

2018 Tax Compliance Summit Welcome



The Office of the State Controller is pleased to announce that on June 5 and 6, 2018, we will offer a Tax Compliance Summit at the Kerr Scott Bldg., NC State Fairgrounds in Raleigh. If you have attended one or more of our past Foreign National Taxation and Immigration Conferences, you know you will receive two-days of valuable information from some of the best subject matter experts in the country. For this year's conference, the format has been changed

so you can receive up-to-date information pertaining to a variety of taxation issues. In addition to issues pertaining to both foreign national individual and entity payments or the impact of our institutions establishing operations abroad, we will discuss the new Tax Cuts and Jobs Act (a.k.a. Tax Reform) and the impact of these changes to our institutions or governmental entities.

Attendance qualifies for up to 16 hours of CPE credit. Terri Crowl and Scott Annis from Thomson Reuters and Bridget Bishop with The University of North Carolina System will be with us again this year. Additionally, Kathy Pitts and Deborah Pflieger with Ernst and Young, LLP have been added to this all-star expert group. Kathy and Deborah are well known in areas of Tax Reform and the processing of Internal Revenue Code Chapter 3 payments for foreign entities. Finalization of the agenda and additional speakers will be added over the next few weeks. Keep checking our website for the latest information and for conference materials.

The registration fee is \$130.00 per attendee and includes breakfast and lunch. **Registration deadline is May 21, 2018.** Payment must be received by this date, or you will be removed from the registration. No request for refunds will be considered after this date.

REGISTER NOW

If you have questions, please contact Jan Prevo at jan.prevo@osc.nc.gov or 919-707-0714. We look forward to your participation in the conference, and thank you.

[Kerr Scott Building Directions](#) | [Area Accommodations](#) | [Google Map Area Accommodations](#)



**2018 Tax Compliance Summit
Continuing Professional Education
North Carolina Office of the State Controller**

Dates:

June 5, 2018 | 8:00 AM - 4:30 PM

June 6, 2018 | 8:00 AM - 4:30 PM

Location:

[Kerr Scott Building](#)

NC State Fairgrounds

Raleigh, NC 27607

Objective:

This conference will provide participants with up-to-date information pertaining to a variety of taxation issues – both general taxation and taxation impacting non-resident aliens (including immigration issues).

Content:

- Specifically, participants will be exposed to the following learning opportunities:
- Tax Reform – Impact on Government Entities and Higher Education
- Worker Classification – Employee vs. Contractor – Importance of Classification
- IRS Form 1099 Requirements
- U.S. Entities with Foreign Presence – Summary of Tax and Other Liabilities to consider
- Identify Nonresident Individuals and Understand Reporting Requirements
- Immigration Update – Current Challenges and Changes
- Nonresident Alien Taxation – Latest Developments

Instructors: Various speakers from:

Jammie Owens - Internal Revenue Service
Donna Powell - NC Department of Revenue
Eric Wayne - NC Department of Revenue
Bridget Bishop - UNC System
Terri Crowl - Thomson Reuters
Kathy Pitts - Ernst and Young
Deborah Pflieger - Ernst and Young
Scott Annis - Thomson Reuters

CPE Credit:

Up to 16 hours

Materials:

Will be available in advance at the [OSC Conference](#) page.

Teaching Method:

Lecture

Prerequisites:

None

Advance Preparation:

None

Level:

Basic

Developers:

[Internal Revenue Service](#) | [NC Department of Revenue](#) | [Ernst and Young](#) | [Thomson Reuters](#) | [UNC System](#)

Sponsor:

[NC Office of the State Controller](#)

North Carolina Office of the State Controller 2018 Tax Compliance Summit Agenda

Tuesday, June 05, 2018

7:00 am to 7:55 am	Registration and Mini Breakfast
7:55 am to 8:00 am	Conference Day Overview
8:00 am to 8:10 am	Opening Remarks – Dr. Linda Combs, State Controller
8:10 am to 10:10 am	Worker Classification and IRS Filing Compliance – Jammie Owens, IRS
10:10 am to 10:30 am	Break
10:30 am to 12:00 pm	State of the State Tax Update – Donna Powell and Eric Wayne, NC DOR
12:00 pm to 1:00 pm	Lunch – Networking
1:00 pm to 2:30 pm	Immigration Fundamentals and Current News – Bridget Bishop, UNC System
2:30 pm to 2:45 pm	Break
2:45 pm to 4:30 pm	Nonresident Alien Taxation – Terri Crowl, Thomson Reuters

Wednesday, June 06, 2018

7:00 am to 7:55 am	Networking and Mini Breakfast
7:55 am to 8:00 am	Conference Day Overview
8:00 am to 10:00 am	Tax Reform and International Presence – Kathy Pitts, E&Y LLP
10:00 am to 10:20 am	Break
10:20 am to 12:00 am	U.S. and Foreign Information Reporting and Withholding Compliance – Deborah Pflieger, E&Y LLP
12:00 pm to 1:00 pm	Lunch – Networking
1:00 pm to 2:30 pm	Latest Developments in Nonresident Alien Taxation – Terri Crowl, Thomson Reuters
2:30 pm to 2:45 pm	Break
2:45 pm to 4:20 pm	Tax Treaty & Tax Assessments using SQL Software – Scott Annis and Terri Crowl, Thomson Reuters
4:20 pm to 4:30 pm	Closing Remarks

Note: Please reference our website – <https://www.osc.nc.gov/training/cpe-events/2018-osc-tax-compliance-summit> for updates related to the conference and agenda. If all sessions are attended, participant is eligible for 16 hours of Continuing Professional Education (CPE). Agenda is subject to change.

North Carolina Office of the State Controller 2018 Tax Compliance Summit Agenda

Tuesday, June 5, 2018:

8:10 am to 10:10 am | Worker Classification and IRS Filing Compliance –
Jammie Owens, Internal Revenue Service

Employee or Independent Contractor? It is critical that your institution correctly classify your workers. During this session, we will decipher the rules, your institutions obligations and consequences for misclassifying workers as independent contractors rather than employees. Additionally, we will discuss general IRS filing requirements related to various IRS Forms, such as Forms 1099, 941, W2 and “B” Notices. The session will provide attendees with an update from the Federal, State and Local Government (FSLG) group and increased understanding of red flags related to compliance with the Internal Revenue Code.

10:30 am to 12:00 pm | State of the State Tax Update
Donna Powell and Eric Wayne, NC Department of Revenue

How has the NC Department of Revenue been impacted by the recent federal and North Carolina legislative changes? Join us for a regulation update, learn more about the newly developed/enhanced e-filing system and filing requirements that many filers may not have realized.

1:00 pm to 2:30 pm | Immigration Fundamentals and Current News –
Bridget Bishop, The University of North Carolina System

This session is designed for the tax and human resource professionals who must understand how the fundamentals of immigration will impact your ability to pay. The attendee will have a better understanding of the aspects of immigration – immigration terminology, documentation and general concepts. We will also discuss the latest immigration news and changes that will impact the life of your foreign nationals, human resources processing and payables.

2:45 pm to 4:30 pm | Nonresident Alien Taxation –
Terri Crowl, Thomson Reuters

The foundation of nonresident alien taxation is understanding basic immigration rules and how intertwined these rules are with the internal revenue code. This workshop will focus on the relationship between immigration and tax law – how these vastly complicated topics must work together. You will better understand these terms and concepts and how to determine tax residence, classify and source income, processing exceptions and reporting requirements to ensure compliance with the Internal Revenue Code.

North Carolina Office of the State Controller 2018 Tax Compliance Summit Agenda

Wednesday, June 6, 2018:

8:00 am to 10:00 am | Tax Reform and International Presence –
Kathy H. Pitts, Ernst & Young LLP

This session will provide an overview of Tax Reform topics in the recently enacted Tax Cuts and Jobs Act of 2017, and will be focused more toward the Higher Education and State Government implications. It will also cover trends impacting international compliance including common global strategies and how they relate to risk, permanent establishment and registration considerations, and tax treaties. Human resources considerations will also be discussed.

10:20 am to 12:00 pm | U.S. and Foreign Information Reporting and Withholding Compliance –
Deborah Pflieger, Ernst & Young LLP

All payors are required to collect more documentation than ever before from payees, and must subject that documentation to strict validation criteria or suffer potential liability for underwithheld tax and penalties. As a result, being in compliance with tax documentation requirements is both critical and challenging for payors, as well as for the entities who must furnish that documentation. This session will provide a practical discussion about providing and maintaining valid Forms W-8 and W-9 and how recent developments in the forms' requirements impact both payors and payees. We will review:

- Basic requirements and pitfalls of the current tax forms
- Helpful tips and methods for completing and validating tax forms properly
- When you should **not** collect or provide a tax form
- Recent changes to taxpayer identification number (TIN) requirements
- How to address the new Limitation on Benefits requirements
- How to approach hybrids, reverse hybrids, partnerships, etc.
- Implementing an electronic Form W-8/W-9 system

1:00 pm to 2:30 pm | Latest Development in Nonresident Alien Taxation –
Terri Crowl, Thomson Reuters

It's been a busy year in the world of taxation. During this session, we will share the latest developments impacting nonresident alien tax compliance, including Tax Reform, changes to the ITIN program and updates to the withholding certificates, IRS Form 1042-S, and more.

2:45 pm to 4:20 pm | Tax Treaty & Tax Assessments using SQL Software –
Terri Crowl and Scott Annis, Thomson Reuters

This session will provide a more in-depth understanding of tax treaties and how these provisions override the tax law to provide exemptions for U.S. source income earned by foreign nationals. Additionally, we will provide "how to" sample scenarios, necessary forms and demonstrate the efficiencies and effectiveness in using the International Tax Navigator SQL Software to determine tax rates, treaty eligibility and restrictions, and compliance with IRS reporting requirements. Throughout these scenarios you will learn "do's and don'ts," recommendation on maintaining documentation and enhanced features of Tax Navigator.

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Scott Annis

Thomson Reuters Corporation
Senior Product Consultant

Scott Annis is a Business Solutions Architect for Thomson Reuters responsible managing relationships with ERP interface clients as well as consulting and seminar training on International Tax Navigator software. Scott has worked at Thomson Reuters (Formerly Windstar Technologies) since 1995 holding a variety of development and support management roles. Prior to joining Thomson Reuters, Scott held a number of technical positions including Micro Computer Manager with the Flatley Corporation and Director of Management Information Systems for Dunfey Hyannis Hotel. He also developed access control, along with timekeeping and inventory control systems as a contractor for Chrysler Corporation.



Income Tax Treaties

Terri Crowl and Scott Annis

The intelligence, technology and human expertise
you need to find trusted answers.



the answer company™
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Agenda

- Tax Treaty Overview/How Treaties Work
- IRS Sources
- Taxes Covered
- Persons Covered
- Articles Conferring Benefits
- Benefit Limitations
- Treaty Claim Forms
- Software Demo

Definition of Terms

- Convention = an income tax treaty
- Bilateral agreement = an agreement between two parties
- Protocol = an amendment to a treaty
- Contracting states = the treaty countries
- Articles = topical sections describing benefits and limitations
- Treaty tax exemption = treaty benefit

What Tax Treaties Do

Purpose is to avoid double taxation

- Residence-based and source-country taxation
- But do not avoid citizenship-based taxation

Exemptions foster international exchange

Assist with enforcement of tax compliance

- Exchange of information
- Admin help with collecting treaty partner's taxes

New Treaty, Special Provisions

Replacement treaty may include

- A one-year election for prior treaty benefit
- Carryover benefit for student/trainee or teacher/researcher benefits eliminated by new treaty

Current Status of Tax Treaties

Tax treaties in force with over 60 countries

Pending:

- Replacement treaty for Hungary
- New treaty with Chile (no prior treaty)
- Japan (protocol)
- Spain (protocol)
- Poland (new treaty)
- Luxembourg (protocol)
- Switzerland (protocol)

IRS Tax Treaty Information

Full treaty texts available on the IRS website, www.irs.gov
(search on "treaties")

- Treasury Explanations
- Overview tables – Search IRS website for “Tax Treaty Tables”

IRS Tax Treaty Tables

Table 1 - passive income

- Interest
- Dividends
- Pensions/Annuities
- Social Security
- Royalties

IRS Tax Treaty Tables

Table 2 - income related to US activities

- Dependent Personal Services (Employment)
- Independent Personal Services (Self-employment)
- Artists and Athletes (Entertainers and Sportsmen)
- Students and Trainees
- Teachers and Researchers

IRS Tax Treaty Tables – Table 2

Country (1)	Code ¹ (2)	Purpose ²² (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Netherlands	16	Scholarship or fellowship grant ^{15,33}	3 years	Any U.S. or foreign resident ⁵	No limit	22(2)
	17	Independent personal services ⁷	No limit	Any contractor	No limit	15
	18	Dependent personal services ^{17, 47, 58}	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 p.a. ²⁵	18
	19	Teaching ^{4, 34}	2 years	U.S. educational institution	No limit	21(1)
	20	Studying and training: ³³				
		Remittances or allowances	Reasonable period	Any foreign resident	No limit	22(1)
		Compensation while gaining experience	Reasonable period	Any U.S. or foreign resident	\$2,000 p.a.	22(1)
		Compensation while recipient of scholarship or fellowship grant	Reasonable period	Any U.S. or foreign resident	\$2,000 p.a. ³⁶	22(2)

Taxes Covered by Tax Treaties

Federal income taxes

Not Social Security and Medicare taxes

- Except Former USSR/CIS treaty applies to employee share of FICA (not employer's share – an excise tax)

Not state income taxes

- But might be covered indirectly
- About 14 states not covered

Persons Covered by Tax Treaties

Persons = individuals and entities

Persons resident in the treaty country

- Resident for tax purposes
- Treaty benefits are NOT based on citizenship

Timing for Eligibility Purposes

Timing of treaty country residency varies by treaty article

- Most articles – throughout the benefit period
- But Student/Trainee, Teacher/Researcher Articles – typically at beginning of the visit
 - Caution with exceptions!

Impact of US Residency Status

Residency status is based on the treaty country's internal law

- US: Foreign nationals are either nonresident aliens (NRAs) or resident aliens (RAs)

RAs lose most treaty benefits due to the saving clause (next slide)

The Saving Clause

Included in all treaties; allows US to tax citizens and residents as if the treaty had not come into effect

Exceptions for specified treaty articles

- But not for Greece and Pakistan

Exceptions do not apply to US citizens/LPRs

- But China, former USSR treaties have exceptions for LPRs

Articles Conferring Benefits

Two types of articles:

Purpose-of-the-visit articles

- Student/Trainee Articles
- Teacher/Researcher Articles
 - Typically covered by Saving Clause exception

Character-of-the-payment – all other articles

- Focus on nature of payment
 - Caution: Benefits lost by gaining US residency status or losing treaty country residency status!

Student/Trainee Articles

May Confer Benefits for some or all of:

- Gifts from abroad for education or training
- Compensation during study or training
- Grant, allowance, or award - direct non-service scholarship or fellowship
- Researcher benefits for direct grant recipients

Teacher/Researcher Articles

May confer benefits for some or all of:

- Compensation for teaching or engaging in research (research must be for public benefit)
 - But no research benefit for Greece and Pakistan
- At a 'school, college, university or other accredited educational institution'
 - Some treaties include research institutes

Benefit Limitations

Described in Table 2 overview

- Required employer or payer (column 5)
 - Caution: Benefit may require a foreign resident or treaty-country resident employer/payer
- Maximum presence in US (column 4)
 - Year may be either tax year, elapsed year, or 12-month period beginning or ending in tax year
 - Caution: Benefit generally lost if time period exceeded
- Maximum amount (column 6)
 - Caution: Benefit generally lost if amount exceeded
 - But there are some exceptions for purpose-of-the-visit articles!

Purpose-of-the-Visit Limitations

Prospective loss – visiting the US for “a period *not expected to exceed 2 years*”

- Based on information known to either employer or employee or both
- Much recent case law due to IRS audits

Retroactive loss – “...who visits the other Contracting State *for a period not exceeding two years...*”

- Benefit lost retroactively if time period physically exceeded for any reason
- 6 treaties - Germany (Student/Trainee only), India, Luxembourg, Netherlands, Thailand, UK

Purpose-of-the-Visit Limitations

Once-in-a-lifetime use

- “An individual shall be entitled to the benefits of this paragraph only once.”
- 6 treaties – Czech Republic, France, Indonesia, Jamaica, Portugal, Slovak Republic
- China Teacher/Researcher benefit also interpreted as one-time use due to “in the aggregate” language

Character-of-the-Payment Limitations

Unique provision for residents of Canada and Greece paid by a US employer

- Under Dependent Personal Services Article (report under Income Code 18)
- Compensation to a maximum of \$10,000
- Benefit lost if
 - Amount exceeded by 1¢
 - Recipient becomes an RA

Character-of-the-Payment Limitations

Artists and Athletes

- No benefit if gross receipts amount exceeded
- Gross receipts includes travel reimbursements excluded under an accountable plan
- IRS: Do not provide withholding tax exemption if article includes a gross receipts maximum

Character-of-the-Payment Limitations

No treaty benefit if the income is attributable to a US fixed base

- Almost all FDAP-type income articles
- Most Independent Personal Services Articles

A fixed base

- Is a fixed place of business through which the business is carried on
- Same as permanent establishment as defined by the treaty

Withholding Tax Exemption Claim

Form 8233 for personal services by an NRA

- Can include scholarship/fellowship grants if also have treaty-exempt compensation

Form W-8BEN for all other treaty claims by NRAs (W-8BEN-E for entities)

Form W-9 for claims by RAs allowed under a saving clause exception

Software Demo

Bridget S Bishop

Assistant General Counsel
Division of Governance, Legal, and Risk
The University of North Carolina System

Bridget Bishop provides legal counsel to the constituent institutions on U.S. immigration law matters and operates a shared services pilot program through which she provides direct representation of participating constituent institutions regarding employment-based immigration nonimmigrant and immigrant sponsorship.

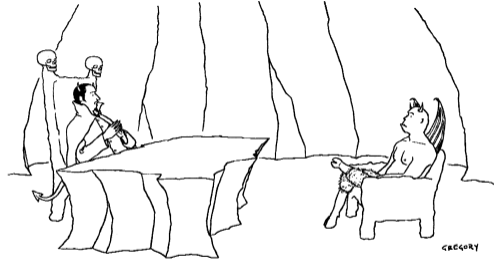
Bridget joined the UNC System in 2010 after working for six years in private practice at a boutique immigration law firm. Prior to private practice, she served as a law clerk for the Honorable Linda McGee on the North Carolina Court of Appeals.

Bridget received her Juris Doctorate from the University of North Carolina at Chapel Hill and her Bachelor of Arts degree from the University of Virginia.



IMMIGRATION FUNDAMENTALS AND CURRENT NEWS

NC Office of the State Controller
2018 Tax Compliance Summit
June 5-6, 2018



*"I need someone well versed in the art of torture—
do you know PowerPoint?"*

Government Agencies Primarily Involved in Immigration

- Department of Homeland Security
 - US Citizenship and Immigration Services
 - Customs and Border Protection
 - Immigration and Customs Enforcement
- Department of Labor
- Department of State (embassies/consulates)

Immigration: Broadly Speaking

- Foreign National is a noncitizen or national of the U.S. (aka “alien”)
- Nonimmigrant: Foreign national seeking temporary entry to the U.S. for a specific purpose. Common classifications include: foreign government officials, business visitors, tourists, international students, treaty traders and investors, temporary workers and trainees, exchange visitors, and others.
- Immigrant: Foreign national admitted to the U.S. as a lawful permanent resident (“green card” holder). Permanent residents have the privilege of residing permanently in the United States and are authorized to work pursuant to their status.
- Employment-based versus Family-based immigration. Some foreign nationals may pursue family-based immigrant status while in a nonimmigrant employment-based status.

Visa Stamps In Passports

- <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html>
- Select foreign nationals may be visa exempt (*e.g., most Canadians*).
- The visa stamp issued by a consular officer is not a guarantee of *entry* to the U.S. but allows you to request permission to enter.
- There are nonimmigrant and immigrant visa stamps.
- NOTE: the visa stamp does not dictate authorized stay/status in the U.S. It concerns travel. Some foreign nationals may not have a visa stamp, but are still maintaining a given nonimmigrant status.

Employment-Based Immigration: Sponsorship

- An employer does not have to sponsor a foreign national who lacks independent employment authorization for a nonimmigrant or immigrant. Not doing so will very likely impact your ability to employ him or her.
- Even if an employer sponsors a foreign national for nonimmigrant status (*e.g.* H-1B), the employer is not required to support immigrant sponsorship.
- How do you know if a candidate for a position requires sponsorship in order to be work-authorized? Consult with EEO/HR offices.
- Two acceptable questions for applicants that get you *almost to a definitive answer*:
 - (1) Are you legally authorized to work in the United States? __Y __N
 - (2) Will you now or in the future require sponsorship for employment visa status (*e.g.*, H-1B visa status)? __Y __N

Please see <https://www.justice.gov/crt/technical-assistance-letters>

Employment-Based Nonimmigrant (Temporary) Sponsorship

- Employment-based nonimmigrant sponsorship is more than just filling out papers. A sponsor is making certain attestations and entering into legal obligations.
- Compliance is ongoing.
- Employer may be subject to worksite investigations.
- In order to obtain employment-based nonimmigrant status and thereby **timely** work authorization, certain steps must be undertaken by the employer.
- Each government agency (USCIS, DOL, etc.) works on its *own* timeframe and some steps cannot be expedited.

Narrowed List of Nonimmigrant Classifications

- **H-1B:** Common employment-based nonimmigrant category. Employer, position, and worksite specific.
- **TN:** applicable to Mexican and Canadian nationals. Employer, position, and worksite specific. Finite list of applicable qualifying occupations: Appendix 1306.d.1 of NAFTA Chapter 16.
- **E-3:** Australian nationals. Employer, position, and worksite specific.
- **J-1:** Exchange Visitors with specific categories including Short Term Scholars, Professors, and Researchers. Category specific, employer, and worksite specific.
- **O-1:** based on extraordinary ability in the sciences, arts, education, business, or athletics. Employer, position, and worksite specific, with some room for change.
- **F-1 OPT:** Optional Practical Training for (F-1) International Students in his/her field of study. Limited to 12 months - 36 months, depending on field of study (STEM or not). Work must be related to the field of study.



Employment-Based Nonimmigrant Sponsorship: H-1B

- Petition filed with U.S. Citizenship and Immigration Services
- Limited to specialized occupations-meaning it requires theoretical and practical application of a highly specialized knowledge and attainment of a bachelor's or higher degree in a specific specialty is minimum for entry into the occupation.
- Strict wage requirements apply.
- Limited to 6 years, but may extend beyond 6 if certain timely steps have been taken towards permanent resident status.
- Annual federal limit on limit on H-1Bs. Some employers "H-1B Cap Exempt."
- 3rd Party Worksite Issues:
<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-02-22-PM-602-0157-Contracts-and-Itineraries-Requirements-for-H-1B.pdf>
- There has been a significant increase in challenging Requests for Evidence (RFEs) over the past year.
- Dependents (Spouse and Children): H-4 Nonimmigrant Status.
- AGAIN: Employer, position, and worksite specific. Employer-Employee relationship.
- Practice: Employer pays filing fees and associated costs.



Employment-Based Nonimmigrant Sponsorship: H-1B

H-1B Wage Requirements

- **Required Wage:** Employer must pay the higher of the prevailing wage and the actual wage.
- **Prevailing Wage:** wage rate set for the occupational classification in the geographical area of employment.
- **Actual Wage:** wage rate paid by the employer to all individuals with experience and qualifications similar to the H-1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment.
- <https://www.dol.gov/whd/immigration/h1b.htm>
- Employer signs off on attestations as part of ETA-9035 Labor Condition Application, which once certified by Department of Labor is filed with H-1B petition.



Employment-Based Nonimmigrant Sponsorship: H-1B

H-1B CAP

- 65,000 per year for regular cap
- 20,000 per year for beneficiaries with U.S. master's degree or higher
- Filing window for October 1 of a given year is the first week of April of that year
- Always more petitions than numbers available
- Some H-1B employers are cap exempt: Institutions of higher education as defined by the Higher Education Act of 1965, nonprofit research organizations, government (local, state or federal) research organizations, and non-profit entities related to or affiliated with an institution of higher education. 8 CFR 214.2(h)(8)(ii)(F)
- Nonprofit is considered related to or affiliated with an institution of higher education if: shared ownership or control by same board/federation; operated by institution of higher education; attached to institution of higher education as a member/branch/cooperative/subsidiary; OR, entered into a formal affiliation with institution of higher education (where fundamental activity of nonprofit is to directly contribute to research and education mission of institution of higher education).
- Also, there is an "employed at" exemption. 8 CFR 214.2(h)(8)(ii)(F)(4)



Employment-Based Nonimmigrant Sponsorship: TN

- Not subject to numerical limits per fiscal year
- Provided for by the North American Free Trade Agreement (NAFTA).
- Limited to Canadian and Mexican citizen-professionals.
- May be eligible to apply at port of entry or petition to U.S. Citizenship and Immigration Services.
- Although limited to Canadian and Mexican *citizens*, worker need not be a citizen by birth to qualify.
- No required wage obligation
- Self-employment generally is prohibited.
- TN classification strictly limited to engagement in one of the 63 NAFTA-specified occupations listed in Appendix 1603.D.1 of Annex 1603 of the NAFTA.
- List of Occupations and 8 CFR §214.6(c).
- Dependents (Spouse and children): eligible for TD classification.
- AGAIN: Employer, position, and worksite specific



Employment-Based Nonimmigrant Sponsorship: E-3

- Limited to 10,500 per year
- Provided for by the Free Trade Agreement
- Limited to Australian nationals
- Although limited to Australian *citizens*, worker need not be a citizen by birth to qualify.
- Required wage same as H-1B. Need certified Labor Condition Application.
- Position must qualify as specialty occupation like the H-1B.
- Can apply at consulate or through petition to U.S. Citizenship and Immigration Services.
- Dependents (Spouse and children): eligible for E-3 classification
- AGAIN: Employer, position, and worksite specific



Employment-Based Nonimmigrant Sponsorship: O-1

- Petition to U.S. Citizenship and Immigration Services
- Limited to Individuals of Extraordinary Ability to Achievement. Requires extensive documentation.
- Position must require an individual of extraordinary ability.
- No required wage
- No annual limit
- Dependents (Spouse and children): eligible for O-3 classification.
- Again: Employer specific, but...an agent can file on behalf of multiple "employers."



J-1 Exchange Visitors

- Requires a J-1 sponsor recognized by the U.S. Department of State
- Very specific categories, such as alien physician, au pair, intern, professor or research scholar.
- Very limited and specific authorization to work
- May be subject to a two-year foreign residence requirement at conclusion of J-1 program.
- Dependents (spouse and children): eligible for J-2 classification



F-1 Optional Practical Training

- Note: there are separate provisions for off-campus (and on-campus) employment for F-1 International Students enrolled in course of study.
- Two types of Optional Practical Training (OPT):
 - Pre-completion OPT
 - Post-completion OPT: more common
- OPT is applied for through application to U.S. Citizenship and Immigration Services---but school's Designated School Officer must recommend first. Timing issues.
- If OPT approved, an Employment Authorization Document (EAD) is issued. Need EAD in hand for proof of employment authorization (see M-274 for narrow exceptions).
- OPT work must be related to program of study.



F-1 STEM-OPT

- STEM-OPT is applied for through application to U.S. Citizenship and Immigration Services---but school's Designated School Officer must recommend first. Timing issues.
- Must be in OPT period when applying for STEM-OPT
- Specific as to which STEM fields qualify
- Employer must be willing to complete (and sign) Form I-983. Need authorized signatory and read the attestations/certifications.
- Employer takes on reporting obligations
- <https://studyinthestates.dhs.gov/employers-stem-opt-reporting-requirements>
- If STEM-OPT approved, another Employment Authorization Document (EAD) is issued. If STEM-OPT application is timely filed, employment authorization pursuant to OPT continues while STEM-OPT application pending.
- STEM-OPT work must be related to program of study
- <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/stem-opt>
- **New issue: Third-party placements**



F-1 Curricular Practical Training (CPT)

- May not see CPT all that often.
- CPT is any alternative work/study, internship, cooperative education, or other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. CPT must be an integral part of an established curriculum.
- CPT abuse is a present concern for Congress and US Citizenship and Immigration Services.
- May not find out it is an issue until filing H-1B petition. Becomes a failure to maintain status issue if CPT was not appropriate.



B-1 Business Visitors

- B-1 Business Visitors may **not** be employed.
- May not be paid—narrow exception for honoraria.
- Length of stay and activities are very limited:
 - (1) Engage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);
 - (2) Negotiate contracts;
 - (3) Consult with business associates;
 - (4) Litigate;
 - (5) Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
 - (6) Undertake independent research.



Others who may have employment authorization

- Foreign nationals with Temporary Protected Status
- Asylees or refugees
- Deferred Action for Childhood Arrival recipients.
- Foreign nationals with a pending Application for Permanent Residence Status (green card)
- And more...

Automatic Extension of Certain EADs

- Foreign nationals in certain employment eligibility categories who file an EAD renewal application may receive automatic extensions of their expiring EAD for up to 180 days. The extension begins on the date the EAD expires and continues for up to 180 days unless the renewal application is denied.
- Automatic EAD extension requirements (with some exceptions for TPS):
 - Timely filed an application to renew their EAD before it expires ;
 - Eligibility category on the face of the EAD is the same eligibility category code on the Form I-797C Notice of Action, the employee received from USCIS indicating USCIS's receipt of their renewal application; and
 - Eligibility category is listed on uscis.gov as eligible for EAD automatic extensions: A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31 and A12 or C19.

TPS

- TPS –country specific designation based on conditions in a specific country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.
- Many countries long designated TPS are or in the process of being phased out.
- Currently: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria and Yemen.

H-4 Dependent Work Authorization

- Certain H-4 Spouses of H-1B workers are eligible to file for an Employment Authorization Document.
- Anticipated that the regulations will be withdrawn.
Department of Homeland Security indicated it will publish notice in June 2018.

Hiring & Time-Limited EADs

- Case to follow: <https://www.bizjournals.com/charlotte/news/2018/05/07/bank-of-america-being-sued-in-federal-court-over.html>
- <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/06/180.pdf>
- <https://www.justice.gov/sites/default/files/crt/legacy/2012/09/27/161.PDF>:
 “[A]ll individuals with employment authorization, including those falling outside the definition of a ‘protected individual,’ are protected from national origin discrimination under 8 U.S.C. § 1324b(a)(1) and from document abuse under 8 U.S.C. § 2 1324b(a)(6). Consequently, employers may not use the ‘temporary nature’ of an individual’s employment authorization as a pretext for discrimination on the basis of national origin.”

Employment-Based Immigrant Sponsorship

- **Allocation of Immigrant Visas (“green cards”)**
 - Each month DOS publishes the Visa Bulletin which dictates the availability of an immigrant visas based on immigrant classification and birth country.
 - The Visa Bulletin reflects the annual limit on the number of immigrant visas. -
<https://www.uscis.gov/greencard/visa-availability-priority-dates>
- Some types of employment-based sponsorship for permanent residence may only be filed by the employer, while others may be self-petitioned by the foreign national.
- Generally, employment-based immigrant sponsorship requires the approval of the U.S. Department of Labor of a labor certification application (aka PERM labor certification) at the conclusion of test of the U.S. labor market.
- There are exceptions to the having to test the U.S. labor market: such as based on outstanding or extraordinary achievement, or work in the national interest. Also, some occupations, such as RNs, have an acknowledged shortage.

Expedited Processing of USCIS Petitions and Applications

- U. S. Citizenship and Immigration Services offers a premium processing service for ***certain petitions and applications*** for an additional fee of \$1,225. Petitions that ***may*** be expedited include H-1B petitions and ***most*** Immigrant Petitions.
- Premium processing only guarantees that it will process the application or petition within 15 calendar days or refund the fee. This is not a promise of approval or denial within 15 calendar days, but only an obligation to review it and, if appropriate, deny or approve it. USCIS may issue a request for evidence instead.
- Who pays for premium processing? If it is an employer need, the employer pays.



Ongoing Compliance Issues

- Any changes to a sponsored employee's salary, worksite, job duties, etc., may have an impact. Consider before making the change.
- Site Investigations for H-1Bs are up.
- If separation is concurrent with the end of the sponsored nonimmigrant status (*e.g., H-1B*), no action is needed with regard to immigration unless there is a pending application or petition that needs to be withdrawn.
- If separation occurs prior to the end of the sponsored nonimmigrant status, USCIS must be notified *in writing of the separation* whether voluntary or not.
- If separation is not voluntary and occurs prior to the end of the sponsored nonimmigrant status, the employer may be obligated to pay the transportation cost for return of international faculty member to his or her home country.
- Certain nonimmigrants are afforded a grace period at the discretion of U.S. Citizenship and Immigration Services to depart the U.S., change nonimmigrant status, etc.



A Word about I-9 Audits

- ICE worksite enforcement investigations already double over last year
<https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-already-double-over-last-year>
- Look to the M-274 Manual
- Consider an electronic I-9 system, but can be cost prohibitive



Will we see comprehensive immigration reform
or piecemeal related legislation this year?



Glossary of Terms

- Visa (Stamp in Passport)
- E-Verify
- I-797 Notice of Action
- I-94 Departure Record (electronic or paper)
- Entry Stamp
- I-551 Card (Green Card/Permanent Resident Card)
- I-9 Employment Eligibility Verification Form
- U.S. Citizenship and Immigration Services (USCIS)
- U.S. Department of Labor (DOL)
- U.S. Department of State (DOS)
- U.S. Department of Homeland Security (DHS)
- Customs and Border Protection (CBP)
- Immigration and Customs Enforcement (ICE)
- Student Exchange Visitor Information System (SEVIS)
- I-20 Certificate of Eligibility for Student (F-1) Status
- DS-2019 Certificate of Eligibility for Exchange Visitor (J-1) Status
- Employment Authorization Document (EAD)
- Science Technology Engineering and Mathematics (STEM)
- Optional Practical Training (OPT)
- Supplement J for STEM-OPT
- Temporary Protected Status (TPS)
- Curricular Practical Training (CPT)
- M-274 Manual for I-9 completion
- Lawful Permanent Resident (LPR)
- Visa Waiver Program (VWP)
- Electronic System for Travel Authorization (ESTA)
- Deferred Action for Childhood Arrivals (DACA)
- U.S. Citizen (USC)
- Immigration and Nationality Act (INA)
- Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
- Immigration Reform and Control Act (IRCA)
- Immigrant and Employee Rights Section, Civil Rights Division, U.S. Department of Justice
- Foreign Affairs Manual (FAM)
- Request for Evidence (RFE)
- Notice of Intent to Deny (NOID)
- Notice of Intent to Revoke (NOIR)

Disclaimer





The information within this presentation does not constitute legal advice and each participant should seek his/her own counsel in addressing specific situations. The University of North Carolina System and the NC Office of the State Controller are providing this content to enhance the knowledge of the participants in this workshop.

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Terri Crowl is a Content and Compliance Specialist for Thomson Reuters ONESOURCE Nonresident Alien Taxation. In her current role, she assists clients with tax residency and treaty analyses, processing procedures, system function analysis and product and tax issue training. In addition, she is responsible for staying abreast of regulatory and tax treaty changes affecting payments to nonresident aliens, and works closely with product development staff to ensure these changes are properly implemented in various software applications. She has been part of the Thomson Reuters (formerly Windstar Technologies) staff since 2001, joining full-time in 2007. Terri previously served for over seven years as the International Tax Coordinator at George Mason University in Fairfax, Va., where she oversaw all payments made by the university to non-immigrants and ensured proper tax reporting and withholding. At Mason, Terri provided tax return preparation workshops for its nonresident alien population and informational sessions for faculty and staff on making payments to foreign nationals. She also completed I-9s for international employees and served as a backup Designated School Official for the F-1 student program. Prior to moving into the higher education arena, Terri held numerous roles at World Learning, Inc., assisting in the administration of US Agency for International Development education and training grants for J-1 visitors from all over the world.

A graduate of Middlebury College, Terri has been a presenter and curriculum developer at International Tax Summits at St. Norbert College, various NAFSA conferences, American Payroll Association Congress and Educational Institute Payroll Conferences, and on-site client trainings.



Nonresident Alien Taxation

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Agenda

Identifying the Payee

- Identifying the Payee
 - Substantial Presence Test Examples
- Classifying the Income
- Sourcing the Income
- Withholding and Reporting Rules
 - Nonresident Alien FICA Exemption
- Withholding Certificates

Tax Impact of Immigration Status

Immigration status determines applicable tax residency rules, code exceptions

- Green card holder (aka Lawful Permanent Resident)
- Government-related individuals
- Students - F, J, M Students
- Teachers and Trainees - J Non-students
- Q cultural workers
- All other categories

Can also imply potential eligibility for certain treaty benefits based on purpose of visit

Determining If and How to Withhold and/or Report

Multi-step Process:

- Identify the payee (tax resident vs. tax nonresident)
- Classify the income
- Determine source of income (Secs. 861 and 862)
- Make withholding and reporting decision
 - Including getting the appropriate documentation

Identify the Payee (Tax Resident or Tax Nonresident)

Citizens and green card holders treated as tax residents for all purposes

Nonimmigrants (temporary visa holders) require annual Substantial Presence Test (SPT) to determine tax residency

The general SPT rule:

- 31 countable US days in the current calendar year, and
- 183 countable US days based on a 3-calendar-year formula
 - All of the current year's countable days
 - 1/3 of the prior year's countable days
 - 1/6 of the 2nd preceding year's countable days
- A partial day counts as one day
- Must use fractions in the computation

Identify the Payee (Tax Resident or Tax Nonresident)

SPT exceptions for exempt (from counting US days) individuals for

- A and G Foreign Government-Related Individuals
- F, J, and M Students (includes J Student Interns)
- J and Q "Teachers and Trainees" (includes all J Nonstudents and Q Cultural Visitors)
- Above categories include dependent children who
 - Are under age 21
 - Reside with the principal alien
 - Are not members of another household

Days spent out of status are NOT exempt from counting!

Identify the Payee (Tax Resident or Tax Nonresident)

Rules for F, J, M and Q status individuals

- Students are exempt from counting US days for 5 calendar years since 1985
- J Nonstudents and Q Cultural Visitors are exempt from counting US days for 2 out of the current 7 calendar years
 - 4 out of 7 years if all remuneration is from a foreign employer
- Must consider prior visits in F, J, M, or Q status in any category that included exempt from counting US days calendar years
 - Individuals can change from NRA to RA or vice versa depending on their prior visits

Identify the Payee (Tax Resident or Tax Nonresident)

Residency start date is retroactive to the first countable day in the year that the individual becomes an RA

Residency end date is deemed by the regulations to be December 31 of the last year as an RA

Special procedures for a later start date or earlier end date

- Described in IRS Pub. 519 for tax returns but not for withholding

Identify the Payee (Tax Resident or Tax Nonresident)

Tax Resident Example:

$$2018: 100\% \times 126 = 126$$

$$2017: 1/3 \times 126 = 42$$

$$2016: 1/6 \times 126 = 21$$

$$\text{Total: } 189 = \text{RA}$$

Tax residents are subject to U.S. tax on worldwide income!

Identify the Payee (Tax Resident or Tax Nonresident)

Tax Nonresident Example:

$$2018: 100\% \times 110 = 110$$

$$2017: 1/3 \times 126 = 42$$

$$2016: 1/6 \times 126 = 21$$

$$\text{Total: } 173 = \text{NRA}$$

Tax nonresidents are only subject to U.S. tax on U.S.-source income!

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Calculation Grid:

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018					1.000	
2017					.333	
2016					.167	

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 1

- Individual enters the U.S. in H-1B status on January 1, 2018. He remains until June 29, 2018 (180 days), at which point he returns to his home country for the foreseeable future.
- Individual was also in the U.S. in B-1 status from July 1 through July 30, 2017 (30 days). He has indicated that he has not been in the U.S. at all other than these two visits.

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 1

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018	H-1B	180	No	180	1.00	180
2017	B-1	30	No	30	.333	10
2016					.167	
					Total	190
					Ans	RA

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 2

- Individual enters the U.S. in O-1 status on January 1, 2018. He remains until April 30, 2017 (120 days).
- Individual was also in the U.S. in B-1 status for 30 days in 2017 and 60 days in 2016. He has no other prior U.S. presence.

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 2

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018	O-1	120	No	120	1.00	120
2017	B-1	30	No	30	.333	10
2016	B-1	60	No	60	.167	10
Total						140
Ans						NRA

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 3

- Individual enters the U.S. in F-1 status on January 1, 2015. He remains until April 30, 2018 (120 days). He has no other prior U.S. presence.

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 3

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018	F-1	120	Yes	0	1.000	0
2017	F-1	365	Yes	0	.333	0
2016	F-1	366	Yes	0	.167	0
2015	F-1	365	Yes		Total	0
					Ans:	NRA

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 4

An individual has been in the U.S. in J-1 Research Scholar three times, with no other U.S. presence:

- June 30, 2008 – July 4, 2009
- June 15, 2013 – April 10, 2014
- March 7, 2017 – July 9, 2018

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 4

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018	J1/R	190	Yes	0	1.000	0
2017	J1/R	300	Yes	0	.333	0
2016					.167	
2015						
2014	J1/R	100	No		Total	0
2013	J1/R	200	No		Ans	NRA
2012						
2011						
2010						
2009	J1/R	185	Yes			
2008	J1/R	185	Yes			

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 5

Facts are the same as in prior example, except the 2013-2014 visit was as a J-1 Student:

- June 30, 2008 – July 4, 2009
- June 15, 2013 – April 10, 2014
- March 7, 2017 – July 9, 2018

Identify the Payee (Tax Resident or Tax Nonresident)

SPT Example 5

YEAR	STATUS	Actual DAYS	Exempt	Count DAYS	Factor	RESULT
2018	J1/R	190	No	190	1.000	190
2017	J1/R	300	No	300	.333	100
2016					.167	
2015						
2014	J1/S	100	Yes		Total	290
2013	J1/S	200	Yes		Ans	RA
2012						
2011						
2010						
2009	J1/R	185	Yes			
2008	J1/R	185	Yes			

Classify the Income

Why is it so important?

What can happen if I get it wrong?

- To the organization
- To the taxpayer

How do I get it right?

Compensation or something else?

If it walks like a duck and talks like a duck, sometimes it still isn't a duck!

Classify the Income

You must determine the income type in order to apply the correct tax rules

Substance controls over form!

Neither the name given a payment nor the paying system it comes from is controlling

- A scholarship requiring services to be performed is compensation
- A stipend may be either a scholarship or fellowship grant or compensation

Source the Income

The source of income, US or foreign, varies with the type of income

- Compensation for services
- Scholarship and fellowship grants
- Prizes and awards
- Royalties

Sourcing rules are at Sections 861 and 862 of tax code

Remember, source matters because NRAs are not taxed by U.S. on foreign-source income

Source the Income

The source of compensation

- Location and currency of payment are generally not controlling
- Source is determined by where the services are performed
 - In the United States = US-source
 - Outside the United States = foreign-source
- IRS provides rules in Treas. Reg. Section 1.861-4 for allocating compensation for services both in the United States and abroad

Source the Income

Foreign-source compensation

- No documentation needed if:
 - All the services performed outside US,
 - No reason to know the provider is a US citizen or resident alien, and
 - The income is not effectively connected to a US trade or business
- Best practice - Form W-8BEN (no TIN required) and document location of services in contract and payment requests

Special Exceptions - Compensation

Special tax code rules for compensation

- Section 861(a)(3) commercial traveler rule
 - Less than 90 days in the calendar year,
 - Less than \$3,000 in the aggregate, and
 - Paid by or for a foreign employer/contractor
 - = foreign-source income

- Section 872(b)(3) exception for F, J, or Q status employees if all remuneration is paid by a foreign employer
 - Doesn't apply to foreign-government employers
 - Doesn't apply to foreign grants
 - = excludable from income

Source the Income

Scholarship and fellowship grants

- US-source if
 - The grantor is a US resident and
 - The study, research, or training is in the United States
- Foreign-source if
 - The grantor is foreign or
 - The study, research, or training is outside the United States
- A grant paid by a US paying agent on behalf a foreign grantor remains foreign-source

Source the Income

Prizes and awards

- Defined in Section 74; source defined in Treas. Reg. 1.863-1(d)
- US-source if provided by a US resident
- Foreign-source if provided
 - By a foreign resident or
 - With regard to activities outside the United States undertaken in the public interest for:
 - Targeted grants and
 - Achievement awards for past activities

Source the Income

Royalties

- Based on where the property is used
- Keep separate records for property used both within and without the United States
 - Avoids having to withhold on total income
- Must differentiate between
 - Payment for use of intangible property (royalties)
 - Payment for creating intangible property (services)
 - Sale of all substantial rights in intangible property (sale proceeds)

NRA Withholding and Reporting

Taxable Wages

- Subject to graduated wage withholding
 - Special W-4 completion rules apply
 - Cannot claim “exempt”
 - Single status even if married
 - Zero or 1 withholding allowance
 - Write “Nonresident Alien” or “NRA” on line 6
 - Electronic Form W-4 must include an indicator for NRA designation
 - “Phantom gross-up” applies
 - To remove effect of the standard deduction from the wage withholding table
 - Does not apply to residents of India who are students or business apprentices
 - See IRS Publications 515 and 15 for more details
- Report on Form W-2

NRA Withholding and Reporting

Treaty-Exempt Wages

- Exempt from federal withholding assuming valid withholding certificate provided
 - 8233 for NRAs
- Report on Form 1042-S, Chapter 3 exemption code 04

NRA FICA Exception

Section 3121(b)(19) exemption

- F-1, J-1, M-1 and Q-1/Q-2 NRAs only
- Does not apply to dependents (F-2, J-2, etc.)
- Does not apply to RAs
- Begin withholding Jan. 1 of year individual will become a RA under the SPT
 - Can refund after year-end if NRA proven

NRA FICA Exception

Section 3121(b)(19) exemption for NRAs in student status covers

- All immigration-authorized employment
- Curricular or Optional Practical Training for F-1 students
- F-1 working with an EAD based on F-1 status
- Academic training for J-1 students

NRA Withholding and Reporting

Nonqualified Scholarship/Fellowship Income

- Subject to 30% federal withholding absent a treaty exemption
 - Reduced to 14% for
 - F, J, M or Q status recipients if either
 - A candidate for a degree at a qualifying educational institution OR
 - Scholarship/fellowship is paid by a 1441(b)(2) organization
- Report on Form 1042-S

Prize/Award Income

- Subject to 30% federal withholding absent a treaty exemption
 - No allowable reduction in rate
- Report on Form 1042-S

NRA Withholding and Reporting

Royalty Income

- Subject to 30% federal withholding absent a treaty exemption or reduced rate
- Report on Form 1042-S

Withholding Certificates

No withholding certificate is required if no withholding tax reduction is claimed

- But still best to collect
 - Form W-9 as a certificate of US status
 - Form W-8BEN as a certificate of foreign status

Withholding certificates for a withholding tax exemption

- Form 8233 for treaty-exempt compensation for personal services
- Form W-9 for RA exempt from tax under a treaty
- Form W-8ECI for effectively connected income
 - But cannot be used for compensation for personal services of individuals
- Form W-8EXP for income of a tax-exempt entity
- Form W-8BEN or W-8BEN-E for all other US income

TIN required in most cases

Questions?



Latest Developments in Nonresident Alien Taxation

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Agenda

What's New at IRS

Effects of TCJA on NRA Withholding

Forms Update

ITIN Update

Miscellaneous Items

What's New at IRS – Recent Proposed Regulations

See REG-102951-16, published in the 5/31/18 Federal Register

- New regs would remove the non-aggregation rule in Reg. § 301.6011-2(c)(1)(iii)
- Prop Reg § 301.6011-2(b)(4) would require any person required to file 250 or more information returns *in the aggregate* of all types of information returns covered by Reg. § 301.6011-2(b) to do so electronically
- Prop Reg § 301.6011-2(b)(5) would require such person to also submit any amendments of covered information returns electronically
- Would apply to information returns required to be filed on or after January 1, 2019 (Tax Year 2018 reporting forms).
- Ability to request hardship waiver would remain intact
- Comments/public hearing requests must be received by July 30, 2018
- Concerns due to ongoing changes to electronic filing formats since advent of FATCA

What's New at IRS – Recent Regulations

New regulations, Treasury Decision 9808, January 2017 include:

- New rules for electronic signatures on Forms W-8
 - Make sure meets all requirements detailed in Reg. sec. 1.1441-1T(e)(4)(i)(B) including the referenced paragraph (e)(4)(iv)(B)(3)(ii). Still must truly be electronically signed
- Allowance for electronic system use to collect Form 8233
 - § 1.1441-1T(e)(4)(iv)(C); not same as W-8 rules!
- Presumption rule changes
- Clarification of due diligence requirements with respect to treaty claims
- Affirmation of U.S. (not foreign) TIN requirement on Form 8233
- Extended phase-in period for new versions of withholding certificates – can accept prior version
 - “...until the later of six full months after the revision date shown on the updated withholding certificate or the end of the calendar year the updated withholding certificate is issued”

What's New at IRS – Recent Regulations

Regarding presumptions, in many cases the requirement is to presume an undocumented payee is a U.S. person. However, under Reg. sec. 1.1441-1(b)(3)iii(E), a withholding agent can presume for purposes of payment for personal services that an individual is a non-U.S. person if all the following are true:

- (1) The payee of the income is an individual;
- (2) The payer does not know or have reason to know that the payee is a U.S. citizen or a U.S tax resident;
- (3) The payer does not know or have reason to know that the income is (or may be) effectively connected with the conduct of a trade or business in the United States (ECI); and
- (4) All of the services for which the payment is made were performed by the payee outside of the United States.

What's New at IRS – New “Compliance Campaigns”

As part of move toward issue-based examinations, IRS has announced several series of compliance campaigns since November, 2017. Of particular interest:

Forms 1042/1042-S Compliance

- Focusing on proper withholding, timely deposits, and 1042-S reporting

Nonresident Alien Tax Treaty Exemptions

- Focusing on improper tax treaty claims, inaccurate or incorrect forms

Nonresident Alien Schedule A and Other Deductions

NRA Tax Credits

Form 1120-F Chapter 3 and Chapter 4 Withholding Campaign

- Focusing on verification of withholding credits, information returns (i.e. 1042-S) filed by withholding agent

What's New at IRS – Acceptance Agents

IRS still seeking more applicants to be acceptance agents to support ITIN applications/renewals

- Certified acceptance agents can now authenticate passport, birth certificate for dependents
- See <https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes>

New Form W-7(COA) issued August 2017

- <https://www.irs.gov/pub/irs-pdf/fw7coa.pdf>

Updated Acceptance Agent application, Form 13551, issued September 2017

- <https://www.irs.gov/pub/irs-pdf/f13551.pdf>

Revised Acceptance Agents' Guide for ITINs, Pub. 4520, issued January 2018

- <https://www.irs.gov/pub/irs-pdf/f13551.pdf>

What's New at IRS – NRSA Private Letter Ruling Revoked

Private Letter Ruling (PLR) 201705001 revokes, replaces PLR 200607017

- Issued 10/24/16
- New PLR holds that compensatory non-NRSA (National Research Service Award) grants are in fact wages and subject to social security tax
 - “The Service has recently determined that Private Letter Ruling 200607017 is not in accord with the current views of the Service.”
- <https://www.irs.gov/pub/irs-wd/201705001.pdf>

What's New at IRS – Online FAQs Are Not Legal Authority

Director of Examination – Field and Campus Policy – SB/SE warns examiners on IRS FAQs in IRS Interim Guidance Memorandum SBSE 04-0517-0030:

“The purpose of this memorandum is to issue guidance to remind examiners that frequently asked questions (FAQs) and other items posted on IRS.gov that have not been published in the Internal Revenue Bulletin are not legal authority. The FAQs and other items should not be used to sustain a position unless the items (e.g., FAQs) explicitly indicate otherwise or the IRS indicates otherwise by press release or by notice or announcement published in the Bulletin.”

- Not legal authority unless published in Internal Revenue Bulletin
- The caution was incorporated into Internal Revenue Manual (IRM) at Subsection 4.10.7.2.4 as of January 10, 2018.

What's New at IRS – Impact of TCJA on NRA Withholding

New W-4 (affects everyone)

- No more additional withholding allowances for qualifying taxpayers from Canada, Mexico, South Korea, India, Northern Marianas, American Samoa
 - But Notice 1392 was never updated to reflect changes – 2013 version is outdated

Another new W-4 with more changes expected for 2019

- Will hopefully include more specific guidance for NRAs and fine-tune actual withholding

Revenue Procedure 88-24 essentially rendered unusable

- Due to elimination of miscellaneous itemized deductions subject to 2% floor

Backup withholding rate now 24% (still lower than statutory 30% NRA rate)

TCJA Effects on NRA Withholding – Phantom Gross-Up

2017		2018	
Amount to Add to Nonresident Alien Employee's Wages for Calculating Income Tax Withholding Only		Amount to Add to Nonresident Alien Employee's Wages for Calculating Income Tax Withholding Only	
<u>Payroll Period</u>	<u>Add Additional</u>	<u>Payroll Period</u>	<u>Add Additional</u>
Weekly	\$ 44.20	Weekly	\$ 151.00
Biweekly	88.50	Biweekly	301.90
Semimonthly	95.80	Semimonthly	327.10
Monthly	191.70	Monthly	654.20
Quarterly	575.00	Quarterly	1,962.50
Semiannually	1,150.00	Semiannually	3,925.00
Annually	2,300.00	Annually	7,850.00
Daily or Miscellaneous (each day of the payroll period)	8.80	Daily or Miscellaneous (each day of the payroll period)	30.20

Forms

All W-8 series forms and instructions were updated during 2017, new solicitations must use 2017 versions:

- W-8BEN
- W-8BEN-E
- W-8IMY
- W-8ECI
- W-8EXP

Form W-8BEN: Higher level of detail required on line 10 than before

- Article *and* Paragraph number
- Additional conditions of Article and Paragraph must be explained

New *Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY* issued April 2018

Forms

Form 8233 instructions updated

- New fax number: 267-466-1365
- Added e-fax number: 877-824-9781 (for use from within the U.S. only)
- Adds reference to potentially-expiring ITINs

Forms

Form 1042-S, 2017 to 2018 updates

- Boxes 9 and 11 switched
 - 9 is now for overwithheld tax repaid to recipient under adjustment procedures
 - 11 is now for tax paid (not withheld) by withholding agent
- Clarifying language added to boxes 7b (tax not deposited) and 10 (total withholding credit)
- Instructions also revised, expanded information and samples

Forms

Form 1042-S, “Big Four” 2016 to 2017 updates

New “Unique Form Identifier” (UFI) box

New “Amendment No.” box

“Pro-rata reporting” checkbox moved to numbered box 15

Income code 23 is now “Other Income”

- Used to be 54

*Maximum penalty for late filing of correct Form 1042-S increased from \$260 to \$270 by Revenue Procedure 2017-58 (effective for TY 2018 forms filed in 2019)

ITIN Update

ITIN expiration continues (pursuant to PATH Act)

- Lagging behind schedule proscribed under PATH

All ITINs with middle digits of 70, 71, 72, or 80 supposedly expired January 1, 2018

- Started sending CP 48 Notices summer 2017

Renewal processing for numbers expiring in January 2018 began in June 2017

- Renewal experiences to share?

ITIN Update

If not already expired due to non-use, rolling expiration schedule is as follows:

- ITINs issued before 2008 expired January 1, 2017
- ITINs issued in 2008 remained in effect until January 1, 2018
- ITINs issued in 2009 or 2010 will remain in effect until January 1, 2019 (should be renewing these now!)
- ITINs issued in 2011 or 2012 will remain in effect until January 1, 2020

Miscellaneous – Tax Court Cases

Ye v. Commissioner

- F-1 2001 – mid-2006
- Tenure-track teaching/research position accepted, H-1B approved mid-2006
- Later applied to adjust status to LPR
- IRS denied teacher/researcher claim, Tax Court upheld; stay not temporary

Klubo-Gwiedzinska v. Commissioner

- Hospital “research fellow” denied both Student/ Trainee and Teacher/Researcher treaty benefits
- Was not “recipient of grant, allowance, or award”
- Hospital not a “recognized educational institution”
 - Read treaties carefully
 - Tax treatment must be consistent with underlying documentation, facts, circumstances

Miscellaneous – Tax Court Cases

Kiselev v. Commissioner

- Entered as J-2 August 2005, changed to F-1 December 2008
- IRS denied Russia student fellowship benefits, said income was salary
- Tax Court ruled against IRS, contrary to other documented situations
 - Contradicts historical requirement to re-establish residency
 - Goes against historical definition of “grant, allowance, or award”
 - Also contrary to concept that grant made to an organization loses its character as such if paid to an individual in return for services
 - Implies that pending LPR application does not negate “temporarily present”

Questions?

Janice W. Davidson

Davidson has been an employee of the North Carolina Department of Revenue since 2005. She currently serves as an Assistant Director in the Tax Administration's Sales and Use Tax Division which administers the North Carolina General Statutes for:

- Sales and Use Tax,
- Certain Machinery and Equipment Excise Tax,
- White Goods Disposal Tax,
- Solid Waste Disposal Tax, Dry-Cleaning Solvent Tax,
- Scrap Tire Disposal Tax,
- Alternate Highway Use Tax, and
- the 911 Service Charge for Prepaid Telecommunications Service.

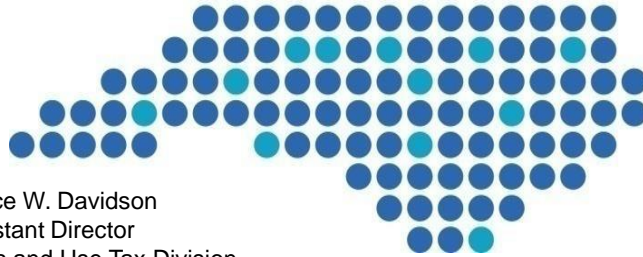
Davidson is also the Division's Rule-making Coordinator. She previously served as the Agency's Final Decision-maker, as IFTA Legal Counsel for the Jurisdiction of North Carolina, and as a hearing officer with regards to Excise Tax licensees. Additionally, she was selected to participate in the Department's 2009 Leadership Development Program. Prior to working for the Department, Davidson was employed in the private practice of law for 25 years.

Davidson is a graduate of the University of North Carolina and the UNC School of Law. She has been a licensed member of the North Carolina State Bar since 1979. She is admitted to practice in the federal courts of the Eastern and Middle Districts of North Carolina and before the United States Supreme Court.



2018 Tax Compliance Summit

Sales and Use Tax



Janice W. Davidson
Assistant Director
Sales and Use Tax Division
Janice.Davidson@ncdor.gov



Disclaimer

- Presentation is for general information only.
- Presentation content should not be interpreted as specific tax advice for a specific tax situation.
- Some questions may require additional facts before a response may be given.
- Some questions may require responses from other Departmental employees or employees in other agencies.
- The presentation does not take into consideration draft or future legislation.

- Sales and Use Tax Expansion
- Services to Real Property
- Repair, Maintenance, and Installation Services
- Real Property Contract
- Mixed Transaction Contract
- State Agencies
- Exemption for Certain Schools and Nonprofits
- Resources

3

- Repeal of Exemption for Installation Charges
- Tax Imposed on Certain Services
- South Dakota v. Wayfair

4



Services to Real Property*

Generally, gross receipts from services to real property are taxable as Repair, Maintenance, and Installation Services, unless the person substantiates that the transaction is subject to sales and use tax as:

- A real property contract.
 - (e.g. obtains Form E-589CI, or maintains other records that establish it is a real property contract).
- Certain mixed transactions.
- Exempt
 - (e.g. RMI for resale where Form E-595E, Certificate of Exemption, is on file, or a service that is exempt from sales and use taxes).



*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Excerpt from SD-18-1

North Carolina Department of Revenue



DIRECTIVE

Subject: Repair, Maintenance, and Installation Services for Real Property and Real Property Contracts
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.3(33d), 105-164.4(a)(16), and 105-164.4H
Issued By: Sales and Use Tax Division
Date: April 18, 2018
Number: SD-18-1

This directive is issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264 to address a number of issues relative to the application of sales and use tax for services to real property. The issues addressed herein are primarily based on law changes effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date, unless an amendment increased a sales or use tax liability, then the change was effective August 11, 2017.

General Application

N.C. Gen. Stat § 105-164.4H(a1) provides that generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to sales and use tax, unless a person substantiates

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Excerpt from Directive SD-18-1

Issued April 18, 2018

Disclaimer: This list is not specific tax advice. The application of sales and use tax may differ based on the facts and circumstances of a particular transaction. This list is not an all-inclusive list and may be updated in the future by the Department.

Transactions by Category	Capital Improvement Gross Receipts are Exempt from Sales and Use Tax Provided the Substantiation Requirements are Met	Repair, Maintenance, and Installation Services Sales Price or Gross Receipts are Taxable Unless Exemption Applies to the Gross Sales Price or Gross Receipts
Central Air Conditioning		
Installation or replacement of central air conditioning unit or system	X	
Installation or replacement of entire ductwork system	X	
Repair, maintain, or replace a component part(s): blowers, coils, condenser coils, control devices, ductwork sections, excess moisture drains, fans, filters, refrigerant, refrigerant tubes		Taxable
Central Wired Audio Sound System		

7



Repair, Maintenance and Installation Services (RMI)*

RMI applies to:

- Tangible personal property
- A motor vehicle
- Digital property
- Real property
- The term does not include services used to fulfill a real property contract taxed in accordance with N.C. Gen. Stat. 105-164.4H



*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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RMI as Defined Includes*:

- To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
- To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. **The term includes activities that may lead to the issuance of an inspection report.**
- To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. **The term includes floor finishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service.** The term does not include an installation defined as a capital improvement under G.S. 105-164.3(2c)d.
- To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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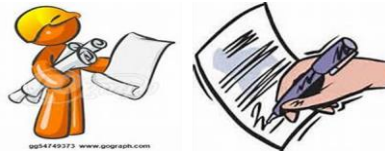
RMI Exemptions*

- **An item exempt from sales and use tax.**
- **The following inspections:**
 - An inspection performed where the results are included in a report for the sale or financing of real property.
 - An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated.
 - An inspection to a system that is a capital improvement under G.S.105-164.3(2c)f, provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated.
- Services performed for a person by a related member as defined by N.C. Gen. Stat. § 105-130.7A.
- **Cleaning of real property, except . . . for a pool, fish tank, or other similar aquatic feature.**
- Pest control service.
- Motor vehicle emissions and safety inspection fee.
- Removal of waste, trash, and debris except . . . portable toilets.
- Moving services.
- **Services performed on an animal such as microchipping a pet, hoof shoeing.**

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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A contract between a real property contractor and another person to perform a capital improvement to real property.



*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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NCDOR Capital Improvement* Definition

One or more of the following:

New Construction - Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

Reconstruction - Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Capital Improvement* Definition (cont'd)

Remodeling - A transaction comprised of **multiple services** performed by one or more persons **to restore, improve, alter, or update real property** that may otherwise be subject to tax as RMI services if separately performed.

- Includes a transaction where the **internal structure or design** of one or more rooms or areas within a room or building are substantially **changed**.
- Does not include a single RMI service.
- Does not include a transaction where the true purpose is a RMI service no matter that another RMI service is performed that is incidental to the true purpose of the transaction.
 - Repair of sheetrock that includes applying paint.
 - Replacement of cabinets that includes installation of caulk or molding.
 - Installation of hardwood floors that includes installation of shoe molding

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Capital Improvement* Definition (cont'd)

Performance of work that requires the issuance of a **permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.**

- Underlined items are taxable as RMI services!!!

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Capital Improvement* Definition (cont'd)

- Installation of utilities on utility owned land, right of way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.
- Installation of equipment or fixture that is attached to real property and that meets one or more of the following conditions:
 - Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - Is depreciated under the Code.
 - Is expensed under Section 179 of the Code.

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Capital Improvement* Definition (cont'd)

- Painting or wallpapering of real property, except where painting or wallpapering is incidental to the RMI service.
- Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler or other similar system.
 - Does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- Replacement or installation of a heating or air conditioning unit or a heating, ventilation, and air conditioning system.
 - Does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Capital Improvement* Definition (cont'd)

- Services performed to resolve an issue that was part of a real property contract if the services are performed **within six months of completion** of the real property contract or, **for new construction, within 12 months** of the new structure being occupied for the first time.
- **Landscaping** – A service that modifies the living elements of an area of land.
 - Installation of trees, shrubs, or flowers on land.
 - Tree trimming.
 - Mowing.
 - The application of seed, mulch, pine straw, or fertilizer to an area of land.
 - Does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.
- **Addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in the definition of RMI services.**

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Substantiation

- **Acceptable Substantiation**
 - Form E-589CI
 - Other Documentation
- **Liability**
 - Person that issues Form E-589CI for any additional tax.
 - Recipient of Form E-589CI, no additional liability unless egregious activity or fraud.

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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NCDOR Form E-589CI, Affidavit of CI

NCDOR
Web-Fill
5-18

E-589CI Affidavit of Capital Improvement

Form E-589CI, Affidavit of Capital Improvement, may be used to substantiate that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes, as a real property contract for a capital improvement to real property.

The receipt of an affidavit of capital improvement for services to real property, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a real property contract for sales and use tax purposes.

A real property contract is a contract between a real property contractor and another person to perform a capital improvement to real property.

Section I. Single Use (Complete this section to issue the affidavit for a single capital improvement.)

<p>A Owner, Lessee/Tenant, or Real Property Contractor</p> <p>Address</p> <p>City State Zip Code</p>	<p>B Real Property Contractor (General Contractor or Subcontractor) <small>Must perform capital improvement</small></p> <p>Address</p> <p>City State Zip Code</p>
<p>Describe capital improvement to be performed:</p>	

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NCDOR Substantiation (cont'd)

- Are State agencies and other entities required to issue Form E-589CI?
 - **No!**
- Benefits
 - Assists the contractor or subcontractor with the proper treatment of the transaction
 - Provides the contractor or subcontractor with documentation to substantiate a real property contract

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Substantiation (cont'd)

- In lieu of issuing a Form E-589CI, may the contractor otherwise document that a transaction is a capital improvement?
 - Yes!
 - A person should obtain a certified statement from the contractor for taxes paid by the contractor in order to file a refund claim
 - May need to address receipt of indirect tax paid at the time of negotiation of any contract

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Mixed Transaction Contract*

Contract that includes both a real property contract for a capital improvement and an RMI service that is not related to the capital improvement.

- **25% Rule** - Does the allocated price of RMI exceed 25% of the contract?
 - If no, the entire transaction is treated as a real property contract.
 - **If yes, the allocated amount for RMI is taxable.**

*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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State Agency Definition

A unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

- Individual community colleges are not State agencies.

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Exemption for State Agency's Direct Purchases

Items subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary service qualify for an exemption if all of the following conditions are met:

- The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.
- The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.
- For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.

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Exemption for State Agency's Direct Purchases (cont'd)

- The following State agencies do not qualify for the exemption:
 - An occupational licensing board, as defined in G.S. 93B-1.
 - An entity listed in G.S. 105-164.14(c).
- The exemption for a State agency is not applicable to real property contracts. A State agency cannot issue the State agency exemption number to a real property contractor for a real property contract or for a mixed transaction contract, where the taxable repair, maintenance, and installation services are twenty-five (25%) or less of the total contract price.
- A State agency that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid.

25



State Agency Refund Claims

State agencies can file quarterly refund claims for indirect tax paid by contractors using Form E-585E, State Agency Claim for Refund County and Transit Sales and Use Taxes.

- State agencies should obtain a certified statement from the contractors for taxes paid by the contractor in order to substantiate a refund claim.

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NCDOR State Agency Refund Claims (cont'd)

E-585E
1/00
6-13

**State Agency Claim for Refund
County and Transit Sales and Use Taxes**
North Carolina Department of Revenue

Complete all of the information in this section.

State Agency Name (Print or Checkmark <i>USE CAPITAL LETTERS FOR FIRST NAME AND ADDRESS</i>)		Account ID
Mailing Address		Federal Employer ID Number
Description or Counter Mailing Address		Quarter Beginning (MM/YY) (1)
City	State	Quarter Ending (MM/YY) (1)
State of Person We Should Contact if We Have Questions About This Claim	Contact Telephone	

1. Name of Tasting County
(If more than one county, see instructions on reverse and attach Form E-530RF.)

2. Amount of County & Transit Sales and Use Tax Paid Indirectly on Building Materials and Supplies as Shown on Contractors' Statements

3. Allocation of County & Transit Tax on Line 2 (Enter the county and transit tax paid at each applicable rate. If you paid more than one county's tax, see the instructions on reverse and attach Form E-530RF.)

County 2.00% Tax	County 2.25% Tax	Transit 0.50% Tax
<input type="text"/>	<input type="text"/>	<input type="text"/>

Signature: _____ Date: _____
(I certify that, to the best of my knowledge, this claim is accurate and complete.)

Title: _____ Telephone: _____

MAIL TO: NC Department of Revenue, P.O. Box 235000, Raleigh, NC 27640-0001

For Departmental Use Only		
Refund Approved: <input type="radio"/> As Filed <input type="radio"/> As Corrected	County Tax	Transit Tax
	<input type="text"/>	<input type="text"/>
By _____	Date _____	

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NCDOR Exemption for Certain Schools and Nonprofits

Food, prepared food, soft drinks, candy, and other items of tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

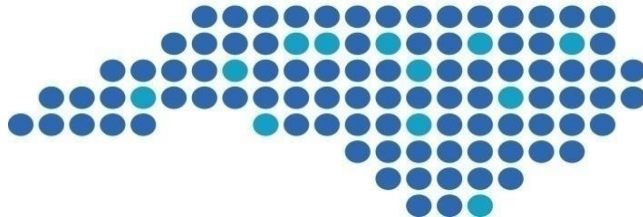
28

The following technical resources are available on the Department's website:

- Form E-505, Sales and Use Tax Legislative Changes
- Sales and Use Tax Law Changes by Year
- Sales and Use Tax Directives
- Important Notices Issued by the Sales and Use Tax Division
- Sales and Use Tax Administrative Code

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Questions



Edward S. Koonce

Ed Koonce is the Assistant Director of the Personal Taxes Division of the North Carolina Department of Revenue. His primary duties as Assistant Director of the Division includes administering and ensuring compliance with the individual income tax laws of this State. He also advises taxpayers, accountants, lawyers, and other tax professionals on questions regarding the application and interpretation of North Carolina tax laws. In addition, he supervises Administration Officers in the Appeals Process.

Ed began working with the Department of Revenue in August 1984 as an auditor in the Individual Income Tax Division. He received his B.S. from Barton College, (formerly Atlantic Christian College.)

State of the State Update

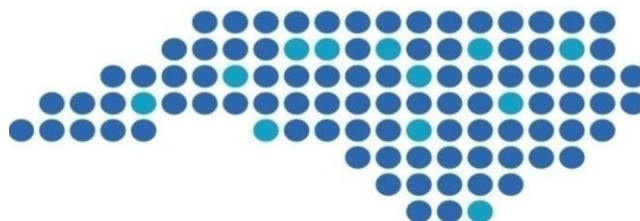


Personal Income Taxes

Office of State Controller Summit

June 5, 2018

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- This presentation does not take draft or future legislation into account.





DOR Senior Leadership

- **Secretary of Revenue– Ronald G. Penny**
- **Chief Operating Officer – Jocelyn Andrews**
- **Assistant Secretary Tax Administration – Anthony Edwards**
- **Assistant Secretary Business Services – Angela Altice**
- **Assistant Secretary CIO/IT – David Roseberry**



Secretary Ronald G. Penny



- Ronald G. Penny has been the Secretary of Revenue since April 2017.
- Penny served as Acting Secretary of Revenue from January 2017 until his permanent appointment in April.
- Penny holds a Bachelor of Science in Economics from NC A&T University and a law degree from UNC Chapel Hill and lives in Clayton.



Chief Operating Officer Jocelyn Andrews



- Jocelyn was appointed Chief Operating Officer in May 2016 after serving a number of leadership roles in DOR during her 30+ year career at DOR.
- Jocelyn was the first female agent in the Department's Criminal Investigation's Division.
- Jocelyn received her degree from Campbell University.



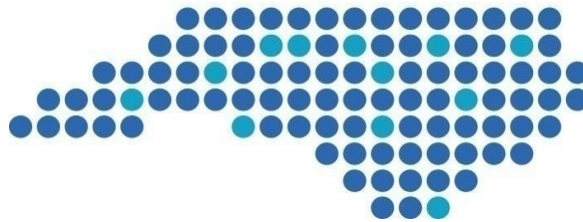
Office of Taxpayer Advocate



Office of Taxpayer Advocate
P.O. Box 871
Raleigh, NC 27602
919-715-2080

- A taxpayer who has exhausted all normal administrative channels may contact the Taxpayer Advocate's office for assistance.
- The office can be reached by mail or by phone.
- Taxpayer should complete Form NC-TA available from the Department's website.

Legislative Changes Affecting Individual Income Tax



NCDOR Personal Income Tax Rate

- Previously, there were three individual income tax rates – 6%, 7%, and 7.75%, with different thresholds for the different filing statuses.
- For tax year 2014, North Carolina law changed to a single individual income tax rate of 5.8%.
- For tax year 2015, the tax rate decreased from 5.8% to 5.75%.
- For tax year 2016, the tax rate remained 5.75%.
- For tax year 2017, the tax rate decreased from 5.75% to 5.499%.
- For tax year 2018, the tax rate will remain 5.499%.
- For tax year 2019, the tax rate will decrease from 5.499% to 5.25%.



Personal Income Tax Rate



The 2015 General Assembly amended G.S. 105-163.2(b)(1) to require the Department to revise the withholding tables and alternative methods of calculating the amount of tax withheld to reflect a tax rate equal to the individual income tax rate plus 0.1%.

For tax year 2018, the tax rate imposed is 5.499%, so the withholding rate on wages paid in 2018 is 5.599%.

For tax year 2019, the tax rate will be lowered to 5.25%. The withholding rate on wages paid in 2019 will be 5.35%.

For tax year 2019, the revised withholding tables and alternative methods will be included in Form NC-30, "2019 Withholding Tables and Instructions for Employers," which should be available on the Department's website in late 2018.

Standard Deduction

Beginning in 2014, the North Carolina General Assembly began increasing the standard deduction a taxpayer may deduct from adjusted gross income based on the taxpayer's filing status. The 2016 and 2017 General Assembly continued this practice.

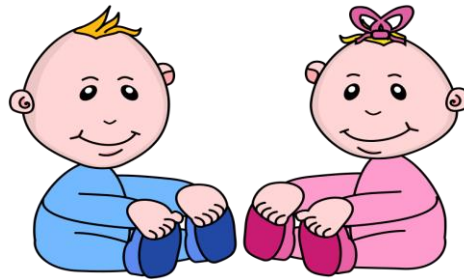
Filing Status	Standard Deduction for taxable years beginning on or after January 1, 2017 and before January 1, 2019	Standard Deduction for taxable years beginning on or after January 1, 2019
Married, filing jointly/ surviving spouse	\$17,500	\$20,000
Head of Household	\$14,000	\$15,000
Single	\$8,750	\$10,000
Married, filing separately	\$8,750	\$10,000

Important. The North Carolina standard deduction amount is zero for a person who is not eligible for a federal standard deduction.



Child Deduction Amount

- Effective for taxable years beginning on or after January 1, 2018, North Carolina's child tax credit is repealed and has been replaced with a new **child deduction**.
- The new child deduction allows a taxpayer a deduction for each dependent child for whom the taxpayer is allowed a federal child tax credit under IRC section 24.



Child Deduction Amount

The new "Child Deduction Amount" for a taxpayer with a filing status of "Married, Filing Jointly or Surviving Spouse" is equal to the amount listed below based on the taxpayer's AGI, as calculated under the Code.

Filing Status	AGI	Deduction Amount
Married, Filing jointly/Surviving spouse	Up to \$40,000	\$2,500.00
	Over \$40,000 Up to \$60,000	\$2,000.00
	Over \$60,000 Up to \$80,000	\$1,500.00
	Over \$80,000 Up to \$100,000	\$1,000.00
	Over \$100,000 Up to \$120,000	\$500.00
	Over \$120,000	\$0.00



Child Deduction Amount

The new “Child Deduction Amount” for a taxpayer with a filing status of “Head of Household” is equal to the amount listed below based on the taxpayer’s AGI, as calculated under the Code.

Filing Status	AGI	Deduction Amount
Head of Household	Up to \$30,000	\$2,500.00
	Over \$30,000 Up to \$45,000	\$2,000.00
	Over \$45,000 Up to \$60,000	\$1,500.00
	Over \$60,000 Up to \$75,000	\$1,000.00
	Over \$75,000 Up to \$90,000	\$500.00
	Over \$90,000	\$0.00



Child Deduction Amount

The new “Child Deduction Amount” for a taxpayer with a filing status of “Single/ Married, filing separately” is equal to the amount listed below based on the taxpayer’s AGI, as calculated under the Code.

Filing Status	AGI	Deduction Amount
Single/Married, filing separately	Up to \$20,000	\$2,500.00
	Over \$20,000 Up to \$30,000	\$2,000.00
	Over \$30,000 Up to \$40,000	\$1,500.00
	Over \$40,000 Up to \$50,000	\$1,000.00
	Over \$50,000 Up to \$60,000	\$500.00
	Over \$60,000	\$0.00



Child Deduction Amount



Employees are not required to file a new Form NC-4, NC-4EZ, or NC-4P because the child tax credit has been replaced with a child

deduction. However, employees should be aware that they could either be entitled to an additional allowance or lose an existing allowance because of the law change. Employees are encouraged to review the number of allowance claimed in 2018.

****For detailed information, see the Department's "Important Notice" dated September 15, 2017 available on the Department's website.**



Payment Settlement Entity

New G.S. 105-251.2(c) requires a **payment settlement entity** that is required to file a return with the IRS to also submit the same information to the Department at the same time the information is filed with the IRS.

- The term "payment settlement entity" has the same meaning as provided in section 6050W of the Code. Under section 6050W, the term generally means:
 - (a) In the case of a payment card transaction, the **merchant acquiring entity**. The term "merchant acquiring entity" means the bank or other organization which has the contractual obligation to make a payment to participating payees in settlement of payment card transactions.

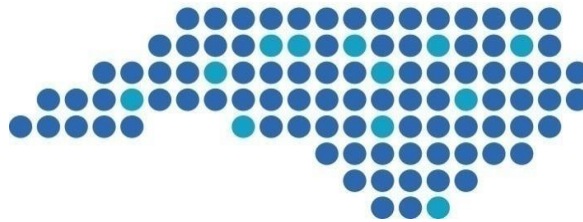
NCDOR Payment Settlement Entity

- (b) In the case of a third party network transaction, the **third party settlement organization**. The term “third party settlement organization” means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.
- Under the Code, each payment settlement entity must report the following information for each calendar year:
 - (1) The name, address, and identification number of each participating payee to whom one or more payments in settlement of **reportable payment transactions** are made.
 - (2) The gross amount of the reportable payment transactions with respect to each participating payee.

NCDOR Payment Settlement Entity

- In general, the term “**reportable payment transaction**” means any payment card transaction and any third party network transaction. The term “**payment card transaction**” means any transaction in which a payment card is accepted as payment, and the term “**third network transaction**” means any transaction which is settled through a third party network.
- **New G.S. 105-251.2(d)** requires the report to be filed with Secretary in an **electronic format**.
- Any report not timely filed is subject to a failure to file penalty of \$1000.

Federal Changes that May Affect Individual Income Tax



On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act ("Tax Act"). In addition, on February 9, 2018, President Trump signed into law the Bipartisan Budget Act of 2018 ("Budget Act"). The Tax Act and the Budget Act include a wide range of tax changes that will impact most individuals to some extent.

For example:

- Increases the federal standard deduction and eliminates the personal exemption.
- Expands the calculation of medical expenses and changes the floor to 7.5% for tax years 2017 and 2018.
- Extends certain provisions set to expire at the end of tax year 2016, including:
 - deduction for education expenses,
 - the deduction for mortgage insurance premiums as deductible mortgage interest,
 - the exclusion from gross income of the discharge of an individual's qualified principal residence indebtedness.





Tax Cuts and Jobs Act of 2018 Bipartisan Budget Act of 2018

The North Carolina General Assembly convened on May 16, 2018. Even if the General Assembly enacts legislation to update the Internal Revenue Code reference to February 9, 2018 or later, it may elect to continue to decouple from some federal provisions. In that case, taxpayers will be required to make decoupling adjustments to their individual income tax returns.

Therefore, any person required to file a North Carolina income tax return and whose 2017 federal taxable income or federal adjusted gross income was impacted by the amendments to federal law included in the TCJA or the BBA should check the Department's website, www.ncdor.gov, for updates that will be posted as they become available.



Tax Cuts and Jobs Act of 2018 Bipartisan Budget Act of 2018

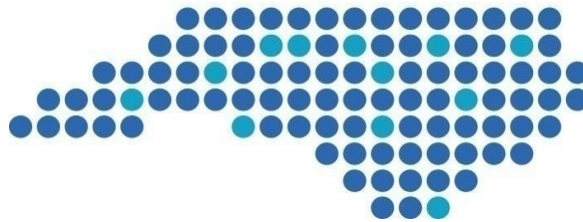
Senate Bill 715, Various Changes to the Revenue Laws, was introduced on Thursday, May 17th. This bill encompasses North Carolina's adoption of the Internal Revenue Code.

The progress of SB 715 can be tracked on the North Carolina General Assembly's website.

<https://www.ncleg.net/>



Various North Carolina Withholding Requirements



General Requirements



North Carolina law requires withholding of income tax from:

- (a) Salaries and wages of all NC residents regardless of where earned,
- (b) Wages of nonresidents for services performed in NC,
- (c) Non-wage compensation paid to nonresidents for certain personal services performed in NC,
- (d) Pension payments paid to NC residents if federal withholding is required on the payments,
- (e) Contractors identified by an Individual Taxpayer Identification Number (ITIN) if the contractor performs services in NC for compensation other than wages, and
- (f) Winnings of \$600 or more paid by the NC State Lottery Commission



4% Withholding of Taxes

Every payer who pays more than \$1500 during a calendar year to either a **nonresident contractor** or an **ITIN contractor** is required to deduct and withhold 4% of the compensation paid to the contractor.

- A **nonresident contractor** is either a nonresident individual or a nonresident entity that performs in NC for compensation other than wages any personal services in connection with a performance, an entertainment event, an athletic event, a speech, or the creation of a film, radio, or television program.
- An **ITIN contractor** is a person whose taxpayer identification number is an “Individual Taxpayer Identification Number (ITIN)” who performs services in NC for compensation other than wages.



NC-4NRA

- In general, North Carolina's wage bracket tables incorporate the amount of NC standard deduction allowed to a taxpayer in determining the amount of income tax to be withheld. However, nonresident aliens **may not be eligible** for the standard deduction.
- Form NC-4 NRA requires the nonresident alien employee to enter on Line 2 an additional amount of income tax to be withheld for each pay period to account for the inclusion of the standard deduction in the wage bracket tables. The additional withholding properly addresses the tax impact of the ineligibility for the standard deduction for the nonresident alien employee.
- To determine whether or not an individual is eligible to claim a standard deduction, see IRC publication 519, “U.S. Tax Guide for Aliens.”





Due Dates

- Employers who withhold an average of less than \$250 from wages each month must file **Form NC-5** and submit the taxes withheld on a **quarterly basis**.
- Quarterly returns and payments are due by the last day of the month following the end of the calendar quarter.
- Employers who withhold an average of at least \$250 but less than \$2000 from wages each month must file **Form NC-5** and submit the taxes withheld on a **monthly basis**.
- Monthly returns and payments, except those in December, are due the 15th day of the month following the month the tax was withheld. December filings are due January 31st.



Due Dates

- Employers who withhold an average of \$2000 or more each month from wages must file **Form NC-5P** and submit the taxes withheld on a **semi-weekly basis**.
- Semi-weekly returns and payments are due at the same time they are required to file the returns and pay the tax withheld for federal income tax purposes.
- **Form NC-5 and Form NC-5P** can be filed electronically using the Department's website, www.ncdor.gov



At the end of each year, an employer must:

- Prepare wage and tax statements for employees (**W-2s**), and **Form 1099PS** or **NC-1099ITIN** for contractors from whom NC tax was withheld. (Note. Federal form 1099-MISC may be filed in lieu of NC forms NC-1099PS or NC-1099ITIN if the form reflects the amount of NC tax withheld.)
- Furnish a copy of the W-2 and/or 1099 statement to the employee for use in filing income tax returns,
- Submit W-2s and required 1099 statements to the Department along with the annual reconciliation of income tax withheld (**Form NC-3**).



Which 1099 statements are required to be filed with DOR?

- **Form NC-1099PS, NC-1099ITIN, NC-1099NRS**, and any federal report of **Form 1099-MISC** or **1099-R**. **
- Other reports of 1099 information (interest, rents, premiums, dividends) are not required to be filed with the Department as long as these reports have been filed with the IRS.

** The Department administratively limits the filing of Form 1099-MISC and 1099-R to:

Form 1099-Misc	Form 1099-R
Box 16 (State tax withheld) is populated and NC income tax has been withheld , and/or Box 3 (other income) and/or Box 7 (nonemployee compensation) is populated and the recipient's address is in NC.	Box 12 (State tax withheld) is populated and NC income tax has been withheld , and/or the recipient's address is in NC.

- Reconciles the total NC income tax withheld as listed on the W-2 and 1099 statements with the amount of tax reported as withheld for the year.
- Serves as a “cover sheet” for submitting required W-2 and 1099 statements to DOR.
- Must be filed in an electronic format using the Department’s **eNC3** application on or before **January 31st**.
- Subject to a \$50 failure to file penalty if received after January 31st.

The image shows the Form NC-3 Annual Withholding Reconciliation form. It includes a header with the NCDOR logo and the form title. Below the header, there are fields for the filer's name, address, and contact information. The main body of the form is a table with columns for 'Month' and 'Amount'. The months listed are January, February, March, April, May, June, July, August, September, October, November, and December. Below the table, there are several sections for reporting different types of withholding, such as 'Total Tax Withheld as Reported', 'Total Tax Withheld on 1099 and 1099-B Statements', and 'Total Tax Withheld on 1099 and 1099-B Statements'. The form also includes a signature line at the bottom.

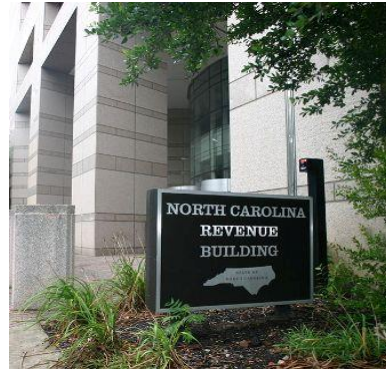
What is eNC3?

- An application created by DOR for the electronic submission of original and amended NC-3 forms, wage and tax statements (W-2s), and required 1099 statements.
- The application provides on-line tutorials that walk you through how to submit the required information to DOR.
- For more information, including specifications on how to submit documents to DOR, see <https://www.ncdor.gov/taxes/withholding-tax/enc3>



Questions?

Edward Koonce, Assistant Director
Personal Taxes Division
Edward.Koonce@ncdor.gov





Jammie Owens
Internal Revenue Service

Jammie F. Owens is a Revenue Agent with Internal Revenue Service. She has been with the IRS since 1989, in the Examination Division, conducting audits on various types of entities. Currently she is a Federal, State & Local Government Specialist (FSLG) with the Tax Exempt/Governmental Entities Division, specializing in Employment Taxes.



**TAX EXEMPT AND GOVERNMENT
ENTITIES PRESENTS**

**FEDERAL, STATE AND LOCAL
GOVERNMENTS/ EMPLOYMENT
TAXES**



NC FSL/ET SPECIALIST

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FSLG Mission:

- To provide government entities with top quality service
 - by helping them understand and comply with applicable tax laws, and
 - to protect the public interest by applying the tax laws with integrity and fairness to all
-



Topics:

- WORKER CLASSIFICATION
 - IRS FILING REQUIREMENTS:
 - Form 1099
 - CP2100/ "B" Notices
-



A Note Before We Begin...

- This presentation is designed to provide information – not a specific determination for your situation
- Worker classification determinations are made on a case by case basis, depending on the specific facts and circumstances

Worker Classification | TE/GE

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Worker Classification

- Workers may be:
- Independent Contractors
- Employees
- How do you know

Resources

- [Pub 1779](#)
- www.irs.gov



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Independent Contractor

- Generally, an independent contractor is an individual who performs services for an entity where the entity controls only the result of the work.

Worker Classification | TE/GE

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Employee

- Considerations:
- Common Law Rules
- Specific Federal Tax Statutes
- Section 218 Agreement

Resources:

- [Pub 963](#)
- www.ncsssa.org/statessadminmenu.html

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Public Officials

- Mayor
 - Legislator or elected representative
 - County commissioner
 - Judge/justice of the peace
 - County or city attorney, marshal, sheriff, constable
 - Registrar of deeds
 - Tax collector or assessor
 - Road commissioner
 - Board members
-

Worker Classification | TE/GE

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Common Law Employee

- An employer-employee relationship exists when the person for whom services are performed has the right to:
 - control and direct the individual who performs the services
 - not only as to the result, but also as to the details and means
 - Treas. Reg. 31.3121(d)-1(c)(1)
-

Worker Classification | TE/GE

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Employee vs. Independent Contractor

- Categories of Evidence:
 - Behavioral control
 - Financial control
 - Relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation system
- Training provided by the business



Behavioral Control

- Key fact to consider is whether the entity retains the RIGHT to control the worker regardless of whether the entity actually exercises that right.



Financial Control

- Significant investment?
- Unreimbursed expenses?
- Opportunity for profit or loss?
- Services available to the market?
- Method of payment?



Relationship of the Parties

- Is there a written contract?
- Are employee-type benefits provided?
- Permanency of the relationship?
- Are services provided a key activity of the business?

Worker Classification | TE/GE

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What if I'm Still Not Sure?

File Form SS-8
with IRS

Resource:

- [Form SS-8](#)

Form SS-8 (Rev. May 2014)		Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding		OMB No. 1545-0048 For IRS Use Only: Case Number: Earliest Receipt Date:
Department of the Treasury Internal Revenue Service		Information about Form SS-8 and its associated instructions is at www.irs.gov/formss8		
Name of firm (or person) for whom the worker performed services		Worker's name		
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address	
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number	
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)	
Note: If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer.				
Disclosure of Information				
The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, you may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See Privacy Act and Paperwork Reduction Act Notice in the separate instructions for more information. If you do not want this information disclosed to other parties, do not file Form SS-8.				
Part 1-4. All items of Form SS-8 must complete all questions in Parts 1-4. Part 1 must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.				
Part I General Information				
1 This form is being completed by: <input type="checkbox"/> Firm <input type="checkbox"/> Worker, for services performed _____ (beginning date) to _____ (ending date)				
2 Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). _____				
3 Total number of workers who performed or are performing the same or similar services: _____				
4 How did the worker obtain the job? <input type="checkbox"/> Application <input type="checkbox"/> Bid <input type="checkbox"/> Employment Agency <input type="checkbox"/> Other (specify) _____				
5 Attach copies of all supporting documentation (for example, contracts, invoices, receipts, Form W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) of issue: \$ _____ If both Form W-2 and Form 1099-MISC were issued or received, explain why: _____				
6 Describe the firm's business: _____				
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 151067 Form SS-8 (Rev. 5-2014)				

Worker Classification | TE/GE

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Form 8919

- Misclassified workers report their share of Social Security and Medicare on Form 8919 (only if certain conditions are met)

Resource:
[• Pub 8919](#)



SS-8 Receipt Process

- Form SS-8 is reviewed
- If incomplete, the Form SS-8 is returned with an explanation or a request for additional information
- Most common reason for return

 **IRS** Form SS-8 Determinations

- Determination letters are binding on the IRS based on the facts presented
- May be modified or revoked for various reasons
- Not considered an audit or examination, but may lead to one if the taxpayer takes a position contrary to the determination

 **IRS** Independent Contractor

- Forms and Filing Requirements:
- Secure Form W-9 before paying the vendor
- File Forms 1099-MISC and 1096
- File Form 945 for Backup Withholding



FIRE System

- Filing Information Returns Electronically
- The system is available 24 hours a day, 7 days a week.

- Those required to file 250 or more information returns for any calendar year, must file electronically.

Worker Classification | TE/GE

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Employee

- Forms and Filing Requirements
- Secure Form I-9
- Secure Form W-4 before paying employees
- File Forms W-2 and W-3

Resources:

- www.irs.gov/Individuals/IRS-Withholding-Calculator
- www.ssa.gov/employer/

Worker Classification | TE/GE

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Employee

- Form 941, Employer's Quarterly Federal Tax Return
- Form 944, Employer's Annual Federal Tax Return

Resource:

- www.eftps.gov/eftps - Electronic Federal Tax Payment System



Wages

- The term “wages” means:
 - all compensation for employment unless the law grants a specific exception
- Wages may be paid in cash, or in other form
- Noncash wages are measured by their fair market value



Penalties

- Information Returns
 - Failure to furnish correct payee statements
 - Failure to file correct information returns
 - Employment Tax Returns
 - Failure to file
 - Failure to pay
 - Failure to deposit
-

Worker Classification | TE/GE

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Example: Elected Officials

- Mayor and Council Members are paid \$100/month. How should their earnings be reported?

Explain...

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Example: Elected Officials

- Mayor and Council Members are paid \$100/month. How should their earnings be reported?
 - Elected officials are specifically identified as employees under tax law
 - \$1,200 reported as wages on Form W-2 for mayor and council members
 - FICA and income tax withholding, as applicable, are reported
-

Worker Classification | TE/GE

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Voluntary Classification Settlement Program (VCSP)

- Agree to reclassify as employees for future periods
 - Partial relief from past employment taxes
 - The application and process are simple
 - Entities pay just 10% of tax computed on favorable rates
 - No penalties or interest
 - Audit protection for past years on workers being reclassified
-

Worker Classification | TE/GE

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Voluntary Classification Settlement Program (VCSP)

- Complete Form 8952, Application for Voluntary Classification Settlement Program
- File 60 days prior to treating workers as employees
- IRS will review application and prepare a closing agreement (if applicable)

Worker Classification | TE/GE

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Voluntary Classification Settlement Program (VCSP)

- Eligible Entities
- Must be currently treating workers as nonemployees
- Must have filed 1099s for nonemployees
- Cannot be under employment tax audit
- Can be tax-exempt organizations or government entities

Worker Classification | TE/GE

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Voluntary Classification Settlement Program (VCSP)

Resources:

- [VCSP Website](#)
- [Announcement 2012-45](#)



Due Dates

New Filing Due Date : January 31, 2017

Forms W-2/W-3 to SSA

Forms 1099-MISC, Box 7 to IRS



Most Common Forms 1099s

Form 1099-MISC (Miscellaneous Income)

Form 1099-INT (Interest)

Form 1099-G (Certain Government
Payments)

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Forms 1099 (-G,-INT,-MISC)

- Generally Exempt Payees
 - Governmental entities
 - Indian tribes
 - Corporations*

(* Includes LLC designated as a corporation)

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 **IRS** Form 1099-MISC Special Rules

- Include Payments paid to Legal and Medical Corporations
 - Payments to medical and health care service-providers (Box 6)
 - Payments to legal firms for legal services (Box 7 or Box 14)

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 **IRS** Form 1099-MISC General Exemptions

- Payments for merchandise and inventory
 - Examples:
 - Office Supplies
 - Cleaning Supplies

- Payments of rent to real estate agents acting as an agent for the owner

PRESENTATION TITLE | TE/GE

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Common Questions

- How long do I keep copies of information returns?
 - Three years from the filing date, unless backup withholding applies (4 years).
- What if I cannot obtain a taxpayer identification number, or the Form W-9 information, from the recipient?
 - Backup withholding applies

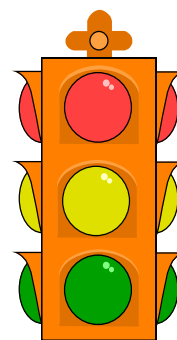
PRESENTATION TITLE | TE/GE

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Are you required to do Backup Withholding?

- If you make reportable payments to “persons” who have not furnished their valid TIN, the withholding rate is 24%; and
 - the backup withholding applies to any payments reported on Forms 1099-G, 1099-INT, and 1099-MISC



PRESENTATION TITLE | TE/GE

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When to begin Backup Withholding

- If the payer has requested & the payee has refused to provide a valid TIN
- If directed to do so by the IRS “Lock-in Letters”
- If the payee is present on the Bad/Missing/No TIN (CP2100/2100A) Notice for 2 of 3 prior years



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When to begin Backup Withholding

- The payer is required to secure reporting information for Forms 1099-MISC from the vendors
- The obligation to initiate backup withholding commences when the vendors are asked for their TINs
- **NOTE:** it is the failure to secure a TIN that subjects the payee and payer to backup withholding

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Backup Withholding – Form W-9

- Form W-9 is not required (but recommended) when a vendor is initially asked for a TIN
- Form W-9 is required when the vendor has been identified by the IRS as a provider of erroneous information reported on Forms 1099 (CP 2100/2100A Notices)

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When to begin Backup Withholding

- CP 2100/2100A Notices
- Sent to the payers when erroneous information is identified on filed F1099
- Direct the payer to take an action dependent upon various factors

Payer must identify all vendors who have provided erroneous information in 2 out of 3 years of reporting and initiate mandatory backup withholding.

PRESENTATION TITLE | TE/GE

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 **CP 2100/2100A Notices**

B-Notices

- 1st B-Notice: 15 business days from CP2100 Notice date or date received
- 2nd B-Notice:
 - a. SSN problem: SSN card
 - b. EIN problem: 147C letter
- Publication 1281

PRESENTATION TITLE | TE/GE

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 **How to report Backup Withholding**

- Report withholding amounts to payee and to IRS in Box 4 of Form 1099-MISC
- Form 945 is used to report and pay backup withholding to the IRS
 - This is an annual return, due 1/31/xx
 - ordinary deposit rules apply
 - make Form 945 deposits separate from Form 941 deposits

PRESENTATION TITLE | TE/GE

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Verifying TIN*s

- You may verify any Taxpayer Identification Number (TIN) by registering with the IRS's TIN Matching Program



- Use of the TIN Matching program will reduce the number of TIN/Name mismatches and protect the employer from civil penalties
- Failure to register and/or use program will not be used to impose civil penalties on non-users

PRESENTATION TITLE | TE/GE

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Verifying TINs

- The TIN Matching Program contains:
 - Social Security Numbers (SSNs)
 - Individual Taxpayer Identification number (ITINs) and
 - Employer Identification Numbers (EINs) issued by SSA and IRS
- Register with IRS e-services at www.irs.gov/taxpros



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Resources

Martinsburg Computing Center Information Return Program (MCCIRP)

- Questions 1-866-455-7438
(8:30 - 4:30 PM EST.)
- E-mail Inquiries
www.mccirp@irs.gov

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Resources

IRS Forms and Publications

- <http://publish.no.irs.gov/catlg.html>
- Forms 1-800-829-3676
- General Instructions for Certain Information Returns (Catalog #27976F)
- Instructions for Forms 1099-MISC (Catalog #11409F)

PRESENTATION TITLE | TE/GE

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Resources

- Tax-Exempt/Government Entities Customer Account Services
 - 877-829-5500

PRESENTATION TITLE | TE/GE

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Resources

- www.irs.gov
 - Type keywords “worker classification” in search box
- [Pub 15-A PDF](#) – Employer’s Supplemental Tax Guide
- www.irsvideos.gov/Governments/Employers
- Submit comments: TEGE.Outreach@irs.gov

Worker Classification | TE/GE

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Deborah J. Pflieger
Principal, Tax Information Reporting and Withholding Services
Financial Services

Debbie joined Ernst & Young in November 2005 and is a Principal in the Financial Services Organization. Debbie is EY Americas' Tax Information Reporting and Withholding Services leader and consults with our clients in the information reporting and withholding arena, assisting them to understand and comply with their many obligations in this area. Debbie focuses on domestic reporting and withholding issues (i.e., Forms 1099 and backup withholding), nonresident alien reporting and withholding issues (i.e., Forms 1042-S and section 1441 withholding), the Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standard ("CRS").

Debbie has many clients in the financial services industry, and also works with non-financial institution payors who face significant information reporting and withholding challenges.

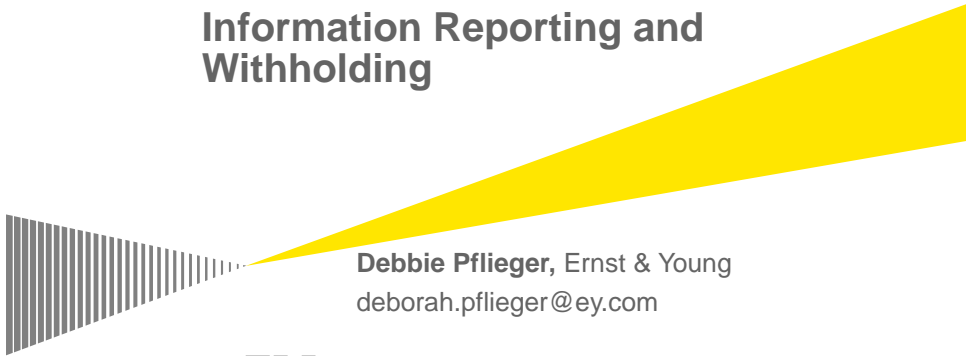
Debbie received a BS in Government from Georgetown University, a JD from Georgetown University Law Center, and an LL.M. in Taxation from New York University. She served as a member of IRS' Information Reporting and Advisory Committee from 1997 through 1999, and was chairperson of the Committee in 1998. She is also a past chair of the AICPA's Relations with the IRS Committee. Debbie was an Adjunct Professor at Georgetown University Law Center where she taught Federal Tax Practice and Procedure in the LL.M. program.

Debbie is a popular speaker amongst external groups who focus on information reporting issues.

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Information Reporting and Withholding



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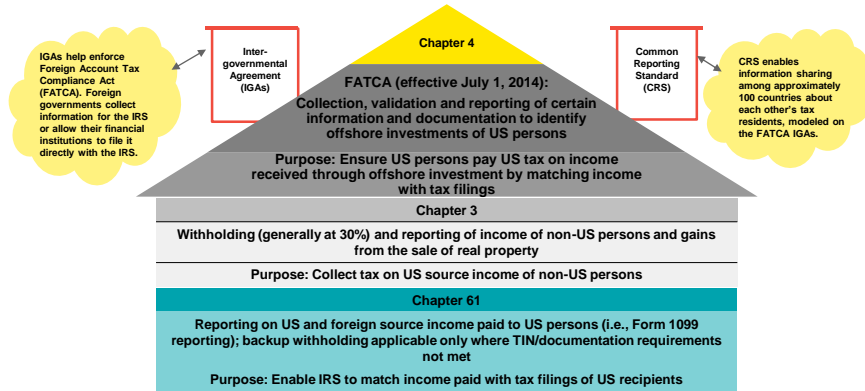


Agenda

- ▶ IRW House
- ▶ Payments to US persons (“chapter 61”)
- ▶ Payments to non-US persons (“chapters 3 and 4”)
- ▶ Six step process
- ▶ Form validation

IRW House

The IRW house



Chapter 61

“Reportable payments”

- ▶ Payors must issue Forms 1099 to report “reportable payments” to the payees and the IRS each year
- ▶ Most reportable payments made by Accounts Payable Departments are reportable on Forms 1099-MISC
- ▶ Why do we care?
 - ▶ Backup withholding liability
 - ▶ Information reporting penalties

“Reportable payments” (cont’d)

- ▶ “Reportable payments” include:
 - ▶ Payments for services rendered whether by outside firms or independent contractors (including incidental amounts for parts and materials)
 - ▶ Director fees
 - ▶ Rents
 - ▶ Royalties
 - ▶ Prizes and awards

Examples of reportable payments

- ▶ Service agreements
- ▶ Advertising
- ▶ Payments to attorneys
- ▶ Temporary agencies
- ▶ Country club dues
- ▶ Parking fees
- ▶ Hotels
- ▶ Landscaping
- ▶ Printing
- ▶ Taxis/limousines
- ▶ Couriers
- ▶ Catering

Procurement cards

- ▶ Procurement cards (or payment cards) are essentially corporate credit cards
- ▶ Payments were reportable to the vendor by the company using the card and potentially subject to backup withholding
- ▶ However, for payments made after 31 December 2010:
 - ▶ Payments made via procurement cards no longer subject to reporting by the payor
 - ▶ Payments made via procurement cards are subject to reporting by the bank or other entity that processes the payment for the merchant
 - ▶ Beware payments where the payor acts as a middleman (or “aggregator”) between the true vendor and the customer

Special rules

- ▶ Corporate exception
 - ▶ Payments to corporations are not reportable unless they are made for either legal or medical services
- ▶ Reimbursements
 - ▶ Not reportable if the payee accounts to the payor for the expenses
- ▶ \$600 minimum
- ▶ Payments for merchandise and goods are generally not subject to reporting
 - ▶ However, when the goods are furnished “incident to” the services, the entire amount paid for services and goods is reportable

Special rules (cont'd)

- ▶ Gross proceeds reporting to attorneys
 - ▶ Special “gross proceeds” reporting applies to ANY payment made to an attorney including payments made by one attorney (or law firm) to another
 - ▶ Gross proceeds are typically NOT taxable to the attorney
 - ▶ Instead they usually represent monies due to the attorney’s client
 - ▶ Attorney recipients of gross proceeds have generally not rendered services to the payor
 - ▶ Gross proceeds paid to attorneys are reportable on Forms 1099-MISC in box 14

Settlement payments

- ▶ **Threshold issues**
 - ▶ Is the payment includible in the claimant's income?
 - ▶ Excludable if they represent damages (other than punitive damages) received on account of physical injuries or physical illness
 - ▶ Is the payment “fixed or determinable income”?
 - ▶ Payments for property damages are generally not reportable
- ▶ **“Settlements” do not require an attorney**
 - ▶ Payments made to customers to “make them whole” or to “make them happy” are generally not gross proceeds, interest or dividends
 - ▶ But may be “fixed or determinable income”

Settlement payments

- ▶ **When reporting is required**
 - ▶ Generally on Form 1099-MISC, in box 3 – Other income
 - ▶ Subject to backup withholding without the payee's TIN
 - ▶ Perhaps on a Form W-2
 - ▶ To the extent the payment represents compensation for services rendered by an employee or former employee
- ▶ **Checks payable to the claimant's attorney or jointly to the claimant and their attorney**
 - ▶ Reportable to the attorney on Form 1099-MISC, in box 14
 - ▶ Perhaps also to the claimant
 - ▶ If the settlement is reportable to the claimant, report the entire amount of the settlement to the claimant, irrespective of to whom the payment is actually made

Mechanics

- ▶ Forms 1099 are due to the payee by January 31
- ▶ Forms 1099 are due to the IRS by February 28, unless the payor files their information returns electronically, in which case the due date is March 31
 - ▶ However, starting with 2016 Forms 1099-MISC, returns reporting nonemployee compensation (in box 7) are due to the IRS by January 31
- ▶ Report
 - ▶ Rents in box 1
 - ▶ Royalties in box 2
 - ▶ Other income in box 3
 - ▶ Nonemployee compensation in box 7
 - ▶ Gross proceeds in box 14

TIN Matching program

- ▶ Widespread TIN Matching program is now available
 - ▶ To filers of Forms 1099-B, DIV, INT, MISC, OID and PATR
- ▶ Payors can submit TINs and corresponding payee names for matching against the IRS' records
 - ▶ System will confirm whether a match exists
 - ▶ It will not provide correct name/TIN combinations
- ▶ Accessible through either
 - ▶ An on-line interactive session (25 TIN match requests at one time) or
 - ▶ Electronic bulk requests (100,000 requests each) processed within 24 hours
- ▶ Register on the IRS' e-service registration page
 - ▶ Located on the IRS web site (www.irs.gov)
 - ▶ Under the Tax Professionals' Section

Backup withholding liability

- ▶ Payors must backup withhold if they have not obtained a payee's TIN
 - ▶ To Obtain Form W-9 or Not to Obtain Form W-9
- ▶ B notices
 - ▶ Notify payees within 15 business days
 - ▶ Start backup withholding after 30 business days unless the payee provides a certified TIN
 - ▶ Special rules apply when a payor receives two B Notices for the same payee in a three-year period
- ▶ Remember: A payor is always liable for any tax they should have withheld but did not

Information reporting penalties

- ▶ For 2017 filings
 - ▶ \$260 for each failure to file a correct and/or timely return with the IRS, up to a maximum of \$3,218,500 per year per payor
 - ▶ \$260 for each failure to furnish a correct and/or timely return to the payee, up to a maximum of \$3,218,500,000 per year per payor
- ▶ For 2018 filings, \$270 per form up to \$3,282,500
- ▶ Notice 972-CG
 - ▶ Establishing reasonable cause
 - ▶ Significant mitigating factors or failure arose from events beyond the filer's control AND
 - ▶ Payor acted in a responsible manner
- ▶ Remember: De minimis safe harbor for incorrect dollar amounts of \$100 or less or \$25 with respect to an amount of tax withheld

Chapter 3

The IRS' ground rules

- ▶ 30% NRA withholding is generally required on US source “fixed or determinable income” paid to foreign persons (entities and individuals)
 - ▶ Reduced withholding rates are available if the payee furnishes a valid treaty claim
- ▶ There are no exempt recipients for NRA withholding and reporting purposes. All foreign persons are subject to these rules.
- ▶ We **MUST** treat payments of “fixed or determinable income” as US source where we don’t know whether a payment is US or foreign source
- ▶ A payor is responsible for any withholding tax it should have withheld but did not, *plus* penalties and interest

Chapter 4

What is FATCA?

- ▶ The Foreign Account Tax Compliance Act (FATCA) is a 2010 US tax law designed to identify US taxpayers who may be evading US taxation by investing in offshore investment vehicles or foreign accounts
- ▶ FATCA introduces new documentation standards, information reporting and compliance requirements for all entities as payors
- ▶ FATCA was generally effective on 1 July 2014, but with phased in effective dates for various specific requirements through 2017
- ▶ FFIs are required to enter into agreements with the IRS to become “participating FFIs”
- ▶ FATCA imposes a 30% withholding tax on certain US-connected payments made to entities that choose not to participate in FATCA and payees who refuse to be properly documented

FATCA fundamentals

- ▶ Expansive new reporting and withholding rules aimed at ensuring that US persons with financial assets outside the US pay their US tax
- ▶ Reporting focus is on ultimate shareholders/owners
- ▶ FATCA categorizes entities as
 - ▶ US entities – US withholding agents (USWAs)
 - ▶ Foreign entities - foreign financial institutions (FFIs) and non-financial foreign entities (NFFEs)
 - ▶ FFIs are generally required to enter into agreements with the IRS to perform substantial due diligence, information reporting and withholding on their account holders or suffer 30% withholding on payments made to them
 - ▶ NFFEs must to certify as to “substantial” US owners or suffer 30% withholding
- ▶ Phased in effective dates, began 1 July 2014

FATCA’s impact on multi-nationals

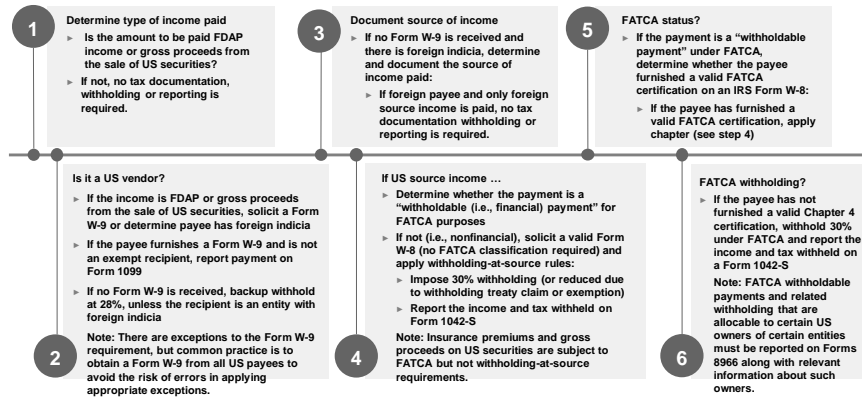
- ▶ FATCA applies to all entities, impact on each entity will vary based on footprint and business lines
- ▶ FATCA presents financial risks and operational challenges for most companies
- ▶ FATCA impacts US entities as payors and multi-national entities as both payors and payees
- ▶ 30% withholding tax applies to noncompliant organizations and recalcitrant account holders
- ▶ Failure to comply with FATCA will make it difficult to do business with compliant institutions
- ▶ FATCA impacts business operating models from vendor onboarding to operations and compliance

FATCA vs chapter 3

- ▶ FATCA is an additional reporting and withholding regime that applies before the NRA/section 1441 regime, but many of the concepts converge
- ▶ NRA vs. FATCA – generally,
 - ▶ NRA rules are aimed at withholding US tax and reporting of US source fixed or determinable, annual or periodical (FDAP) income paid to non-US persons
 - ▶ FATCA is not designed to impose a withholding tax, but rather is designed to capture information about US persons. Withholding generally only applies if there are payments to:
 - ▶ NFFEs that fail to either identify and disclose substantial US owners or certify they have no substantial US owners, OR
 - ▶ Nonparticipating (or presumed nonparticipating) FFIs

Six step process

Six-step process to IRW compliance



Step One: What is FDAP?

- Step 1: Determine whether an amount to be paid is fixed, determinable, annual, periodical (FDAP) income or gross proceeds from the sale of US securities
 - If it is not, no documentation, withholding or reporting is required

FDAP

- ▶ The term “FDAP” is merely descriptive of the character of a class of income and is broader than the term implies
 - ▶ A payment not made annually or periodically (for example a one-time payment) does not prevent it from being FDAP
 - ▶ An item of income is determinable if the amount to be paid is unknown but there is a basis of calculation by which the amount may be ascertained later
 - ▶ For example, interest is determinable even if it is contingent upon factors that are not fixed at the time of payment

FDAP (cont.)

Items of income subject to withholding include:

- ▶ Interest
- ▶ Dividends
- ▶ Rent
- ▶ Salaries
- ▶ Wages
- ▶ Premiums
- ▶ Annuities
- ▶ Compensations
- ▶ Remunerations
- ▶ Emoluments
- ▶ Certain gains, or
- ▶ Other fixed or determinable annual or periodical income (FDAP)

FDAP (cont.)

- ▶ Generally think in terms of amounts reportable on Forms 1099-MISC
 - ▶ Payments for services rendered
 - ▶ Rents
 - ▶ Royalties and licensing fees
 - ▶ Prizes and awards
- ▶ Special types of payments
 - ▶ Certain gains
 - ▶ Certain transportation activities
 - ▶ Certain communication activities

Step two: US vendors

- ▶ If the income is FDAP (or gross proceeds from the sale of US securities), solicit a valid Form W-9 from the payee or determine payee has foreign indicia
 - ▶ If the payee furnishes a Form W-9 and is not an exempt recipient, report payment on a Form 1099
 - ▶ A payee that has not furnished a Form W-9 should be backup withheld upon unless it is an "eyeball exempt recipient."
 - ▶ Note: Non-financial payments do not require a Form W-9, although a non-exempt recipient must furnish their TIN to avoid withholding and an exempt recipient that does not meet the eyeball test must provide a Form W-9 to be treated as an exempt recipient
 - ▶ Common practice is to get a Form W-9 from all US payees

Form W-9

- ▶ **Form W-9, Request for Taxpayer Identification Number and Certification**
 - ▶ To be valid requires (1) Name, (2) TIN, (3) Signature and (4) Date
 - ▶ Disregarded entities
 - ▶ Enter the owner's name on the "Name" line. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported
 - ▶ Enter the owner's TIN in the taxpayer identification number box, Part I
 - ▶ Enter the disregarded entity's name on the "Business name/disregarded entity name" line
 - ▶ Can indicate status as an exempt recipient by indicating a C Corporation (or an LLC taxed like a corporation) and/or by furnishing an exempt payee code

Presumption rules currently applicable to chapters 3, 4 and 61

- ▶ The presumption rules determine the status of a payee as US or foreign in the absence of documentation
 - ▶ Undocumented individuals are presumed to be US persons
 - ▶ Certain exempt recipients ("The Bad 8") are presumed foreign payees (thus, when undocumented, nonparticipating FFIs subject to FATCA withholding)
 - ▶ Corporations; foreign governments; international organizations; foreign central banks of issue; financial institutions; nominees/custodians; brokers; and swap dealers
 - ▶ Note, this rule does not apply if the payor "classified" the payee as an exempt recipient prior to 1 July 2014
 - ▶ All other entities (including the "Good 9") are subject to the "old" indicia test – treat as foreign if indicia of foreign status is present
 - ▶ Added foreign telephone number as type of foreign indicia (for "accounts" opened on or after 1 July 2014)

Step three: US source

- ▶ If no Form W-9 received and there is foreign indicia, determine and document source of income
 - ▶ If the income is foreign source, no withholding or reporting is required

US source income

- ▶ US source income includes:
 - ▶ Payments for professional services performed in the US, and related fees, commissions, etc.
 - ▶ Examples
 - ▶ Legal or accounting services performed in the US
 - ▶ Fees paid to members of the board for attendance at meetings held in the US
 - ▶ Guest lecturers, speakers, etc.
 - ▶ Note: Services may be part of larger invoice, e.g., fees paid for installation, training & maintenance may be imbedded in a contract for the purchase of computer hardware
 - ▶ Service provider should tell us how much of any invoice is US source
 - ▶ And someone internally who “should know” should review the allocation for reasonableness

US source income (cont.)

- ▶ US source income also includes:
 - ▶ Rent paid for the use of tangible or real property used in the US
 - ▶ Royalties and licensing fees paid for the use of intangible property used in the US
 - ▶ Subscription fees for data accessed from a US server
 - ▶ Sponsorships of events held in the United States by foreign entities

US source income (cont'd)

- ▶ US source income does not include:
 - ▶ Payments for services performed outside the US, and related fees, commissions, etc.
 - ▶ Expenses reimbursed under an accountable plan
- ▶ Income partially earned in the US and partially earned outside the US
 - ▶ Withholding/reporting must be allocated between US source and foreign source
- ▶ When we don't know whether a payment is US or foreign source, we **must** treat it to be US source

Software

- ▶ Software – Four different categories of software transactions can apply
 - ▶ Transfer of a “copyright right” in a computer program
 - ▶ The provision of “know-how” relating to computer programming techniques
 - ▶ A transfer of a copy of the computer program (a “copyrighted article”)
 - ▶ The provision of services for the development or modification of a computer program

Software

- ▶ Software – Copyright right
 - ▶ A transfer of a “copyright right” in a computer program
 - ▶ A right to make copies for distribution to the public
 - ▶ Use by employees in connection with employment is not considered “made to the public”
 - ▶ The right to prepare derivative computer programs based on the copyrighted computer program
 - ▶ The right to make a public performance of the computer program, or
 - ▶ The right to publicly display the computer program
 - ▶ Transaction(s) described above are classified as either;
 - ▶ A sale or exchange (sales of copyrights are subject to withholding) if there has been a transfer of all substantial rights in the copyright, or
 - ▶ A license generating royalty income where not all substantial rights have been transferred

Software

- ▶ Software – “Know-how”
 - ▶ The provision of “know-how” relating to computer programming techniques
 - ▶ This applies where the information relates to computer programming techniques, furnished under a contract establishing conditions preventing unauthorized disclosure, and is considered property subject to trade-secret protection.
 - ▶ IRS has taken the position that payments for use of know-how are in the nature of royalty income

Software

- ▶ Software – Copyrighted article
 - ▶ A transfer of a copy of the computer program (a copyrighted article)
 - ▶ This includes a copy of a computer program from which work can be perceived, reproduced, or communicated, either directly or with the aid of a machine
 - ▶ If a copy of a computer program is transferred, but none of the rights described under the “copyright right” or the conditions of “know-how”, apply, then the transfer falls under this default classification
 - ▶ A transfer of a copyrighted article is either
 - ▶ A sale or exchange of property because the benefits and burdens of ownership have been transferred (no withholding), or
 - ▶ A lease generating rental income because insufficient benefits and burdens of ownership have been transferred

Software

▶ Software - Services

- ▶ The provision of services for the development or modification of a computer program
 - ▶ Whether a transaction falls into this rubric is based on the intent of the parties as evidenced by their agreement and conduct as to which party owns the copyright rights in the program and how the risk of loss is allocated between them
 - ▶ Generally, income is service income if the foreign vendor is involved in the property's creation but never has an ownership interest in the property and is paid for development work regardless of whether the owner is satisfied with the developer's work

Step four: Chapter 3 or chapter 4

- ▶ If the income is US source, determine whether the payment is a “withholdable payment” for chapter 4 purposes
 - ▶ If the income is not a “withholdable payment” for chapter 4 purposes, solicit a valid Form W-8 (no FATCA classification required) and apply chapter 3
 - ▶ Impose 30% withholding (or reduced withholding rate if the payee furnishes a valid treaty claim or 0% if the payee certifies that the income is effectively connected with their conduct of a trade or business in the US)
 - ▶ Report the income and any tax withheld on a Form 1042-S

Note: insurance premiums and gross proceeds on US securities are subject to chapter 4, but not chapter 3 (gross proceeds become subject to chapter 4 withholding in 2017)

“Withholdable payments” under FATCA

Types of FDAP income included or excluded for FATCA purposes (i.e., chapter 4)

Note: All US source FDAP income is subject to chapter 3, unless specifically excepted

FATCA withholdable payments	Excluded from FATCA
<ul style="list-style-type: none"> ▶ Bank and brokerage fees ▶ Investment advisory fees ▶ Custodial fees (e.g., fund manager fees) ▶ Payments in connection with lending transactions ▶ Forward, futures, option or notional principal contracts ▶ Insurance premiums and annuities* ▶ Dividends on US securities ▶ Interest (with certain exceptions) ▶ OID (excluding short term) ▶ Certain dividend equivalent payments ▶ Financing leases 	<ul style="list-style-type: none"> ▶ Payments for tangible goods (non-FDAP) ▶ Fees paid for non-financial services ▶ Software licensing fees ▶ Rent for office space ▶ Lease payments on equipment ▶ Payments for use of other property (e.g., royalty or intellectual property) ▶ Freight/transportation expenses ▶ Interest on outstanding bills arising from services ▶ Interest on deferred purchases (e.g., goods purchased on credit)

* Insurance premiums are excepted from chapter 3 withholding and reporting

Documentation

- ▶ Form 8233 – Establish treaty benefit for personal services rendered by an individual
- ▶ Form W-8BEN – Establish foreign status, and treaty benefit if applicable for an individual
- ▶ Form W-8BEN-E – Establish foreign status, and treaty benefit if applicable for an entity
- ▶ Form W-8ECI – Claim foreign status and that the income is Effectively Connected Income (ECI) with the conduct of US trade or business
- ▶ Form W-8IMY – Establish foreign “intermediary” status (i.e., is acting on behalf of beneficial owner(s))
- ▶ Form W-8EXP – Claim a reduced rate of withholding or tax exempt status specified under the code (e.g., foreign government, international organization and foreign private foundation)

Form 8233

- ▶ Form 8233: Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
 - ▶ Foreign individuals must furnish Form 8233 to the payor to claim a treaty benefit
 - ▶ Still requires ITIN (“applied for” is acceptable)
 - ▶ Valid only for year of claim
 - ▶ Payor must file Form 8233 with the IRS within five days of receipt and should not make payments until 10 days after filing
 - ▶ Valid treaty claim will result in reporting, but no withholding

Revised Form W-8BEN

- ▶ Form W-8BEN (revised January 2017)
 - ▶ Still relying on instructions released for the old version in February 2014
- ▶ The IRS has broken the former version of the Form W-8BEN into two separate forms
 - ▶ Form W-8BEN and Form W-8BEN-E
- ▶ Form W-8BEN is used by individuals
 - ▶ The form no longer contains a question for “type” of owner since this form will only be used by individuals
 - ▶ Foreign tax identifying number is mandatory, if the individual has one
 - ▶ Date of birth is mandatory in the absence of a foreign TIN

Revised Form W-8BEN (cont.)

- ▶ Treaty benefit claims are simplified
 - ▶ Provide country of residency
 - ▶ Beneficial owner must furnish either a US or foreign TIN to receive treaty benefits on anything other than interest or dividends on actively traded securities
- ▶ A place to print out the beneficial owner's name after signing the form has been added
 - ▶ Printed name is required unless the withholding agent has documentation on file identifying the person who signed the form

Form W-8BEN-E

- ▶ Form W-8BEN-E and related instructions released April 2016
- ▶ Form W-8BEN-E will be used by foreign entities
- ▶ This is a completely new form – what was once one page is now eight pages
 - ▶ There are 31 Chapter 4 (FATCA) potential classifications from which a foreign entity must choose its status (see subsequent slide)
 - ▶ There is a separate certification section for each entity classification that contains specific FATCA certifications
 - ▶ New line 14c requires the beneficial owner to identify the applicable limitation on benefits provision when a treaty benefit is claimed
 - ▶ There is one penalties of perjury statement and signature line at the end of the form
 - ▶ Followed by a schedule to list the substantial US owners of any Passive NFFEs
 - ▶ The capacity line has been replaced by a check box indicating authorized signer
 - ▶ There is a line for the signer of the form to print their name

Revised Form W-8ECI

- ▶ Form W-8ECI and related instructions released as a final version dated February 2014
- ▶ This form is used by foreign persons claiming that their income is effectively connected with the conduct of a trade or business in the United States
- ▶ Changes to the form:
 - ▶ Line 3 is a new line for the name of a disregarded entity receiving the payment (if any)
 - ▶ Line 4 removed disregarded entity as a choice for type of entity
 - ▶ Explicit language prohibits use of an in-care-of address
 - ▶ It is possible for an entity with a foreign business address to be deriving effectively connected income
 - ▶ A place to print out the signer's name after signing the Form has been added
 - ▶ Removed line for capacity and added a check box stating "I certify that I have the capacity to sign for the person identified on line 11 of this form"

Revised Form W-8IMY

- ▶ Form W-8IMY and related instructions released as a final version dated September 2016
- ▶ This form is used by foreign intermediaries, foreign flow-through entities, or certain U.S. branches
 - ▶ Line 3 is a new line for the name of the disregarded entity receiving the payment (if any)
 - ▶ Must select one of nine classifications for chapter 3 purposes
 - ▶ There is a separate certification section for each chapter 3 classification, which is the same as on the old form
 - ▶ Chapter 3 status line added an additional status for Territory Financial Institution
 - ▶ Additional line to provide chapter 4 status
 - ▶ Must select one of twenty-five classifications for FATCA purpose
 - ▶ There is a separate certification section for each entity classification that contains specific FATCA certifications

Revised Form W-8EXP

- ▶ Form W-8EXP revised September 2016
 - ▶ Still relying on instructions released for the old version in April 2014
- ▶ This form is used by foreign governments and other foreign organizations
 - ▶ Additional line to provide chapter 4 status
 - ▶ Chapter 4 qualification section
 - ▶ Explicit instruction not to use an in-care-of address on line 4 (permanent address line)
 - ▶ An additional line to provide a GIIN
 - ▶ An additional sentence has been added to the certifications agreeing to submit a new form if any certification made on the form becomes incorrect
 - ▶ Capacity line replaced by a check box indicating authorized signer
 - ▶ A place to print out the signer's name after signing the form has been added

General documentation rules

- ▶ Faxed or emailed Forms W-8
 - ▶ Effective 6 March 2014, withholding agents may rely on fax or pdf versions of valid withholding certificates (Forms W-8)
 - ▶ Unless the withholding agent knows the sender transmitted the document without the authority of the person who signed the form
- ▶ “Evergreen” Forms W-8
 - ▶ Valid Forms W-8 furnished after 30 June 2014 may be treated as “evergreen” if:
 - ▶ No US indicia (individuals only),
 - ▶ The Form W-8 is completed in full, and no changes in circumstance have occurred, and
 - ▶ Documentary evidence furnished with the Form W-8
 - ▶ Treaty claims cannot be “evergreen”

Documentation (continued)

- ▶ Treaty claims on Forms W-8
 - ▶ Prior law: a valid treaty claim required a US TIN, unless the claim related to a payment of interest or dividends on actively traded securities
 - ▶ Effective 6 March 2014, a valid treaty claim can provide either a US TIN or a foreign TIN (from the country whose treaty benefits are being claimed)
 - ▶ Except no TIN is required for treaty benefits on interest and dividends from actively traded securities remains,
 - ▶ A US TIN is still required on Forms 8233 for claims by individuals with respect to personal services

Documentation (continued)

- ▶ Substitute Forms W-8
 - ▶ May omit FATCA status on substitute form when not relevant to withholding agent (e.g., traditional vendor payments)
- ▶ Use of affidavits for retroactive Forms W-8
 - ▶ Affidavit required when withholding certificate is received more than 30 days after the payment was made
 - ▶ Documentary evidence also required when received more than one year after the payment was made

Electronic signatures on Forms W-8

- ▶ Electronic signatures are acceptable on Forms W-8 under certain conditions:
 - ▶ The electronic signature must indicate that the form was electronically signed by someone authorized to do so (e.g., a time and date stamp, and a statement that the form has been electronically signed)

- ▶ Generally, a withholding agent can rely on an electronic signature even if the withholding agent has not developed and does not maintain its own electronic collection system (e.g., DocuSign)
 - ▶ The current IRS revision (July 2017) includes a digital signature button embedded in the signature line
 - ▶ The instructions specify that merely typing a name into the signature line is not an electronic signature
 - ▶ The act of the electronic signature must be effected by the person whose name is on the electronic Form W-8 as signer, that the signature "authenticate" and "verify" the form, and that the electronic signature must be the "final entry" on the form

Step five: Chapter 4 status

- ▶ Step 5: If the payment is a "withholdable payment" for chapter 4 purposes, determine whether the payee furnished valid chapter 4 certifications on a Form W-8
 - ▶ If the payee has furnished valid chapter 4 certifications, apply chapter 3 (see step 4)

Step six: Chapter 4 status

- ▶ Step 6: If the payee has not furnished valid chapter 4 certifications, withhold 30% under FATCA and report the income and tax withheld on a Form 1042-S

Form validation

2017 Form W-8BEN validation elements

- ▶ Line 1: Name of individual beneficial owner matches your records
 - ▶ The individual's first given name and family surname are listed in full with no abbreviations
 - ▶ Joint account – each owner must submit a separate form, unless one of them is a US person and has submitted a valid Form W-9
- ▶ Line 2: Country of citizenship is not the United States
 - ▶ If the country is abbreviated, a valid government issued ID must be on file evidencing citizenship in a country that reasonably matches the abbreviation
- ▶ Line 3: Permanent residence address
 - ▶ Complete address that includes (1) a building name/house number and street name; (2) city or town, state or province; and (3) country
 - ▶ If the country is abbreviated, a valid government issued ID must be on file evidencing residence in a country that reasonably matches the abbreviation
 - ▶ May not contain:
 - ▶ P.O. Box
 - ▶ An "in-care-of" address [Beware of 3rd party names]
 - ▶ An address of a financial institution (including your own) in which the beneficial owner maintains an account (e.g., a "hold mail" address)
 - ▶ Permanent residence address provided on Line 3 is consistent with your records
- ▶ Line 5: USTIN required in limited situations (e.g. submitting the form to a partnership that conducts a trade or business in the United States)

Foreign TIN (FTIN) and date of birth per Notice 2017-46

- ▶ Only applies to financial accounts maintained at a withholding agent's US office or US branch
 - ▶ Not applicable to non-US funds even if the managerial functions are performed in the US
- ▶ Required on Forms W-8BEN, BEN-E, EXP and ECI for direct investors
 - ▶ Indirect investors (i.e., beneficial owners/payees of an intermediary (Form W-8IMY)) are not required to have an FTIN or date of birth

2017 Form W-8BEN validation elements (cont'd)

- ▶ Part III: Certifications
 - ▶ No alterations to the certifications that need to be signed under penalties of perjury
 - ▶ Form is signed in correct place and dated
 - ▶ Note: If there is no date, you may date stamp the form with the date on which it was received. Do not write in the date by hand
 - ▶ The print name of the signatory is the same as the name on Line 1
 - ▶ If the printed name is not provided, you must have a document on file identifying the person who signed the form to be the same person whose name is on Line 1
 - ▶ If the Form is signed by an agent with legal authority the capacity line must reflect that and a power of attorney form must be provided
 - ▶ If the printed name is not provided or not the same as the name on Line 1, you must have appropriate documentation on file supporting the signer's authority to represent the beneficial owner

2017 Form W-8BEN validation elements (cont'd)

- ▶ Line 9: Treaty claim [does not affect validity of the form]
 - ▶ Note: Treaty claim is not required for payment of bank deposit interest
 - ▶ Full name of a treaty country is provided on Line 9 and is the same as the country on Line 3
 - ▶ If the country is abbreviated, a valid government issued ID must be on file evidencing residence in a country that reasonably matches the abbreviation
 - ▶ Treaty Eligibility – the treaty country on Line 9 must be consistent with the permanent residence and mailing address on the form and in your records, and current standing instruction (if any) to make payment to an account or address is in the treaty country
 - ▶ If this cannot be confirmed, the following documentation must be on file to cure the individual's treaty claim
 - ▶ Written statement from the individual explaining the discrepancy between the countries; or
 - ▶ Documentary evidence that establishes residency in the treaty country
 - ▶ A US or foreign TIN may be required to make a valid claim for treaty benefits
 - ▶ Except for certain payments – e.g., Dividends and interest from stocks and debt obligations that are actively traded
 - ▶ **Note:** a US or foreign TIN must be provided on the form to make a valid treaty claim
 - ▶ Tax Treaty exemption on pension and annuity payments
 - ▶ In the absence of a statutory or treaty exemption, withholding is required at the statutory rate of 30% on the taxable portion of the distribution that is from sources within the United States.

2017 Form W-8BEN validation elements (cont'd)

- ▶ Line 10: Special rates and conditions [does not affect validity of the form]
 - ▶ Line 10 must be used only if you are claiming treaty benefits that require that you meet conditions not covered by the representations you make on line 9 and Part III.
 - ▶ For example, persons claiming treaty benefits on royalties must complete this line if the treaty contains different withholding rates for different types of royalties
 - ▶ This line is generally not applicable to treaty benefits under an interest or dividends (other than dividends subject to a preferential rate based on ownership) article of a treaty

Table 1. Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties

▶ Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
 ▶ In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		1	6	7	14
		Interest	Dividends		
Name	Code	Paid by U.S. Obligors—General	Paid by U.S. Corporations—General	Qualifying for Direct Dividend Rate ^{a,b}	Pensions and Annuities ^c
Australia	AS	10 g,k,m	15 mm	5 mm,00	0
Austria	AU	0 g,j	15 w	5 w	0
Bangladesh	BG	10 g,h,j	15 mm	10 mm	0 l,q
Barbados	BB	5	15 w	5 w	0 f
Belgium	BE	0 g,j	15 dd,mm	5 dd,mm,00	0 f
Bulgaria	BU	5 g,dd,j,m	10 dd,mm	5 dd,mm	0 f
Canada	CA	0 g,j	15 mm	5 mm	15
China, People's Rep. of	CH		10	10	0 i
Comm. of Independent States ^d	0 n		30	30	30

Income Code Number		10	11		12	
		Royalties				
Name	Code	Industrial Equipment	Know-How/Other Industrial Royalties	Patents	Film & TV	Copyrights
Australia	AS	30 u	5	5	5	5
Austria	AU	30 u	0	0	10	0
Bangladesh	BG	30 u	10	10	10	10
Barbados	BB	30 u	5	5	5	5
Belgium	BE	30 u	0	0	0	0

Form W-8BEN-E: Lines 1-10 and Signature Certification

Form W-8BEN-E
 Rev. July 2017
 Department of the Treasury
 Internal Revenue Service

Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

OMB No. 1545-1021

▶ For use by entities. Individuals must use Form W-8BEN. ▶ Section references are to the Internal Revenue Code.
 ▶ Go to www.irs.gov/FormW8BEN-E for instructions and the latest information.
 ▶ Give this form to the withholding agent or payer. Do not send to the IRS.

Do NOT use this form for:

- U.S. entity or U.S. citizen or resident
- A foreign individual
- A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits)
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions)
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of sections 115(c), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions for other exceptions)
- Any person acting as an intermediary (including a qualified intermediary acting as a qualified derivatives dealer)

Instead use Form:

- U.S. entity or U.S. citizen or resident W-9
- A foreign individual W-8BEN (Individual) or Form 6233
- A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits) W-8ECI
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions) W-8IMY
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of sections 115(c), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions for other exceptions) W-8ECI or W-8EXP
- Any person acting as an intermediary (including a qualified intermediary acting as a qualified derivatives dealer) W-8IMY

- ▶ Ensure no certifications have been crossed out on any part of the form, or any markings have been made to alter the form
- ▶ Confirm that the signature on the form is an original ink to paper form, or the form has been provided to you electronically via email or fax

Form W-8BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 1** – Name listed should match the name of the account holder of record. If the name does not match, review Line 3 or Line 10 to determine if account holder's name is listed
- ▶ **Line 2** – Country should match country in your records for the account holder.
- ▶ The United States cannot be listed as a country
- ▶ If the country is abbreviated, the abbreviation cannot be ambiguous

Part I Identification of Beneficial Owner	
1 Name of organization that is the beneficial owner ABC Company	2 Country of incorporation or organization Cayman Islands
3 Name of disregarded entity receiving the payment (if applicable, see instructions)	
4 Chapter 3 Status (entity type) (Must check one box only):	
<input type="checkbox"/> Simple trust <input type="checkbox"/> Grantor trust <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Disregarded entity <input type="checkbox"/> Partnership <input type="checkbox"/> Central Bank of Issue <input type="checkbox"/> Tax-exempt organization <input type="checkbox"/> Complex trust <input type="checkbox"/> Estate <input type="checkbox"/> Government <input type="checkbox"/> Private foundation <input type="checkbox"/> International organization	
If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. <input type="checkbox"/> Yes <input type="checkbox"/> No	

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Form W-8BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 4** – One box should be checked. If the entity type selected is Partnership, Simple Trust, or Grantor Trust, request the account holder provide a Form W-8IMY. **Note:** A partnership that is a hybrid claiming treaty benefits can provide a W-8BEN-E but must also provide a W-8IMY
- ▶ If no box or more than one box is checked, form is invalid
- ▶ **Line 5** – One box should be checked..
- ▶ If no box or more than one box is checked, form is invalid

4 Chapter 3 Status (entity type) (Must check one box only):	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Disregarded entity	<input type="checkbox"/> Partnership
	<input type="checkbox"/> Simple trust	<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate
	<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Private foundation	<input type="checkbox"/> International organization
	<input type="checkbox"/> Central Bank of Issue	<input type="checkbox"/> Tax-exempt organization	<input type="checkbox"/> Government
If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. <input type="checkbox"/> Yes <input type="checkbox"/> No			
5 Chapter 4 Status (FATCA status) (See instructions for details and complete the certification below for the entity's applicable status.)	<input type="checkbox"/> Nonreporting IGA FFI. Complete Part XII.		
<input type="checkbox"/> Nonparticipating FFI (including an FFI related to a Reporting IGA FFI other than a deemed-compliant FFI, participating FFI, or exempt beneficial owner).	<input type="checkbox"/> Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII.		
<input type="checkbox"/> Participating FFI.	<input type="checkbox"/> International organization. Complete Part XIV.		
<input checked="" type="checkbox"/> Reporting Model 1 FFI.	<input type="checkbox"/> Exempt retirement plans. Complete Part XV.		
<input type="checkbox"/> Reporting Model 2 FFI.	<input type="checkbox"/> Entity wholly owned by exempt beneficial owners. Complete Part XVI.		
<input type="checkbox"/> Registered deemed-compliant FFI (other than a reporting Model 1 FFI, sponsored FFI, or nonreporting IGA FFI covered in Part XII). See instructions.	<input type="checkbox"/> Territory financial institution. Complete Part XVII.		
<input type="checkbox"/> Sponsored FFI. Complete Part IV.	<input type="checkbox"/> Excepted nonfinancial group entity. Complete Part XVIII.		
<input type="checkbox"/> Certified deemed-compliant nonregistering local bank. Complete Part V.	<input type="checkbox"/> Excepted nonfinancial start-up company. Complete Part XX.		
<input type="checkbox"/> Certified deemed-compliant FFI with only low-value accounts. Complete Part VI.	<input type="checkbox"/> Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XX.		
<input type="checkbox"/> Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII.	<input type="checkbox"/> 501(c) organization. Complete Part XXI.		
<input type="checkbox"/> Certified deemed-compliant limited life debt investment entity. Complete Part VIII.	<input type="checkbox"/> Nonprofit organization. Complete Part XXII.		
<input type="checkbox"/> Certain investment entities that do not maintain financial accounts. Complete Part IX.	<input type="checkbox"/> Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII.		
<input type="checkbox"/> Owner-documented FFI. Complete Part X.	<input type="checkbox"/> Excepted territory NFFE. Complete Part XXIV.		
<input type="checkbox"/> Restricted distributor. Complete Part XI.	<input type="checkbox"/> Active NFFE. Complete Part XXV.		
	<input type="checkbox"/> Passive NFFE. Complete Part XXVI.		
	<input type="checkbox"/> Excepted inter-affiliate FFI. Complete Part XXVII.		
	<input type="checkbox"/> Direct reporting NFFE.		
	<input type="checkbox"/> Sponsored direct reporting NFFE. Complete Part XXVIII.		
	<input type="checkbox"/> Account that is not a financial account.		

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Form W-8BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 6**– Address line should not contain 1) the name of a financial institution, 2) a P.O. Box, "In-Care-Of" address or address used solely for mailing purposes.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).	
123 Euclid Street	
City or town, state or province. Include postal code where appropriate.	Country
George Town, Grand Cayman	Cayman Islands

- ▶ If P.O. Box is provided, request that the account holder provide articles of incorporation to support that the P.O. Box is the registered address
- ▶ Country cannot be an ambiguous abbreviation
- ▶ If US address is provided on the form or if there is a US permanent address in the account file, additional cure documentation is required, (e.g. certificate of incorporation).

Form W-8BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 7**–A P.O. Box or "In-Care-Of" address may be used in this line

7 Mailing address (if different from above)	
345 Antilles Road	
City or town, state or province. Include postal code where appropriate.	Country
George Town, Grand Cayman	Cayman Islands

- ▶ Country cannot be an ambiguous abbreviation
- ▶ If US address is provided or if there is a US mailing address in the account file, additional cure documentation is required (e.g. certificate of incorporation)
- ▶ If the country is abbreviated and the abbreviation is not ambiguous then this requirement is satisfied
- ▶ If the country is abbreviated and the abbreviation is ambiguous, confirm the account file has government issued identification and the country on the identification reasonably matches the abbreviation

Form W-BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 8**—If provided, ensure it does not look obviously incorrect
- ▶ **Line 9a**—If provided, ensure it does not look obviously incorrect
- ▶ GIIN number must follow the **19 CHARACTER** Format:

Example:
ABCDEF.00000.ME.123

- ▶ GIIN needs to be validated against the IRS FFI list within 90 days of receiving the Form W-8BEN-E and annually thereafter.
- ▶ Alternatively, the entity may state "Applied For" and the account holder will need to provide the GIIN to you in 90 days.
- ▶ Some entities may be required to provide the GIIN of the Sponsoring FFI, please see Chapter 4 matrix

8 U.S. taxpayer identification number (TIN), if required	9a GIIN	b Foreign TIN
98-1234567	ABCDEF.00000.ME.123	

Form W-8BEN-E: Lines 1-10 and Signature Certification (cont'd)

- ▶ **Line 9b**—Does not need to be validated. May rely on TIN provided.

8 U.S. taxpayer identification number (TIN), if required	9a GIIN	b Foreign TIN
98-1234567	ABCDEF.00000.ME.123	1122334
10 Reference number(s) (see instructions)		
ABC Company		

- ▶ **Line 10**—Name of account holder may be included in this Line if account holder is disregarded entity

- ▶ **Part XXX** – Ensure **signature, printed name and date** are entered **AND certification box** is clearly checked

- ▶ If there is an indication that the form has been signed by an agent or third party request a power of attorney (e.g. Authorized signatory or Attorney-in-fact written underneath name) from the account holder
- ▶ If the account holder does not provide a date, you may date stamp the Form W-8

Part XXX Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- The entity identified on line 1 of this form is the beneficial owner of all the income to which this form relates, is using this form to certify its status for chapter 4 purposes, or is a merchant submitting this form for purposes of section 6050W;
- The entity identified on line 1 of this form is not a U.S. person;
- The income to which this form relates is: (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income; and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which the entity on line 1 is the beneficial owner or any withholding agent that can disburse or make payments of the income of which the entity on line 1 is the beneficial owner.

I agree that I will submit a new form within 30 days if any certification on this form becomes incorrect.

Sign Here	<input checked="" type="checkbox"/> I certify that I have the capacity to sign for the entity identified on line 1 of this form.
	John Doe Print Name
	9/21/17 Date (MM-DD-YYYY)

Treaty claims: Individuals for services performed

- ▶ Foreign individuals must furnish Form 8233 to the payor to claim a treaty benefit
- ▶ Requires ITIN (“applied for” acceptable)
- ▶ Valid only for year of claim
- ▶ Payor must file Form 8233 with the IRS within five days of receipt and should not make payments until 10 days after filing
- ▶ Valid treaty claim will result in reporting, but no withholding

Form 8233 – Treaty claims by individuals performing services in the US

- ▶ Calendar year for which the claim is made
- ▶ Line 1: Name (mandatory)
- ▶ Line 2 US ITIN (mandatory): “Applied for” is acceptable if Form W-7 is attached
- ▶ Line 4: Permanent address (mandatory): P.O. box or in-care-of address is not acceptable
- ▶ Line 5 US Business address:
 - ▶ Not required
 - ▶ P.O. box is not acceptable

Form 8233 (cont'd)

- ▶ Line 6 – 9b: Visa and passport information
- ▶ Line 11a: Description of personal services to be provided
- ▶ Line 11b: Expected compensation for these services for the year
- ▶ Line 12a: Tax treaty and treaty article on which claim is based
- ▶ Line 12b: Expected compensation exempt under treaty
- ▶ Line 12c: Country of permanent residence
- ▶ Line 14: Justification for exemption claimed
- ▶ Part III: Certification -- Signature and date
- ▶ Part IV: Completed by withholding agent

Biography



Kathy H. Pitts

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Kathy H. Pitts is an Executive Director with Ernst & Young LLP's National Exempt Organization Tax Services practice. She is the Southeast region leader for this practice. Kathy provides services to tax-exempt organizations, including health systems and hospitals, colleges and universities, governments, public charities and their related subsidiaries.

She provides these organizations with tax services related to a variety of issues, including federal, state and foreign transaction tax compliance and disclosures; IRC Section 501(r) policies and compliance; unrelated business income identification and reporting; program service, community benefit and financial assistance disclosures; intermediate sanctions, private inurement and private benefit analysis; and lobbying and political activity analysis. She has represented taxpayers before the Internal Revenue Service in applications for tax exemption, changes in tax exempt status, private letter and other rulings, and audit inquiries.

Kathy has over 25 years of experience in public accounting. She enjoys teaching technical and behavioral courses to both Ernst & Young LLP professionals and external audiences.

Kathy received a B.S. in accounting, *cum laude*, from The University of Alabama. She is a certified public accountant licensed in Alabama, Georgia, and Maryland. Kathy is a member of the American Institute of Certified Public Accountants and the Alabama Society of Certified Public Accountants. She has also successfully completed the Certified Management Accountant, Certified Internal Auditor, and Healthcare Financial Management Association's Certified Healthcare Financial Professional examinations. Kathy is a member of the Gulf Coast IRS Tax Exempt/Government Entities Council.



Disclaimer

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Topics

- ▶ Tax Cuts and Jobs Act (TCJA)
 - ▶ Overview
 - ▶ Key provisions directly affecting exempt organizations
 - ▶ State implications
- ▶ International presence

TCJA overview



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Tax reform and international presence



What's in the TCJA?

Lower rates



The final US tax reform legislation includes a significant reduction in the business tax rate as well as individual tax rates.

Broader tax base



To pay for the proposed lower rates, the TCJA includes a wide array of base-broadening provisions (e.g., limitations on deductions). The base-broadening provisions extend to both business and individual taxation.

New international tax system



Republicans were unified in moving toward a territorial system of taxation, with the TCJA imposing a transition tax (or toll charge) on previously untaxed accumulated foreign earnings, with the rate determined by whether the earnings are in cash or noncash assets.

Timing



- ▶ **White House:** Republican Framework released on September 27
- ▶ **Congress:** Budget resolution — October 26
- ▶ **House:** Legislative language — November 2; passage — November 16
- ▶ **Senate:** Legislative language — November 9; passage — December 2
- ▶ **Reconcile bills:** December 15
- ▶ **Final Senate and House votes:** December 19/December 20
- ▶ **Signing by President:** December 22

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Tax reform and international presence



Next steps in process

- ▶ Joint Committee on Taxation “Bluebook” explanation
 - ▶ Often helpful, but not binding
- ▶ Treasury Department and IRS begin regulatory process
 - ▶ Representatives from Treasury’s Office of Tax Policy, IRS Chief Counsel and operating divisions develop guidance (notices and regulations)
- ▶ Technical corrections bill
 - ▶ Requires bipartisan support

What to do now

- ▶ Understand TCJA, monitor guidance and regulatory developments
- ▶ Assess and model implications
- ▶ Develop formal implementation plan across finance and tax departments
- ▶ Evaluate tax-planning strategies
- ▶ Identify whether third-party assistance is required
- ▶ Consider appropriate disclosures
- ▶ Engage in regulatory process; communicate with legislators and IRS about particular issues

Key elements in the TCJA

Business provisions



Corporate tax rate and corporate alternative minimum tax (AMT)

- ▶ 21% tax rate, effective 1/1/2018
- ▶ Eliminates corporate AMT



Interest expense deduction

- ▶ Limits deduction to net interest expense that exceeds 30% of adjusted taxable income (ATI). Initially, ATI computed without regard to depreciation, amortization or depletion. Beginning in 2022, ATI would be decreased by those items. Regulated utilities are generally excepted.



Expensing

- ▶ Allows immediate write-off of "qualified property" placed in service after 9/27/2017 and before 2023. The increased expensing would phase-down starting in 2023 by 20 percentage points for each of the five following years. Eliminates original use requirement. "Qualified property" excludes certain public utility property and floor plan financing property. Taxpayers may elect to apply 50% expensing for the first tax year ending after 9/27/2017.

Key elements in the TCJA

Business provisions



Net operating losses (NOLs)

- ▶ Limits NOLs to 80% of taxable income for losses arising in tax years beginning after 2017. Repeals carryback provisions, except for certain farm and property and casualty losses; allows NOLs to be carried forward indefinitely.



Like-kind exchanges

- ▶ Limits to exchanges involving real property only. Current law applies to exchanges if property disposed of on or before 12/31/2017 or the property received in the exchange is received on or before such date.



Dividends received deduction (DRD)

- ▶ Reduces the deduction for dividends received from other than certain small businesses or those treated as "qualifying dividends" from 70% to 50%. Reduces the deduction for dividends received from 20%-owned corporations from 80% to 65%.

Key elements in the TCJA

Compensation provisions



- ▶ Eliminates many deductions and exclusions for certain **fringe benefit** expenses:
 - ▶ Business entertainment activities and membership dues
 - ▶ Transportation or commuting expenses (even if provided under a tax-qualified subsidy program)
 - ▶ Employee achievement awards if the award is paid in cash, gift cards, meals, lodging, tickets, securities or other similar items
- ▶ Employer-provided eating facilities are no longer exempt from the 50% deduction limitation; in 2026, deductions are completely disallowed for employer-provided eating facilities and meals provided for the convenience of the employer
- ▶ Adds a **new income inclusion deferral election** allowing deferral of tax for options and restricted stock units issued to qualified employees of private companies; applies after 2017

Key elements in the TCJA

Individual provisions



Individual income tax rates

- ▶ Lowers rates to 10%, 12%, 22%, 24%, 32%, 35% and 37%; adjusts rate bracket thresholds
- ▶ Roughly doubles standard deduction; suspends deduction for personal exemptions; repeals overall limitation on itemized deductions; repeals all miscellaneous itemized deductions subject to the 2% floor under present law



State and local tax deduction

- ▶ Caps deduction at \$10,000, which can be taken for the aggregate of state and local property and income taxes (or state and local sales taxes)



AMT

- ▶ Retains the individual AMT
- ▶ Increases the exemption amounts (\$70,300 single/\$109,400 married filing jointly) and phase-out thresholds (\$500,000 single/\$1m married filing jointly)







Mortgage interest deduction

- ▶ Caps deduction at \$750,000 of debt; \$1m for debt incurred before 12/15/2017. Reverts back to \$1m 1/1/2026, regardless of when debt incurred. Available for second homes
- ▶ Eliminates deduction for interest on home equity debt





Key elements in the TCJA

Individual provisions

 <p>Medical expense deduction</p> <ul style="list-style-type: none"> Applies to expenses that exceed 7.5% of adjusted gross income (AGI) in 2017 and 2018, and expenses that exceed 10% of AGI thereafter 	 <p>Estate tax</p> <ul style="list-style-type: none"> Retains estate, gift and generation-skipping transfer taxes; doubles \$10m basic exclusion and indexes it for inflation
 <p>Child tax credit</p> <ul style="list-style-type: none"> Increases child tax credit to \$2,000 per qualifying child (of which \$1,400 refundable); phase-out starts at AGI over \$400,000 (mfj). New \$500 nonrefundable dependent credit 	 <p>ACA individual mandate</p> <ul style="list-style-type: none"> Reduces shared responsibility payment (individual mandate) to zero, effective beginning in 2019 Provision does not sunset

Key elements in the TCJA

Individual provisions

 <p>Charitable donations</p> <ul style="list-style-type: none"> Retains deduction for charitable donations and increases the AGI limitation for charitable contributions from 50% to 60% 	 <p>Section 529 plans</p> <ul style="list-style-type: none"> Allows distributions of up to \$10k per student tax-free from 529 accounts to be used for elementary, secondary and higher tuition
 <p>Deductions for higher education</p> <ul style="list-style-type: none"> Continues to allow graduate students to exclude the value of reduced tuition from taxes Continues to allow deductions for student loan interest and for qualified tuition and related expenses 	 <p>Tax-free retirement vehicles</p> <ul style="list-style-type: none"> Retains retirement savings options such as 401(k)s and Individual Retirement Accounts (IRAs) Generally repeals rule allowing IRA contributions to one type to be recharacterized as a contribution to the other type

Key elements in the TCJA

Individual provisions



Capital gains and dividends

- ▶ Net capital gains and qualified dividends would continue to be taxed at the current 0%, 15% and 20% rates, and also would continue to be subject to the 3.8% net investment income tax



Gain from sale of principal residence

- ▶ Retains current law ownership period for the exclusion of gain from the sale of a principal residence



Deductions

- ▶ Repeals deductions for tax preparation, moving expenses and alimony payments (after 2018)
- ▶ All itemized deductions subject to the 2% floor would be repealed (e.g., home-office deductions, license and regulatory fees, dues to professional societies)



Other credits

- ▶ Retains adoption credit

Key provisions impacting exempt organizations



Adjustments to charitable giving incentives

- ▶ Various changes to individual income taxes that may alter individuals' incentives to make charitable gifts, including:
 - ▶ Doubled standard deduction at \$24,000 for joint returns; \$12,000 for single filers
 - ▶ Repealed limit on itemized deductions for certain high-income taxpayers
 - ▶ Increased 50% AGI limitation for charitable contributions to 60%
 - ▶ Retained estate, gift and generation-skipping taxes; doubled basic exclusion to \$10m, indexed for inflation
 - ▶ Eliminated charitable deduction for college-event seating rights

Provisions not in TCJA, may resurface

- ▶ Clarification of unrelated business taxable income (UBTI) treatment of entities treated as exempt from taxation under Section 501(a) (“dual status” entities)
- ▶ Income from sale or license of name or logo treated as UBTI
- ▶ Modifications to tax on excess benefit transactions
- ▶ Modifications to prohibition of candidate support or opposition by Section 501(c)(3) organizations
- ▶ Repeal of exempt status of private activity bonds

Excise tax based on investment income

Private colleges and universities

- ▶ **Prior law:** Section 4940 excise tax on investment income that applies to private foundations does not apply to public charities such as colleges and universities.
- ▶ **New Section 4968 of Code:** Effective for tax years beginning after December 31, 2017, “applicable educational institution” is subject to 1.4% excise tax on net investment income.
- ▶ Applicable educational institution:
 - ▶ Eligible educational institution for purposes of Hope and Lifetime Learning credits
 - ▶ Not a state college or university
 - ▶ At least 500 tuition-paying students during prior year
 - ▶ Investment assets valued at end of prior year of at least \$500,000 per student
- ▶ Net investment income is determined using rules “similar to” Section 4940(c).
 - ▶ Interest, dividends, rents, royalties, and similar, plus
 - ▶ Net capital gain, minus
 - ▶ Expenses incurred in producing investment income and managing property used to produce income
- ▶ Assets and income of related entities are attributed to educational institution.

UBTI separately computed for each trade or business

- ▶ **Prior law:** UBTI is calculated by aggregating revenue from all unrelated trades and businesses and subtracting deductions connected with producing.
- ▶ **New provision:** Section 512(b)(12), effective for tax years starting after December 31, 2017, requires determining UBTI separately for each business. Thus, an unrelated trade or business’s revenue can only be offset using deductions directly connected with that particular trade or business.
 - ▶ NOLs of a particular business could offset future income from that business, but not from other businesses.
 - ▶ NOLs arising in tax years beginning before January 1, 2018, carried forward to a tax year beginning after that date are not subject to provision and can be applied to UBTI generally.
- ▶ Key question for regulatory guidance: “What constitutes a separate business?”

Excise tax on excess tax-exempt organization executive compensation

- ▶ New Section 4960 provides, for taxable years beginning after December 31, 2017, an “applicable tax-exempt organization” is subject to 21% excise tax on:
 - ▶ Remuneration over \$1m paid to a covered employee
- ▶ Applicable tax-exempt organization:
 - ▶ Exempt from tax under Section 501(a); a farmers’ cooperative described in Section 521(b)(1); has income excluded from tax under Section 115; or is a political organization described in Section 527
- ▶ A covered employee is an employee who:
 - ▶ Was one of the five highest compensated employees of organization for tax year or
 - ▶ Was a covered employee of the organization (or predecessor) for any preceding tax year beginning after December 31, 2016
- ▶ Excess parachute payment:
 - ▶ Compensation paid on account of separation from service if present value of aggregate amount exceeds three times the base amount, which is the five-year average
 - ▶ Excise tax is imposed on full amount above the base

UBTI for amount of certain fringe expenses

- ▶ New Section 512(a)(7) effective for amounts paid after December 31, 2017 — organizations subject to unrelated business income tax rules must increase UBTI by expenses of providing certain fringe benefits that would be nondeductible for a taxable entity.
- ▶ Fringe benefits subject to rule:
 - ▶ Expenses for commuter highway vehicle transportation, transit passes and qualified parking if benefits are excludable from employee income under 132(f).
 - ▶ On-premises athletic facility expenses increase UBTI if facility is primarily for benefit of highly compensated employees.
- ▶ Expense considerations:
 - ▶ Employee pretax salary reduction (excludable under 132(f)) likely to be treated as UBTI.
 - ▶ Post-tax reimbursements of commuting expenses that do not qualify for exclusion under 132(f) should not generate UBTI.
- ▶ Other considerations:
 - ▶ Many organizations may be subject to state or local laws requiring employers to provide some form of transportation subsidy.

Repeal of exempt status of advance refunding bond issuances

- ▶ **Prior law:** Section 103 excludes from gross income interest on any state or local bond which is classified generally as either a governmental or private activity bond. This includes refunding bonds, but with limits on advance refundings.
- ▶ **Summary of new provision:** It removes income exclusion for bonds issued after December 31, 2017, issued to advance refund another bond.
- ▶ **Key takeaway:** Interest from initial issuance of qualified 501(c)(3) bonds continues to be tax exempt, but interest on bonds issued as part of an advance refunding of those bonds is not.
 - ▶ Entities may not be able to refinance outstanding debt except as part of a current refunding and retain their tax-exempt benefit under Section 103.

State income tax implications



State income tax

Will states conform to federal tax law changes?

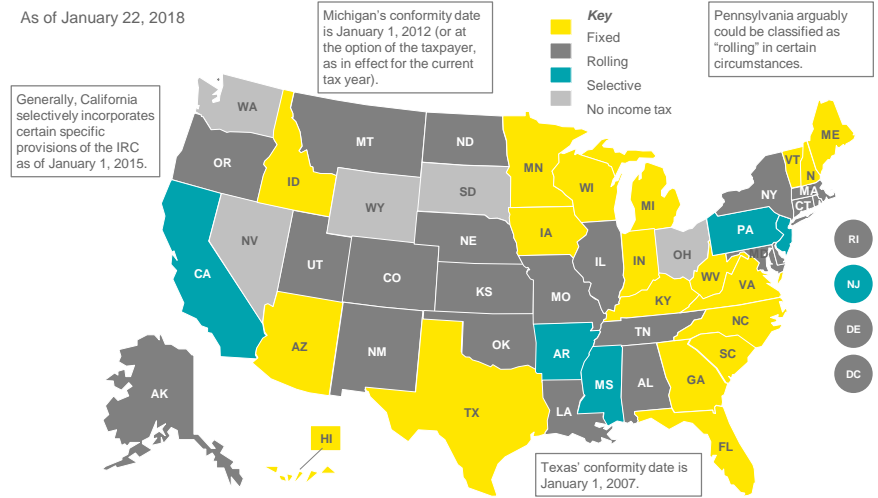
- ▶ Federal income tax reform:
 - ▶ Broadens the tax base
 - ▶ Reduces tax rates
 - ▶ Repeals deferral of foreign earnings
 - ▶ Taxes untaxed accumulated foreign earnings and moves to a territorial system
- ▶ Internal Revenue Code (IRC) and resulting federal taxable income (FTI) typically is the starting point to determine state taxable income:
 - ▶ When IRC changes (e.g., base expansion, elimination of deductions, modifications of credits), state tax base may change as well.
- ▶ States differ on federal conformity:
 - ▶ State conformity dates are key:
 - ▶ "Fixed"/"Static" conformity states = generally not automatic (consider whether/when to conform)
 - ▶ "Rolling" conformity states = generally automatic (consider whether to decouple)
 - ▶ "Selective" conformity states = generally adopt only certain specific provisions, typically as of a specific date, or make significant changes to IRC provisions.

State income tax

Will states conform to any federal tax law changes?

- ▶ Even where conformity applies, states have history of decoupling from unfavorable federal provisions, such as federal bonus depreciation.
- ▶ States generally don't conform to federal income tax rate reductions:
 - ▶ State income taxes generally rise as federal tax base expands, unless states align tax rates with federal rate reductions.
- ▶ Generally, all states (except Vermont) must have a balanced budget and must address impact of conforming to federal income tax law changes.

State income tax Conformity to IRC (corporate income tax)



International presence



Why do we need to think differently?

Outside “safe haven” of home country ...

- ▶ Unfamiliar laws of foreign country
- ▶ Evolving regulatory landscapes
- ▶ Lack of organizational structure
- ▶ Challenging to monitor activities
- ▶ Financial controls over foreign transactions
- ▶ Different time zones, languages and customs

Internal administration

Single point of contact?



Role of central administration

- ▶ *Proactively* support key functional areas — legal, compliance and risk management, HR and cash management
- ▶ Oversight of activities to reduce financial and reputational risks
- ▶ Set policy and procedural guidance
- ▶ Provide strategic direction (president/provost)
- ▶ Fulfill university reporting obligations

Potential compliance issues abroad (most common)

As an employer

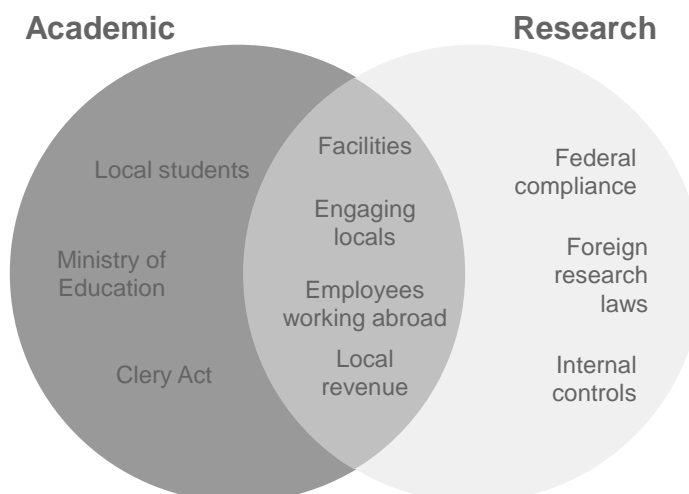
- ▶ Those paid as contractors may qualify as employees
- ▶ University employees traveling abroad have immigration, tax and Social Security obligations
- ▶ Labor and employment laws for those hired locally

As a reporting entity

- ▶ University activities qualify as fixed place of business in foreign country (permanent establishment (PE))
- ▶ Registration requirements
- ▶ Tax filings requirements
- ▶ Value-added tax (VAT) and other statutory reporting

Academic vs. research

More overlap with compliance risks than you may think



Risks

- ▶ Risk factors relate to:
 - ▶ Duration of activities in country
 - ▶ Annual recurrence of activities
 - ▶ Use of space/infrastructure
 - ▶ Presence of employees for extended period
 - ▶ Engagement of local employees
 - ▶ Repatriation of cash
 - ▶ Related tax compliance issues

Identifying risks

Asking the right questions

- ▶ What is the activity and where?
- ▶ How long is it? Recurring?
- ▶ Are we paying anyone for services?
- ▶ Are our employees spending more than a few weeks there?
- ▶ Do we have office or classroom space?
- ▶ Do we perform any service (including education) in a foreign country for which we're paid?

Risks to consider

- ▶ Collaborative partners
- ▶ Permanent establishment
- ▶ Human capital
- ▶ Other

Collaborative partners

- ▶ Third-party “outsource” — partnering with foreign university/study-abroad company — under full control of partner
- ▶ “Hybrid” model — shares resources with foreign partner institution
- ▶ “Go-it-alone” — own campus or facility abroad

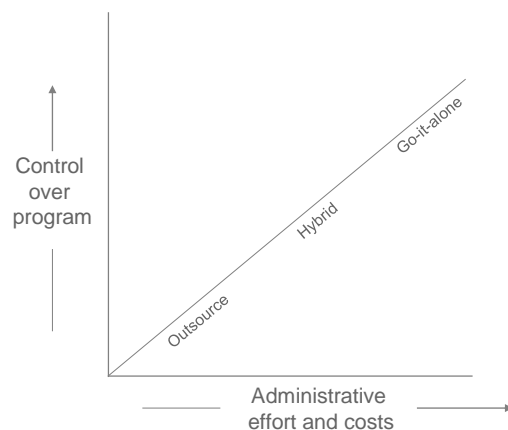
Common structuring approaches

Examples of US university operating strategies:

- ▶ Identifying a local “partner” to operate through
- ▶ Establishing agreement with host country government (e.g., Memorandum of Understanding)
- ▶ Engaging a professional employment organization (PEO)
- ▶ Registering a “branch office” of the university
- ▶ Formation of a nongovernmental organization (NGO)
- ▶ Formation of a subsidiary (for-profit or not?)

Risk
High
↑
↓
Low

Collaborative partners



Risk factors with collaborative partners

- ▶ Partner — “blind reliance” regarding legal/regulatory responsibilities
 - ▶ Local country requirements (e.g., statutory filings, tax returns)
- ▶ Reputational factors:
 - ▶ Agreement should benefit university (“It sounded great at the time ...”)
 - ▶ Unauthorized use of university name
 - ▶ Partner fails to fulfill obligations
- ▶ Difficulty of terminating arrangement
- ▶ Domestic compliance may still apply
 - ▶ (Office of Foreign Assets Control (OFAC), US Export Control Act, Foreign Corrupt Practices Act (FCPA))

Common assumptions (which may get us in trouble)

- ▶ “We’ve been doing this for a long time and never been in trouble.”
- ▶ “Our foreign partners take care of everything and are responsible for issues, not us.”
- ▶ “Educational or research activities don’t require registration and are nonprofit abroad too.”
- ▶ “Our foreign contractors would never turn on us.”
- ▶ “Employees on US payroll don’t have to pay taxes abroad.”
- ▶ “Other schools are doing it this way ... they must be doing it right.”

What is permanent establishment (PE)?

- ▶ Generally defined as a country’s determination that university has a fixed place of business in the country
- ▶ Specifically defined in tax treaties (roughly 70 countries)
 - ▶ If no tax treaty, defined in local laws
- ▶ Common “triggers”
 - ▶ Income-generating activities (executive education, curriculum development contracts, certificate or degree programs, research, etc.)
 - ▶ Use of facilities (renting office or other space)
 - ▶ Duration of program (typically greater than six months)
 - ▶ Negotiation or execution of contracts on behalf of university
 - ▶ Employment of local nationals (even as contractors)
- ▶ PE requires reporting university activities (submit tax filing)

Tax treaties

- ▶ What's great about them?
 - ▶ Easy to find; well organized on IRS website
 - ▶ Definition for permanent establishment
 - ▶ Defines and often extends number of days US citizen can work in country without tax issue (immigration may still be an issue)
 - ▶ Information regarding tax exemptions which may apply for teaching or research
- ▶ And not so great ...
 - ▶ Not written for higher education/not-for-profit audience
 - ▶ Don't address all issues with registration or human resources
 - ▶ Only about 70 countries covered
 - ▶ Tax treaty for Malta (fewer people than smallest US state)
 - ▶ None for Singapore, Hong Kong, most African countries

Overview of HR issues



Faculty and staff working abroad (compliance considerations only)

- ▶ Immigration — visas and work permits
- ▶ Individual taxation
 - ▶ Could start on Day 1, most likely 90–183 days
 - ▶ Advances and personal bank accounts
 - ▶ Social insurances may also apply
- ▶ Report of Foreign Bank and Financial Accounts (FBAR) reporting (for individuals)
 - ▶ Beware of using personal bank accounts to transact university business
- ▶ Ensure familiarity with local health and safety issues

Immigration

- ▶ It applies to expats (US employees working abroad) and TCNs.
- ▶ Visas often require a local host to sponsor.
- ▶ Without correct visa, employee is *illegally entering country*.
- ▶ “Tourist” visas are commonly not a legally compliant form of documentation for employees working in a foreign country.
- ▶ University may be considered responsible by local authorities.
- ▶ Tax treaties do not offer benefits for immigration!

Summary of options to support employees abroad

- ▶ Standard treaty exemption period?
- ▶ Do teaching or research exemptions apply? (application often required)
- ▶ “Manage” days working in foreign country (employees on US payroll only)
- ▶ Special exemption granted by foreign gov’t? (bilateral agreements)
- ▶ Third-party “partner” (university, subcontractor or other locally registered org)
- ▶ Professional employment organization (PEO)
- ▶ Nonresident employer registration (NRE), engaging payroll provider
- ▶ Registration (e.g., branch, subsidiary), engaging payroll provider
- ▶ *Not* a recommended option!
 - ▶ Telling the employee it is their responsibility to report and pay their own taxes

Local employee considerations

- ▶ Employment contracts (often required by law, and in local language)
 - ▶ Use a professional services firm.
- ▶ Understand termination regulations before hiring
- ▶ Compensation and benefits
 - ▶ Local laws and customs relate differently to local nationals, US expats, third-country nationals and contractors.
 - ▶ You should consider compensating based on completing milestones vs. salary.
 - ▶ You should understand what benefits are mandatory in-country, then what incrementally is “market norm.”
 - ▶ A comparison with a US benefit plan can be a factor in evaluating local benefits, but shouldn’t be the only one.
 - ▶ You should not hire as employee but pay as a vendor or contractor.
 - ▶ That is, cash or AP

Engaging individuals in a foreign country

- ▶ Employee vs. contractor — No.1 compliance issue today
- ▶ Assume that employee vs. contractor classification in foreign country is as stringent as US.
- ▶ Agreement that individual is a contractor does not determine classification
- ▶ Countries taking aggressive measures to encourage “whistle-blowers”
 - ▶ Fines often far exceed cost of hiring as employee

Tips on hiring a contractor

Don't do this

- ▶ Pay for time worked
- ▶ Give them tools
- ▶ Worker self-employed
- ▶ Paid leave (vacation)
- ▶ Supervise and direct daily
- ▶ Nothing in writing
- ▶ Require contractor to perform all work
- ▶ Executing contracts/making decisions

Do this!

- ▶ Pay for milestone or task
- ▶ Worker provides own tools
- ▶ Work for company (three or more people)
- ▶ No “employee” benefits
- ▶ Flexibility to set own hours
- ▶ Contract stating terms
- ▶ Work can be performed by others at worker’s discretion
- ▶ No decision-making on behalf of university!

Other risk areas

- ▶ Accounting and bookkeeping compliance
- ▶ Cash management practices
 - ▶ Wire transfers, cash receipts, cash advances
 - ▶ Restrictions on repatriation of funds
- ▶ Making resources available
- ▶ Internal controls
- ▶ Additional policies to consider
- ▶ Discovery — potential discovery of regulatory violations by local officials

US regulations and reporting considerations

Not an all-inclusive list!

- ▶ IRS reporting
 - ▶ Form 990 Schedule F (n/a for public institutions)
 - ▶ Unrelated business income?
- ▶ FinCEN Form 114sp.(FBAR)
- ▶ Clery Act
 - ▶ May apply to guest houses and other nontraditional facilities
 - ▶ Consider adding incident reporting requirements to agreements
- ▶ FCPA
- ▶ US Export Control Act
- ▶ OFAC

Making resources available

- ▶ Website for students (outbound)
 - ▶ Opportunities for study abroad and fellowships
 - ▶ Forms, waivers, school contacts
 - ▶ Links to US State Dept, Centers for Disease Control and Prevention (health, vaccinations info)
 - ▶ Emergency procedures
- ▶ Website for faculty and staff
 - ▶ Policies and procedural docs or links
 - ▶ Activities by country
 - ▶ School and central admin contacts

Internal controls and A-133

A-133 definition:

- ▶ Transactions are properly recorded and accounted for
- ▶ Transactions are executed in compliance with laws and grant agreements
- ▶ Funds and assets are safeguarded from unauthorized use

→

→

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In layman's terms:

- ▶ Follow university policies
- ▶ Approval of transactions
- ▶ Segregation of duties
- ▶ Documentation is readily available for inspection
- ▶ Invoices, POs, receiving
- ▶ Timecards
- ▶ Employment agreements
- ▶ Job descriptions

Internal controls and A-133

Audits of federal grant operations are becoming much more common, especially in Africa and the Middle East!

- ▶ **Common finding No. 1:** procurement noncompliance
 - ▶ Failure to monitor procurement sources
- ▶ **Common finding No. 2:** subrecipient monitoring
 - ▶ Failure to provide oversight and training to foreign subrecipients
- ▶ **Common finding No. 3:** lack of documentation
 - ▶ No time and effort reporting by overseas project personnel
 - ▶ No records of taxes paid, pending exemption
 - ▶ No record of retention policy applied abroad

Examples of policies to consider

Typically already in place for home campus:

- ▶ Code of conduct (e.g., conflict of interest, discrimination)
- ▶ Transaction authority (cash disbursements)
- ▶ Signing contracts/obligating the university
- ▶ Use of institutional property
- ▶ Gift receipts
- ▶ Travel
- ▶ Data privacy

Examples of policies to consider

Policies which often need to be written specifically for international:

- ▶ Opening and maintaining bank accounts
- ▶ Procurement
- ▶ Hiring of independent contractors abroad
- ▶ Leasing or purchasing office space
- ▶ Global mobility (incl. hiring of employees abroad)
- ▶ Compliance with US Export Control Act, Office of Foreign Assets Control and Foreign Corrupt Practices Act

Going global — other considerations

- ▶ Alignment with university's strategic vision and mission
- ▶ US accreditations of foreign programs
- ▶ Endowment-foreign investment reporting
- ▶ Gifting by foreign sources

War stories

- ▶ Large US research nonprofit debarred by United States Agency for International Development (USAID) — inadequate internal controls
- ▶ Independent contractors come forward in EU claiming to be employees
 - ▶ Settlements in excess of \$500,000
 - ▶ Six US universities in recent years — study-abroad contractors
- ▶ Foreign partner noncompliance
 - ▶ Multimillion-dollar tax issue
 - ▶ Non-registration, no filings, illegally hiring contractors
- ▶ Dedicated international tax unit in Nigeria
 - ▶ Audits activities of nonresident companies in order to assess PE risks, related tax implications
- ▶ University employee detained in India
 - ▶ Stopped at border when flying back to US
 - ▶ Prevented from leaving country until university activity disclosed

War stories

What happened in-country	How it was detected
Local team made double payments — one to a vendor and one to a personal account.	New finance director detected the fraud.
Local finance team member created fabricated travel receipts for reimbursement.	Home campus finance team was suspicious of large \$\$ amounts being paid.
Local finance team colluded to produce fake hotel receipts and steal travel advance funds.	Home campus finance team spotted inconsistencies and initiated outside audit.
Generators and vehicles purchased for significantly more than market value from executive director's relative and profit was split.	Review of transactions by university's US internal audit team during routine audit.

Why the shakedown?

- ▶ US federal agencies under scrutiny by media and public for how federal monies are spent
- ▶ US and foreign governments budget constraints — looking for revenue opportunities
- ▶ Countries creating “whistle-blower” laws to encourage contractors to come forward

Let's recap ...

- ▶ Alignment with entity's strategic vision and mission
- ▶ Single point of contact acts as liaison for schools/departments, and works closely with central admin offices to make sure of consistent messaging and timely follow-up
- ▶ Include General Counsel's office with activities requiring analysis
- ▶ Assess risks at onset of activity and over activity life
- ▶ Internal controls/documentation, policies and procedures
- ▶ Consult with advisors with local-country expertise

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NC State Fairgrounds - Wi-Fi Instructions & Use Policy

NCDA&CS Guest Wireless Access Acceptable Use Policy

This Policy is a guide to the acceptable use of NCDA&CS Guest wireless network facilities and services (Services). Any individual connected to the NCDA&CS Guest wireless network in order to use it directly, or to connect to any other network(s), must comply with the State of North Carolina Statewide Information Security Manual, this policy, and the stated purposes and Acceptable Use policies of any other network(s) or host(s) used. The following guidelines will be applied to determine whether or not a particular use of the Services is appropriate:

1. Users should not expect any right to privacy while using the NCDA&CS Guest wireless network. Because this resource is State-owned and subject to all State of North Carolina laws, including public records laws, there are no privacy rights on the NCDA&CS Guest wireless network.
2. Users must respect the privacy of others. Users shall not intentionally seek information on, or represent themselves as, another user unless explicitly authorized to do so by that user. Nor shall Users obtain copies of, or modify files, other data, or passwords belonging to others.
3. Users must respect the legal protection applied to programs, data, photographs, music, written documents and other material as provided by copyright, trademark, patent, licensure and other proprietary rights mechanisms.
4. Users must respect the integrity of other public or private computing and network systems. Users shall not intentionally develop or use programs that harass other users or infiltrate any other computer, computing system or network and/or damage or alter the software components or file systems of a computer, computing system or network.
5. Use should be consistent with guiding ethical statements and accepted community standards. Use of the Services for malicious, fraudulent, or misrepresentative purposes is not acceptable.
6. The Services may not be used in ways that violate applicable laws or regulations.
7. The Services may not be used in a manner that precludes or significantly hampers network access by others. Nor may the Services be used in a manner that significantly impairs access to other networks connected to the NCDA&CS Guest wireless network.
8. Connections which create routing patterns that are inconsistent with the effective and shared use of the Services may not be established.
9. Repeated, unsolicited and/or unwanted communication of an intrusive nature is strictly prohibited. Continuing to send e-mail messages or other communications to an individual or organization after being asked to stop is not acceptable.
10. By logging on, you agree to hold the North Carolina Department of Agriculture harmless for any damages that may result from access to the Internet or inappropriate usage. You also agree that Services are provided solely as a convenience to you, "as

is”, with any and all defects, and understand that the Services may be subject to unannounced periods of maintenance rendering them inaccessible as necessary. The intent of this policy is to identify certain types of uses that are not appropriate, but this policy does not necessarily enumerate all possible inappropriate uses. Using the guidelines given above, we may at any time make a determination that a particular use is not appropriate.

You will be prompted to accept or decline the above acceptable use policy.

**Click on STATEFAIRGROUNDSPUBLIC
No password or registration is required.**

NOTE: This wireless site is available to anyone on the fairgrounds and access is restricted to no more than one hour after sign-in EXCEPT that active continuous use will extend access; however, periods of inactivity will require a refresh and log in.

The above courtesy services are available at no fee.

**2018 Tax Compliance Summit
June 5-6, 2018**

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Daysi Allen-UNC-Chapel Hill
Jim Allen-Duke University
Terrie Lynn Ames-NC Central University
Kokila Amin-OSC
Susan Arnsperger-Asheville-Buncombe Tech
Lamees Asad-UNC-Chapel Hill
Grace Many Atangana-UNC-Chapel Hill
Stacy Atkins-Halifax Community College
Debra D Bailey-East Carolina University
John Barfield-OSC
Somerset Batres-Campbell University
Kelly Beasley-OSC
Linda Blackmon-OSC
Deborah Blackwell-State Treasurer
Stephany Blaney-Berea College
Leslie Blankenship-Isothermal CC
Desiree Bowling-ECU
Gilbert Brazel-Gilbert Brazel
Angela Brown-OSC
Barry Brown-OSC
Crescentia Brown-Wake Technical CC
Joshua Brown-Randolph CC
Anita Bunch-Revenue
Gene Bunting-High Point University
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Wesley Taylor-General Assembly
Steve Thomas-University of Florida
Sara Thorndike-ECU
Sonya Tillman-NC SSM
Debbie Todd-Fayetteville Technical CC
Judy Todd-University of Missouri
Angela Tuttle-UNC School of the Arts
Pablo Unda-Clemson University
Melissa Valko-Asheville-Buncombe Tech CC
Kimberly Van Metre-DENR
Lydia Vanhoy-Stanly CC
Helen Vozzo-NCSU
Megan Wallace-OSC
Yiwen Wang-UNC-Chapel Hill
Gary Ward-NC Central University
Kyle Watson-Mitchell CC
Sarah Westwood-UNC School of the Arts
Rex Whaley-DEQ
Teresa White-DENR
Lottayne Widemon-NC A&T
Sherry Willis-James Madison University
Melissa Wilson-University of Kentucky
Misty Wilson-NCSU
Pam Winstead-Agriculture
Grace Wright-NC Central University
Kendra Zafiratos-University of Colorado
Xuefen Zhen-University of Iowa
Yifan Zhou-ASU
Fang Zuo-UNC Charlotte

**2018 Tax Compliance Summit
June 5-6, 2018**

Attendees by Agency (229)

Felix Muriithi-
Jacqueline Pollmiller-
Sue Kearney-Agriculture
June Rhodes-Agriculture
Pam Winstead-Agriculture
Cynthia Collie-Alamance CC
Susan Arnsperger-Asheville-Buncombe Tech CC
Tonja Poole-Asheville-Buncombe Tech CC
Melissa Valko-Asheville-Buncombe Tech CC
Stephanie Chaisson-ASU
Paul Forte-ASU
McKenzie Harris-ASU
Tom Isaacs-ASU
Yifan Zhou-ASU
Stephany Blaney-Berea College
Sara Clements-Berea College
Sommer Batres-Campbell University
Julie Byrd-Campbell University
Phillip Price-Central Carolina CC
Pablo Unda-Clemson University
Craig Forsythe-Coastal Carolina CC
Marianne Couch-Cokala
Lisa Crawford-College of Wooster
Peta-Gaye Shaw-Commerce
Lori Kanellis-Cornell University
Susan Caldwell-Davidson College
Susie Fuller-Davidson College
Lori Gaston-Davidson College
Jennifer Joyce-Davidson College
Cathy Richards-Davidson College
Shannon Hobby-DENR
Kimberly Van Metre-DENR
Teresa White-DENR
Rex Whaley-DEQ
Gloria Howell-DHHS
Lymari Rentas-Gonzalez-DHHS
Brenda Postma-Dordt College
Michelene Evans-DOT
Todd Honeycutt-DOT
Laurie Smith-DOT
Bonaventure Ezewuzie-DPI
Meera Phaltankar-DPI
John Del Greco-DPS
Tammy Forsythe-DPS
Debra Neal-DPS
Joan Saucier-DPS
Jim Allen-Duke University
Andrew Kleitsch-Durham Technical CC
Liza Nordstrom-Durham Technical CC
Debra D Bailey-East Carolina University
Jocelyne Chapin-Eastern Va Medical School
Desiree Bowling-ECU
Stephanie Coleman-ECU
Elisa Heller-ECU
Sherrilyn Johnson-ECU
Lois Shrewsbury-ECU
Brittany Stockstill-ECU
Steve Strickland-ECU
Sara Thorndike-ECU
Ashley Johnson-Fayetteville State University
DeSharon Kersey-Fayetteville State University
Seneva Miles-Fayetteville State University
Terra Poole-Fayetteville State University
Linda Harrell-Fayetteville Technical CC
Betty Smith-Fayetteville Technical CC
Debbie Todd-Fayetteville Technical CC
Kathryn Alexander-Forsyth Technical CC
Elisa Fernbach-Forsyth Technical CC
Martha Greene-Forsyth Technical CC
Wesley Taylor-General Assembly
Elena Cirmizi-George Mason University
Nona Machavariani-George Mason University
Dawn Crockett-Gettysburg College
Gilbert Brazel-Gilbert Brazel
David Forest-Halifax CC
Stacy Atkins-Halifax Community College
Gene Bunting-High Point University
Brian Shollenberger-High Point University
JoAnn Clune-Indiana University
Susan Norrell-Indiana University
Leslie Blankenship-Isothermal CC
Amy Penson-Isothermal CC
Chris Jones-James Madison University
Sherry Willis-James Madison University
Courtney Jackson-Kennesaw State University
Rebekah Duke-Marshall University
Kimberly Fry-Marshall University
Steve Gednalske-Minnesota State
Jonathan Harris-Mitchell CC
Kyle Watson-Mitchell CC
Debra Chamberland-Mount Holyoke College
Lilia Mariano-Nash CC
Allison Chisholm-NC A&T
Frederick Cundiff-NC A&T
Tammie Hill-NC A&T
Wilson Jones-NC A&T
April Pennix-NC A&T
Penelope Smith-NC A&T
Penny Smith-NC A&T
Traci Smitherman-NC A&T
Jacqueline Stringfellow-NC A&T
Lottayne Widemon-NC A&T
Terrie Lynn Ames-NC Central University
Antonio L McDaniel-NC Central University
Luke McHale-NC Central University
Benita Quick-NC Central University
Gary Ward-NC Central University
Grace Wright-NC Central University
Jason Forlines-NC Community College System
Leah Englebright-NC SSM
Sonya Tillman-NC SSM
Karen Lundin-NC State University
Jennifer Coltrane-NCSU
Dwayne Cook-NCSU
Joan Everett-NCSU
Emily Millican-NCSU
Tracy Patty-NCSU
Helen Vozzo-NCSU
Misty Wilson-NCSU
Laura Garske-Hermanson-North Dakota State Uni
Sadie Goble-Oberlin College
Trisha Lyons-Oklahoma State University
Lisa Hecker-Old Dominion University
Kokila Amin-OSC
John Barfield-OSC
Kelly Beasley-OSC
Linda Blackmon-OSC
Angela Brown-OSC
Barry Brown-OSC
Edith Cannady-OSC
Elizabeth Colcord-OSC
Noah Dickerson-OSC
Michael Euliss-OSC
Anne Godwin-OSC
Sean Gutowski-OSC
Shivani Jani-OSC
Brad Johnson-OSC
Ginny Kammer-OSC
Laura Klem-OSC
Akhira McDonald-OSC
Ben McLawhorn-OSC
Courtney Michelle-OSC
Jennifer Pacheco-OSC
Rick Pieringer-OSC
Dayna Portis-OSC
Jan Prevo-OSC
Ellen Rockefeller-OSC

Randy Smith-OSC
Megan Wallace-OSC
Toula Capetanos-OSHR
Danny Stutzman-OSHR
Julie Peaden-Pitt CC
Rhonda Mah-Radford University
Joshua Brown-Randolph CC
Anita Bunch-Revenue
Jackie McKoy-Revenue
Tami George-Robeson CC
Lettie Navarrete-Robeson CC
Melissa Sherman-Sandhills CC
Enda Kelleher-Sprintax
Lori Poplin-Stanly CC
Lydia Vanhoy-Stanly CC
Larna Griffin-State Education Assistance Authority
Deborah Blackwell-State Treasurer
Paul Palermo-State Treasurer
Wanda Pipkin-State Treasurer
Kirstin Guancia-Syracuse University
Andrea Meyer-Texas A&M University
Carmelita Mendoza-Texas State University
Robin Gore-UNC Asheville
Mary Hall-UNC Asheville
Lisa Hall-UNC Charlotte
Marlo Hardiman-UNC Charlotte
Fang Zuo-UNC Charlotte
George Burnette-UNC GA
Yolonda Crim-UNC Greensboro
Robin Jones-UNC Greensboro
John Kirkman-UNC Greensboro
Teresa Nordan-UNC Greensboro
Frances Hunt-UNC Pembroke
Jacqueline Strickland-UNC Pembroke
Dana Dupree-UNC School of the Arts
Lisa McClinton-UNC School of the Arts
Jasheen Midgette-UNC School of the Arts
Angela Tuttle-UNC School of the Arts
Sarah Westwood-UNC School of the Arts
Debbie Dryer-UNC System Office
Lisa Laverick-UNC System Office
DP Singla-UNC System Office
Donna Sommer-UNC System Office
Lisa Eakins-UNC Wilmington
Daysi Allen-UNC-Chapel Hill
Lamees Asad-UNC-Chapel Hill
Grace Many Atangana-UNC-Chapel Hill
Andrea Cox-UNC-Chapel Hill
Angela Davis-UNC-Chapel Hill
Yamaris Fontanez-UNC-Chapel Hill
Jennifer Hall-UNC-Chapel Hill
Judy LeDoux-UNC-Chapel Hill
Arun Malik-UNC-Chapel Hill
Stephanie May-UNC-Chapel Hill
Martha Pendergrass-UNC-Chapel Hill
Chandrika Rao-UNC-Chapel Hill
Janet Rupert-UNC-Chapel Hill
Yiwen Wang-UNC-Chapel Hill
Adriana Mendiaz-Coronado-Univ of New Mexico
Amber Duncan-University of Arkansas
Shelly Gahagans-University of Arkansas
Kendra Zafiratos-University of Colorado
Alla Chubina-University of Florida
Steve Thomas-University of Florida
Xuefen Zhen-University of Iowa
Katie Robinson-University of Kentucky
Melissa Wilson-University of Kentucky
Candace Chow-University of Maryland
Amy McKenzie-University of Missouri
Judy Todd-University of Missouri
Steffany Sandoval-University of New Mexico
Christine Ness-University of San Diego
Marsha Mayhew-Virginia Military Institute
Annie Connelly-Virginia Polytechnic Institute
Rebecca Goad-Virginia Polytechnic Institute
Janet Kunz-Virginia Polytechnic Institute
Lynn Meadows-Virginia Polytechnic Institute
Chris Jessie-Wake Forest University
Crescentia Brown-Wake Technical CC
Marla Tart-Wake Technical CC
Lisa McCarthy-West Virginia University
Jennifer Cross-Western Carolina University