



# Taxes: Federal Taxation of Aliens

|                             |   |
|-----------------------------|---|
| <b>Responsible Officer:</b> | EVP - Chief Financial Officer                                 |
| <b>Responsible Office:</b>  | FA - Financial Accounting                                     |
| <b>Issuance Date:</b>       | 2/1/2017  |
| <b>Effective Date:</b>      | 2/1/2017  |
| <b>Last Review Date:</b>    | February 1, 2017  |
| <b>Scope:</b>               | This Bulletin applies to all UC Campuses and Medical Centers. |

***I. POLICY SUMMARY*** \_\_\_\_\_ **1**

***II. DEFINITIONS*** \_\_\_\_\_ **1**

***III. POLICY TEXT*** \_\_\_\_\_ **3**

***IV. COMPLIANCE / RESPONSIBILITIES*** \_\_ **3**

***V. PROCEDURES*** \_\_\_\_\_ **3**

***VI. RELATED INFORMATION*** \_\_\_\_\_ **4**

***VII. FREQUENTLY ASKED QUESTIONS*** \_\_ **30**

***VIII. REVISION HISTORY*** \_\_\_\_\_ **30**

|                 |                       |
|-----------------|-----------------------|
| <b>Contact:</b> | John Barrett          |
| <b>Title</b>    | Tax Manager           |
| <b>Email:</b>   | John.Barrett@ucop.edu |
| <b>Phone #:</b> | (510) 987-0903        |

---

## **I. POLICY SUMMARY**

---

It is the policy of the University to comply with IRS regulations regarding the withholding, reporting and remittance of federal income tax on any payment made by the University to a nonresident alien.

---

## **II. DEFINITIONS**

---

***Asylee/Refugee:*** A person who has been granted asylum but has not yet been granted permanent residency.

**GLACIER Alien Tax Compliance Software:** GLACIER is an online tax compliance system created by Arctic International LLC which is designed to allow campuses to collect information, make tax residency and income tax treaty determinations, manage paperwork, and maintain data for their foreign employees, independent contractors and scholarship/fellowship recipients.

**Green Card Test:** An alien is considered to be a U.S. resident for income tax purposes if the individual is a lawful permanent resident of the United States, i.e., a lawful U.S. immigrant--with a Permanent Resident Card ("green card")--at any time during the calendar year.

**Nonresident Alien:** An alien who comes to the U.S. temporarily for some purpose such as study, business, or tourism. Normally a nonresident leaves the U.S. within a determined time although it is possible to change status while in the U.S.

**Out of Status:** Usually a nonresident who entered the U.S. with legal status but who has violated the terms of his or her admission (e.g. overstay).

**Resident Alien:** An alien is classified as a resident for tax purposes if he/she passes either the "Green Card Test" or the "Substantial Presence Test". A resident alien who passes the "Green Card Test" is called a **Permanent Resident or Immigrant**. Permanent Residency gives an alien the right to reside permanently in the U.S. while maintaining his/her own non-U.S. citizenship. Generally permanent residents are the only aliens eligible for naturalization.

**Student:** An individual who is temporarily present in the United States, with F-1 or J-1 student visa status, and who substantially complies with the requirements for being present in the United States.

**Substantial Presence Test:** An alien will be considered a U.S. resident for tax purposes if he or she meets the substantial presence test under the conditions listed. The test must be applied each year on a prospective basis, always taking into account the current year and the two preceding years.

**Teacher or Trainee:** An individual who is temporarily present in the United States with J-1 visa status (other than as a student), and who substantially complies with the requirements for being present in the United States. Researchers are included in this category.

**Temporary Protected Status:** Persons from designated countries who have been granted the right to remain and work in the U.S. for a specified time. This is generally due to adverse and extraordinary circumstances in their home country.

**Temporary Resident:** Generally temporary residents are persons who have applied for legalization or amnesty. A temporary resident eventually will become a permanent resident.

**Totalization Agreements:** An alien whose earnings are subject to taxes or contributions under the social security system of a foreign country with which the United

States has a totalization agreement is exempt from the FICA tax when the exemption is properly substantiated. A list of countries that have totalization agreements with the U.S. can be found on the [SSA website](#) and [IRS website](#).

**U.S. Citizen:** U.S. citizenship is usually gained by persons at birth in the United States. It also may be gained by birth to U.S. citizen parents or through naturalization.

**Undocumented Alien (illegal):** A person who has entered the US illegally (without valid entry status or documentation).

---

### III. POLICY STATEMENT

---

#### A. *University Policy*

This policy addresses the eligibility of certain classes of aliens to receive employment, independent contractor, or scholarship and fellowship payments from the University, and the Federal withholding and reporting requirements applicable to those payments. Whether or not an alien may receive salary, honoraria, or other compensation for services, as well as reimbursement for travel and subsistence expenses, is governed by the Immigration and Nationality Act<sup>1</sup> (INA) and regulations promulgated by the United States Citizenship and Immigration Services (USCIS). The tax status of payments made to aliens is governed by the Internal Revenue Code (IRC) and regulations promulgated by the Internal Revenue Service (IRS). The hiring of nonresident alien employees or independent contractors normally should be coordinated with the campus international students and scholars office.

***It is essential to determine the immigration status of any alien receiving payment from the University to ensure that the rules and regulations of both the USCIS and the IRS are met.***

---

### IV. COMPLIANCE / RESPONSIBILITIES

---

Federal income tax laws contain special provisions regarding foreign scholars who are visiting the United States for the purpose of teaching, research, study, or training. In addition, tax treaties between the United States and certain countries contain special provisions for income tax to be paid by resident and nonresident scholars. Therefore, it is frequently necessary to seek clarification from the IRS prior to extending tax treaty

---

<sup>1</sup> Revisions to the INA:

1986- Immigration Reform and Control Act

1990- Immigration Act

1991- Miscellaneous and Technical Immigration and Naturalization Amendments

2001- Department of Homeland Security was created

2003- Immigration and Naturalization (INS) became the United States Citizen and Immigration Service (USCIS)

benefits to an alien. However, information obtained verbally from the IRS should be treated as guidance only and may not be relied upon in any subsequent disputes with the IRS or used as precedent. Specific procedures for obtaining official rulings from the IRS changes annually in the Revenue Procedures with the heading "Letter rulings, determination letters, and information letters". Questions concerning University policy on taxes should be referred by the campus controllers' offices to the UCOP Financial Accounting – Payroll Coordination and Tax Services Unit.

| Function   | Responsibilities  |
|--|---|
| Executive Vice President-<br>Chief Financial Officer     | <ul style="list-style-type: none"> <li>Establish and update the policies set forth in this Bulletin.</li> </ul>   |
| Employing or Contracting<br>Campus Department            | <ul style="list-style-type: none"> <li>Obtain and forward the documentation required to pay a nonresident alien to the Payroll Office/UC PATH Center.</li> </ul>  |
| Campus Controller or<br>Payroll Office/UC PATH<br>Center | <ul style="list-style-type: none"> <li>Ensure that all payments made to aliens are properly reported and that applicable taxes are withheld.</li> </ul>   |
| Campus International<br>Students and Scholars<br>Office  | <ul style="list-style-type: none"> <li>Provides assistance regarding visas, immigration status, etc., to ensure compliance with campus procedures governing payments to foreign students and scholars.</li> </ul> |

---

## V. PROCEDURES

---

### A. *Determining Residency Status*

For federal income tax purposes, non-U.S. citizens are classified by the IRS as either resident or nonresident aliens. Since the tax withholding requirements are different for resident and nonresident aliens, it is **essential** to establish the residency status of any non-U.S. citizen who will be receiving payments from the University. There are two tests used to determine whether a non-U.S. citizen should be classified for tax purposes as a U.S. resident or as a nonresident alien: the "green card" test and the substantial presence test. An alien who does not qualify under either test is defined for income tax purposes as a nonresident alien.

#### 1. Green Card Test

An alien is considered to be a U.S. resident for income tax purposes if the individual is a lawful permanent resident of the United States, i.e., a lawful U.S. immigrant--with a Permanent Resident Card ("green card")--at any time during the calendar year.

#### 2. Substantial Presence Test

#### General Rules

An alien will be considered a U.S. resident for tax purposes if he or she meets the substantial presence test under the conditions listed below. The test must be applied each year on a prospective basis, always taking into account the current year and the two preceding years.

An alien will meet the substantial presence test with respect to any current calendar year if:

- a. He or she was present in the United States for at least 31 days during the current calendar year; and
- b. The sum of the number of days he or she was present in the United States during the current year and the two preceding calendar years equals or exceeds 183 days as computed using the following formula:

- 1) Current year days in U.S.           x 1 = \_\_\_ days
- 2) 1st preceding year days in U.S. x 1/3 = \_\_\_ days
- 3) 2nd preceding year days in U.S. x 1/6 = \_\_\_ days
- 4) Total Days in U.S.                       = \_\_\_ days

If line 4 equals or exceeds 183 days, the individual has passed the substantial presence test for the current calendar year. The test must be applied again in the following year.

### **Examples of the Substantial Presence Test**

#### **Example (a)**

An alien who is present in the United States during the current calendar year for 183 days--almost exactly six months--**is** considered to be a U.S. resident for income tax purposes.

#### **Example (b)**

An alien who satisfied the substantial presence test for 2011 and was therefore considered a U.S. resident for income tax purposes for the 2011 tax year subsequently leaves the country on January 30, 2012. The alien is in the United States for fewer than 31 days in 2012, and therefore, for income tax purposes, **is not** considered to be a U.S. resident in 2012, even though the 183 day test is met.

#### **Example (c)**

An alien who is present in the United States for 183 or more formula days is considered to be a U.S. resident for income tax purposes:

| <u>Year</u> | <u>Actual Days</u> | <u>Multiplier</u> | <u>Formula Days</u> |
|-------------|--------------------|-------------------|---------------------|
| 2009        | 138                | 1/6               | 23                  |

|      |     |     |            |
|------|-----|-----|------------|
| 2010 | 129 | 1/3 | 43         |
| 2011 | 120 | 1   | <u>120</u> |
|      |     |     | Total 186  |

**Example (d)**

An alien who is present in the United States for the length of time shown below is not considered to be a U.S. resident for income tax purposes (even though the alien is present for more than 31 days in the current year, because he or she is not present for 183 formula days):

| <u>Year</u> | <u>Actual Days</u> | <u>Multiplier</u> | <u>Formula Days</u> |
|-------------|--------------------|-------------------|---------------------|
| 2009        | 54                 | 1/6               | 9                   |
| 2010        | 150                | 1/3               | 50                  |
| 2011        | 110                | 1                 | <u>110</u>          |
|             |                    |                   | Total 169           |

3. Special Rules for First Year of Residency

- a. Residency Starting Date for Individuals Who Meet the Substantial Presence Test

In the case of an alien who meets the substantial presence test in any calendar year, the residency starting date will be the first day during such calendar year on which he or she is physically present in the United States.

- b. Residency Starting Date for Individuals Lawfully Admitted for Permanent Residence

In the case of an alien who is a lawful permanent resident of the United States at any time during the calendar year, but who does not meet the substantial presence test, the residency starting date will be the first day in such calendar year on which he or she was physically present in the United States while a lawful permanent resident of the United States.

4. Special Rules for Last Year of Residency

An alien is not treated as a resident of the United States during a portion of any calendar year if:

- a) Such portion is after the last day in the calendar year on which the individual was physically present in the United States (or, in the case of a lawful permanent resident, the last day on which he or she was so described);
- b) During such portion the individual has a closer connection to a foreign country than to the United States; and

- c) The individual is not a resident of the United States at any time during the next calendar year.

5. Individuals Exempt from the Substantial Presence Test

Some individuals who are actually present in the United States are generally not treated as being present for tax purposes, with certain limitations. A specified period of time must elapse before the substantial presence test is applied to these exempt individuals,<sup>2</sup> and during this initial period they are considered nonresident aliens. An exempt individual is one who is a foreign government-related individual or a teacher, trainee, or student, as defined below:

- a) **Foreign Government-Related Individual** – An individual is temporarily present in the United States who (a) has a diplomatic status, or a visa that represents full-time diplomatic or consular status; (b) is a full-time employee of an international organization; or (c) is a member of the immediate family of one of the aforementioned individuals. A foreign government-related individual is considered a nonresident alien for income tax purposes for the duration of his or her sojourn in the United States.
- b) **Teacher or Trainee** – See definitions.
- c) **Student** – See definitions.
- d) **Commuters from Canada or Mexico** – An individual who regularly commutes to employment in the United States from a place of residence in Canada or Mexico will not be treated as being present in the United States on any day during which he or she so commutes.
- e) **Medical Condition** – If an individual is unable to leave the United States on any day because of a medical condition which arose while he or she was in the United States for that day.
- f) **In Transit Between Two Foreign Points** – If an individual who is in transit between two points outside the United States is physically present in the United States for fewer than 24 hours, that individual will not be treated as being present in the United States on any day during such transit.

**B. *Payments to Aliens***

1. General Provisions – Employment

Immigrants are aliens who have been admitted to the United States for permanent residence and may be employed without restriction.

---

<sup>2</sup> The term “exempt individual” refers to an individual who is exempt from the substantial presence test, not to an individual who is exempt from paying federal tax, OASDI and Medicare tax or from filing a United States income tax return.

Immigrants are issued alien registration cards (commonly known as the "green card") by the USCIS. Nonresident aliens are individuals admitted to the United States for a limited period of time. Certain classes of nonresident aliens are authorized for employment as a condition of their admission to the United States, and, as long as the employment is consistent with the terms of their admission, a specific employment authorization by the USCIS need not be requested.

Other classes of nonresident aliens may be employed only if a specific authorization is obtained from the USCIS. Some classes of nonresident aliens are prohibited from any type of employment while in the United States. Under the INA, it is unlawful to employ illegal and/or out-of-status aliens. Executive Order 12989, issued in February 1996, imposes additional sanctions against employers who are not in compliance with the employment-related provisions of the INA.

An employer who is not in compliance with these USCIS provisions may be debarred from receiving Federal contracts.

2. General Provisions – Compensation Paid Through Accounts Payable

Provisions regarding payments made through the Campus Accounts Payable Office to non-employee aliens for personal services, such as honoraria, consulting fees, and performance fees, are subject to the applicable requirements specified.

3. Immigration Expenses

Expenses incurred to process visa applications, visa renewals and to obtain temporary and permanent residence status on behalf of existing University employees, prospective University employees, and independent contractors, are excluded from the individual's gross income as follows:

Legal expenses and immigration fees paid in connection with visa applications and visa renewals, as well as all travel and other expenses related to obtaining those visas are primarily related to the business of the University. Therefore, such expenses should be excluded from the individual's gross income. These visas (e.g., J, H, O, and TN visas) are obtained by the University on behalf of the foreign individual for the express purpose of permitting that individual to enter the U.S. to work at the University. In addition, reimbursements of the spouse's visa-related expenses are also excludable under the fringe benefit rules as another type of moving expense.

Legal expenses, immigration fees, and related expenses paid in connection with obtaining status as a permanent resident (i.e., obtaining a green card) or obtaining temporary resident status may or may not relate to the business purposes of the University, depending on the facts and



circumstances. If the expenses relate to the University's business purposes, they are excluded from the individual's gross income. Obtaining a green card for a foreign national employee's spouse (as well as any minor children) also services the business interest of the University because otherwise the spouse (as well as any minor children) must leave the U.S. The following are examples of immigration fees that should be excluded from an individual's gross income:

- a) An employee's work visa is going to expire and the visa cannot be renewed, and the only alternative to keeping the employee in the U.S. and working for the University is to obtain a green card for the individual;
- b) A government contract in which the University is involved requires that foreign nationals working on the contract have a green card;
- c) The foreign national is working on a University project involving technology to which the United States export control laws require that only permanent residents can have access; or
- d) The position involves extensive travel to other countries, and the foreign national's home country (e.g., China, Iran, and Iraq) makes it difficult for the person to enter other countries; therefore, the foreign national needs a green card so he or she can obtain U.S. travel documents.

In these and other similar business-related situations, the fact that the University pays the legal fees and other expenses in order to obtain a card for the person should not result in income to the individual because the expense is primarily a University expense, with the individual receiving only incidental benefits.

When there is no connection between the immigration-related expenses paid by the University and the foreign national's employment functions, legal and other expenses paid by the University would constitute taxable income to the individual. The following are examples of immigration-related fees that represent taxable income and should not be excluded from an individual's gross income:

- a) An employee asks the University to obtain a green card for him or her simply because they want to have a green card; or
- b) A foreign national may not agree to come to work for the University unless the University agrees to obtain a green card for him or her while they are in the U.S.

In these and other similar situations, the obtaining of the green card by the University is primarily for the benefit of the individual, not the University, and is more in nature of a bonus or a fringe benefit.

Any payment made to an employee or independent contractor as a reimbursement of a business- related immigration expense must be properly substantiated by the individual, in order for the payment to be excluded from his or her gross income. Such payments made to a third party on behalf of an employee or independent contractor would be excludable from the individual's gross income as a working condition fringe benefit, since the payment would have been deductible had the individual made the payment himself.

The University is required to include immigration-related fees paid to fellowship or scholarship recipients who are nonresident aliens in their gross income. Under section 117 of the Code, which defines the types of fellowship and scholarship grants that are excludable from the recipient's gross income, only tuition, books and related fees can be excluded. All other aspects of the fellowship and scholarship grant are included in the person's gross income, including such items as stipends, room and board, etc. Therefore, immigration-related fees are considered as another component of the fellowship grant and must be included in the individual's gross income, regardless of whether withholding is required. Refer to Accounting Manual chapter T-182-77, *Taxes: Taxation of Scholarship and Fellowship Grants and Education Assistance*, for additional information on payments paid to fellowship or scholarship recipients.

4. Visa Classifications

a. B-1 Visa

Classified as visitors for business. This classification is often given to foreign scholars who make short visits to the University. This visa does not authorize employment, but allows the alien to engage in commercial transactions that do not involve employment.

b. B-2 Visa

A visitor who intends to combine business with pleasure may be issued a B-1/B-2 visa; however, the visitor's status will be designated as either B-1 or B-2 on the USCIS Form I-94, Arrival/Departure Record, at the time the visitor enters the United States. The initial maximum admission period for B-1 and B-2 visa holders is one year.

c. Waiver for Business (WB) and Waiver for Tourism (WT) Visa

The Visa Waiver Program was established by the Immigration Reform and Control Act of 1986. The Act allows citizens of certain countries, to enter the United States for business or pleasure without obtaining a nonresident visa. Individuals in the Visa Waiver Program (VWP) are treated in accordance with the rules for B-1/B-2 visa holders. The maximum admission period for WB and WT visa holders is 90 days. For more information about the VWP and a list of the participating

countries, please see the U.S. State Department's Visa Waiver Program [website](#).

d. E Visas – Treaty Trader and Treaty Investor

E-1 visa holders may not be employed by the University. However, these individuals may be reimbursed for incidental expenses, i.e., honorarium or travel reimbursements, without violating their visa status. ***The dependents of E-1 visa holders (spouse and children) may be employed, provided they have a valid employment authorization.***

e. F Visas – Academic Students and Spouses

F-1 visa is issued to nonresident students attending academic institutions or enrolled in language training programs. An F-1 student is admitted for his or her "duration of status," defined as the period of time during which the student is pursuing a full course of studies in any educational program, and any periods of authorized practical training, plus sixty (60) days within which to depart from the United States. An F-1 student may be employed on campus for no more than twenty (20) hours a week while school is in session. During periods when school is not in session, the student may work full time, provided the student is eligible, and intends to register for the next school session.

While the USCIS places no further restrictions on employment on campus, some campuses may require that an F-1 student obtain special permission from the campus foreign student adviser before accepting nonacademic campus employment (i.e., other than as a teaching or research assistant or a reader). This is done to ensure that the student has a financial need and that his or her academic progress will not be adversely affected by such employment.

Off-campus employment, including employment on a campus other than the one the student is attending, requires written authorization. Such authorization may come from the USCIS or from the international students and scholars office at the school of record. (Please contact your local international students and scholars office for further information.) Such permission normally allows employment for twenty (20) hours per week during the school year and forty (40) hours per week during vacation periods.

Under certain circumstances specified by the USCIS, temporary employment may be authorized for practical training related to the student's course of study prior to completion of the student's studies. However, such employment cannot exceed twelve (12) months in the aggregate. After completion of the student's studies, the student cannot be employed for more than twelve months. Employment for

practical training requires certification by the foreign student advisor, or by both the foreign student advisor and the USCIS, depending on the circumstances.

An F-2 visa is issued to the alien spouse of an F-1 student. The holder of an F-2 visa **may not accept any employment**.

f. H Visas – Temporary Workers or Trainees and Spouses

Holders of an H-1B, H-2, or H-3 visa are authorized to work, in accordance with the terms and conditions of their admission. Each individual is admitted to the United States pursuant to a petition filed by a particular employer for a specific job or training program and is not free to accept other employment.

An H-1B visa is issued to alien professionals of exceptional merit and ability for temporary employment. An approved H-1B petition is valid for a period of up to three years. Extensions may be authorized, but the alien's total stay generally may not exceed six years.

An H-2 visa is issued for temporary employment to aliens with unique or specialized expertise only when it can be demonstrated by means of a labor certification that no qualified Americans are available to accept such employment. The labor certification is normally valid for only one or two years, subject to possible renewal. An extension of stay may not exceed more than three years.

An H-3 visa is issued to aliens for participation in training programs not available in their home country. Few H-3 visas are issued for University positions, since the employer must present extensive documentation that an elaborate training program, with full supervision, will be provided. An approved petition is valid for the documented length of the approved training program.

An H-4 visa is issued to the alien spouse of an H-1, H-2, or H-3 visa holder. The holder of an H-4 visa **may not accept any employment**.

g. J Visas – Exchange Visitors and Spouses

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

The holder of a J-1 visa may receive salary, honoraria, or other compensation for services, as well as reimbursement for travel and subsistence expenses, *but only for the academic undertaking for which the holder was admitted*. In addition, a J-1 visitor must have permission to accept employment from the visitor's sponsoring agency. The

immigration status of a J-1 visitor is valid for the duration of status. The individual must pursue the program for which he or she was admitted to the United States as described on the Certificate of Eligibility for Exchange Visitor (J-1) Status Form (DS-2019) issued by the program sponsor. However, most J-1 scholars are permitted to remain in the United States for three years.

The holder of a J-1 *student* visa may receive salary, honoraria, or other compensation for services, as well as reimbursement for travel and subsistence expenses. However, regulations require that all J-1 students have a work authorization for **any employment** they wish to engage in, whether it is on-campus or off-campus. The immigration status of a J-1 student is valid for the duration of his or her status. The student must pursue the program for which he or she was admitted to the United States, as described on the DS-2019 issued by the program sponsor. (For further information regarding the J-1 student work authorization, contact your local International Student and Scholars Office.)

A J-2 visa is issued to the alien spouse of an exchange visitor. The holder of the J-2 visa may be employed only with special authorization by USCIS. (Income from the employment of a spouse or dependent may be used to support the family's recreational and cultural activities and related travel. Employment is normally not authorized if this income is needed to provide support for the J-1 visitor.)

h. K Visas – Fiance(e) of an American Citizen

A K-1 visa is issued to an individual who is coming to the United States to marry an American citizen. The individuals must marry within 90 days and the visa holder must apply for permanent residence. A work authorization may be requested at the time the visa holder enters the United States; the temporary authorization is shown on his or her I-94 (Entry Permit).

A K-2 visa is issued to the minor child (or children) of a K-1 visa holder. The holder of a K-2 visa may request work authorization upon entry to the United States. The temporary work authorization is shown on the I-94.

i. L Visas – Intra-Company Transfers and Dependents

The L-1 visa is issued to intra-company transfers, i.e., managers or executives who have worked abroad for a branch of a U.S. firm. Individuals on an L-1 visa may only work for the company that obtained the visa classification on their behalf; no other work is permitted. The L-1 visa is listed for informational purposes only since it is not applicable to University employees.

The L-2 visa is issued to the dependent of an L-1 visa holder. An L-2 dependent may accept University employment if he or she has been granted a work authorization. The work authorization is shown on the I-94 ID card or the employment authorization document (EAD).

j. M Visas – Vocational Students and Spouses

The M-1 visa is issued to students enrolled in courses, other than language training programs, at established vocational or other recognized nonacademic institutions. The M visa is listed here for *informational purposes only since it is not applicable to University students.*

The M-2 visa is issued to the alien spouse of an M-1 student. A holder of the M-2 visa **may not accept employment.**

k. O Visas – Extraordinary Ability

An O-1 or O-2 visa holder is admitted to the United States for specific events. O-1 and O-2 visas are issued to individuals who have established extraordinary ability in their fields of science, arts, education, business, or athletics. The alien must demonstrate extraordinary ability through extensive documentation of sustained national or international acclaim. These individuals may be paid any amount by the employer who filed the request and received approval for their O visas. The alien's total period of stay in the United States is limited to the duration of the event.

An O-3 visa is issued to the dependents of an O-1, or O-2 visa holder. **The holder of an O-3 visa may not be paid from any U.S. source.**

l. P Visas – Performing Arts

P-1, P-2, and P-3 visas are issued for the temporary admission of entertainment groups, athletes (individuals or a team), and individuals accompanying such groups. P visa holders are admitted to the United States to teach, perform, or coach under a program that is culturally unique. These individuals may be paid any amount by the employer who filed and received approval for their P-1, P-2 or P-3 visa. The alien's total period of stay in the United States is limited to the duration of the event. A P-4 visa is issued to the dependents of a P-1, P-2, or P-3 visitor. **The holder of the P-4 visa may not be paid from any U.S. source.**

m. Q Visas – International Cultural Exchange Visitors

The Q visa is issued to individuals who will participate in international cultural exchange programs established to enhance Americans' knowledge and appreciation of different world cultures. Q visa holders

are authorized to work for specific employers, e.g., Disney World's Epcot Center in Florida. Examples of nonresident employees include Chinese acrobats and members of Bavarian Oktoberfest bands. The Q visa is listed here for information purposes only.

n. TN and TD Classifications – and Their Dependents

This special classification was established by the USCIS as a result of the North American Free Trade Agreement (NAFTA). It is not a visa category. Under NAFTA, a qualified Canadian or Mexican business person may be admitted temporarily to the United States to engage in business activities at a professional level, for a period not to exceed one year. An extension of stay may be granted by the USCIS. The Canadian or Mexican visitor must present to the USCIS documentation demonstrating that he or she seeks entry to the United States to engage in business activities for a U.S. employer at a professional level (often as a researcher).

Such documentation is often in the form of a letter from the prospective employer(s) in the United States. The Canadian or Mexican visitor's I-94 will show a "TN" classification; a visa is not required.

A TD (Trade Dependent) visa is generally issued to the spouse of a Canadian or Mexican TN visitor. The holder of a TD classification may not accept employment.

**Visa Classification Chart**

| Visa                | Classification   | May Be Employed As a Condition of Admission | May Be Employed With Special USCIS Authorization | May Not Be Employed |
|---------------------|--|---|--|---------------------|
| B-1                 | Visitor for Business   |   |  | X                   |
| B-2                 | Visitor for Pleasure   |   |  | X                   |
| F-1                 | Academic Student   | On campus                                   | Off campus                                       |                     |
| F-2                 | Academic student's alien spouse  |   |  | X                   |
| H-1B<br>H-2B<br>H-3 | Temporary professional worker<br>Temporary worker<br>Temporary professional worker trainee | X   |  |                     |
| H-4                 | Temporary workers or trainee alien spouse  |   |  | X                   |

University of California – Policy T-182-27  
 Taxes: Federal Taxation of Aliens

|                 |  |   |   |   |
|-----------------|--|---|---|---|
| J-1             | Exchange visitor   | X |   |   |
| J-2             | Exchange visitor's alien spouse                              |   | X |   |
| L-1             | Intra-company transfer                                       |   |   | X |
| L-2             | Dependent of L-1   |   | X |   |
| O-1             | Alien of extraordinary ability                               | X |   |   |
| O-2             | Alien with critical skills and experience                    | X |   |   |
| O-3             | Dependents of O-1's and O-2's                                |   |   | X |
| P-1             | Alien athlete internationally recognized                     | X |   |   |
| P-2             | Alien artist or entertainer, individual or group             | X |   |   |
| P-3             | Alien providing essential support to P-1 or P-2 visa holders | X |   |   |
| P-4             | Dependents of P-1's, P-2's or P-3's                          |   |   | X |
| TN <sup>3</sup> | Canadian or Mexican citizen business person                  | X |   |   |
| WB              | Waiver for business  |   |   | X |
| WT              | Waiver for tourism   |   |   | X |

### Overview Of Alien Registration Cards and Employment Authorization Documents

| Document Name   | Description  |
|---|--|
| Alien Registration Receipt Card I-151                                   | Issued by the USCIS, prior to June 1978, to lawful permanent resident aliens. This card is no longer valid. Persons holding this card must apply for a replacement green card.   |
| Alien Registration Receipt Card (Resident Alien Card) I-551             | Issued by the USCIS after March 1977 to lawful permanent resident aliens. Although this card is no longer issued, it is valid indefinitely. The card is commonly referred to as a "green card" and is the replacement for the Form I-151. This version is white with a blue logo.  |
| Alien Registration Receipt Card (Conditional Resident Alien Card) I-551 | Issued by the USCIS after January 1987 to conditional permanent resident aliens such as spouses of U.S. citizens or lawful permanent resident aliens. It is similar to the I-551 issued to permanent resident aliens. This card is no longer issued. It was valid for 2 years from the date of admission or adjustment. The expiration date is listed on the back of the card. This version is white with a blue logo. |
| Alien Registration Receipt Card (Resident Alien Card) I-551             | Issued by the USCIS since 1989 to both conditional and lawful permanent resident aliens. Although it is similar to the previously issued I-551's, this card is valid only for a limited period of time – two years from the date of admission or adjustment for conditional permanent resident aliens and 10 years from issuance for lawful permanent resident aliens. The expiration date is listed on the front of   |

<sup>3</sup> TN is a special INS classification; it is not a visa type.



|   |   |
|---|---|
|   | the card. This version is rose-colored with a blue logo.  |
| Temporary Resident Card I-688                       | Issued by the USCIS to aliens granted temporary resident status under the Legalization or Special Agricultural Worker program. It is valid until the expiration date printed on the face of the card or on the sticker(s) placed on the back of the card.   |
| Employment Authorization Card I-688A                | Issued by the USCIS to applicants for temporary resident status after their interview for Legalization or Special Agricultural Worker status. It is valid until the expiration date printed on the face of the card or the sticker(s) placed on the back of the card.   |
| Employment Authorization Card I-688B                | Issued by the USCIS to aliens granted authorization for temporary employment in the U.S. The expiration date is printed on the face of the card. This card is known as the EAD. USCIS began phasing out the I-688B in January 1997. Holders of this card to not need to replace their current card with the new Form I-766. This card will remain valid until the expiration date on the individual card.   |
| Employment Authorization Card I-766                 | Issued by the USCIS to aliens who are not legal permanent residence but who have been granted temporary permission to work in the U.S. Initial distribution of this card began in January 1997.   |
| Employment Authorization Document (EAD), Form I-766 | Issued by USCIS in January 1997 to replace the I-688B. This card looks like a credit card.  |
| Arrival/Departure Forms: I-94 and I-94W             | <p>Foreign visitors to the U.S. arriving via air or sea no longer need to complete paper Customs and Border protection Form I-94 Arrival /Departure Record. Those who need to prove their legal-visitor status ission to work in the U.S. Initial distribution of this card began in January 1997<sup>4</sup> arrival/departure record information online.</p> <p>CBP now gathers travelersinformation online. information automatically from their electronic travel records. Because advance information is only transmitted for air and sea travelers, CBP will still issue a paper form I-94 at land border ports of entry.</p> <p>If travelers need the information from their Form I-94 admission record to verify immigration status or employment authorization, the record number and other admission information they are encouraged to get their I-94 Number.</p> <p>Upon arrival, a CBP officer stamps the travel document of each arriving non-immigrant traveler with the admission date, the class of admission, and the date that the traveler is admitted until. If a traveler would like a paper Form I-94, one can be requested during the inspection process. All requests will be accommodated in a secondary setting.</p> |
| I-20 ID   | F-1 Visa holders. All important actions (transfers, work permission, etc.) are recorded on this document.   |
| DS-2019   | Document indicating that the individual has a J-1 visa.   |

5. The American Competitiveness and Workforce Improvement Act of 1998

The American Competitiveness and Workforce Improvement Act contains a provision that allows certain visa holders who were formerly prohibited from receiving payments for services to be paid honoraria and associated incidental expenses. Holders of B-1, **B-2, WB, and WT** visas may be paid for *usual academic activity*<sup>5</sup>, if the payment is offered by an institution of higher education or a governmental research organization provided such activities do not exceed nine days at a single institution. In addition, such

<sup>4</sup> CBP stands for Customs and Border Protection

<sup>5</sup> Under prior law, holders of B-1 and WB visas could be reimbursed *only* for incidental travel and subsistence expenses; B-2 and WT visa holders could not accept any payment whatsoever.

visa holders cannot have accepted honoraria and/or incidental expenses from more than five such institutions or organizations in the previous six-month period.

Payments made to short-term foreign visitors (nonemployees) to reimburse **expenses** are made through Campus Accounts Payable. Such payments are not subject to income tax reporting or withholding, provided the visitor accounts for the reimbursement in accordance with the University's travel policy (see Business and Finance Bulletin [G-28](#), *Travel Regulations*, for more information).

#### 6. Health Insurance Requirements

Nonresident alien **employees** are required by the University to have medical insurance coverage as a condition of University employment<sup>6</sup>. Non-student employees who do not qualify for University health coverage are required to obtain medical insurance through some other means and to provide proof of such coverage at the time of employment.

The "J" visa exchange visitor program requires all international faculty, researchers, scholars and their dependent family members to have adequate health insurance, including repatriation of remains. The University health plans meet the required requirements except for repatriation and medical evacuation. International visitors with "J" visas should contact their department for additional information.

Registered students may fulfill this requirement through participation in student health services or insurance plans offered to students. Other arrangements for group coverage may be available through the campus. Foreign scholars who receive honorarium or reimbursement payments are not required to have health insurance.

#### 7. GLACIER Nonresident Alien Tax Compliance Software

GLACIER is an online tax compliance system created by Arctic International LLC which is designed to allow campuses to collect information, make tax residency and income tax treaty determinations, manage paperwork, and maintain data. Campus administrators and foreign nationals can access GLACIER 24 hours a day, seven days a week from any web-accessed computer anywhere in the world. GLACIER is stored on the Arctic International servers so updates and enhancements are done automatically and thus UC's IT support is not required. Each campus must purchase and pay its own GLACIER license, using the system - wide pricing schedule negotiated with Arctic International. The license size that a campus purchases is pre-determined based on the number of foreign nationals they anticipate each year.

---

<sup>6</sup> University of California [Group Insurance Regulations](#), Sections 1000, Core Medical Plan, and 1100, Career Medical Plans.

GLACIER is designed to allow the foreign national to enter the majority of their information themselves which eliminates the need for excessive data entry by campus administrators. GLACIER also removes the burden of calculating substantial presence and interpreting tax treaty language from the campus administrator, reducing the risk of compliance issues down the road. GLACIER completes the following forms when applicable:

- Tax Summary Report
- [IRS Form W-8 BEN](#)
- [IRS Form 8233](#)
- Tax Treaty Statement
- [IRS Form W-9](#)

GLACIER will also produce the year-end [IRS Form 1042-S](#) for reporting payments that were made to foreign employees and vendors. It also produces the [IRS Form 1042](#) that campuses file annually with the IRS.

#### 8. Withholding and Reporting Obligations

- a) **Resident aliens** are subject to income tax under the same rules that apply to U.S. citizens. Thus, they are subject to graduated income tax rates on income received from all sources, both within and outside the United States, and are allowed the same deductions for exemptions as are citizens.
- b) **Nonresident aliens** are taxed only on income received from sources within the United States. Such income may be subject to taxation either on the basis of the graduated income tax rates or at a flat rate of 30 percent (in most cases), depending on the nature of the income and the applicable tax laws. In general, nonresident aliens can only claim "single" filing status regardless of their marital status and can only claim a single personal exemption regardless of the actual number of their dependents.

#### 9. Tax Treaties

When the United States enters into a tax treaty agreement with a foreign country, ***the treaty supersedes Federal tax laws*** and provides tax benefits to aliens who are residents of the treaty country. Such aliens may be eligible for reduced tax rates or for exemption from Federal tax and withholding, if they meet the requirements of the particular treaty.

The tax treaty provisions that most frequently apply to the University are for personal services, teaching services, scholarship/fellowship payments, royalties, student services, and compensation received during training. Information regarding the personal service articles and teaching articles is summarized below.

a. Personal Services Articles

Most applicable personal services articles provide that a resident of a tax treaty country is exempt from Federal income tax on compensation received for personal services performed in the United States, if the individual is employed by a foreign employer and is temporarily in the United States for a period or periods not exceeding a certain number of days during the taxable year and if total compensation does not exceed a certain amount.

b. Teaching Articles

The teaching articles generally provide that a professor, teacher, or researcher who is a resident of a tax treaty country and who visits the United States to teach or conduct research at an educational institution is exempt from Federal income tax on compensation received for such services, generally for a period of two or three years. **However, some tax treaties exempt compensation for teaching services only and do not include research services within the scope of the exemption.**

Because tax treaties are lengthy and the provisions vary for each treaty, either the specific treaty or a recent edition of the following IRS publications can be consulted to get more information:

- [Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities](#)
- [Publication 519, U.S. Tax Guide for Aliens](#)
- [Publication 901, U.S. Tax Treaties](#)

Copies of full U.S. income tax treaties are available on the IRS's tax treaty [website](#). The IRS only updates its publications *annually*; however, there are a number of private tax treaty services that provide *monthly updates* of new or revised tax treaties. The U.S. Treasury Department's Treaties and TIEAs [website](#) provides texts of recently signed U.S. income tax treaties, protocols, and tax information exchange agreements (TIEAs) and the accompanying Treasury Department tax treaty technical explanations as they become publicly available, as well as the U.S. Model Income Tax Convention.

When the foreign individual enters their information in GLACIER, the system will determine tax treaty eligibility and print the supporting documentation that needs to be signed by the foreign individual and submitted to the appropriate campus office.

10. Federal Income Tax Withholding and Reporting Procedures

In order to apply the correct rate for withholding Federal income tax, it is necessary to determine the residency status of any alien who will be

receiving a payment from the University. Thus, aliens who will be receiving salary, wages, scholarships, fellowships, or payments for independent personal services are required to complete a GLACIER record.

a. Salaries and Wages<sup>7</sup>

**Resident aliens** employed by the University are subject to regular graduated tax withholding and may claim marital status and withholding exemptions on the same basis as U.S. citizens.

**Nonresident aliens** employed by the University are subject to regular graduated tax withholding at the "single" filing status rate, i.e., they can claim only one personal exemption, regardless of their marital status and are allowed only a single personal exemption regardless of the actual number of their dependents. A nonresident alien must complete a Form W-4 (University of California Employee's Federal-State Withholding Allowance Certificate) to claim the personal exemption.

[IRS Notice 2005-76](#) significantly changes the manner by which employers calculate tax withholding for wages paid to nonresident alien employees for services performed in the U.S. It eliminates additional tax withheld per pay period and requires that an additional amount be added to the "taxable base" prior to calculating tax withholding. The added amount is not income or wages to the employee, does not affect income, FICA or FUTA tax liability for the employer or the employee, and is not to be reported as income or wages. *Note that the new rules are not applicable to a nonresident alien employee who is a student or business apprentice who is or was a resident of India immediately before visiting the United States and who is presently in the United States on an F-1 or J-1 Visa status.*

A nonresident alien who is a resident of Canada or Mexico must claim single marital status, but may claim the same personal exemptions as U.S. citizens. The alien may claim a personal exemption for a spouse only if the spouse has no income subject to U.S. tax for the tax year. A resident of South Korea also must claim single marital status but, under certain conditions, may claim additional exemptions for a spouse and dependent children. IRS Publication 519 provides further information concerning tax withholding for residents of Canada, Mexico, South Korea, and students from India.

Nonresident aliens may not claim the no-tax-liability exemption<sup>8</sup> from Federal income tax withholding.

### Tax Treaty Exemption from Withholding

---

<sup>7</sup> Compensation paid to a nonresident alien for services performed outside the United States is considered to be foreign source income; therefore, no withholding is required. (Refer to [IRS Publication 515](#) for special conditions concerning Puerto Rico).

<sup>8</sup> A nonresident alien cannot write EXEMPT on line 7 of the Form W-4.

If an alien student, teacher, or researcher qualifies for exemption from Federal withholding tax under a tax treaty, based on the information entered into the GLACIER system, an [IRS Form 8233](#), *Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, and a Tax Treaty Statement will be issued and must be signed by the nonresident alien and submitted to the designated campus office.

Upon receipt of the employee's Form 8233 and the tax treaty statement, the designated office must also sign the forms and submit both items to the IRS within five days of certification. The IRS is required to review the Form 8233 and notify the University if there is a problem with the Form. However, if no notification has been received from the IRS within 10 days after the Form 8233 was mailed, the Form is deemed to be accepted and the exemption from withholding takes effect. Withholding must be instituted, however, if a subsequent notification is received from the IRS rejecting the Form 8233. A Form 8233 and tax treaty statement must be filed for each tax year to which the treaty applies.

A copy of the Form 8233 and the tax treaty statement should be given to the employee. One copy is retained for the individual's file, and another is attached to the paper Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

b. Scholarships and Fellowships

Refer to Accounting Manual chapter T-182-77, *Taxes: Taxation of Scholarship and Fellowship Grants and Educational Assistance*, for IRS requirements for Federal income tax withholding and reporting of scholarship payments, tuition reductions, and employee educational assistance.

c. Payments for Independent Personal Services

The following procedures apply to the payment of honoraria, consulting fees, performance fees, or other stipends for services. Please refer to the **Visa Classification Chart** in a previous section to determine a partial list of visa classifications, including those that permit a nonresident alien to receive payments for services and/or reimbursement of travel and incidental expenses. Such payments may be restricted to the program sponsor that requested the visa on behalf of the alien. The campus office responsible for international students and scholars can provide further information regarding visa classifications.

i. Resident Aliens

If it appears from information provided by the GLACIER Tax Compliance System that an independent contractor is a resident alien, the payment is not subject to tax withholding, but is reported to the IRS by the campus payroll office/UC PATH Center on [IRS Form 1099-MISC](#).

ii. Nonresident Aliens

A nonresident alien who qualifies for exemption under a tax treaty per the GLACIER Tax Compliance System must complete, sign, and file IRS Form 8233 with the appropriate office, in order to claim the exemption. If exemption from withholding is warranted, the office forwards the Form 8233 within five days of acceptance to:

Department of the Treasury  
Internal Revenue Service  
Philadelphia, PA 19255-0725

The Form 8233 can also be faxed to (267) 941-1365. You are limited to 25 pages at one time.

The exemption from withholding may be allowed immediately upon receipt of the Form 8233, if the withholding agent finds it to be complete and accurate or the withholding agent may continue to wait 10 days after sending the form to the IRS before allowing tax treaty benefits. A copy of Form 8233 must be attached to IRS Form 1042-S, which is filed annually with the IRS. A copy of Form 8233 is retained by the campus office of record, and another copy is given to the alien for his or her records.

If a nonresident alien (with other than F-1 or J-1 visa status) claims the personal exemption amount, procedures regarding the Form 8233, as described in the first paragraph, must be followed.

A nonresident alien who is not a resident of Canada, Mexico, or South Korea is allowed one personal exemption. A nonresident alien who is a resident of Canada or Mexico may claim the same personal exemptions as a U.S. citizen. (In order to claim a personal exemption for a spouse, the claimant must establish that his or her spouse has no income subject to U.S. tax for the tax year.)

Under certain conditions, residents of South Korea may claim extra exemptions for a spouse and dependent children. Payments are then subject to withholding at a flat rate of 30 percent. IRS Publication 519 provides further information concerning tax withholding for residents of Canada, Mexico and South Korea.

Payments to nonresident aliens (other than residents of Canada, Mexico or South Korea) who perform personal services in the United States are subject to withholding tax at a rate of 30%, except that only one personal exemption is allowed regardless of marital status or the number of dependents.

Nonresident aliens with F-1 or J-1 visa status who are residents of Canada or Mexico may claim married status and the same personal exemptions as U.S. citizens. (In order to claim a personal exemption for a spouse, the claimant must establish that his or her spouse has no income subject to U.S. tax for the tax year.)

Under certain conditions, residents of South Korea may claim married status and extra exemptions for a spouse and dependent children. (IRS Form 8233 is not required to claim the personal exemption(s).) IRS Publication 519 provides further information concerning tax withholding for residents of Canada, Mexico or South Korea.

Payments to all other nonresident aliens are subject to withholding at a flat rate of 30-percent. *However, in order to reduce the over- withholding that may result when tax is withheld at the 30-percent rate, an alien may obtain a reduced withholding rate in one of the following two ways:*

### **Withholding Agreement**

Prior to receiving any payments in the tax year, an alien may enter into an agreement with the IRS regarding the amount of withholding required. The alien must file two copies of the agreement with the appropriate campus office. One copy must be attached to the IRS Form 1042-S filed annually with the IRS, and one copy is retained by the campus office of record. The alien should retain a copy for his or her records.

### **Final Payment**

The 30-percent rate is applied to all payments except the final payment made to the alien during the tax year. Before receipt of the final payment, the alien may obtain a letter from the IRS that states: (1) what portion of the final payment is exempt from withholding and (2) the amount that may be paid to the alien due to the exemption. The alien should retain a copy of the letter for his or her records and must file two copies with the appropriate campus office. (The office must attach one copy to the Form 1042-S filed annually with the IRS and retain the other copy for its records.)



d. Tax Clearance for Departing Aliens

**Resident aliens** leaving only temporarily as well as resident or nonresident aliens with no taxable income can use [IRS Form 2063](#), *U.S. Departing Alien Income Tax Statement*, to apply for a sailing permit. Form 2063 is a short information form that, once obtained, can be used for all departures during the year.

**Nonresident aliens** who have any taxable income and **resident aliens** leaving the U.S. with no definite plans to return for the year will generally have to complete [IRS Form 1040-C](#), *U.S. Departing Alien Income Tax Return*, to receive a sailing permit. You must pay all tax shown as due on the Form 1040-C or you must furnish a bond prior to departure. Any tax paid with your Form 1040-C counts as a payment on the annual return filed after the end of the tax year (either a Form 1040NR for nonresident aliens or a Form 1040 for resident aliens). If the IRS sees that leaving the U.S. will not jeopardize the collection of the tax, then the tax may not need to be paid with the Form 1040-C.

Certain classes of aliens are exempt from obtaining sailing permits. This includes foreign diplomats, employees of foreign governments, students, trainees and exchange visitors, and others who generally have no income subject to U.S. tax. For more details on who fall into these categories, refer to the “Departing Aliens and the Sailing or Departure Permit” information in [IRS Publication 519](#), *U.S. Tax Guide for Aliens*.

A foreign individual should apply for a sailing permit at least two weeks, but no earlier than 30 days, before leaving the U.S. To apply for a sailing permit, they should visit the nearest [IRS Taxpayer Assistance Center](#) (walk-in office).

e. California State Tax Withholding

Regardless of their Federal income tax status, all aliens are subject to California Personal Income tax in the same manner as U.S. citizens. Refer to Accounting Manual chapters P-196-77, *Payroll: State Tax Withholding from Employees*, and D-371-77, *Disbursements: State Tax Withholding from Nonwage Payments to Nonresidents of California*.

f. Tax Reporting Documents

**Form W-2**

Federal income tax withheld from salaries and wages paid to resident or nonresident alien employees is reported on [IRS Form W-2](#) in accordance with the same rules that apply to tax withheld from citizens.

### Forms 1042-S and 1042

Federal income tax withheld from vendor payments to nonresident aliens, (i.e., scholarships, independent contractor payments, royalties, etc.) is reported on [IRS Form 1042-S](#), *Foreign Person's U.S. Source Income Subject to Withholding*. Salary and wage payments made to nonresident aliens must normally be reported on a Form W-2 as noted above; however, if the payment is exempt from tax under a tax treaty, the exempt portion of the wage payment must be reported on Form 1042-S. A wage payment may have to be reported on both Form W-2 and 1042-S if, for example, a portion of the payment is exempt under a tax treaty but the remainder of the payment is taxable.

Payroll and vendor payments made to nonresident aliens exempt from withholding are reported on IRS Forms 1042-S, on or before March 15 of each year. Under IRS regulations, an employer issuing 250 or more Forms 1042-S must file its returns electronically.

A paper [IRS Form 1042](#), *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, must be filed whenever Forms 1042-S are filed, whether or not any tax was withheld. Any paper Forms 1042-S or 8233, tax treaty statements, or other required forms or attachments must be transmitted with the Form 1042, is due by March 15 of each year.

### Form 1099 – Misc

Vendor system payments made to resident aliens exempt from withholding are reported to the IRS on IRS Form 1099-MISC on or before February 28 of each year.

## 11. Taxpayer Identification Numbers

### a. Social Security Number

A resident or nonresident alien who is employed by the University must obtain a Social Security number, which is required on individual tax returns filed by the employee and on the Form 1042-S or Form W-2 filed by the University. To obtain a Social Security number, a [Form SS-5](#), *Application for a Social Security Card*, must be completed and presented in person at the nearest Social Security Administration (SSA) office (call 1- 800-SSA-1213 for locations and information). The SSA is the only agency authorized to issue Social Security numbers. Individuals must present the following original documents or certified when applying for a Social Security number:

- Proof of identify (e.g., a birth certificate or valid passport),
- Work authorization or proof of eligibility to be in the United States (e.g., Form I-94, Arrival/Departure card, or Form IAP 66).

It normally takes three to four weeks to receive a Social Security number; therefore, the nonresident alien should apply for a number as soon as he or she arrives in the United States. The individual should request a receipt of application at the time the completed Form SS-5 is submitted to the SSA office. This receipt serves as evidence that a number has been applied for and will allow the individual to begin work or to be paid.

The Form is available on the Social Security Administration web site located at the following web site: <http://www.ssa.gov/online/ss-5.html>.

b. Individual Taxpayer Identification Number

**Eligibility Requirements**

Any individual who is not eligible to obtain a Social Security number must obtain an ITIN. An ITIN is a nine-digit number that begins with a "9". The requirement to obtain an ITIN applies primarily to nonresident aliens who receive honorarium or other payments for independent contractor services or who are recipients of scholarship or fellowship payments.<sup>9</sup> Individuals required to file a tax return or who can be claimed as a dependent on a return also must have an ITIN.

A nonresident alien who is issued an ITIN and who is later entitled to a Social Security number must apply for a Social Security number and relinquish the ITIN.

An ITIN has no correlation with an individual's immigration status or the right to be legally employed in the United States. Therefore, since the ITIN is intended for **tax use only**, care should be taken not to mistake an ITIN for a Social Security number in the employment eligibility review process.

Please note that an individual who applies for and receives an ITIN is not eligible to participate in the Social Security or Medicare systems.

**Application Process**

In order to expedite the ITIN application process, a campus or Laboratory may enter into an agreement with the IRS to become an acceptance agent for its location. Under an agreement with the IRS, an acceptance agent would assume responsibility for providing the required information to the IRS and to the applicant.

The IRS published revised guidelines which describes the application procedures for becoming an acceptance agent. An acceptance agent facilitates the issuance of the ITIN to alien individuals who are ineligible

---

<sup>9</sup> Nonresident aliens with an ITIN may not be paid through the PPS/UC Path.

to obtain Social Security Numbers (SSNs), or Employer Identification Numbers (EIN) to foreign persons. These guidelines can be found at the following location: <http://www.irs.gov/Individuals/New-ITIN-Acceptance-Agent-Program-Changes>

c. FICA Tax

The Federal Insurance Contributions Act (FICA) provides a system of social security and Medicare benefits financed through taxes on employers and employees. FICA taxes and benefits consist of two parts: social security or Old Age, Survivors, and Disability Insurance (OASDI), and Hospital Insurance for senior citizens and the disabled (Medicare).

d. Exempt Visa Holders

An alien who is in one of the following two categories is exempt from OASDI and Medicare taxes: A **nonresident** alien holding an F-1, J-1, M-1, or Q-1 visa is exempt from OASDI and Medicare taxes on University earnings, provided that such earnings are in payment for services performed to carry out the purpose for which the alien was admitted to the United States. **However, the spouse and dependents of the primary visa holder who usually hold an F-2, J-2, M2, or Q-2 visa) are subject to OASDI and Medicare taxes.**

***In addition, an alien employee with a F-1 or J-1 visa who is considered a resident alien (under the substantial presence test) for tax purposes is subject to OASDI and Medicare withholding.***

e. Totalization Agreements

In order to claim the totalization agreement as an exemption from OASDI and Medicare taxes, the employee must check with the agency that administers his or her home country's social security system for specific rules governing totalization agreements. Once the totalization agreement has been approved, the individual will be provided with a "Certificate of Coverage" from the agency administering the home country's social security system.

If a certificate is not provided by the home country, the alien must apply to the U.S. Social Security Administration's Office of International Policy to obtain a special certificate showing that the individual's wages are exempt from OASDI and Medicare taxes. This certificate of coverage will specify a beginning and an end date during which the U.S. employer is exempt from withholding OASDI and Medicare taxes from the alien. Additional information regarding totalization agreements can be found on the [SSA website](#) and [IRS website](#). Refer to Accounting Manual chapter P-196-30, *Payroll: OASDI and Medicare Contributions*.

Aliens employed by the University (other than the exempt individuals identified above) are subject to OASDI and Medicare taxes under the same regulations that apply to other University employees. Refer to the UCRP Regulations and Accounting Manual chapters P-196-30, Payroll: OASDI and Medicare Contributions, and [P-196-78](#), Payroll: UCRP Accounting Procedures.

---

## VI. RELATED INFORMATION

---

### Related Business and Finance Bulletins

- [G-28](#) Travel Regulations

### Related Accounting Manual Chapters

|                            |   |
|----------------------------|---|
| <a href="#">D-371-12.1</a> | Disbursements: Accounting for and Tax Reporting of Payments Made through the Vendor System            |
| <a href="#">D-371-35</a>   | Disbursements: Honorarium Payments  |
| D-371-77                   | Disbursements: State Tax Withholding from Nonwage Payments to Nonresidents of California              |
| <a href="#">P-196-11</a>   | Payroll: Accounting for and Tax Reporting of Mandatory Deductions and Insurance Benefit Contributions |
| P-196-30                   | Payroll: FICA and Medicare Contributions  |
| P-196-77                   | Payroll: State Tax Withholding from Employees   |
| <a href="#">P-196-78</a>   | Payroll: UCRS Accounting Procedures   |
| T-182-77                   | Taxes: Taxation of Scholarship and Fellowship Grants and Educational Assistance                       |

### [A Complete Guide to Your UC Health Benefits](#)

### Internal Revenue Service Publications

- [Publication 15](#) Circular E, Employer's Tax Guide
- [Publication 515](#) Withholding of Tax on Nonresident Aliens and Foreign Entities
- [Publication 519](#) U.S. Tax Guide for Aliens
- [Publication 901](#) U.S. Tax Treaties

### Websites:

- [U.S. Citizenship and Immigration Services](#)
- [Arctic International LLC: GLACIER Nonresident Alien Tax Compliance System](#)

### Forms:

- [IRS Form W-7](#) Application for IRS Individual Taxpayer Identification Number
- [Form SS-5](#) Application for a Social Security Card

Publications:

Faculty Members Guide to U.S. Immigration Law, National Association for Foreign Student Affairs. This publication may be obtained from Publications Order Desk, NAFSA, 1860 19th Street, NW, Washington, D.C. 20009.

A Guide to the Employment of Aliens, College and University Personnel Association. This may be obtained from CUPA, 11 Dupont Circle, Suite 120, Washington, D.C. 20036.

Donna E. Kepley, Nonresident Alien Tax Compliance: A Guide for Institutions Making Payments to Foreign Students, Scholars, Employees, and Other International Visitors. This may be obtained from Arctic International, 17761 I Street, N.W., Suite 900, Washington, D.C. 20006 or at the following web site: <http://www.arcticintl.com/>

---

## VII. FREQUENTLY ASKED QUESTIONS

---

Not applicable

---

## VIII. REVISION HISTORY

---

5/1/84: Original chapter first published

Revisions:

6/15/85

12/1/85

3/15/87

9/1/88

5/1/89

4/15/91

12/30/93

9/30/94

9/30/95

9/30/96

3/31/97

6/30/97

9/30/97

12/30/97

6/30/98: Updated to add new visa classifications, citizenship codes and visa waiver countries. Removed Revenue Procedures 87-8 & 87-9

9/30/98: Updated to reflect termination of the H-1A visa classification

12/30/98: Revised UC W-4

3/31/99: Transferred procedures related to scholarship grants, tuition assistance and employee assistance to a new chapter entitled T-182-77

6/30/99: Revised to include a new L-Visa category

9/30/99: Revised to include a new E-Visa category

12/30/99: Revised to include the new Form UC W-8BEN

6/30/00

12/30/00: Revised various forms

6/30/01

12/30/01: Revised to include the latest version of Form 8233

6/30/02

3/31/03

12/31/03: Revised to include the new Form UC W-8BEN

6/30/04: Revised to include a new section on health insurance and the requirements of the J Visa Exchange Visitor program

6/30/06

9/30/07: Updated to include changes to Totalization Agreements

2/28/09: Revised the Form 8233, Form W-7, Totalization Agreements, and Visa Waiver Countries

10/31/12: Updated entire chapter for new USCIS and IRS regulations, added GLACIER information and updated the policy to the new format.

2/1/17: Reformatted to the new policy template. Included UC PATH Center in Section IV, Compliance/Responsibilities. Updated hyperlinks and replaced the lists of countries participating in the Visa Waiver Program (VWP) and having totalizations agreements with the relevant SSA and IRS hyperlinks. Also updated Form I-94 Information and Form 8233 Information. Other minor technical corrections made.