

SOUTHERN ILLINOIS UNIVERSITY'S GUIDELINES AND PROCEDURES

For Payments Made to or on the Behalf of Nonresident Alien Employees, Independent Contractors, Guest Speakers/Honoraria Recipients, Students and Scholars

*The guidelines and procedures described herein serve as a reference tool to be used by departments when making payments to or on the behalf of a nonresident alien and should in no way affect the University's decision to hire or otherwise engage any individual. Failure to comply with the guidelines and procedures described herein will result in the maximum amount of tax withholding for the nonresident alien and/or significant potential tax liability for the University. Note: A nonresident alien for tax purposes is different than a nonresident alien for immigration purposes. U.S. tax withholding and reporting rules governing nonresident aliens are quite different than those governing U.S. citizens, permanent residents, and resident aliens for tax purposes. **Therefore, the guidelines and procedures addressed herein apply only to nonresident aliens for tax purposes.***

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OVERVIEW

There are four categories of individuals for U.S. tax purposes:

- U.S. Citizen
- Permanent Resident (i.e., “Green Card Holder”)
- Resident Alien for Tax Purposes
- **Nonresident Alien for Tax Purposes**

U.S. tax law requires the University to withhold federal income tax, unless specifically exempt by either U.S. tax law or by an income tax treaty, and report to the Internal Revenue Service (IRS) all payments made to a nonresident alien or to a third party on his or her behalf. Therefore, in order for the University to be in compliance with this law, the University must be able to identify **all** payments made to or on the behalf of a nonresident alien. The University is then required to apply the appropriate tax withholding and report the payments made to those individuals in the correct manner. If the University does not withhold the appropriate amount of tax at the time of payment, the University can be held liable for the tax that was not withheld, plus penalties and interest.

Types of Payments Made to or on the Behalf of a Nonresident Alien

- Wages, Salary, or Compensation
- Independent Contractor Payments for Personal Services
- Scholarship/Fellowship Grants Covering Tuition, Fees, Books, Room/Board, and/or Travel
- Guest Speaker/Honoraria
- Prizes/Awards
- Royalties/Commissions
- Travel Payments/Reimbursements

Note: Payments do not have to be paid in cash or made directly to a nonresident alien to be considered income. For example, prizes/awards credited to a nonresident alien student’s Bursar account and direct payments to a hotel or airline on the behalf of a nonresident alien may qualify under these requirements.

Possible Exemptions from Tax Withholding

A nonresident alien may be eligible to claim an exemption from the 30 or 14 percent or graduated rates of withholding if he or she qualifies for an income tax treaty exemption. An income tax treaty is an agreement between the U.S. and a foreign country that is intended to alleviate double taxation. Income tax treaties also contain various provisions designed to promote cross-cultural education and exchange by allowing students, teachers, and researchers of one country to perform certain related activities in the other country and receive an exemption from tax in the host country. These tax treaty exemptions are usually only valid for a limited time period and/or for a specified

dollar amount. A nonresident alien must meet the qualifications of a particular tax treaty in order to claim an exemption and must complete either *Form 8233* or *Form W-8BEN* to request the exemption.

Responsibility of the Department Requesting a Payment to or on the Behalf of an Individual

A department requesting a payment to an individual or for an individual on his or her behalf must determine if the individual for whom the payment is for is a U.S. citizen or permanent resident. This determination must be made regardless of the payment type, as referenced above, or payment method (e.g., Payroll, Accounts Payable, or Bursar). Such a determination will depend on a variety of factors specific to each individual's situation. Departments are responsible only for the collection of all necessary information and forms.

A department is neither required nor expected to understand the complexities associated with the taxation of nonresident aliens. Therefore, the University has designated an International Tax Specialist to review and approve all payments made to or on the behalf of a nonresident alien. The International Tax Specialist, Jann Taylor, can be reached at 453-5275 or tayjann@siu.edu.

Responsibility of the International Tax Specialist

The International Tax Specialist will monitor all payments made to an individual or on the behalf of an individual who is not a U.S. citizen or permanent resident (i) for possible tax withholding and reporting liability, (ii) to ensure compliance with all IRS rules and regulations, and (iii) to confirm that all information and required forms have been completed and collected.

The International Tax Specialist also works closely with the Office of International Students & Scholars – International Programs & Services and the Financial Aid Office in identifying nonresident alien students and scholars. The International Tax Specialist also works closely with the Graduate School in identifying fellowships and assistantships awarded to nonresident aliens.

To access the Office of International Students & Scholars – International Programs & Services website, see: <http://www.ips.siu.edu/ISS/index.html>

To access the Financial Aid Office website, see: <http://www.siuc.edu/~fao/>

To access the Graduate School's website, see: <http://www.siu.edu/gradschl/admit-international.htm>

DETERMINING U.S. TAX RESIDENCY STATUS

An individual for whom a payment will be made to, or on the behalf of, who is not a U.S. citizen or permanent resident must complete the [Alien Information Collection Form](#) to determine his or her U.S. tax residency status. The *Alien Information Collection Form* is designed to collect the information necessary to determine whether the individual will be treated as a resident alien or nonresident alien for U.S. tax purposes. The form contains the information necessary to apply the substantial presence test, which is used to make such a determination.

Note: Completion of the *Alien Information Collection Form* is the only method that can be used to determine an individual's U.S. tax residency status under University policy.

PAYMENTS MADE THROUGH PAYROLL

- Step 1: All new employees are required to complete [Form I-9](#).
- Step 2: The department is responsible for administering *Form I-9* and for ensuring that any individual who is not a U.S. citizen, permanent resident, or "an alien authorized to work until..." complete the [Alien Information Collection Form](#). The department must notify the individual that he or she needs to make arrangements to meet with the International Tax Specialist. The *Alien Information Collection Form* should accompany the individual to the appointment.
- Step 3: If the new employee indicates that he or she is a U.S. citizen or permanent resident, there is no change to current procedure.
- Step 4: If it is determined that the individual is a nonresident alien, the International Tax Specialist will decide whether the nonresident alien qualifies for a U.S. tax exemption under an income tax treaty and, if so, assist the nonresident alien with the completion of [Form 8233](#) and/or [Form W-8BEN](#). If the nonresident alien does not qualify for an income tax treaty exemption, he or she will be required to complete [Form W-4](#) following guidelines set by the IRS.

Note: *Form W-4* should only be completed with the direction of the International Tax Specialist; *Form W-4* completed in any other manner will not be processed.

Note: Failure of the new employee to meet with the International Tax Specialist in a timely manner will result in tax withholding at the maximum rate; any tax withheld due to failure to complete necessary forms prior to payment cannot be refunded by the University.

FICA Tax

Generally, a nonresident alien is subject to FICA tax on wages, salary, or other compensation received while working in the United States. However, a FICA tax exemption exists for any nonresident alien F, J, M, and Q visa holder who is performing services to carry out the primary purpose of his or her visa issuance as set forth in IRC § 3121(b)(19). In addition, a nonresident alien student is eligible for the student FICA tax exemption as set forth in IRC § 3121(b)(10) in the same manner and extent as a U.S. citizen, permanent resident, and a resident alien student.

All FICA tax exemptions will be determined and monitored by the International Tax Specialist based upon information provided by the nonresident alien on the *Alien Information Collection Form* and visa documentation.

To access the Payroll website, see: <http://www.siuc.edu/~payroll/>

PAYMENTS MADE THROUGH ACCOUNTS PAYABLE

Payments Made Using an *Invoice Distribution Form (IDF)* and/or *Contractual Service Voucher (CSV)*

Step 1: The department is responsible for determining whether the payee or the true beneficiary of the income is a U.S. citizen or permanent resident. The determination should be made by asking each payee or beneficiary about his or her U.S. citizenship/permanent residency status, regardless of whether there is reason to believe that the individual may or may not be a U.S. citizen or permanent resident. **If the payee is a third party being paid on the behalf of an individual, the question regarding U.S. citizenship/permanent residency status applies to that of the true beneficiary of the income, not the check payee.**

Example: If an airline ticket is purchased from a travel agency, the true beneficiary or recipient of the income is the individual for whom the ticket is being purchased or the actual traveler. Therefore, in this example, the question regarding U.S. citizenship/permanent residency status applies to the traveler, not the travel agency.

Step 2: The question on the IDF or CSV that asks if the payment is made to or on the behalf of a U.S. citizen or permanent resident **must** be answered.

If the answer is YES, there is no change to current procedure. If the answer is NO, you must provide a CSV or the payment will not be processed. You also must provide a CSV for all Foundation and grant account payments, and their associated forms. The completed **Alien Information Collection Form** must also be attached.

Step 3: All required forms and supporting documentation must be attached to the CSV and forwarded to the International Tax Office – Mail Code 6818.
Note: The department should contact the International Tax Specialist to ensure that all the required forms and supporting documentation is in order.

Step 4: If it is determined that the individual is a nonresident alien, the International Tax Specialist will decide whether the nonresident alien qualifies for a U.S. tax exemption under an income tax treaty and, if so, assist the nonresident alien with the completion of **Form 8233** and/or **Form W-8BEN**.

If the nonresident alien is not from a country with which the U.S. maintains an income tax treaty, there still could be an exception, reducing the withholding to 14%. This is accomplished by completing *Form W-8BEN*. The reduction in tax can only be determined by the International Tax Specialist, and only after this determination will any payment be processed.

Step 5: If the nonresident alien does not submit a properly completed *Form 8233* or *Form W-8BEN* and/or have either a social security number (SSN) or an individual taxpayer identification number (ITIN), tax withholding at a rate of 30% will be deducted from the payment. Any tax withheld due to failure to provide the required information or forms cannot be refunded by the University. **NO EXCEPTIONS.**

Step 6: The International Tax Office will then forward the applicable forms and supporting documentation to Accounts Payable so that payment can be processed.

Note: Payments made to short-term foreign visitors (nonemployees) to reimburse expenses are not subject to income tax reporting or withholding, provided the visitor accounts for the reimbursement in accordance with the University's travel policy and is here for the benefit of the University with the appropriate visa classification.

Note: The use of a P-Card or a Transfer Voucher is prohibited for payments made to or on the behalf of a nonresident alien.

Special Notes for Guest Speakers/Honoraria Recipients

A guest speaker who enters the U.S. under a visitor's visa (e.g., B-1 or B-2) or a waiver of a visa (e.g., WB or WT) is generally treated as a nonresident alien if he or she is present in the U.S. for a total of less than six months over a three year period. A guest speaker who is present in the U.S. under a J-1 visa is usually considered a nonresident alien for the first two calendar years that he or she is present in the U.S.

Honoraria payments are reportable and generally taxable. A visitor must have, or applied for, a SSN or ITIN before payment can be made. If the visitor has neither, a mandatory 30% withholding is required. The International Tax Specialist can assist the individual in applying for an ITIN with the IRS.

A guest speaker who is not a U.S. citizen or permanent resident must complete the *Alien Information Collection Form* and return it to the International Tax Office, via e-mail or fax. Once his or her U.S. tax status has been determined, and he or she is a nonresident alien, a tax equal to 30 percent is generally required to be withheld. In some cases, a reduced withholding or an income tax treaty exception may be applied.

This determination can only be made by the International Tax Specialist.

Note: A guest speaker is responsible for entering the U.S. under a visa or visa waiver that allows payment for services (if applicable) and/or reimbursement for travel (if applicable). B-1 or WB may be paid a honoraria as well as associated incidental expenses. Under this provision the visa holder may not accept honoraria from more than five institutions within a six month period, and cannot have performed services for more than nine days at any institution. B-2 or WT under certain circumstances may only be reimbursed for incidental expenses.

What is an Individual Taxpayer Identification Number (ITIN)?

The University may make a payment to an individual who is ineligible to obtain a SSN, but who, nonetheless, must obtain an ITIN, generally for the purposes of reporting payments and filing U.S. tax returns. This individual may be a nonresident alien or resident alien who is not authorized to work in the U.S., but who will receive payments from the University (e.g., a student who receives a scholarship or a guest speaker who receives a honoraria or travel reimbursement). With regards to the almost constant changes in obtaining an ITIN, please make arrangements for the individual to meet with the International Tax Specialist, prior to making commitments for payments to international visitors and students.

To access the Purchasing/Accounts Payable website, see:

<http://www.siuc.edu/~purchase/>

PAYMENTS/AWARDS CREDITED TO STUDENT'S BURSAR ACCOUNT

Upon arrival in the U.S., an international student is **required** to either attend an international student orientation or meet with the International Tax Specialist to complete an **Alien Information Collection Form, Form W-8BEN**, and provide other information.

All transactions posted to a nonresident alien student's Bursar account will be reviewed by the International Tax Specialist for possible tax withholding and reporting liability.

The department actually granting the award is not required to complete any

additional forms, but should make arrangements with the recipient of the award to meet with the International Tax Specialist to assure that all required forms and information necessary to make tax withholding and reporting determinations is complete.

To access the Bursar's website, see: <http://www.siuc.edu/~bursar/>

U.S. INCOME TAX TREATIES CURRENTLY IN FORCE

Each income tax treaty is unique and may not contain the same provisions for exemption as another treaty. The existence of an income tax treaty does **not** mean that an individual will automatically be exempt from tax withholding; the individual must meet all of the qualifications as set forth in the treaty and must complete and submit all the required income tax treaty exemption forms. The U.S. currently maintains income tax treaties with the following countries:

Australia	Latvia
Austria	Lithuania
Barbados	Luxembourg
Belgium	Mexico
Canada	Morocco
China, Peoples Republic of	Netherlands
Cyprus	New Zealand
Czech Republic	Norway
Denmark	Pakistan
Egypt	Philippines
Estonia	Poland
Finland	Portugal
France***	Romania
Germany	Russian Federation
Greece	Slovakia
Hungary	Slovenia
Iceland	South Africa
India	Spain
Indonesia	Sweden
Ireland, Rep of	Thailand
Israel	Trinidad & Tobago
Italy	Tunisia
Jamaica	Turkey
Japan	Former USSR (CIS & Georgia)*
Kazakhstan	United Kingdom**
Korea, South	Venezuela

**The former US-USSR treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.*

*** The United Kingdom treaty applies to Northern Ireland, Scotland and Wales.*

****The France treaty applies to Guadeloupe and Martinique.*

FORMS REQUIRED FOR EXEMPTION UNDER AN INCOME TAX TREATY

If, after reviewing the qualification for exemption as set forth in the tax treaty, the International Tax Specialist will determine if an individual qualifies for an income tax treaty exemption. The University can grant a tax withholding exemption only if the individual completes **Form 8233** or **Form W-8BEN**. If the required *Form 8233* or *Form W-8BEN* is not completed, the University is required to withhold tax even though the individual may otherwise qualify for the income tax treaty exemption. If the individual does not file the exemption form at the time of payment, he or she can still claim the benefits of the income tax treaty by claiming the exemption when filing his or her income tax return. Please note that sufficient time should be allowed for payment processing under these procedures.

Form 8233 is valid only for the calendar year in which it is filed; the form must be renewed for each year that the exemption is claimed. The International Tax Office makes every attempt to mail *Form 8233* in early November to all current employees who are eligible to continue to claim an income tax treaty exemption for the next year.

Form W-8BEN is used to claim an income tax treaty exemption for scholarship and fellowship grants. Unlike *Form 8233*, which is valid for only one year, *Form W-8BEN* is valid indefinitely unless a change in the individual's status has occurred. Although, it is recommended that it be renewed every 3 years.

Note: No *Form 8233* or *Form W-8BEN* is ever valid without a SSN or ITIN.

COMMON VISA TYPES

F Visa

A F-1 visa is issued to a nonresident alien student attending an academic institution or enrolled in a language training program. A F-1 student is admitted for his or her "duration of status," defined as the period of time during which the student is pursuing a full course of study in any educational program, and any periods of authorized practical training. A F-1 student may be employed on campus for no more than twenty hours a week while school is in session. During periods when school is not in session, the student may work full-time, provided the student is eligible, and intends to register for the next school session. Permission for employment must be obtained, prior to employment, from the Office of International Students & Scholars – International Programs & Services, with the exception of graduate, teaching or research assistantships. Off campus employment requires written authorization.

A Visa

An A Visa is issued to a Foreign Diplomat and may only be compensated by the foreign government entity.

H1-B, O or TN Visas

A H-1B, O, or TN visa holder is authorized to work and receive compensation only from his or her sponsoring institution.

J Visa

A J-1 visa is issued to a foreign scholar or student for temporary participation in approved programs of study, teaching, research, or training. It is also issued to individuals classified as an “international visitor”.

The holder of a J-1 visa may receive salary, honoraria, or other compensation for services, as well as reimbursement for travel and subsistence expense, but only for the academic undertaking for which the holder was admitted. The individual must pursue the program for which he or she was admitted to the U.S. as described on the *DS-2019* and for the length of stay dictated by the *DS-2019*.

P Visas

P-1, P-2, and P-3 visas are issued for the temporary admission of entertainment groups, athletes, and individuals accompanying such groups. A P visa holder may be admitted to the U.S. to teach, perform, or coach under a program that is culturally unique. The individual may be paid any amount by the employer who filed and received approval for their visa. The individual's period of stay is limited to the duration of the event.

Canadian Visitors

Below is a brief summary of regulations pertaining to payments to Canadian citizens. These regulations will be helpful to departments making payments to Canadian visitors.

1. A Canadian citizen who enters the U.S. by showing his or her birth certificate and another form of identification is considered to be a B-2. Therefore, the only payment that can be made to this individual is restricted to travel payments/reimbursements.
2. A Canadian citizen can enter the U.S. without a visa or passport and obtain a B-1 permit at the U.S. Port of Entry by stating that he or she will be conducting business while in the U.S. and asking for a *Form I-94W* with a B-1 or WB stamp. This will allow the individual to receive a payment/reimbursement of travel expenses and or a honoraria pertaining to his or her visit to the University.
3. A payment for a honoraria can be made to a Canadian citizen only if the individual completes the University required documents and show proof of a SSN or ITIN. **The Canadian Insurance number is not a valid number for use in the**

U.S. and should never be used on any documents. Without a SSN or ITIN the maximum withholding rate of 30% is required on all payments.

4. A Canadian citizen who enters the U.S. as a TN can enter without first obtaining a visa if he or she qualifies under the NAFTA provisions for certain professionals. The TN is equivalent to the H-1. A TD is a dependent of a TN and is not permitted to be compensated from any U.S. source.

VISA WAIVER PROGRAM

An individual who is not a U.S. citizen or permanent resident who enters the U.S. under the Visa Waiver Program (VWP) must show evidence that he or she entered for business reasons (BW or VW), which is equivalent to a B-1, or for tourism (BT or VT), which is equivalent to a B-2. Any individual entering the U.S. under the VWP must make arrangements to meet with the International Tax Specialist prior to **any** payment. To qualify under the VWP, a traveler must:

1. Have a valid passport issued by a participating country and be a citizen and resident of that country;
2. Be seeking entry into the U.S. for no more than 90 days;
3. If entering by air or sea, have a round-trip ticket issued by a carrier that participates in the VWP and arrive on that carrier. The traveler should consult with his or her carrier to ensure that they participate in the VWP; and
4. Have proof of financial solvency and hold a completed and signed visa waiver arrival/departure *Form I-94W*. This form can be obtained from the carrier, travel agent, or at the land-border ports of entry.

Countries currently participating in the VWP: Andorra, Argentina, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Uruguay.

PAYMENT OF IMMIGRATION EXPENSES

An expense incurred to process a visa application, visa renewal, or to obtain permanent residency status on behalf of an existing University employee, prospective University employee, or independent contractor, will be excluded from the individual's gross income as follows:

1. Legal expenses, immigration fees, and related expenses paid in connection with a visa application or a visa renewal, as well as travel and other expenses related to

2. Legal expenses, immigration fees, and related expenses paid in connection with obtaining permanent residency status may or may not relate to the business purposes of the University, depending on the facts and circumstances. If the expenses relate to the University's business purposes, they are excluded from the individual's gross income.

Note: When there is no connection between the legal expenses, immigration fees, and related expenses paid by the University and the foreign national's employment functions, all payments made by the University would constitute taxable income to the individual.

All questions/comments concerning the guidelines and procedures described herein should be directed to the International Tax Specialist, Jann Taylor, at 453-5275 or tayjann@siu.edu.

Southern Illinois University is committed to ensuring full compliance with the tax laws. The policies and procedures contained herein was originally prepared by KPMG LLP for the exclusive use of Southern Illinois University and has subsequently been updated and modified by Southern Illinois University. Reprinting, except by University employees acting within the scope of their duties, is forbidden without the expressed written consent of the University and KPMG LLP.

Last Update: July 2008