



FOREIGN NATIONALS TAX COMPLIANCE TRAINING

“How To Perform A Tax Assessment For Your Foreign Nationals”

May 3, 2011

Presenters



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 - NC Office of the State Controller

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2011 Training Curriculum



This training is an Office of State Controller Initiative, in collaboration with NC State University. This training is part of the Foreign National Tax Compliance curriculum that the Office of State Controller has planned for the 2011 calendar year. The Office of State Controller is committed to the success of the Foreign National Tax Compliance Program and will provide technical assistance to all State Agencies, Universities and Community Colleges.

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Disclaimer

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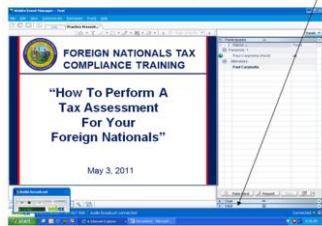


How to ask questions

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Training Agenda

- Identify the Payee – NRA vs. RA
- Recognizing and Interpreting Immigration Documentation
 - Employment Authorization Documents
- Identify the Character of Payment
 - Type and Source of Income
- Treaty Benefits
 - Benefits and Limitations
- Withholding and Reporting Forms
- Case Studies
- Questions and Answers

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Training Objectives

You should:

- Understand the importance of maintaining records of immigration and other taxation documents.
- Be familiar with the most common visa types and appropriate activities they can engage in.
- Be familiar with necessary documents to process a foreign national's record.

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Foreign National Challenges

Establishing effective policies and procedures to comply with government requirements

- Gathering information to comply with rules
- Timely communicating changes in data that impact compliance
- Keeping current in government rules and procedures
- Balancing knowing both immigration laws and tax laws

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Policy

The reporting and withholding of taxes associated with payments made to NON-U.S. citizens by universities, community colleges, and other agencies of the State of North Carolina are in accordance with the laws and regulations of the U.S. Citizenship and Immigration Services and the Internal Revenue Services.

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Policy (cont.)

- The U.S. Citizenship and Immigration Services define what payments may be made to aliens who perform services in the United States.
- The Internal Revenue Service defines which payments made to aliens are reported and subject to taxes, as well as establishes the tax rate for those payments.




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What Tax Status Determines

The Starting Point: Tax Residency Status

- Resident Alien (RA) or Non-resident Alien (NRA)
 - Determines:
 - Income subject to tax – RA (Worldwide) or NRA (US Only)
 - Form W-4 and FIT rules
 - Internal Revenue Code tax exemptions
 - NRA FICA Exceptions
 - Whether certain treaty exemption apply
 - Withholding certificate for treaty benefits




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The Substantial Presence Test (SPT)

- 31 or more U.S. days in the calendar year
- 183 – days based on the formula
 - All days in the calendar year
 - 1/3 of U.S. days in the prior calendar year
 - 1/6 of U.S. days in the 2nd preceding calendar year
 - Includes partial days



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F, J, & M STUDENT EXCEPTIONS

- Do not count days for 5 calendar years as an exempt individual
 - Begin with 1985
- May include years in dependent F, J, or M Status
- Does not restart with absence from the U.S.
- Any calendar year with a day as an exempt individual in F, J, M, or Q status counts as an exempt year.

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F, J, & M STUDENT EXCEPTIONS (cont.)

May extend beyond 5 calendar years with proof that not intending to reside permanently in the US

- Attach a statement to Form 8843 with NRA tax return
- No effective process for withholding purposes although described in IRS regulations and publications.

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Changes in Tax Residency Status

- An alien may start a year as a NRA and become a RA during the year. The change and timing is significant because of the tax consequences.
- There are three significant dates
 - Residency change date
 - Residency start date
 - Residency termination date

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Non-resident Alien (NRA) Worker

Performing Services in the US

- Not a United States Citizen
- Not a Dual Citizen
- Not an Lawful Permanent Resident
- Not an Resident Alien

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Taxable Income of NRAs

- The term income refers to all income received as compensation for services, including fees, commissions, fringe benefits, and similar items.
- The source of income for services depends upon where the services are performed. Compensation for services performed in the United States, whether for a U.S. employer under an employment--based non-immigrant classification, or for a foreign employer under B visitor classification, is U.S. source income.

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IRS Requirements and Tax Status Determinations

In making payments such as wages, non-service fellowship grants, honoraria, and other independent contractor fees, pensions, royalties, and miscellaneous payments, you need to know:

- US citizen, green-card holder, or other
- Character of the income paid
- U.S. tax residency status of income recipient
- Source of the payment under U.S. tax rules
- Conditions allowing exemption from tax
- Applicable withholding rates

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Forms, Filing, and Immigration Risks

Best practices in making payment to non-resident Aliens (NRAs)

- Implement policies and procedures for meeting IRS due diligence.
 - Recommend posting them to your website
- Keep up-to-date on rules and forms procedures – they change frequently!

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Forms, Filing, and Immigration Risks

Immigration risk for your agency

- Unauthorized workers performing services
 - Non-sponsored employees performing services for your agency
 - Foreign nationals not authorized to perform independent services

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What is Windstar?

- **International Tax Navigator** is software solution for non-resident alien tax compliance and income tax treaty analysis.
 - Applies complex bodies of U.S. tax law and procedures, providing up-to-date analyses for withholding tax rates, and tax and treaty exemptions.
 - Produces all required IRS withholding certificates and Form 1042 tax return and 1042-S reporting forms.

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What is SEVIS???

- The computerized system that collects and maintains information on the current status of non-immigrant students, exchange visitors, and their dependents during their stay in the United States.
 - Each school should have a designated official who updates the data
 - Information will assist you in making choices to avoid jeopardizing your status.

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Examples of Status Violations

- Failure to enroll by the date specified by the school or exchange visitor program.
- Unauthorized employment during the stay.
- Failure to leave the U.S. following completion of the course, exchange visitor program, or program-related employment.
- For academic students (visa category F-1): failure to maintain a full course load without prior authorization for a reduction from the designated school official.

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Importance of NRA Tax Compliance

- Withhold on and report income correctly to avoid unnecessary assessments, fines and penalties
- Provide tax benefits to students, professors, researchers, medical residents, trainees, interns, and independent contractors
- Be prepared for an IRS audit – where is the audit trail???

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Documentation

- Two Primary tax categories of payees:
 - United States
 - Non-United States
- Tax documentation, reporting and withholding rules differ depending on who your payee is for tax purposes.
- Tax status has little to do with citizenship
 - Except that U.S. citizenship will control.
 - If payee is not a U.S. citizen, then you must determine the payee's country of tax residency

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International Students

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Students

- Foreign students may be studying in U.S. in one of three categories:
 - F-1 Academic Student Status
 - J-1 Student Exchange Visitor Status
 - M-1 Technical Student Status

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F1-Visa (Students)

Documentation required for payments:

- Immigration Documentation:
 - Passport (Some passports will have more than one page)
 - Visa
 - I-94 card
 - ❖ (Small index looking card with entry date stamped on it. A foreign national CAN NOT legally work without this card.)
 - I-20 (Approval notice for F-1 status)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN
 - 8233 (If applicable)



F-1 Visa CPT (Curricular Practical Training)

Documentation required for payments:


- Immigration Documentation:
 - Passport
 - Visa
 - I-94
 - I-20
 - ❖ (I-20 must have the employers information listed on page 3 of the I-20. Without this notation the employment is not legal.)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN



F-1 Visa OPT (Optional Practical Training)

Documentation required for payments:


- Immigration Documentation:
 - Passport
 - Visa
 - I-94
 - I-20 (must state that they are on OPT)
 - Valid EAD Card (Employment Authorization Document)
 - ❖ Employment must be related to their field of study listed on the I-20.
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN



Students

- On or Off-Campus Employment
 - Curricular Practical Training (CPT) F-1 and F-3
 - Enrolled > 9 months full – time study
 - Required for graduation or academic credits
 - DSO must authorize I-20
 - Canadian's and Mexican's must obtain EADs
 - Optional Practical Training (OPT) F-1, F-3, M-1, M-3
 - No longer than 12 months
 - One year full-time study
 - Job relates directly to field of study
 - DSO must authorize I20
 - Must obtain EAD prior to commencing work

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J-1 Student Visa

Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - DS-2019 (Must show student sub-category)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN
 - 8233 (If applicable)

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J-1 Visa (Curricular Practical Training)

Documentation required for payments:


- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - DS-2019 (Must show student sub-category)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN
 - 8233 (If applicable)
- Letter from Institution attached to DS-2019

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Students

On or Off-Campus Employment


- Academic Training J-1
 - During or after completion of their academic degree for a total of 18 months
 - Employment must be related and appropriate to the level and field of study
 - Commence within 30 days of completion of their academic program
 - Postdoctoral students are eligible for 36 months
 - Authorization is by written approval from Responsible Officer (RO)
 - NO EAD is required
- Documentation required for payments
 - See previous slide



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Students


- Section 31212(b)(10) Internal Revenue Code – Student FICA Exception
 - Resident or Non-resident alien
- Qualification
 - Enrolled and attending classes
 - Incidental to course of study
- ❖ Can qualify for both NRA FICA exemption or Student FICA exemption




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Students

- Foreign Students qualify for the NRA FICA Exception if:
 - They are non-resident aliens under the SPT
 - The work is authorized under the immigration rules
 - The work is consistent with their purpose for being in the U.S.
- ❖ Students can qualify for NRA FICA exemption on CPT or OPT.



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Students

Unauthorized employment


- Does not meet the definition of on-campus employment
- Not authorized off-campus employment
- For example:
 - Honorarium for lectures
 - Employment without pay

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International Teachers and Researchers

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J-1 Visa (Student Intern)

Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - DS-2019 (Must show student intern sub-category)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN
 - No Treaty (Be extremely careful when entering this category into Windstar)

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J-1 Visa (Professor; Teacher; Research Scholar; Short-Term Scholar; Intern)




Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - DS-2019 (Pay attention to sub-category)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN
 - 8233 (If applicable) (Be careful with these treaties. Make sure you review the loss clauses before issuing the tax treaty.)

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H1-B, E-3 & O-1 Visas




Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - I-797 (Approval Notice)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN (NRA) or W-9 (RA)
 - 8233 (If applicable) (Be careful with these treaties. Make sure you review the loss clauses before issuing the tax treaty.)

❖ **Remember once a foreign national applies for permanent residency they are no longer eligible for tax treaty.**

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TN-Visa (Canada/Mexico)



Documentation required for payments:


- Immigration Documentation:
 - Passport
 - I-94 Card (Must have duration of stay. Only eligible to be employed for the dates listed on the I-94 card.)
 - I-797 (May or may not have an approval notice)
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN (NRA) or W-9 (RA)

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Employment Authorization Documents

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Employment Authorization Documents

Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
 - EAD Card
- Taxation Documentation:
 - NC-4
 - W-4
 - W-8BEN (NRA) or W-9 (RA)

❖ *You must review the authorization code. Taxation requirements correspond with the authorization codes.*


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Employment Authorization Document - Codes

Code	Description
A01	Lawful Permanent Resident of the United States
A01A	Legalization applicant granted temporary residence
A02B	A seasonal agricultural worker granted temporary residence
A03	Admitted to the United States as a refugee
A04	Paroled into the United States as a refugee
A05	Application for asylum has been granted
A06	A fiancé(e) of a United States citizen with K-1 nonimmigrant status; or the dependent of a fiancé(e) of a United States citizen with K-2 nonimmigrant status
A07	H-8 or H-9 nonimmigrant
A08	A citizen of the Federated States of Micronesia or of the Marshall Islands
A10	Granted a withholding of deportation
A11	Granted extended voluntary departure by the AG as a member of a nationality group pursuant to a request of the Secretary of State
A12	Granted Temporary Protected Status
A13	Granted voluntary departure status by the AG under the Family Unity Program
A14	Granted Family Unity benefits under the Life Act Amendments
A15	A V nonimmigrant
A16	A T nonimmigrant (victim of a severe form of trafficking in persons)
A17	Spouse of an E-1/E-2 Treaty Trader or Investor
A18	Spouse of an L-1 Intracompany Transferee


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Employment Authorization Document - Codes

Code	Description
C01	Dependent of an A-1 or A-2 government official
C02	Dependent of an employee of the Coordination Council of North American Affairs in B-3 nonimmigrant status
C04	Dependent of a G-3, G-5, or G-6 nonimmigrant
C05	Dependent spouse or minor child of an exchange visitor in J-2 status
C06	A vocational foreign student in M-1 status with optional practical training authorization
C07	Dependent of an individual classified as NATO-1 through NATO-7
C08	Pending applicant for asylum in the United States
C09	Pending applicant for adjustment of status to lawful permanent resident status
C10	Pending applicant for suspension of deportation
C11	Paroled into the United States for emergent reasons or for reasons in the public interest
C12	Deportable but granted voluntary departure either prior to or after a hearing before an immigration judge
C14	Granted deferred action by DHS as an act of administrative convenience to the government
C16	Applicant for adjustment of status based on continuous residence in the United States since January 1, 1972
C18	Final order of deportation pending
C19	Applicant with prima facie eligibility for Temporary Protected Status
C21	Principal S nonimmigrant or qualified dependent family member
	A foreign student (F-1) with authorization for Optional Practical Training (OPT) directly related to the student's area of study as follows:
C03A	Pre-completion OPT
C03B	Post-completion OPT
C03C	STEM extension of post-completion OPT


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Employment Authorization Document - Codes

C032	A foreign student (F-1) with authorization for employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act
C033	A foreign student (F-1) with authorization for 20 hours a week or full-time summer employment due to severe economic necessity
C041	Dependent spouse or child of an officer or employee of an international organization (G-1 or G-4)
C042	Dependent student of a G nonimmigrant
C171	A B-1 nonimmigrant personal or domestic servant of a nonimmigrant employer in the United States
C172	A B-1 nonimmigrant domestic servant of a United States citizen who is visiting the United States temporarily
C173	A B-1 nonimmigrant employed by a foreign airline

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Honoraria Payments

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Honoraria– Definition

The law states "(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium [payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution) as defined by the Attorney General in consultation with the Secretary of Education if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period."



B-1/ B-2 Visas

Documentation required for payments:

- Immigration Documentation:
 - Passport
 - Visa
 - I-94 Card
- Taxation Documentation:
 - Compliance Statement for the American Competitiveness and Workforce Improvement Act (Section 431)
 - W-8BEN
 - Social Security Card (or unknown SSN affidavit if n/a)
 - For 8233 (for Treaty Benefits with valid SSN)
 - Dates of Visits (9/5/6 Rule)



B-1 Visa – Business

Most common immigration status for entry into the U.S. for business

- Includes the VWB
- Work temporarily in the U.S. in connection with their foreign employers international transactions

Visa Wavier




Currently, 36 countries participate in the Visa Waiver Program, as shown below:

Andorra	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium	Japan	Singapore
Brunei	Republic of Korea	Slovakia
Czech	Republic Latvia	Slovenia
Denmark	Liechtenstein	Spain
Estonia	Lithuania	Sweden
Finland	Luxembourg	Switzerland
France	Malta	United Kingdom
Germany	Monaco	
Greece	The Netherlands	
Hungary	New Zealand	

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Visa Wavier



Documentation required for payments:

- Immigration Documentation:
 - Passport
 - I-94 Card (Make sure the VW notation is on the I-94 card)
- Taxation Documentation:
 - Compliance Statement for the American Competitiveness and Workforce Improvement Act (Section 431)
 - W-8BEN
 - Social Security Card (or unknown SSN affidavit if n/a)
 - For 8233 (for Treaty Benefits with valid SSN)
 - Dates of Visits (9/5/6 Rule)

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**Tax
Treaties**

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Tax Treaty Benefits

Tax Treaties serve to:

- Avoid double taxation in situations in which a taxpayer could be taxed twice
- Applied to both Federal income taxes and State taxes, specifically North Carolina Taxes.
- Reduce withholding taxes on certain types of income such as investment income and royalties
- Establish agreed-to levels of activities in which taxpayers can engage in the treaty country before becoming subject to taxes
- Provide for the exchange of information
- Eliminate taxes in situations that treaty partners agree should have favorable tax treatment
- Coverage is based on tax residence in treaty country and not country of citizenship.

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Tax Treaty Limitations

- Maximum Amounts
- Benefit Periods
- Loss Clauses
 - Retroactive
 - Proactive
- One-time Use Limitation

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Tax Treaties

Treaties may eliminate U.S. tax on:

- Payments from abroad for maintenance, education, and training
- U.S. or foreign scholarship and fellowship grants, or both
- A limited amount of earned income

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Treaty Claim Requirements

- Your payee **MUST** have a U.S. TIN to claim treaty benefits (except for payments of dividends).
- EIN
 - XX-XXXXXXX
- SSN
 - XXX-XX-XXXX
- ITIN
 - 9XX-7/8X-XXXX
 - Note that these numbers look much like Canadian social insurance numbers.

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Tax Treaties

Foreign Nationals can claim Treaty Benefits by:


- Form 8233
 - W-8BEN
 - W-9
 - W-2
 - Claiming refund on tax return
- ❖ Remember you are not required to give treaty benefits. So always use your best judgment.

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Documentation Example

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Procedures

6 Steps for Paying or Compensating Foreign Vendors:

Step 1 – The Payee-Payment Eligibility and Tax Status
Step 2 – The “Source” of the Income
Step 3 – Payment Subject to Income Tax Withholding?
Step 4 – Determine if Payment is Reportable and How?

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Documentation

- No documentation require if 3 conditions are met:
 - All services are performed abroad (keep evidence for audit purposes)
 - Employer has no reason to know worker is a
 - United States Citizen
 - Lawful Permanent Resident, or
 - Resident Alien
 - Services are not effectively connected to a U.S. trade or business
- **Best practice:** collect form W-8BEN in case of audit and document location of services

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Qualified Scholarships

- Grants for tuition and required fees for enrollment, along with books, fees, supplies, and equipment require of all participants in course of study provided the recipient is a “candidate for a degree”

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Non-Qualified Scholarships

Limitations on Treaties

- Benefits are non consistent
- Researchers are not interchangeable



Publication 970

Table 1-1. Tax Treatment of Scholarship and Fellowship Payments¹

Do not rely on this table alone. Refer to the text for complete details.

If you use the payment for...	AND you are...		THEN your payment is...	
	A degree candidate	Not a degree candidate	Tax free ²	Taxable
Tuition	X	X	X	X
Fees	X	X	X ³	X
Books	X	X	X ³	X
Supplies	X	X	X ³	X
Equipment	X	X	X ³	X
Room	X	X		X
Board	X	X		X
Travel	X	X		X

¹Does not include payments received for past, present, or future services.
²Payments used for any expenses included in the column are tax free only if the terms of the scholarship or fellowship do not prohibit the expense.
³Required if all students in the course.



Filing Fees – Taxable Income

As your institution is filing fees for dependents of your institution you may be incurring taxable income for those dependents, which you will need to included on the 1042s.



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- Should be familiar with the most common visa types and appropriate activities they can engage in.
- Should be familiar with necessary documents to process a foreign national's record.

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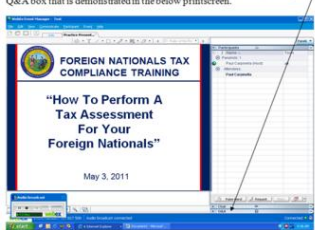


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- For additional training opportunities please visit:
 - http://www.osc.nc.gov/Foreign_Nationals/training.html

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THANK YOU!

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