

UNIVERSITY OF DAYTON
NONRESIDENT ALIEN TAX GUIDE

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I. RESPONSIBILITIES

The University of Dayton (UD) is responsible for maintaining compliance with the letter and intent of all federal, state, and local laws, including all federal tax and immigration laws pertaining to nonresident aliens that may be hosted by UD departments. This policy is intended as a reference tool for University personnel when working with nonresident alien visitors, students, or employees.

United States tax law requires the University to withhold federal income tax from and report to the Internal Revenue Service all payments made to or on behalf of a nonresident alien. In order for the University to comply with this law, the University must be able to identify all payments made to or on behalf of a nonresident alien. The University of Dayton is committed to fully complying with the tax laws.

The Assistant Treasurer and Tax Manager is charged with monitoring all payments made by the University (i) to confirm that all information and required forms have been completed and collected, (ii) for possible nonresident alien tax withholding and reporting liabilities, and (iii) to ensure compliance with all IRS rules and regulations. Final determination of U.S. tax residency status and applying tax withholding and reporting requirements for all payments made by the University is made by the Assistant Treasurer and Tax Manager.

All questions concerning the taxation of nonresident aliens should be directed to the Assistant Treasurer and Tax Manager, St. Mary's Hall Rm. 405, (937) 229-3600.

This policy presents basic information about common tax situations pertaining to the majority of nonresident aliens on campus and does not cover all tax situations. This information should not be construed as either a complete treatment of all tax questions or an official University statement as to the subject matter reviewed. University personnel are cautioned against acting as tax consultants, giving personal tax advice, or representing an individual dealing with the Internal Revenue Service while in their official capacity at the University of Dayton.

Nonresident alien students, faculty, and staff with tax questions or problems are advised to seek assistance from the Internal Revenue Service. In the U.S., the individual taxpayer is responsible for filing an appropriate and accurate tax return and negotiating all tax matters with the IRS. Taxpayer assistance is available from the local IRS office or by calling the IRS toll-free taxpayer assistance number (800) 829-1040.

The University Administration reserves the right to modify, terminate, or change the provisions of the policy in whole or in part at any time. While the University administration will make every effort to notify University staff in a timely fashion of changes made to the policy, it assumes no liability in the event of such changes.

The IRS continues to conduct audits of colleges and universities focusing on compliance with the areas of the tax laws that are discussed in this policy. In cases where taxes have not been withheld, the IRS can assess the University the full amount of tax that should have been withheld, as well as penalties and interest charges. If such an assessment occurs in an audit, the University bills these amounts back to the sponsoring department.

Sponsoring Department Responsibilities

University departments who plan to host foreign visitors should contact the offices of International Student and Scholar Services and the Assistant Treasurer and Tax Manager before making any contractual arrangement to pay or reimburse a nonresident alien visitor, to insure that violations of immigration and tax laws do not occur. Violations could lead to fines assessed against UD or detention or deportation of the nonresident alien visitor.

University personnel wishing to offer nonresident aliens employment, honoraria, scholarships, fellowships, stipends or grants must be aware that compliance with the tax and immigration laws and regulations involves considerable paperwork and advanced planning. Completion of the **Nonresident Alien Information Form** is the only way to determine an individual's tax and residency status. This form may be obtained from the Assistant Treasurer and Tax Manager's website.

In most cases, it is possible to legally reimburse nonresident alien visitors for expenses and to pay them for services performed for UD, provided that the nonresident alien visitor enters the U.S. in the proper visa status. Visa status is the responsibility of the nonresident alien visitor, who must have an I-94 marked with a visa status that allows payment. Failure to obtain the proper visa status will result in non-payment of expenses and honoraria. University personnel, who may extend an invitation to a foreign colleague, should be aware that for some countries it may take several months to obtain the proper visa. Foreign visitors should be visa ready before traveling to the United States and should not expect the University to reimburse the cost of obtaining the proper visa status. **Exceptions to this requirement are not granted at the University of Dayton.**

II. SOCIAL SECURITY NUMBER REQUIREMENT

The University requires nonresident aliens rendering services to provide either a **United States Social Security Number or an Individual Taxpayer Identification Number**. If they do not have one of these numbers, the nonresident alien must obtain one before UD can process any payments or tax treaty benefit claims on their behalf.

Whichever number the individual receives must be furnished to the University for tax reporting.

III. DEFINITIONS

The following are terms and definitions commonly used when dealing with nonresident aliens

1. Immigrant (Resident Alien for Immigration Purposes)

An immigrant, or resident alien for immigration purposes, is a “green card” holder and is often referred to as a permanent resident. An immigrant is a U.S. citizen who has been authorized to live and work in the U.S. indefinitely.

2. Nonimmigrant (Nonresident Alien for Immigration Purposes)

A nonimmigrant, or nonresident alien for immigration purposes, is a person who is not a citizen or permanent resident of the U.S. and has been admitted to the U.S. for a temporary stay that will end when the purpose of that stay has been met.

3. Resident Alien (For Tax Purposes)

A resident alien for tax purposes is a person who is not a U.S. citizen but meets either the green card or the substantial presence test described in IRS Publication 519.

With regard to residency determination for tax purposes:

- ◆ F and J student visa holders are generally considered resident aliens after their first five (5) calendar years in the U.S.
- ◆ J non-student visa holders (researchers, scholars, teachers,) are generally considered resident aliens after their first two (2) calendar years in the U.S.
- ◆ H visa holders are considered resident aliens either in the first year of their arrival in the U.S. or in the following year.

4. Nonresident Alien (For Tax Purposes)

A nonresident alien for tax purposes is a person who is not a U.S. citizen and who does not meet either the green card or substantial presence test described in IRS Publication 519.

With regard to residency determination for tax purposes:

- ◆ F and J student visa holders are generally considered nonresident aliens during their first five (5) calendar years in the U.S.
- ◆ J non-student visa holders (researchers, scholars, teachers,) are generally considered nonresident aliens during their first two (2) calendar years in the U.S.
- ◆ H visa holders are considered to be nonresident aliens in the first year of their arrival in the U.S. if they are present in the U.S. less than 183 days during the calendar year.

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 does not mean that the individual is “exempt” from paying federal income tax or FICA tax or filing a U.S. income tax return.

5. Taxable Income

Any money paid to a foreign visitor or to a third party on their behalf from which taxes are required to be paid to a government entity is considered taxable income. Employee wages, independent contractor payments, stipends, and travel reimbursements are considered taxable income. Federal, State, and local income taxes will be withheld by UD from these payments at the appropriate rates.

6. Withholding

Withholding means that the taxes a foreign visitor is obligated to pay to the Federal, State, or local governments will be taken out of the taxable income by UD, and remitted to the appropriate tax authority, as required by law.

If more taxes are withheld than the foreign visitor ultimately owes, the foreign visitor can obtain a refund for the excess amount by filing a tax return with the appropriate tax authority. If the visitor's ultimate tax liability is greater than the amount of taxes withheld, the person must pay the excess amount when filing his or her tax return.

7. Employee Wages

Employee wages are payments for services that an individual performs or carries out subject to the direction and control of the University personnel guidelines. Employee wages are not the same as payments made to a foreign visitor for independent contractor payments. *Employee wages can only be paid to foreign visitors who have been granted an appropriate employment authorization and visa status by the United States Citizenship and Immigration Services (USCIS).*

8. Independent Contractor Payments

Independent contractor payments are made for services performed by nonresident alien visitors which are outside the scope of employment. In order for an individual to be treated as an independent contractor and not as an employee, all of the following tests must be met:

- ◆ The foreign visitor must not be under the direction or control of the University regarding the means and methods that are used to perform services for the University.
- ◆ The services or tasks performed are of a short duration and will not result in the foreign visitor entering a long-term working relationship with the University.
- ◆ A written contract or agreement exists that identifies the services that are to be performed.

Independent contractor payments can only be made to nonresident aliens who have been granted the appropriate employment authorization and visa status by the USCIS. They must have an I-94 marked with a status that allows payment.

9. Candidate for a degree

A candidate for a degree includes any full-time or part-time student enrolled at an institution that grants degrees. Every UD student is a candidate for a degree.

10. Scholarships and Fellowships

Scholarship or fellowship payments are made to assist candidates for a degree pursuing a course of study or research. Under IRC Section 117, amounts paid to individuals as qualified scholarships or fellowships can be excluded from taxable income (meaning the payments are not taxable) if both of the following requirements are met:

- ◆ The scholarship or fellowship is awarded to a candidate for a degree.
- ◆ The scholarship or fellowship is used to pay for tuition and fees required for enrollment at UD.

The portions of scholarship and fellowship payments used for meals, lodging, non-mandatory medical insurance, travel, personal living expenses, or other non-course related expenses must be included in taxable income unless excluded by a tax treaty. Additionally, any amount of a scholarship or fellowship that is paid in exchange for employment-related services, including teaching and research services, is taxable as wages.

11. Travel payments

Travel expenses that are reimbursed by the University to nonresident alien employees or independent contractors, who have a compensatory relationship with the University, may be excluded from taxable income, if the traveler accounts for their expenses to the University by providing original receipts and substantiation of the business purpose of the travel.

Travel expenses of students and other visitors who have a non-compensatory relationship with the University are considered taxable income and must be taxed at the appropriate rate.

Also, travel expenses prepaid by the University are considered taxable income, because the tax status of the traveler cannot be determined at the time of payment. Travel reimbursements can only be paid to foreign visitors who have been granted the appropriate authorization and visa status. Individuals must have an I-94 marked with a visa status that allows reimbursement for expenses.

IV. TAX TREATIES

Residents of certain foreign countries may be entitled to reduced tax rates, or exemption from tax under an applicable tax treaty between their country of residence and the United States. The hosting department or nonresident alien must notify the Assistant Treasurer and Tax Manager of their desire to use a tax treaty exemption. Benefits of tax treaties vary widely, depending on the particular country involved. Notification from the IRS that the nonresident alien qualifies for a reduced rate of income tax withholding or exemption from withholding must be received before the University can grant this exemption. The University does not offer tax treaty benefits to employees to exempt wages from taxes.

Contact the Assistant Treasurer and Tax Manager to determine the specific treaty provisions available for each nonresident alien. See the section on **Payments to Nonresident Aliens-Independent Contractor Payments** for directions on applying for tax treaty benefits and processing payments to nonresident aliens.

V. PAYMENTS TO NONRESIDENT ALIENS

The University is required to withhold income taxes at the time a payment is made to a nonresident alien. The types of payments to which this rule applies include, but are not limited to – wages, salary or compensation, scholarships, fellowships, stipends, book allowances, independent contractor payments, travel reimbursements, living allowances, consultant payments, prizes, awards, honoraria or guest speaker fees. Payments do not have to be processed by check; credits to a student’s account qualify under the requirements.

The following is an overview of the forms required in connection with payments made to nonresident aliens and a detailed discussion of the procedures for properly requesting each type of payment and completing each form. Failure to follow the payment processing steps set forth in this policy will result in the maximum amount of tax withholding for the nonresident alien and a significant potential tax liability for the University. Therefore, it is essential that all deans, department chairpersons, administrators, and other personnel clearly understand and comply with the University’s policies and procedures of payments made to nonresident aliens as set forth in this policy.

The type and form of payment that a nonresident alien may receive is RESTRICTED by the type of visa they use to obtain admittance into the United States. In addition, the legality of UD making any payments to a nonresident alien may be prohibited if UD is not the institution which petitioned the government for the nonresident alien’s visa. The University pays nonresident aliens directly by check or wire payment. Nonresident aliens are **never** paid in cash. The University is required to report all payments to nonresident aliens to the Internal Revenue Service.

Classification of Payments and Tax Consequences

Employee Wages

Employee wages will have income tax withheld at the graduated tax rates per pay. The nonresident alien must file a Form W-4 claiming “single” marital status (even if married), one personal exemption, and write “Non-resident Alien” on line six. This is a federal requirement and W-4 forms not completed in this manner will be returned. A nonresident alien is not eligible to claim “**Exempt**” on their W-4 form.

FICA Tax

FICA tax is withheld from all employee wages. Special exemptions are available from FICA withholding under certain circumstances:

- ◆ Services performed by nonresident aliens temporarily in the U.S. on F, J, M, or Q-1 visas only, when those services are consistent with the purpose for which the nonresident alien has been granted visa status, are exempt from FICA tax as long as the employee is classified as a nonresident alien for tax purposes.
- ◆ Services performed by a nonresident alien student who is employed by the University while enrolled and regularly attending classes are exempt from FICA tax. If FICA taxes are withheld from a student's paycheck while they are enrolled in classes, the student must complete an appeal form (available in the Payroll Office, St. Mary's Hall Rm. 303). This form is only honored during the calendar year in which the taxes were withheld. For prior years' taxes, the student must file a **Form 843** with the IRS.

State and local taxes

The University is required to withhold from wages the applicable taxes for state and local governments.

Independent Contractor Payments

Departments who are planning to invite a nonresident alien visitor to the University must ensure that the following forms are completed in order to comply with the IRS rules.

- ◆ **Nonresident Alien Information Form** with copies of the following attached:
 - ◆ **Form I-94** arrival-departure record
 - ◆ Current visa showing issue date, visa type and a picture of the visitor
- ◆ **Letter of authorization** to perform services at UD, if the visitor is working in the U.S. for another university or organization, on the sponsoring organization's letterhead and signed by their sponsor.
- ◆ **Form 8233** to seek exemption from tax under a tax treaty if the visitor meets all of the following criteria:
 - ◆ U.S. Social Security Number or Individual Taxpayer Identification Number
 - ◆ Appropriate visa type
 - ◆ Tax treaty between the U.S. and the visitor's country

Form 8233 is available on the IRS website.

The completed paperwork and check request should be sent to the Assistant Treasurer and Tax Manager for evaluation before payment. As a withholding agent of the Internal Revenue Service, the Assistant Treasurer and Tax Manager must determine that the facts presented on Form 8233 justify granting the nonresident alien treaty benefits. If the facts do not justify the treaty benefits, the exemption form will not be accepted. Also, the IRS may disallow treaty benefits based on the information submitted on Form 8233. If either situation occurs, the visitor will be notified and applicable taxes must be withheld from the nonresident alien's payment before the check request is processed. Independent contractor payments made to nonresident aliens are subject to a 30% tax rate withholding.

Form 8233 is only valid for the calendar year in which it is filed; the form must be filed each year to claim tax treaty benefits. The exemption from tax withholding becomes effective for payments made to a nonresident alien ten (10) days after the date on which the University files the Form 8233 with the IRS. By law, the institutions must submit Form 8233 to the IRS at least ten (10) days prior to the date of payment; thus, payment will be delayed if the form is not correctly completed in advance of that time period. Tax withheld because the University did not have approved exemption forms cannot be refunded. Instead, the nonresident alien must seek a refund via their yearly tax return.

If the preceding steps are not followed, the payment will not be processed. In addition, if the nonresident alien does not complete the necessary forms, the maximum rate of tax will be withheld from the payment.

Scholarship and Fellowship payments

Scholarship and fellowship payments made to nonresident alien students through their student accounts may be subject to federal tax withholding and reporting. Amounts that are restricted to the payment of required tuition, fees, and books required for enrollment at the University are not subject to federal taxation. Amounts that do not qualify under this category are subject to federal taxation at the reduced rate of 14% unless specifically excluded from tax by a tax treaty between the United States and the nonresident alien student's country of residence. For those students not on F-1, J-1, M-1, or Q-1 status, the tax-withholding rate is 30%. An exemption must be claimed by the student using IRS Form W-8BEN. In order to claim a tax treaty benefit, the student must have a valid Social Security Number or ITIN.

Nonresident alien students who receive scholarships or fellowships that are subject in whole or in part to federal tax will be notified by the Assistant Treasurer and Tax Manager of any applicable tax withholding amounts charged to their student account.

VI. COMMON VISA TYPES AND THEIR TREATMENTS

B-1 visitor for business

Nonresident aliens present in the United States on a B-1 visa may be paid an honorarium, for usual academic activities conducted at a U.S. institution of higher education for the benefit of that institution, or reimbursed for travel expenses, subject to University travel policy restrictions. B-1 visitors are, however, prohibited from being paid a salary, wage, stipend, or other form of compensation for services rendered. The activities of a B-1 visa holder must last no longer than nine days at any single institution and the non-resident alien must not have accepted payment for honoraria or travel expenses from more than five institutions within the previous six months. If the nonresident alien is from a country that does not have a tax treaty with the United States, tax will be withheld at a rate of 30%. See the section on **Payments to Nonresident Aliens-Independent Contractor Payments** for directions on applying for tax treaty benefits and processing payments to nonresident aliens.

B-2 visitor for tourism

Nonresident aliens in the United States on a B-2 visa are prohibited from receiving any payments for work performed or travel expense reimbursement for any reason.
No exceptions are granted to this rule.

Visa waiver for business and tourism

The immigration status of visa waivers for business (WB) and tourism (WT) are identical to their B visa counterparts. WB holders can only receive reimbursement for expenses and honoraria. WT holders, like B-2s, cannot receive payments of any kind.

H1-B

An H1-B visa is an employment based visa, granted in response to a petition by an employer. Nonresident aliens in H1-B status may work only for the sponsoring organization. A nonresident alien with H-1B visa status not sponsored by the University may not receive honorariums, stipends, or travel reimbursements from UD.

In addition, H1-B visa holders with work authorization are subject to FICA tax withholding. Any change of visa status to H1-B status must be communicated to the appropriate payroll office immediately.

F-1 and J-1 students

F-1 student and J-1 student visas allow for employment of a nonresident alien on campus and off campus under certain circumstances, such as curriculum related practical training. Federal income taxes, FICA tax, and state and local income taxes will apply to payments made to these visa holders.

J-1 and J-2 scholars (professors and researchers)

J-1 nonstudent visas allow for employment of a nonresident alien on campus exclusively. Permission to work off campus is strictly limited. Federal income taxes, FICA tax, and state and local income taxes will apply to payments made to these visa holders.

A nonresident alien with J-1 visa status based on a document issued by a sponsoring organization other than the University of Dayton, must have written authorization from their sponsor before traveling to UD. The nonresident alien must provide the written authorization along with the check request and other required documents before payment will be made.

Other Visa Types

O-1 and **P** visas are issued to artists, performers, and aliens of extraordinary ability. These visa types are treated in the same manner as the H1-B visa holder and may only work for the organization that sponsored their visa.

R-1 visas are issued to religious workers, who may work only for the organization who sponsored their visa.

TN visas are issued to Canadians and Mexicans and are the equivalent of the H1-B for tax and payment purposes. FICA tax is withheld from their wages from the beginning of their employment with the University. TN visa holders may work only for the organization that sponsored their visa.