



Tax Department

Payments to Nonresident Aliens

The taxability of payments made to Nonresident Aliens (NRA) depends on various immigration and tax treaty factors. Our University has many foreign visitors, students and employees. The first criteria of whether or not a payment can be made and the taxability of the payment is the foreign individual's visa. There are many different visa types. The most frequent we have are:

- F-1 Students. Work authorized under very limited circumstances.
- J-1 Exchange visitors, students, scholars, trainees, researchers. Work authorized under certain circumstances for the sponsoring institution as allowed by their sponsoring institution's program.
- H-1B Professional. Work authorized for the sponsoring employer. May only receive compensation as an employee.
- B-1 Business visitors. No work authorization. Eligible to receive honorarium and reimbursement for travel expenses in limited situations. Contact the Tax Department.
- B-2 Visitors for pleasure. No work authorization. Eligible to receive honorarium and reimbursement for travel expenses in limited situations. Contact the Tax Department.
- A-1 Diplomats and foreign government officials. No work authorization and they are ineligible to receive honorarium or travel reimbursements.
- G-1 Employees of international organizations. No work authorization and they are ineligible to receive honorarium or travel reimbursements.
- WB Waiver of visa for business. No work authorization.
- WT Waiver of visa for tourism. No work authorization.

All employees, fellows (stipend recipients) and student employees are paid through the University's payroll system. Withholding rates vary depending on individual circumstances. Payments made to any other foreign individuals are paid through the A/P system and must be approved by the Tax Department. Most of these payments are for honorariums, travel reimbursements and volunteering as human subjects.

Honorariums are made to NRAs for providing personal services performed in the United States and are subject to tax withholding at a 30% rate if not exempted by treaty. The taxability of these payments is based on U.S. tax treaties with the visitor's home country, type of visa, the 9/5/6 rule (see below) and the underlying facts and circumstances. Honorariums can also be paid to foreign organizations. If you have an honorarium payment to a foreign organization the same rules apply to them unless the service is provided in a foreign country.

Personal Service Income: If the payment is for personal services performed in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer. You must generally withhold tax at the **30%** rate on compensation you pay to a NRA for labor or personal services performed. This category of pay includes payments for volunteering as a human subject and for professional services, such as fees of an attorney,

physician, or accountant made directly to the person performing the services. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers. It does not include individuals appointed as employees. Personal service and honorarium payments are also governed by the 9/5/6 rule.

9/5/6 Rule: Foreign individuals are eligible to receive honorarium payments from an organization if;

- they are not at that organization for longer than 9 days and
- they have not been at 5 other organizations in the U.S. during the last 6 months.

Payments may not be made if the individual exceeds any one of these limits. If the University has sponsored the individual and this is the only organization that they are to visit in the United States, then the 9/5/6 rule might not need to be applied. You should always ask the foreign individual if they have been in the US during the previous six months and if so, whether they received an honorarium from another organization.

Form 8233 can be used by foreign individuals who provide independent personal services to claim exemption from, or reduced withholding, if permitted by the tax treaty with their country. In order to use this form the foreign individual must have a social security number (SSN) or a U.S. individual taxpayer identification number (ITIN). A foreign individual who wants to apply for a U.S. ITIN number needs to complete the **W-7** form. To obtain a SSN the individual must be employed in the U.S. and file form SS-5. Upon issuance of the ITIN number by the Internal Revenue Service they would be entitled to use the treaty benefit between their home country and the United States. The treaty benefit will exempt or reduce tax withholding on payments received in the U.S. The NRA must also provide a copy of his/her visa or I-94.

If an 8233 is not filed, tax must be withheld from all payments. Application for and issuance of SSN or ITIN can take up to 6 months. Application should be made early or delayed payment arrangements made so that the number can be obtained if withholding is to be avoided or reduced. Form 8233 without SSN or ITIN is not acceptable.

Note: Canadian citizens SSNs look just like United States SSNs. Please verify that the SSN provided is United States SSN.

Travel expenses.

Generally if the payments are made under the accountable plan (in accordance with the University's travel policy) and are for a business purpose you may pay or reimburse for travel expense to a nonresident alien. Most payments are not reportable to the IRS and are not subject to NRA withholding. Travel reimbursements also depend on the foreign individual's visa type and if they qualify for an honorarium payment. We may not be paying them an honorarium, but they must qualify to receive an honorarium in order to receive a travel reimbursement if they are on any visa type other than B-1 or B-2. The foreign individual must provide travel documents; airline tickets, train tickets, food receipts, etc. The University's accountable plan does not recognize per diem payments, so all expenses must have receipts. To approve travel expense payments and reimbursements the Tax Department requires the following information;

- A copy of the visa showing the immigration entry stamp and/or I-94 issued by immigration, and
- What service and why the foreign national is at the University, and

- Did the University invite the foreign national, and
- How many days will the foreign national be at the University, and
- Will the foreign national be visiting any other organization while they are in the United States?

Purchases of Equipment from Foreign Companies:

Most purchases of equipment from foreign companies are not subject to tax withholding and reporting unless:

- The foreign company has a U.S. office, or
- The equipment is installed in the U.S. by an employee of the foreign company, or
- There is a service contract as part of the purchase price and the service will be provided by a NRA.

If you make any purchases that fall under the parameters listed above, you need to contact Sandra Goodwin, 314-935-8335 in the Tax Department about withholding issues.

Purchases of Software from Foreign Companies:

Software licensing fees are classified as royalty payments by the Internal Revenue Service. Depending on the Income Tax Treaty provisions with the foreign company's country of operation (*if that country has an income tax treaty with the U.S.*), these software licensing fees would be subject to withholding at a rate of 0% to 30%. Training provided by the foreign company to the University's employees would be taxable at 30% unless the foreign company can provide the University with a valid Form W-8BEN. If you make any purchases that fall under the parameters listed above, you need to contact Sandra Goodwin, 314-935-8335 in the Tax Department about withholding issues.