



NONRESIDENT ALIEN TAX COMPLIANCE

A Policy and Procedure Manual

ABSTRACT

Discusses the payment policies and procedures when dealing with Foreign students, employees, guest speakers, consultants, independent contractors, and foreign entities or companies, and the related IRS tax withholding and reporting.

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NONRESIDENT ALIEN TAX COMPLIANCE SUMMARY

The information contained in this manual is designed to serve as a reference tool for department representatives when making payments to or on behalf of nonresident alien students, employees, guest speakers, consultants, or other payees. Because the issues of nonresident alien tax compliance can be complex and confusing, the Nevada System of Higher Education (“NSHE”) has designated a Nonresident Alien Tax Specialist (NRATS) at each organization to monitor and review the U.S. tax liability for all payments made to or on behalf of a nonresident alien individual. Each department representative will be asked to collect certain information; the Nonresident Alien Tax Specialists will make all tax withholding and reporting decisions. A summary of the basic procedures for making payments to nonresident alien individuals as applicable to NSHE is set forth below:

- **All payments made to or on behalf of a nonresident alien are generally subject to income tax withholding unless specifically exempted either by the U.S. tax law or an income tax treaty.**
- **All payments made to or on behalf of a nonresident alien are generally required to be reported to the Internal Revenue Service (IRS), regardless of whether the payment is taxable.**
- Examples of payments made to nonresident aliens include, but are not limited to:

Wages, Salaries or Compensation	Salary/Wages
Scholarships/Fellowships	Living Allowances
Stipends	Prizes/Awards
Independent Contractor Payments	Consultant Payments
Certain Travel Expenses/Reimbursements	Honorariums
Book Allowances	Royalties and Interest

Note: Payments do not have to be paid in cash or made directly to the individual to be considered income. Payments made to a third party on behalf of the individual are also subject to the withholding and reporting rules.

- Each payment requires the review of certain key factors, including the (i) individual's U.S. tax residency status, (ii) individual's visa/immigration status, and (iii) type of payment made to the individual.
- In some cases, if the individual does not perform any activities in the U.S. related to the payment, the payment will not require tax withholding or reporting.
- There are tax treaties with a number of foreign countries, each of which is unique and different. If a nonresident alien wishes to claim an exemption from U.S. income tax withholding because of an income tax treaty, the individual meet with the Nonresident Alien Tax Specialist (NRATS) to claim and sign a treaty exemption:
 - Form W-8BEN (scholarship, fellowship, grant, stipend, and royalty payments)
 - Form 8233 (consultant, honoraria, independent contractor and employee payments)

- The amount of U.S. income tax withholding depends on the type of payment:
 - Scholarship, fellowship, grant, non-service stipend payments 14 %
 - Consultant, honoraria, independent contractor payments 30 %
 - Compensation paid to employees Graduated withholding
 - Royalties (copyright, software) 30 %
- **Form 1042-S is the annual tax statement used to report most payments and tax withholding to nonresident aliens.** The form must be issued by NSHE to both the IRS and the nonresident alien no later than March 15.
- If the individual receives taxable wages, he or she may receive both Form 1042-S and Form W-2.

INTRODUCTION

U.S. tax law requires NSHE to withhold federal income tax from and report to the IRS all payments made to or on the behalf of a nonresident alien. Please note that the U.S. tax withholding and reporting rules governing nonresident aliens are quite different than those governing U.S. citizens and resident aliens. In order to be in compliance with the nonresident alien tax withholding and reporting rules, NSHE must be able to identify **all** payments made to a nonresident alien or to a third party on his or her behalf. NSHE is then required to apply the appropriate tax withholding and report the payments made to those individuals in the correct manner. Failure to comply with IRS tax law and regulations may result in a significant potential tax liability and fines for NSHE.

The Department representatives will be responsible for

- determining whether the individual is a U.S. citizen or permanent resident alien
- contacting NRATS and possibly Office of International Students and Scholars before hiring or bringing a Foreign National to UNLV
- contacting the NRATS for an appointment for your Foreign National. New Employees will contact the NRATS directly.

The Nonresident Alien Tax Specialist will be responsible for

- making all U.S. tax residency status determinations;
- monitoring all payments made by NSHE for possible nonresident alien tax withholding and reporting liability;
- making all tax withholding and reporting decisions based on the information collected by the department representatives; and
- ensuring compliance with all IRS rules and regulations with respect to payments to nonresident aliens.

TAXATION OF NON-U.S. CITIZENS AND NON-PERMANENT RESIDENT ALIENS

Under U.S. tax laws, all non-U.S. citizens and non-permanent resident aliens are considered to be either "resident aliens" or "nonresident aliens." Residency status rules for tax purposes are governed by the IRS and the Treasury Department. Resident aliens are taxed on their worldwide income in the same manner as U.S. citizens; nonresident aliens, however, are taxed only on income from U.S. sources under special rules. The residency status rules for tax purposes are related to, but are not the same as, the residency status rules for immigration purposes, which are governed by the U.S. Citizenship and Immigration Services (USCIS). Therefore, individuals who are resident aliens for tax purposes may in fact be nonresident aliens for immigration purposes. Unless otherwise stated, the information contained in this document pertains to U.S. residency status for **tax** purposes only.

Types of Payments Made to Nonresident Aliens

NSHE is required to withhold U.S. income tax at the time a payment is made to a nonresident alien or a third party on his or her behalf; if NSHE does not withhold the appropriate amount of tax at the time of payment, NSHE may be held liable for the tax not withheld. The types of payments to which this rule applies include, but are not limited to:

- Wages, Salary or Compensation
- Independent Contractor Payments
- Consultant Fees
- Scholarships/Fellowships
- Stipends
- Book Allowances
- Living Allowances
- Honoraria or Guest Speaker Fees
- Prizes/Awards
- Royalties/Commissions
- Certain Travel Reimbursements
- Interest

After NSHE has determined the individual's residency status for tax purposes and the amount of income subject to taxation, NSHE must then determine the appropriate amount of tax to withhold and must collect any additional required information. These withholding and reporting determinations are based upon the type of payment made.

Non-employee payments made to nonresident aliens are subject to a general 30 percent tax withholding rate; however, scholarships and fellowships, which require no service to be performed as a condition of the payment, may be subject to a reduced withholding rate of 14 percent. Compensation paid to nonresident alien employees is subject to the U.S. graduated rates of tax withholding; however, some restrictions pertaining to marital status and withholding allowances will apply.

Possible Exemptions From Tax Withholding

An individual may be eligible to claim an exemption from the 30 or 14 percent or special 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. These tax treaty exemptions are usually only valid for a limited time period and/or for a specified dollar amount. An individual must meet the qualifications of a particular tax treaty in order to claim an exemption and must complete a form requesting the exemption. The individual will need to have a Social Security Number or Individual Taxpayer Identification Number (ITIN) to be eligible for treaty benefits. The Nonresident Alien Tax Specialists will review the information and will submit all necessary forms on behalf of the individual to the IRS.

Following is a general overview of the forms required in connection with payments made to nonresident aliens;

TAX WITHHOLDING RATES FOR NONRESIDENT ALIENS

The IRS requires that special tax withholding rates be applied to all payments made to or on behalf of nonresident alien individuals. The rate of tax withholding is dependent upon the type of nonresident alien recipient and the type of income paid. The following chart sets forth the **generally** applicable tax withholding rates.

Employees		Independent Contractors, Guest Speakers and Honoraria Recipients		Students	
All Employee Classifications, Including Student Employees				F, J, M, or Q visa holders receiving scholarship or fellowship grants/stipends (no services required) in excess of tuition and required fees	
With Treaty Exemption	Without Treaty Exemption	With Treaty Exemption	Without Treaty Exemption	With Treaty Exemption	Without Treaty Exemption
0%**	Special NRA Withholding Rates using "Single," One Withholding Allowance	0%**	30%	0%**	14%

* Individuals from Canada, Mexico, Japan, So Korea, American Samoa, the Northern Mariana Islands and students from India may be, in certain cases, eligible for additional withholding allowances.

** Please note that income tax treaties contain annual dollar and/or time limits for income tax exemption. If payments to an individual meet or exceed the dollar and/or time limits, the tax treaty exemption is no longer applicable. In some cases, the exemption may be lost retroactively, thus making the individual taxable from the first payment.

DETERMINING U.S. TAX RESIDENCY STATUS

Is the Individual a U.S. Resident Alien or Nonresident Alien for Tax Purposes?

The Alien Information Collection Form is designed to collect the information necessary to determine the U.S. tax residency status of an individual who is not a U.S. citizen, permanent resident alien, or immigrant. The Alien Information Collection Form contains the information necessary to apply the "substantial presence test," which is the test used by the IRS to make such determinations. Completion of the Alien Information Collection Form is the only method that can be used to determine an individual's U.S. residency status. The form should be used to determine the U.S. residency status for all compensation, scholarship, fellowship, grant, and stipend recipients or consultants, independent contractors, or honoraria recipients.

An individual (not the department) should complete the form using the following instructions:

1. **NAME AND ADDRESS:** Enter your name and U.S. home address/phone number.
2. **COUNTRY OF CITIZENSHIP:** Enter your country of citizenship.
3. **U.S. SOCIAL SECURITY OR INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER:** Enter your U.S. social security or individual taxpayer identification number. If you are from Canada, do not enter a social security number issued by the Canadian government. If you do not have a social security number, you must apply for one immediately. To apply for a social security number, visit the nearest Social Security Administration office or call 1-800-772-1213. If you have already applied for a social security number but have not yet received the number, enter "Applied" in the box.
4. **ADDRESS IN HOME COUNTRY:** Enter your permanent foreign mailing address and your current e-mail address.
5. **INSTITUTION DEPARTMENT:** Enter the name and phone number of the NSHE department with which you are associated.
6. **COUNTRY OF RESIDENCY:** Enter your country of tax residence. This may not be the same as your country of Citizenship. Country of tax residence will be where you taxed on your global income and may be your location of permanent establishment (home, etc).
7. **RELATIONSHIP WITH NSHE:** Indicate whether you are an employee, full-time student, graduate assistant, student worker, guest speaker/consultant and/or volunteer.
8. **PASSPORT/VISA NUMBER:** Enter your passport and visa number (typically a number in the bottom right corner)
9. **CURRENT IMMIGRATION STATUS:** Indicate the status of visa on which you are currently present in the U.S.
10. **SPONSORING INSTITUTION:** Enter the name of the institution that sponsored the issuance of your visa (for example, UNLV).
11. **ORIGINAL DATE OF ENTRY TO U.S.:** Indicate the first date on which you entered the U.S. for the purpose of this visit.
12. **VISA EXPIRATION:** Enter the date your permission to stay in the U.S. expires (please use the date found on your Form I-20, DS-2019, I-797 or entry stamp in passport).
13. **PRIOR VISIT:** Were you present in the U.S. prior to this particular visit? If yes, enter the date(s) on which you were present in the U.S. and the type of visa held during the visit(s). For business or tourist status, only note the current year and prior two years. Any other status, record your entry/exit date to the U.S. and visa type(s) going back to Year 1985. Some travel history may be obtained from your I-94 online.
14. **ESTIMATED DATE OF DEPARTURE:** Enter the date on which you plan to leave the U.S.

15. **OTHER EDUCATIONAL INSTITUTIONS:** If you have attended, are currently attending, and/or are affiliated with other educational institutions in the U.S., indicate the institution(s) and period of attendance.

Completing the Alien Information Collection Form (Continued)

16. **STEP 1 OF THE SUBSTANTIAL PRESENCE TEST:** Indicate whether you are a student present in the U.S. for less than five calendar years, or a professor, research scholar, trainee, alien physician, short-term scholar, or specialist present in the U.S. for less than two calendar years. **If you marked either box in Step 1 of the Substantial Presence Test, do not complete Step 2 of the Substantial Presence Test; complete only Sections E and F.**
17. **STEP 2 OF THE SUBSTANTIAL PRESENCE TEST:** If you did not mark a box in Step 1 of the Substantial Presence Test, indicate the number of days you have been present in the U.S. during a three calendar year period by following the instructions on the form.

Current Year: Indicate the number of days present in the U.S. during the current calendar year;

1st Preceding Year: Determine the number of days present in the U.S. during the immediately preceding calendar year and divide that number by 3;

2nd Preceding Year: Determine the number of days present in the U.S. during the second preceding calendar year and divide that number by 6;

Total: Add the calculated numbers.

If the Total is less than 183 days, you are a nonresident alien; if the Total is equal to or greater than 183 days, you are a resident alien.

18. **RESIDENCY STATUS:** Indicate your residency status based upon the results of Step 1 or Step 2 of the Substantial Presence Test.
19. **SIGNATURE AND DATE:** Sign and date the form.

Do not complete the shaded boxes on the form.

For a detailed discussion of the substantial presence test, see page 12.

Nevada System of Higher Education Alien Information Collection Form

The information requested below is strictly confidential and will be used for tax withholding and reporting purposes only. This information will allow the Nevada System of Higher Education ("NSHE") to determine your U.S. tax residency status for tax purposes and is not associated with immigration or visa classification. All questions regarding IRS reporting and withholding rules and completion of this form should be directed to the Nonresident Alien Tax Specialist at (702) 895-0872.

PLEASE COMPLETE ALL APPLICABLE QUESTIONS

UNLV

SECTION A PERSONAL INFORMATION					
NAME (Last or Family)	First or Personal	Middle	E-M AIL ADDRESS	U.S. SOCIAL SECURITY/INDIVIDUAL TAXP AYER IDENTIFICATIONNUMBER	
U.S. ADDRESS (Street)			ADDRESS IN HOME COUNTRY (Street)		
CITY	STATE	ZIP CODE	CITY	COUNTRY	POSTAL CODE
CELL PHONE	INSTITUTION DEPT	JOB TITLE	COUNTRY OF CITIZENSHIP	COUNTRY OF RESIDENCY	
What is your relationship with the NSHE? (check all that apply) <input type="checkbox"/> Employee <input type="checkbox"/> Full-Time Student <input type="checkbox"/> Student Worker <input type="checkbox"/> Grad Assist <input type="checkbox"/> Guest Speaker <input type="checkbox"/> Consultant/Independent Contractor <input type="checkbox"/> Volunteer			PASSPORT NUMBER	VISA NUMBER (see definitions)	

SECTION B DEFINITIONS
<p>Because some of the terms on this form may be confusing, before you begin to complete the questions below, please read the following definitions:</p> <p>CALENDAR YEAR: For U.S. tax purposes, a person is considered to be in the U.S. for a "calendar year" if he or she is present during one or more days between the period of January 1 – December 31. For example, if you are present in the U.S. from December 15-31, you are in the U.S. for one full calendar year, even though you are only present for 17 days.</p> <p>ORIGINAL DATE OF ENTRY TO THE U.S.: You may enter and leave the U.S. many times during the period of your study or research in the U.S. (for vacation, holidays or summer break.) The original date of entry to the U.S. in your current visa status is the first date that you arrived in the U.S. to begin your study, teaching, research, etc., not the last date that you entered the U.S.</p> <p>VISA STATUS: when completing this form, all questions concerning "visa status" refer to the category of visa that you currently hold. Your "visa status" is marked on the visa stamp/sticker in your passport and/or on your Form I-94 (see below). For example, if you are a student, your visa status may be F-1 or J-1.</p> <p>FORM I-20: Form I-20 is sent to all F-1 students by the NSHE or other sponsoring organization; it lists the details of your program of study.</p> <p>FORM DS-2019: Form DS-2019 is given to all J-1 visa holders by the NSHE; it lists the details of your program. There are several categories of J-1 visas; the category of your J-1 visa is stated in section 4 of the Form DS-2019. For example, section 4 of the Form DS-2019 will state whether you are a J-1 student, J-1 professor, J-1 research scholar, etc.</p> <p>FORM I-797: Form I-797 is given to all H-1B visa holders. H1-B is employer specific and can only work for the Petitioner for the period authorized.</p> <p>FORM I-94: Form I-94 is your Arrival/Departure record available online. The date on your DHS stamp in your passport is the date on which your permission to stay in the U.S. expires. If "D/S" is written, use the expiration or completion date found on your Form I-20 or DS-2019 or I-797.</p> <p>VISA NUMBER: The number found in the lower right corner of the visa stamp/sticker in your passport, usually written in red.</p>

SECTION C CURRENT IMMIGRATION STATUS	
<p>My current visa status is: (mark only one box) *</p> <p><input type="checkbox"/> Lawful Permanent Resident/Immigrant (Complete Sections E and F; do not complete Sections C or D)</p> <p><input type="checkbox"/> F-1 Student</p> <p><input type="checkbox"/> J-1 Student</p> <p><input type="checkbox"/> J-1 Professor, Research Scholar, Trainee, Alien Physician, Specialist or Short Term Scholar</p> <p><input type="checkbox"/> H-1B Employee</p> <p><input type="checkbox"/> B-1 Visitor for Business</p> <p><input type="checkbox"/> B-2 Visitor for Tourism</p> <p><input type="checkbox"/> Visa Waiver for Business</p> <p><input type="checkbox"/> Visa Waiver for Tourism</p> <p><input type="checkbox"/> TN Trade NAFTA</p> <p><input type="checkbox"/> Other: _____</p> <p style="color: red; font-size: small;">*Provide copies of passport, visa, I-94 and any other documents with this form</p>	<p>Original Date of entry to U.S. on current visa status:</p> <hr/> <p>When does your permission to stay in the U.S. expire?</p> <hr/> <p>Have you been in the U.S. prior to your current visit to the NSHE?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide details below:</p> <p>From _____ To _____ / Visa _____</p> <p>From _____ To _____ / Visa _____</p> <p>From _____ To _____ / Visa _____</p> <p>From _____ To _____ / Visa _____</p>
<p>Institution sponsoring your visa and NSHE student ID#:</p>	<p>Estimated date of departure from the U.S.:</p>

<p>Have you attended and/or are you attending another U.S. educational institution?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the following information:</p> <p>Name of Institution(s):</p>	<p>Period(s) of Attendance:</p>
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SECTION D RESIDENT ALIEN/NONRESIDENT ALIEN DETERMINATION

STEP 1

I am a STUDENT, or a dependent of a student, on an F or J visa AND I have been in the U.S. as a student or dependent of a student for a total of five or fewer calendar years.

I am a PROFESSOR, RESEARCH SCHOLAR, TRAINEE, ALIEN PHYSICIAN, SPECIALIST OR SHORT TERM SCHOLAR, or the dependent of such individual on a J visa AND I have been in the U.S. as such for a total of two or fewer of the past six calendar years.

If you marked either box you are a NONRESIDENT ALIEN for tax purposes. Go to Section E, do not complete Step 2.

If you did not mark either box above, complete STEP 2.

STEP 2

Step 2 involves a calculation of the number of days that you have been physically present in the U.S. For purposes of this calculation, DO NOT include in your calculation any days that you are or were present in the U.S. as:

A student, or dependent of a student, on an F or J visa (during the **first five calendar years** you are/were present in the U.S.)

A Professor, Research Scholar, Trainee, Alien Physician, Specialist or Short Term Scholar on a J visa, or the dependent of such individual on a J visa (during the **first two calendar years of the past six calendar years** you are/were present in the U.S.)

Example: if you arrived in the U.S. for the first time on August 15, 1999, as a J-1 Research Scholar and you have been in the U.S. since that date, do not include in your calculation the days that you are or were present in the U.S. for the first **two** calendar years (1999 and 2000). For this example, you would begin to count the number of days present in the U.S. from January 1, 2001.

Example: if you arrived in the U.S. for the first time on September 1, 1997 as an F-1 student and you have been in the U.S. since that date, do not include in your calculation the days that you are or were present in the U.S. for the first **five** calendar years (1997, 1998, 1999, 2000 and 2001). For this example, you would begin to count the number of days present in the U.S. beginning on January 1, 2002.

Note: If you have no days to include in your calculations, enter a "0" (zero) on the line for "Number of Days in the U.S."

	Year	Number of Days in U.S.	Calculation for Substantial Presence
Current Year	_____	_____	X 1 = _____
1 st Preceding Year	_____	_____	X 1/3 = _____
2 nd Preceding Year	_____	_____	X 1/6 = _____
		TOTAL	_____

If the Total is less than 183; you are a **NONRESIDENT ALIEN** for tax purposes.
 If the Total is equal to or greater than 183; you are a **RESIDENT ALIEN** for tax purposes.

SECTION E SUMMARY OF RESIDENCY STATUS FOR U.S. TAX PURPOSES

I certify that I am a lawful **PERMANENT RESIDENT** or **IMMIGRANT ALIEN**. Please return this form to the NSHE official who requested this information.

I certify that I am a **RESIDENT ALIEN** for tax purposes based on the results of the substantial presence test completed in Section D, Step 2. Please return this form to the NSHE official who requested this information.

I certify that I am a **NONRESIDENT ALIEN** for tax purposes based on the results of the substantial presence test completed in Section D, Step 1 and/or Step 2. Failure to complete any required additional forms will result in the automatic withholding of tax at the maximum rates.

SECTION F CERTIFICATION

I hereby certify that the information provided above is true and correct. If I receive an extension of my visa status or if my visa/immigration status changes, I will notify the Nonresident Alien Tax Specialist at (702) 895-0872.

SIGNATURE

DATE

FOR INTERNAL USE ONLY

Residency Status	RS Change Date	Tax Rate	Treaty Exp Date	Dollar Limit	FICA Exp Date	Review Date/App

The Substantial Presence Test

The substantial presence test is a method used by the IRS to determine if an individual should be taxed as a nonresident alien. This test is made each year, and in general, is a calculation of the number of days that an individual has been or will be physically present in the U.S. during a three calendar year period.

An individual is taxed in the same manner as a U.S. citizen if he or she meets the substantial presence test by being physically present in the U.S. for at least 183 days, taking into account (i) all of the days present in the U.S. during the current calendar year, (ii) one-third of the days present in the U.S. during the first preceding calendar year, and (iii) one-sixth of the days present in the U.S. during the second preceding calendar year.

The Nonresident Alien Tax Specialist will use information provided on the Alien Information Collection Form to calculate the substantial presence test.

The "Exempt Individual" Rules

Certain individuals are exempt from counting days toward the substantial presence test. They are individuals who are present in the U.S. under the following circumstances:

- A teacher, researcher or trainee who is temporarily present in the U.S. under a J or Q visa for two calendar years or less.
- A student who is temporarily present in the U.S. under an F, J, M, or Q visa for five calendar years or less.

- A foreign government-related individual (an "A" Visa holder).

The term "exempt individual" as used in connection with the substantial presence test refers only to an individual who is "exempt" from having to count days of presence in the U.S. **The term "exempt individual" does not refer to an individual who is "exempt" from paying federal income or FICA tax or filing a U.S. income tax return.**

The Substantial Presence Test

To determine whether the individual is a "nonresident alien or resident alien," administer the substantial presence test:

If the individual has been or will be in the U.S. for less than 31 days in the current calendar year, he or she is automatically considered to be a nonresident alien for tax purposes,

or

If the individual has been in the U.S. for 31 days or more and less than 183 days during a three year period including the current calendar year and the two immediately preceding calendar years using the following formula:

All days present in U.S. during current calendar year

+ 1/3 of days present in U.S. during 1st preceding calendar year

+ 1/6 of days present in U.S. during 2nd preceding calendar year

= Total number of days present in U.S. for tax purposes

PAYMENTS MADE THROUGH THE PAYROLL SYSTEM

Payments Made to New Employees Through the Payroll System

All new employees (full-time, part-time, or temporary) are required to complete a Form I-9 (Employment Eligibility Form) at the time of hire. It is the responsibility of the HR/Personnel or Authorized NSHE representative and/or his or her designee to certify Form I-9 and to determine the new employee's U.S. citizen/permanent residency status by following the steps set forth in this section of this manual.

How to Process a Payment Through the Payroll System

- Step 1** The HR/Personnel or Authorized NSHE representative responsible for administering and certifying Form I-9 must review the information on the form (specifically the question regarding alien work authorization) to determine whether the new employee is a U.S. citizen or permanent resident alien. Please keep in mind that all new employees are required to complete this question and provide information about their U.S. citizenship/permanent residency status on this form, regardless of whether there is reason to believe that the individual may or may not be a U.S. citizen.
- Step 2** If the new employee indicates on Form I-9 that he or she is a U.S. citizen or permanent resident alien, there is no change to current ~~procedures~~.
- Step 3** If the new employee indicates on Form I-9 that he or she is not a U.S. citizen or a permanent resident alien (i.e., an "other alien authorized to work until"), the HR/Personnel or Authorized NSHE representative responsible for administering and certifying Form I-9 must request that the new employee complete an Alien Information Collection Form and contact NRATS for appointment. The new employee must also be provided with a copy of the Employee Notification Sheet and advised that this information should be reviewed and the appropriate procedures followed. (A copy of the Employee Notification Sheet is attached in the Blank Forms section of the manual). As indicated on the Employee Notification Sheet, the HR/Personnel or Authorized NSHE representative must also notify the new employee that he or she must schedule an appointment to meet with the appropriate Nonresident Alien Tax Specialist. The new employee will be required to sign the Employee Notification Sheet to verify receipt. Potential nonresident alien employees should not complete Form W-4 as part of any employment orientation.
- Step 4** The new employee must take the Alien Information Collection Form to meet with the appropriate Nonresident Alien Tax Specialist in order to review the form, discuss the applicable tax withholding status, and complete any additional tax forms. To schedule an appointment, email nrat@unlv.edu. The new employee should bring to the appointment his or her (i) passport(s) which includes the visa(s) and Form I-94 and (ii) Form DS-2019 (if J visa holder), Form I-20 (if F visa holder), or Form I-797 (if H-1B visa holder). **Failure of the new employee to meet with the appropriate Nonresident Alien Tax Specialist in a timely fashion will result in tax withholding at the maximum rates; any tax withheld due to failure to complete necessary forms prior to payment cannot be refunded by NSHE.**

- Step 5** The Nonresident Alien Tax Specialist will meet with the Foreign National and review the individual's tax situation to determine their residency, and whether the individual qualifies for a U.S. tax exemption under an income tax treaty. The NRAT will also complete the W-4 form in accordance with special NRA withholding rates, and assist the individual with the completion of any and all other required forms. A Form W-4 should only be completed under the direction of the Nonresident Alien Tax Specialist; a Form W-4 completed in any manner will not be processed. The NRATS will also discuss general tax structure in the U.S., tax filing responsibilities, and provide information on free tax assistance provided by their office.

FORM W-4 (EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE)

How to Complete Form W-4

Special withholding tax rules apply to compensation payments made to nonresident aliens. Nonresident aliens are required to complete Form W-4 following the special guidelines discussed below. Also, no tax withholding is required to the extent that the compensation payment is exempt from income tax under either a provision of the Internal Revenue Code or an income tax treaty. Form W-4 should be completed by all nonresident alien employees during their appointment with the Nonresident Alien Tax Specialist; however, for your information, instructions are below. A Form W-4 not completed with the NRATS will **not** be processed.

Nonresident Alien Employees

Nonresident aliens who receive employee compensation are subject to graduated rates of withholding and required to complete Form W-4 as follows, regardless of their actual status:

- **"Single" marital status;**
- **One withholding allowance; and**
- **NRA on line 6 designates special NRA withholding rates – see IRS Pub 15.**

1. **NAME AND ADDRESS:** Enter name and U.S. mailing address.
2. **SOCIAL SECURITY NUMBER:** Enter social security number.
3. **MARITAL STATUS:** Mark "Single" for marital status regardless of actual marital status.
4. **NAME CHANGE:** Mark the box only if the last name has changed since the individual received his or her social security card.
5. **NUMBER OF ALLOWANCES:** Claim only one withholding allowance by entering a "1" on line 5, regardless of the number of actual withholding allowances. Individuals from Canada, Mexico, American Samoa and the Northern Mariana Islands are entitled to the same personal allowances as U.S. citizens. Individuals from Japan and Korea are entitled to claim one allowance for themselves, and one additional allowance for their spouse and dependents who are present with them in the U.S. Students from India are entitled to claim one additional allowance for their spouse.
6. **ADDITIONAL WITHHOLDING:** Nonresident aliens are required to have NRA special withholding rates as published in IRS Pub 15. Students from India are not required to have the additional amount withheld and may leave this line blank.
7. **EXEMPTION:** A nonresident alien is not permitted to claim "Exempt" on this line; in the case of an exemption under an income tax treaty, Form 8233 (discussed on pages 28-29) should be completed in addition to Form W-4. Form W-4 should be completed in the manner outlined above and will apply at the time the treaty-based exemption no longer applies.
8. **SIGNATURE:** The individual must sign and date the form.

FICA TAX WITHHOLDING

The F, J, M, and Q Visa holder Exception

A broad FICA (includes Medicare) tax exemption exists for all nonresident alien F-1, J-1, M-1, and Q-1 visa holders who are performing services to carry out the primary purpose of their visa's issuance. As previously discussed, F, J, M, and Q student visa holders are exempt from counting days of presence in the U.S. under the substantial presence test for five calendar years; J and Q professor, research scholar, trainee, alien physician, short-term scholar, or specialist visa holders are exempt from counting days for two calendar years. Once such an individual is in the U.S. long enough so as to lose his or her "exempt individual" status, the individual must begin counting days of presence in the U.S. under the substantial presence test. Once such an individual counts 183 days of U.S. presence toward the substantial presence test, he or she is considered a resident alien for the entire calendar year and is subject to FICA tax retroactively to January 1 of that calendar year.

EXAMPLE: *If a J-1 researcher arrived in the U.S. on February 1, 2016, the researcher would be able to exempt" two calendar years from counting days of presence in the U.S. (e.g., 2016 and 2017). The researcher would begin counting days of presence in the U.S. beginning on January 1, 2018, and would technically qualify as a U.S. resident for tax purposes after 183 days, on July 3, 2018; however, the researcher would be considered a resident alien retroactively to January 1, 2018, and would be subject to FICA tax as of that prior date. Therefore, NSHE must begin withholding FICA tax on January 1, 2018, unless there is evidence that the researcher will leave the U.S. prior to July 3, 2018.*

FICA Exception for F, J, M and Q Visaholders

An individual can be exempt from FICA tax withholding if he or she meets all of the following criteria:

1. **a nonresident alien, and**
2. **present in the U.S. under an F-1, J-1, M-1, or Q-1 category visa, and**
3. **performing services in accordance with the primary purpose of the visa's issuance (i.e., the primary holder of the visa, the "-1" Visa**

In addition, in order to qualify for the FICA tax exemption, the nonresident alien's work must be "performed to carry out the purpose specified in" the F, J, M, and Q visa. The individual will typically satisfy this requirement by being the primary visa holder (the "-1" visa holder); however, the spouse/dependents (the "-2" visa holders) will not meet this requirement because their employment does not "carry out the purpose" of the F-2, J-2, M-2, or Q-2 visa. **Therefore, the "- 2" visa holders are not eligible for the FICA tax exception.**

All FICA tax exemptions will be determined and monitored by the Nonresident Alien Tax Specialists based upon information provided by the individual on the Alien Information Collection Form and the individual's visa documentation. The individual must meet all three requirements as discussed above in order to qualify for the exemption. If the individual's visa expires, documentation of a visa extension must be provided to the Nonresident Alien Tax Specialist; if the necessary documentation is not provided, the FICA exemption will no longer apply.

PAYMENTS MADE THROUGH ACCOUNTS PAYABLE

NSHE must determine the U.S. citizenship status of all payees. Therefore, the question on the Independent Contractor Agreement (ICA) or Independent Service Provider (ISP) contract regarding U.S. citizenship must be answered for all payments made to individuals for independent personal services. If the question is not answered on the Independent Contractor Agreement, the payment will not be processed and will be returned to the requesting department for completion.

When requesting a payment through Accounts Payable/Disbursements, it is the responsibility of the individual who prepares the Independent Contractor Agreement, Payment Voucher, Purchase Order, or Request for Check to ensure that the payee has been asked about his or her U.S. citizenship/permanent residency status. Such a determination must be made by asking each payee 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.

If you are making a payment to a company, you will need to determine whether the entity is a domestic or foreign entity. If the vendor is determined to be foreign, you will need to contact the NRATS for guidance. There are many types of W-8 Forms for companies based on their entity or structure. See payments made to foreign companies for more details.

If the payee is a third party being paid on the behalf of another individual, the question regarding U.S. citizenship/permanent residency status applies to that of the true beneficiary of the income, not the check payee. This also applies to payments made to U.S. Agents of Performers/Artists/Athletes. The true beneficial owner of the income may be a foreign person or entity.

NSHE will modify the Payment Voucher, Purchase Order, and Request for Check, or other payment request form to contain a similar question regarding U.S. citizenship. Until such time as the forms are modified, departments must contact the NRATS if the individual is not a U.S. Citizen or Permanent Resident.

Award payments are processed on Payment Vouchers (PV) through Accounts Payable Department. Recipients who are not U.S. Citizens or Permanent Residents need to meet with the NRATS to sign forms for processing. If the recipient is not here in the U.S., departments should have them email the NRATS at nrat@unlv.edu for more information.

Please note that sufficient time should be allowed for foreign payment processing. Any federal tax withheld due to failure to provide the required information or forms cannot, by IRS regulation, be refunded by NSHE.

PROCEDURES FOR FOREIGN NATIONAL NONRESIDENT ALIEN GUEST SPEAKER/CONSULTANT/INDEPENDENT SERVICE PROVIDER (ISP) OR CONTRACTOR

If you are paying an honorarium and/or paying for and/or reimbursing travel expenses to or on behalf of a Foreign National, you will need to contact Debbie Honrath to discuss their entry status to the U.S. or their current visa/immigration status and to schedule an appointment for your foreign contractor or guest speaker/consultant while they are here on campus.

The guest speaker/independent contractor should bring all their documentation (Passport, Visa, I-94, completed Alien Information Collection Form) to Debbie's office at their scheduled appointment time.

Generally, for Nonresident Aliens (not a U.S. Citizen or Permanent Resident), 30% tax must be withheld unless an IRS income treaty benefit is available. If the individual does not have a U.S. SSN, or Individual Taxpayer Identification Number (ITIN), they cannot take advantage of a treaty benefit through the withholding agent (UNLV). They may be able to take a treaty benefit later if they apply for an ITIN when they file their U.S. tax return the following year.

Independent contractors (includes guest speakers) must provide a service to UNLV in order to have their travel expenses be considered nontaxable under the accountable plan rules. An individual attending a conference to benefit their studies is not considered providing a service. This type of payment is considered a travel grant and the accountable plan rules do not apply.

If they are a guest (i.e., not providing a service), these travel expenses are considered personal expenses and are taxable by the IRS. It is the same for U.S. citizens.

Individuals arriving on a B-1, B-2, B-1/B-2, VWB, VWT visa may be paid a small honorarium and reimbursed expenses as long as their duration of their activity at UNLV is not more than 9 days, and have not been paid more than 5 institutions in the previous 6 months (9-5-6 rule).

If the individual is not arriving at UNLV on a B or VW type of visa, please advise Debbie in advance. UNLV may not be able to pay or reimburse this individual or even prepay expenses on behalf of this individual if the payment is not a legal payment under their current immigration status in accordance with USCIS.

Departments

The following documentation is sent to Debbie Honrath (MS1015) for approval:

- Original ISP contract (with proper signatures) and exhibits A/B/C completed.
- Original travel receipts (if applicable)

If you prepaid travel expenses, attach copies of the documentation to the ISP. You can prepay travel expenses with a PV (send to A/P) or with your UNLV PCard. If you paid with your PCard, attach all documentation to your PCard log for audit purposes. A Travel Itinerary Worksheet (TIW) is necessary for multiple days. Guest Speakers/Consultants (considered an Independent Contractor) may not be paid per diems. Lodging and meals are limited in dollar amount. See Accounts Payable Travel Policy.

Nonresident Alien Tax Specialist (NRATS)

The following documentation and forms are collected and completed by the NRATS only (not by the department) during their appointment. Not all may apply:

- **Copy of passport(s)**
- **Copy of visa(s) or DHS stamps**
- **Copy of I-94 (online) with travel history**
- **Copy of other USCIS immigration documents**
- **Alien Information Collection Form**
- **W-8BEN or W-9 Form**
- **8233 Form including Certification**
- **Certification Statement (9/5/6 rule)**
- **Bank wiring information**

After the department documentation is received and reviewed by the NRATS, all documentation and forms collected will be sent by Debbie to Accounts Payable for processing.

IRS Tax Withholding:

If the individual does not have a social security number or ITIN number, the IRS requires that we withhold Federal Income Tax of 30%. Individual must have a SSN or ITIN to be eligible for a treaty. The individual may still apply for an ITIN number and take any treaty benefits available when they file their U.S. income tax return, and may receive all the tax refunded to them by the IRS. Treaty eligibility is determined by the withholding agent (NRATS) and not by the individual or department.

The department has the option of grossing up the payment to cover the tax payment for the individual. The department would be charged the gross amount. The gross-up formula is = Net payment amount divided by .70 = Gross Amt). For example if you want to pay a \$1000.00 payment and cover the tax for the individual, it would be \$1,000.00 divided by .70 = \$1,428.57 (Gross = \$1,428.57, Tax = 428.57, Net Payment = \$1,000.00).

IRS Tax Reporting:

The individual will receive an IRS 1042-S Form in late February of the following year. This form will report the taxable amount paid, tax withheld, and other reporting information. This information is reported to the IRS. The individual will need this form to complete their Nonresident U.S. Tax Return.

UNLV provides our international community with free Nonresident U.S. Tax Filing software (FNTR) to complete their 1040NR tax return. They can email Debbie in February for software instructions and access. Thomson Reuters Foreign National Tax Resource (FNTR) at <https://trr.windstar.com/>

Additional information and links:

The I-94 and travel history:

<https://i94.cbp.dhs.gov/>

Visa Waiver Program (VWP):

<https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>

Nonresident alien policies/procedures/forms located at:

UNLV Travel Policy (Independent Service Providers):

<http://www.unlv.edu/controller/travel-program>

PAYMENTS TO FOREIGN CORPORATIONS

General Information:

When making payments to foreign corporation, the facts and circumstances need to be analyzed to determine the appropriate withholding certificate to request, and which withholding rates or exemptions to apply. The source of income must be determined, whether or not it is effectively connected with the conduct of a U.S. trade or business, whether or not the corporation is actually a personal holding company, and whether or not a tax treaty applies. In order to arrive at the correct conclusions, it is imperative that you correctly classify the income and identify the true beneficial owner of the income.

For payment of foreign **goods only**, IRS section 1441 does not apply, and there is no tax withholding or reporting.

For services performed abroad (foreign-sourced income), IRS section 1441 does not apply, and there is no tax withholding or report.

Exception – U.S. citizens performing services abroad. U.S. citizens are taxed on their worldwide income.

Payments for software or copyright use (unless UNLV owns exclusive rights) is considered a royalty. Royalty income is taxed where it is used (U.S.) and is subject to 30% tax withholding unless a valid W-8 form is received and a tax treaty applies.

Any time you deal with payments, some of which are foreign source and some of which are U.S. source, it is important that the payee identify the payment by source on an invoice. If they do not identify the payment by source, and you know that some of the payment is U.S. source, you must withhold tax on **all** of the payment(s).

Special tax and reporting issues occur when making payments to a U.S. Agent on behalf of a Foreign Person (Entity). These situations arise with Performers/Artists/Athletes. The beneficial owner of the income is the Foreign Person not the agent. The payment is subject to 30% tax withholding and reporting unless a valid W-8 form is received from the Foreign Persons (Entity) and the Foreign Person(s) has a Central Withholding Agreement (CWA) with the IRS.

The U.S. EIN (Employer Identification Number) that is assigned to foreign corporations begin with 98-xxxxxxx

IRS Code/Regulations:

W-8ECI Form

If all available evidence indicates that the foreign entity is a for-profit, taxable entity under that foreign country's law, then withholding of 30% under IRC 1441(a) is necessary, unless the entity has a fixed base or permanent establishment in the USA. If the entity has a fixed base or permanent establishment in the USA, then the entity can avoid the 30% withholding under IRC 1441(a) by filing form W-8ECI with your institution.

The Form W-8ECI must include a U.S. EIN. It is the foreign corporation's responsibility to make estimated tax payments and to complete a U.S. income tax return (1120F).

Under Treas. Reg. 1-1441-4(a)(1), a foreign corporation may deliver a form W-8ECI to a U.S. withholding agent to avoid the 30% withholding only if the foreign corporation has "income which is effectively

connected with a U.S. trade or business" (called ECI for short—Effectively Connected Income). Under section 864(b) of the Internal Revenue Code payment for the performance of personal services in the

United States constitutes ECI by definition. Or ECI may be established if the foreign corporation has some sort of permanent office, fixed base, or permanent establishment in the USA from which its U.S. sales are derived. A foreign corporation that has ECI is required to file a U.S. income tax return (form 1120F) on which it should report the income and expenses related to its ECI in the United States. A foreign corporation which has no ECI in the United States and which is not filing a U.S. income tax return is not allowed to file form W-8ECI with a U.S. withholding agent.

Treas. Reg. 1-1441-4(a)(1) adds the stipulation, however, that a foreign corporation may not use form W-8ECI to avoid the 30% withholding if the following three conditions apply: **(1)** the foreign corporation qualifies as a personal holding company (i.e., at least 60% of its gross income arises from the performance of personal services by individuals and at least 50% of the stock of the corporation is owned by not more than 5 individuals);

(2) The individuals performing the personal services (and not the corporation) have the right to determine who will perform the personal services; and **(3)** 25% or more of the stock of the corporation is owned by the individual(s) who are contracted to perform the personal service contracts made by the corporation.

W-8EXP Form

A Form W-8EXP is used by a foreign tax-exempt organization to claim that they are the beneficial owner of the income and to claim a reduced rate or exemption from tax under IRC 1441(a). The form applies to amounts exempt from withholding under Sections 115(2), 501(c), 892 or 895, or amounts subject to reduced withholding under Section 1443(b). In order to claim a reduced rate or exemption from tax, the Form W-8EXP must include an EIN. If you make the payment based on receiving a W-8EXP with no U.S. EIN, you must withhold 30 percent.

If they later provide you with a Form W-8EXP that includes an EIN, you can refund the 30 percent withheld as long as it is within the timeframe provided for refunds. (See IRS Publication 515 for instructions on refunds and reimbursements). **The foreign entity would have to attach to form W-8EXP a letter from a U.S. attorney indicating that if the organization had been organized under the laws of the United States the organization would have been granted tax-exempt status under IRC 501(c).**

W-8BEN-E Form

The W-8BEN-E is the appropriate form if the foreign corporation is certifying its foreign status, is the beneficial owner of the income, and is receiving certain types of non-compensatory income, which is either not effectively connected to a U.S. trade or business, or is effectively connected but exempt from withholding under the terms of a tax treaty. A foreign corporation that claims a treaty benefit on effectively connected income must submit a Form 1120F tax return giving the facts supporting the claim. The W-8-BEN-E must include a U.S. EIN or a Foreign TIN to be eligible for treaty benefits.

The W-8BEN is the appropriate form for individuals to sign when certifying that they are a nonresident alien in the U.S. for tax purposes.

1042-S Reporting Requirements for Foreign Corporations (U.S. Sourced Income)

U.S. source payments are still subject to reporting on Form 1042-S.

According to the new Section 1461 regulations, U.S. source income subject to reporting on Form 1042-S includes amounts subject to withholding under section 1441 even if no amount is deducted and withheld from the payment because of an exemption under an Internal Revenue Code or an income tax treaty provision. Therefore, if the income would have been subject to 30 percent withholding, you must report the income on a Form 1042-S with an exempt code 2 for a Code Exemption or 4 for an income tax treaty exemption.

Therefore, in order for the foreign company to avoid having all of the income paid to them reported on a Form 1042-S, they need to invoice for U.S. source income separately from foreign source income so that you can report the U.S. source income accurately to the IRS. If they do not, you will have to report income that you do not know to be foreign source and let them sort it out on their Form 1120-F tax return when they provide the fact and circumstances supporting the treaty exemption.

Summary:

If you know or have reason to know that the payments are being made to a foreign entity for U.S. source income, i.e. services performed in the U.S. or payments to a U.S. agent (for Foreign Persons), you must withhold 30% on the payment unless the company presents you with an original signed Form W-8BEN-E, with Part III completed, claiming no U.S. permanent establishment under an *applicable treaty*, or a Form W-8EXP accompanied by a letter from a U.S. attorney stating that the company would be a tax-exempt entity under section 501(c), or a W-8ECI form for companies that have a fixed base or permanent establishment in the USA. Forms would have to include a U.S. EIN. Foreign entities may use their Foreign TIN for treaty benefits on the W-8BEN-E form. Foreign Performers paid by a U.S. Agent must also have a Central Withholding Agreement (CWA) with the IRS.

If you do not have enough information to decide which forms would apply to your situation, then you may ignore the corporation's form W-8BEN-E claiming a treaty benefit, or W-8ECI, or W-8EXP form, and withhold 30% federal income tax on the payment(s) to the corporation. The corporation may then file a U.S. income tax return (form 1120F) with the IRS in order to clarify the corporation's tax status in the USA and to claim whichever deductions, credits, or treaty exemptions it believes accrue to it. This relieves NSHE, the withholding agent, of the responsibility of trying to understand the complex tax laws which relate to the taxation of the payment(s) you are making to the foreign corporation. If other institutions in the USA have accepted a form W-9 from the foreign corporation and not withheld U.S. federal income tax from the payment(s) to the foreign corporation, then such other institutions have almost certainly made payment(s) to a foreign entity without securing proper documentation and withholding certificates and are probably liable for the 30% withholding tax on the payments in case of an IRS audit.

Related Links and Forms:

U.S. EIN (Employer Identification Number) information:

<https://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-TIN#ein>

IRS Forms/Publications

W-8BEN-E, W-8EIC, W-8EXP, W-8IMY Forms: (W-8IMY not discussed above)

<https://www.irs.gov/Forms-&-Pubs>

U.S. Withholding Agent FAQ:

<https://www.irs.gov/Businesses/International-Businesses/U.S.-Withholding-Agent-Frequently-Asked-Question>

PAYMENTS CREDITED TO A STUDENT'S ACCOUNT

Payments Made to a Student Through a Student's Account

All payments credited to a student's account will be reviewed by NSHE's Nonresident Alien Tax Specialists for possible tax withholding and reporting liability. **The department actually granting the scholarship or fellowship is not required to complete any additional forms.**

All scholarship and fellowship payments made to a nonresident alien student through the student's account must be reported to the IRS; however, only a portion (if any) of the payment may be subject to U.S. tax. Amounts which are restricted to the payment of (i) tuition and fees required for enrollment, and (ii) fees, books, supplies, and equipment required for courses of instruction are not subject to U.S. taxation for any student, regardless of whether the student is a U.S. citizen, resident alien or nonresident alien. Amounts that do not qualify under these two categories are subject to U.S. taxation.

While the IRS does not require NSHE to withhold tax on taxable scholarship/fellowship payments made to U.S. citizens and permanent residents, tax must be withheld on such payments made to nonresident aliens. Therefore, when awarding a scholarship or fellowship to a nonresident alien student by crediting the student's account, it is the responsibility of the awarding department to notify the student of a possible tax liability associated with the payment prior to his or her arrival in the U.S. The "U.S. Tax Information for Nonresident Alien Students" letter should be provided to the student at the time the scholarship or fellowship is granted.

The Nonresident Alien Tax Specialist will obtain information from the Student Information System to identify potential nonresident alien students receiving scholarship or fellowship payments and will calculate any applicable tax. The Nonresident Alien scholarship tax report is run each week by semester and tax charges are posted to the student's account.

If the student's citizenship is missing or contains errors or discrepancies, the student will need to provide their documentation to the Student Accounts Office. Once documentation is received, the student's citizenship information will be updated in the Student Information System, and the tax charges will be adjusted if applicable.

Students who receive fellowships for which no services are required and paid through the accounts payable system should follow the directions discussed under Payments Made through Accounts Payable.

INCOME TAX TREATIES

An individual may be eligible to claim an exemption from tax 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 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. These tax treaty exemptions are usually only valid for a limited time period and/or for a specified dollar amount. An individual must meet the qualifications of a particular tax treaty in order to claim an exemption and must complete a form requesting the exemption. The Nonresident Alien Tax Specialists will determine whether the individual qualifies for a tax treaty exemption. Failure to collect all necessary information may result in NSHE incorrectly deducting tax from payments otherwise exempt or excluded from taxation.

How Will an Income Tax Treaty Benefit an Individual?

Income tax treaties contain articles which address certain categories of income and different types of individuals; typically, tax treaties contain articles which relate to students, trainees, teachers, researchers, as well as articles that apply to individuals receiving income in the U.S. as employees, independent contractors and honorarium recipients. If an individual qualifies for a tax treaty exemption, the exemption can be claimed at the time of payment by asking the employer or payer not to withhold taxes from the payment and completing all required forms. In addition, the exemption can be claimed by the individual when he or she files a U.S. income tax return instead of with NSHE at the time of payment. Please note that failure by the individual to request a tax withholding exemption will not affect the individual's ability to later claim a tax treaty exemption when completing his or her U.S. income tax return.

Income from Personal Services

Some tax treaties contain a limited exemption for personal services income earned by students and trainees while in the U.S., but there is typically an annual maximum dollar amount and/or a time limit of presence in the U.S. for which the exemption can be claimed.

Example: Article 21 of the U.S. - France income tax treaty allows an exemption of \$5,000 per calendar year for personal services income earned by a student for a period of five calendar years from the date of the student's arrival in the U.S.

Example: Article 19 of the U.S. - China income tax treaty allows an unlimited exemption from tax on compensation paid to teachers and researchers for a period of three years.

Scholarship and Fellowship Grants/Stipends (no services required)

Many U.S. tax treaties contain a "Student" article that exempts scholarship and fellowship grants or stipends received by an individual who is in the U.S. (i) studying at a U.S. educational institution, (ii) training to pursue a professional specialty, or (iii) studying or doing research under a grant from a governmental, charitable or educational organization.

U.S. Income Tax Treaties Currently in Force

Each income tax treaty is unique and may not contain the same exemption provisions as another treaty. The mere existence of an income tax treaty between the U.S. and the individual's home country 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 required tax treaty exemption forms. The NRATS (IRS Certified Acceptance Agent or Withholding Agent) will make the determination whether an individual or entity qualifies for a treaty exemption for withholding purposes.

The U.S. currently maintains income tax treaties with many countries. See IRS Publication 901 for more information.

FORMS REQUIRED FOR EXEMPTION UNDER AN INCOME TAX TREATY

If an individual qualifies for a tax treaty exemption, NSHE may exempt the individual from U.S. tax withholding, but only if the individual (i) completes either Form W-8BEN or Form 8233/Certification and (ii) has a U.S.-issued social security or individual taxpayer identification number. These forms are prepared in the office of Nonresident Alien Services. NSHE is required to calculate and deduct the tax even though the individual may otherwise qualify for the tax treaty exemption. The form used to claim the tax withholding exemption is determined by the type of income received; individuals who receive several types of income may be required to file different forms.

Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding)

Form W-8BEN is used to claim a tax treaty exemption for royalties, scholarships, fellowships, grants and stipends that do not require the performance of a service. Unlike Form 8233, which is valid for only one year, Form W-8BEN is valid for a period of three calendar years if the individual provides his or her social security number or ITIN. If no social security number or ITIN is provided, the form is valid for one calendar year. NSHE is required to collect Form W-8BEN prior to making the first payment to the individual for which he or she is claiming a tax treaty exemption.

Form 8233 (Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual)

Form 8233 is used to claim a tax treaty-based exemption from federal tax withholding on income received for personal services (i.e., wages, salary, consultant fees, or honoraria). Form 8233 must be filed by all individuals who wish to claim a tax treaty exemption for services performed.

Form 8233 is valid only for the calendar year in which it is filed; the form must be re-filed for each year that the exemption is claimed. The exemption from withholding becomes effective for payments made to an individual 10 days after the date on which the Nonresident Alien Tax Specialists file the Form 8233 with the IRS.

Employees who claim a tax treaty exemption for compensation income are required to provide an additional statement detailing the specifics of the exemption claimed.

SOCIAL SECURITY AND INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINS)

All individuals are now required to have a social security or individual taxpayer identification number. If the individual is eligible to work in the U.S., he or she must obtain a U.S. social security number. NSHE makes payments to individuals who are ineligible to obtain a social security number, but who, nonetheless, must obtain an identifying number, generally for the purposes of reporting payments and filing U.S. tax returns. Such individuals include, but are not limited to, nonresident aliens and resident aliens who are **not** authorized to work in the U.S., but who receive payments from NSHE (e.g., fellows, athletes who receive grants and stipends, royalty recipients, award recipients, consultants and guest speakers who receive honorariums). Individuals who are unable to obtain a social security number must apply for an individual taxpayer identification number (“ITIN”). To apply for an ITIN, the individual must complete and submit Form W-7 with their annual U.S. tax return. Nonresident Aliens will complete a 1040NR tax return.

To assist individuals in obtaining an ITIN, NSHE has executed an acceptance agent agreement with the IRS that allows the Nonresident Alien Tax Specialists and certain other individuals to serve as a “certifying acceptance agent.” This agreement will facilitate the application for and issuance of an ITIN to affected individuals.

An income tax treaty exemption will not be allowed to an individual who fails to provide a valid social security number or ITIN.

Form W-7 (Application for IRS Individual Taxpayer Identification Number)

Form W-7 may be submitted to most IRS offices and certain U.S. consular offices abroad. In addition, an individual may also complete a W-7 form in person to the NRATS during their tax return appointment. The W-7 form, required documentation, and tax return is submitted as a packet to the IRS. Each nonresident alien individual applying for an ITIN must provide documentation that evidences the individual’s alien status and identity. A list of acceptable documents supporting the individual’s status and identity is determined by the NRATS and detailed in the IRS W-7 instructions. The designated certifying acceptance agent should sign and date the form.

Calendar Year: For U.S. tax purposes, a person is considered to be in the U.S. for a "calendar year" if he or she is present during one or more days between the period from January 1-December 31. For example, if an individual is present in the U.S. from December 15-31, he or she is present in the U.S. for one calendar year, even though he or she is here for only 17 days.

Form I-94: A Form I-94 is the DHS Arrival/Departure record. The I-94 and travel history is available online at <https://i94.cbp.dhs.gov>
DHS border officials will also stamp the passport with the U.S. entry date and the date when the individual's permission to stay in the U.S. expires.

Nonresident Alien: The U.S. tax residency status of a non-U.S. citizen who is temporarily present in the U.S. Nonresident aliens are required to pay taxes only on their income from U.S. sources.

Original Date of Entry to the U.S.: An individual may enter or leave the U.S. several times during the period of his or her U.S. visit (for vacation, holidays, etc.) The original date of entry in the U.S. is the **first** date that he or she arrived in the U.S. before beginning his or her study, research, consulting, etc.

Permanent Resident Alien: An individual granted lawful U.S. permanent residence status. Permanent resident aliens (often referred to as "green-card holders") are taxed in the same manner as U.S. citizens.

Resident Alien: The U.S. tax residency status of an individual who has been present in the U.S. for a period of time long enough to meet the substantial presence test (defined below). Resident aliens are taxed on their worldwide income and in the same manner as U.S. citizens.

Substantial Presence Test: A test used to determine an individual's U.S. residency status for tax purposes. It involves a calculation of the number of days that an individual has been present in the U.S. over a period of three calendar years. The SPT will look back as far as the year 1985 for certain visa categories to determine possible exempt years used.

Tax Treaty: The U.S. maintains income tax treaties or agreements with countries in an effort to reduce or eliminate double taxation.

U.S. Residency Status For Tax Purposes: U.S. tax is imposed based upon an individual's U.S. residency status for tax purposes; this status is not associated with the individual's immigration or visa status. A non-U.S. citizen's residency status is either a resident alien or nonresident alien. A resident alien is taxed on worldwide income in the same manner as a U.S. citizen; a nonresident alien is taxed only on income from U.S. sources.

Visa Status: "Visa status" refers to the category of visa that a non-U.S. citizen holds. The "visa status" is marked on visa stamp or sticker in the individual's passport. For more information regarding the appropriate visa status needed for a particular individual, see the visa chart on the following page.

A-1, A-2	Diplomats and foreign government officials and their dependents. Some dependents are granted work authorization.
B-1	Business visitors. No work authorization. Eligible to receive only reimbursement for travel expenses and per diem. May not receive consulting fees; however, may receive an academic honorarium.
B-2	Visitors for pleasure. No work authorization. Eligible to receive only reimbursement for travel expenses and per diem. May not receive consulting fees; however, may receive an academic honorarium.
C-1	Transit visa. No work authorization
D-1	Foreign crewmen. Work authorized for sponsoring employer.
E-1	Treaty trader. Work authorized for sponsoring employer.
E-2	Treaty investor. Work authorized for sponsoring employer.
F-1	Students. Work authorized for host institution under very limited conditions.
F-2	Spouse and dependents of students. No work authorization.
G-1, G-2	Employees of international organizations. Some
G-3, G-4	dependents are granted work authorization.
H-1B	Professionals. Work authorized for sponsoring employer.
H-2A	Temporary Agricultural Workers. Work authorized for sponsoring employer.
H-2B	Temporary workers. Work authorized for sponsoring employer.
H-3	Trainee. Work authorized for sponsoring employer.
H-4	Dependents of H visa holders. No work authorization.
I-1	Foreign Journalists. Work authorized for sponsoring employer. Dependents are not work authorized.
J-1	Exchange Visitors including students, scholars, teachers and researchers. Work authorized under certain conditions.
J-2	Spouse and dependents. Work authorized under certain conditions.
K-1	Fiancee of U.S. citizen. Work authorized.
L-1,A,B	Intra-company executive, managerial, or specialized-knowledge transferee. Work authorized for sponsoring employer.
L-2	Dependents. No work authorization.
M-1	Vocational student. Work authorized under certain conditions.
M-2	Dependents. No work authorization.
O-1	Individual of Extraordinary Ability in the sciences, education, business, athletics or the arts. Work authorized for sponsoring employer.
O-2	Accompanying workers. Work authorized for sponsoring employer.
O-3	Dependents. No work authorization.
P-1	Internationally known athletes and entertainment groups. Work authorized for sponsoring employer.
P-2	Performing artists under a reciprocal exchange program. Work authorized for sponsoring employer.
P-3	Culturally unique entertainers. Work authorized.
P-4	Dependents. No work authorization.
Q-1	International Cultural Exchange. Work authorized for sponsoring employer.
R-1	Religious Workers. Work authorized for sponsoring employer.
TN	"Trade NAFTA" (Canadians only) Supersedes "TC" designation. Work authorized for specified employer only.
VWB	Waiver of visa for business. No work authorization. Eligible to receive only reimbursement for travel expenses and per diem; however, may in some limited cases receive an academic honorarium.
VWT	Waiver of visa for tourism. No work authorization. Eligible to receive only reimbursement for travel expenses and per diem; however, may in some limited cases receive an academic honorarium.

V I S A C L A S S I F I C A T I O N S

BLANK FORMS

U.S. Tax Information for Nonresident Alien Students

U.S. Tax Information for Consultants and Guest Speakers (ISP)

Employee Notification Sheet

Other IRS forms on website under forms

U.S. TAX INFORMATION FOR NONRESIDENT ALIEN STUDENTS

The Internal Revenue Service (IRS), the U.S. Government taxing authority, has issued strict regulations regarding the taxation and reporting of payments made to non-United States citizens. As a result, the Nevada System of Higher Education (“NSHE”) may be required to withhold U.S. income tax and file reports with the IRS in connection with payments made by the NSHE to students who are not U.S. citizens or permanent resident aliens (green card holders) and who receive financial aid, scholarships, fellowships, awards, or compensation for services performed.

The NSHE must determine whether you will be treated as a “resident alien” or “nonresident alien” for U.S. tax purposes. The substantial presence test is used to calculate the number of days that a student is present in the U.S. and determine whether the individual is a nonresident alien or resident alien for purposes of calculating U.S. tax withholding. Students present in the U.S. on F-1 or J-1 visas are usually considered to be nonresident aliens for the first five calendar years that they are present in the U.S., the NSHE is generally required to withhold taxes from all payments made to nonresident aliens. In order for the NSHE to make this determination, you must complete the *Alien Information Collection Form* and submit it to the Nonresident Alien Tax (“NRAT”) Specialist during your appointment. The NSHE is also required by law to report to the IRS all payments made to a nonresident alien, or to a third party on his or her behalf, regardless of whether the payment is subject to U.S. tax.

Nontaxable items consist of the following:

- Tuition
- Book allowance
- Required registration fees
- Mandatory health insurance fees

Taxable items include, but are not limited to, the following:

- Room and board
- Fellowship stipend (which does not require a service to be performed)
- Living allowance
- Cash award
- Travel payment/reimbursement
- Compensation (including a fellowship stipend that does require a service to be performed)

The U.S. has income tax treaties with a number of foreign countries. Certain taxable payments made by the NSHE may be exempt from U.S. tax based on an income tax treaty entered into between the U.S. and your country of residency. The existence of a tax treaty does not automatically ensure an exemption from taxation; rather, you must satisfy the requirements for the exemption set forth in the tax treaty. In order to be considered for a tax treaty exemption, you must complete Form W-8BEN (for all scholarship, fellowship, or stipend payments) or Form 8233 (for all compensation payments). Forms W-8BEN and 8233 are completed with the NRAT Specialist.

A 14 percent withholding tax will be deducted from scholarship, fellowship, stipend payments, and housing living allowances made to students present in the U.S. under an F-1 or J-1 visa (i) who are from countries that do not maintain an income tax treaty with the U.S., (ii) whose payment does not qualify for exemption under a tax treaty, or (iii) who do not have a U.S. Social Security Number or ITIN.

If you receive a scholarship or fellowship grant, certain portions of the grant (for example, tuition and required fees) will not be paid directly to you, but will be credited to your student account at NSHE. If the portion credited to your account is a nontaxable item (for example, tuition), there will be no tax impact to you. If, however, the credited portion is a taxable item (for example, room and board), you will be required to pay to the NSHE the amount of the tax that is required to be withheld, generally, 14 percent of the amount involved. NCAA Special Assistance Fund payments are taxed at 30% as these are payments not related to studies.

Compensation payments made to a nonresident alien for services performed as a NSHE employee are paid through the Payroll system. U.S. tax is withheld on this type of payment at a specific graduated tax-withholding rate. With respect to compensation paid to a nonresident alien as part of a fellowship grant, income tax treaties may or may not apply to exempt some or all compensation, and any tax withholding associated with the taxable compensation will be automatically deducted from the payments. Students who plan to work on campus must apply for a social security number from the U.S. Social Security Administration prior to beginning work.

If you have additional questions, please contact the Nonresident Alien Tax Specialist at: nrat@unlv.edu

U.S. TAX INFORMATION FOR NONRESIDENT ALIEN CONSULTANTS AND GUEST SPEAKERS

The Internal Revenue Service (IRS), the U.S. Government taxing authority, has issued strict regulations regarding the taxation and reporting of payments made to non-United States citizens. As a result, the Nevada System of Higher Education (“NSHE”) may be required to withhold U.S. income tax and file reports with the IRS in connection with payments made by the NSHE to consultants and guest speakers who are not U.S. citizens or permanent resident aliens (green card holders) and who receive compensation for services performed and/or reimbursement for travel.

The NSHE must determine whether you will be treated as a “resident alien” or “nonresident alien” for U.S. tax purposes. Consultants or guest speakers who enter the U.S. under a visitor’s visa (e.g., B-1 or B-2) or a waiver of a visa (e.g., VWB or VWT) are generally treated as nonresident aliens if they are present in the U.S. for a total of less than six months over a three year period. Consultants or guest speakers who are present in the U.S. under a J-1 visa are usually considered nonresident aliens for the first two calendar years that they are present in the U.S.

The NSHE is generally required to withhold taxes from all payments made to nonresident aliens. So that NSHE can make a correct determination about tax withholding, all guest speakers who are not citizens or permanent resident aliens of the U.S. must complete the *Alien Information Collection Form* and return it to the Nonresident Alien Tax (NRAT) Specialist. You will need to meet with the NRA Specialist to sign forms while you are here on campus. Bring your passport to your appointment. Once your U.S. tax status has been determined, if you are a nonresident alien, a tax equal to 30 percent is generally required to be withheld.

Taxable items include, but are not limited to:

- Honoraria
- Consulting fee
- Compensation
- Speaker fee
- Living Allowance
- Cash Award

The U.S. has income tax treaties with a number of foreign countries. Certain taxable payments made by the NSHE to you may be exempt from U.S. tax based on an income tax treaty entered into between the U.S. and your country of residency. The existence of a tax treaty does not automatically ensure an exemption from taxation; rather, you must satisfy the requirements for the exemption set forth in the tax treaty. In order to be considered for a tax treaty exemption, you must have a U.S. Social Security Number or Individual Tax Identification Number (ITIN). You must meet with the NRAT Specialist to sign the forms.

A 30 percent withholding tax will be deducted from compensation payments made to consultants or guest speakers (i) who are from countries that do not maintain an income tax treaty with the U.S., (ii) whose payment does not qualify for exemption under a tax treaty, or (iii) who do not have a U.S. Social Security Number or ITIN.

If you do not meet with the NRAT Specialist, the NSHE cannot refund the tax to you. You must file a U.S. income tax return at year-end to apply for a refund of tax withheld from the IRS. Please note that the NSHE is also required by law to report to the IRS all payments made to a nonresident alien, or to a third party on his or her behalf, regardless of whether the payment is subject to U.S. tax.

All individuals who receive payment from the NSHE are also required by law to disclose their U.S. Social Security or ITIN. All consultants and guest speakers who are not citizens or permanent resident aliens of the U.S. are required to meet with the NRAT Specialist and will complete forms during the appointment prior to receiving any payments or financial assistance. If you need information concerning tax-withholding obligations, please contact the Nonresident Alien Tax Specialist by email at: nrat@unlv.edu.

NEVADA SYSTEM OF HIGHER EDUCATION
Employee Notification Sheet

All individuals who are not Citizens or Permanent Resident Aliens of the United States are required to complete an Alien Information Collection Form before receiving any payment from the Nevada System of Higher Education ("NSHE"). If you are a new employee, you must meet with the Nonresident Alien Tax Specialist in order to review your completed Alien Information Collection Form, discuss your applicable tax withholding status, and complete any additional tax withholding or exemption forms.

You must bring the following documents with you to your meeting with the Nonresident Aliens Tax Specialist:

1. Alien Information Collection Form
2. Passport(s) Old and New (which includes the visas) and;
3. I-94 and travel history to the U.S.
4. Form DS-2019 if you are in J-1 status or Form I-20 if you are in F-1 status, or Form I-797 if you are in H-1B status.
5. For any other immigration status, bring your passport(s), and any immigration paperwork pertinent to your situation.

If you do not meet with the Nonresident Alien Tax Specialist within 5 days of beginning your employment with NSHE, the maximum rate of U.S. federal income tax will be withheld from your payments. Any tax withheld because you did not meet with the Nonresident Alien Tax Specialist to complete the necessary forms prior to payment cannot be refunded by NSHE.

The Nonresident Alien Tax Specialist (Debbie Honrath) is located in the Student Services Complex (SSC-A) Room 131 (same building as the Office of International Students and Scholars).

Please email nrat@unlv.edu to schedule an appointment

Employee Name (Print)

Employee Signature

Date

Date of Appointment

Appointment Time

NONRESIDENT ALIEN TAX SPECIALIST (NRATS) - UNLV

Nonresident Alien Tax Specialist Contact:

Debbie Honrath

University of Nevada Las Vegas
Student Services Complex (SSC-A) Room 132-C

4505 Maryland Pkwy, Box 451015

Las Vegas, NV 89154-1015

702.895.1243 phone (staff)

702.895.0872 (international community)

702.895.0695 fax

Email for staff: debbie.honrath@unlv.edu

Email for international community: nrat@unlv.edu

<https://www.unlv.edu/controller/nonresident-alien-services>



