agency has primary responsibility for determining whether the employee qualifies for the exemption from social security and Medicare tax withholding. If the employing agency determines that the employee qualifies for the exemption from social security and Medicare withholding, then the employing agency should make the appropriate entry in SHARE HCM so that social security and Medicare taxes are not withheld from wages.

The employing agency should retain copies of all documentation it relied on to support its determination that the wages are exempt from social security and Medicare tax withholding (i.e., the employee's W-4, I-9, Visa (type F, J, M or Q), I-94, and Optimal Practical Training (OPT) or Curricular Practical Training (CPT) certification from the employee's sponsoring educational institution). Employees should be informed that if they fail to provide the required documentation regarding visa and OPT/CPT authorization from their sponsoring educational institution that social security and Medicare will be withheld from their wages.

3. If the employee is a student and presents a foreign passport and visa for the I-9, the employing agency should consider whether the employee may qualify for the exemption from social security and Medicare tax withholding. The employing agency should request that the employee provide the documentation listed in (2) above. Employees should be informed that social security and Medicare taxes will be withheld if they fail to provide the requested documentation.

Please contact Gilbert Kometa, Central Payroll Bureau Chief at 505 – 476 – 8535 if you have questions related to this memorandum.