



FOREIGN NATIONALS TAX COMPLIANCE TRAINING

**“Best Practices and Recommendations”
for
State Agencies, Universities and
Community Colleges**


July 11, 2012



Panelist

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– NC State University – International Employment and Taxation
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– NC Office of the State Controller


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2012 Training Curriculum

This training is an Office of State Controller Initiative, in collaboration with NC State University. This training is part of the Foreign Nationals Tax Compliance curriculum that the Office of State Controller has planned for the 2012 calendar year. The Office of State Controller is committed to the success of the Foreign Nationals Tax Compliance Program and will provide technical assistance to all State Agencies, Universities and Community Colleges.


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Disclaimer

- The information within this presentation does not constitute tax/legal advice and each participant should seek his/her own counsel in addressing specific situations. The NC Office of the State Controller is providing this training as a way of enhancing the knowledge of the participants who are implementing and maintaining the Foreign Nationals Tax Compliance Program within their State Agency, University or Community College. Information presented is not intended to be used for the purpose of avoiding any penalties that may be imposed on the taxpayer by any taxing authority or agency.
- Any questions that are not handled within the presentation will be responded to via email. Further follow-up questions can be submitted to Jennifer Trivette, with the NC Office of the State Controller, at jennifer.trivette@osc.nc.gov.

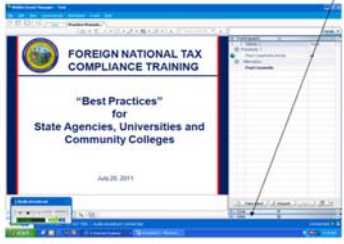
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How to ask questions

Asking Questions:
Attendees have the opportunity to ask their questions to the presenter/panelist during the presentation. Questions will be tabbed until the end of the presentation and can be asked throughout the event by using the Q&A box that is demonstrated in the below printscreen.

To ask questions select "Q&A" Then type in the box.




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Training Agenda

- Identify the Payee – NRA vs. RA
 - Accounts Payable
 - Payroll
 - Scholarships (Students)
- 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
 - W-8BEN
 - 8233
 - W-9
- Compliance Requirements recently covered by the IRS
- Questions and Answers
- Case Studies

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Training Objectives

You should:

- Understand the policies your state agency, university or community college must adhere to.
- Understand the importance of maintaining records of immigration and other taxation documents.
- Be familiar with necessary documents to process a foreign national's record for employees, independent contractors and vendors.
- Understand the requirements of year-end reporting

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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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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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Per the IRS – The Withholding Agent

- Any person that has control, receipt, custody, disposal or payment of any item of income of a foreign person subject to Nonresident Alien (NRA) withholding.
- Responsible to withhold tax payments on U.S. source income.
- Responsible for correctly reporting income paid and withholding applied.


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The Withholding Agent (This is YOU!!!)

- Potential civil penalties that withholding agents face:
 - The 100% penalty on the total amount of tax evaded.
 - The 20% accuracy-related penalty on the underpaid withheld taxes in the case of negligence.
 - A 75% penalty for the underpayment of withheld taxes in the case of civil fraud.
 - Additional taxes of 5% (to a maximum of 25%) for the negligent failure to file a return.
 - Additional taxes of 15% (to a maximum of 25%) for the negligent failure to file a return.
 - Additional taxes of 15% (to a maximum of 75%) for the fraudulent failure to file a return.


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Example of Penalties

| | | | |
|---------------|-----|---------|--|
| Payment \$838 | | | |
| Honoraria | 30% | 251.40 | Original Taxes Owed |
| | 20% | 50.28 | Penalty on underpaid taxes |
| | 75% | 188.55 | Penalty in the case of fraud |
| | 25% | 62.85 | For not putting it on your 1042 filing |
| | 75% | 188.55 | Penalty in the case of fraud for 1042 filing |
| | | 741.63 | Taxes and Penalties |
| | | 838.00 | Original Payment |
| | | 1579.63 | Now your payment has almost doubled |

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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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Procedures

6 Steps for Paying or Compensating Aliens:

Step 1 – The Payee-Payment Eligibility and Tax Residency Status

Step 2 – The Type of Payment


Step 3 – The "Source" of the Income

Step 4 – Payment Subject to Income Tax Withholding?

Step 5 – Is the Payment Subject to FICA?

Step 6 – Determine if Payment is Reportable and How?

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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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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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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




Withholding certificates

- W-4 – Employee's Withholding Allowance Certificate
- 8233 for treaty benefits for NRA compensation (required annually)
- W-8BEN for treaty benefits for all other payment types
- W-9 for treaty benefits for Resident Aliens (RAs)
- W-8ECI for Effective Connected Income

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Forms, Filing, and Immigration Risks

- Nonresident aliens who fail to file Form W-4, or file an invalid Form W-4, shall have federal income taxes withheld at the rates pertaining to single status, zero withholding allowances, with no other special rules.
- For income tax withholding purposes, nonresident aliens are subject to special withholding rules.
 - An NRA:
 - Cannot write "Exempt" on line 7.
 - May claim only "Single" filing status on line 3, regardless of actual marital status.
 - With certain exceptions, cannot claim more than one withholding allowance.
 - Is required to write "Nonresident Alien" or "NRA" above the dotted line on line 6.

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Forms, Filing, and Immigration Risks

Non-resident Aliens

- W-2 reporting for wages subject to wage withholding and FICA wages and taxes
- 1042-S for treaty-exempt income (including treaty-exempt wages)
- 1042-S reporting for all other income payments (**not** 1099!)
- Form 1040NR or 1040NR-EZ Tax Return

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Forms, Filing, and Immigration Risks

Year-end reporting

- 1042-S information return for NRAs
- 1042 tax return required if any Forms 1042-S are issued (even if all are for treaty exemption and have no tax withholding)


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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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Individuals Eligible for ITINs

The following individuals, who are not eligible to apply for an SSN, are eligible to apply for an ITIN for a federal tax administrative purpose:

- Non-resident alien required to obtain an ITIN to claim a tax treaty benefit
- Non-resident alien filing a U.S. tax return
- U.S. resident alien (based on days present in the United States filing a U.S. tax return)
- Dependent of a U.S. citizen/resident alien
- Spouse of a U.S. citizen/resident alien
- Non-resident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
- Dependent/spouse of a non-resident alien holding a U.S. visa
- Other


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Significance of ITIN

- Needed for U.S. tax purposes for treaty benefits if alien is not eligible for SSN
- Suggests that an alien who services are used as an employee or independent contractor is not eligible to work
- Highly relevant to application of both immigration and tax law


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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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Foreign Students


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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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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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Review Of Documentation

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F-1 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)

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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

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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

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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
 - Review Income Codes CO3A, CO3B, CO3C

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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 Exemption
 - 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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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

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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 | Has a degree candidate | Tax free ² | Taxable |
| Tuition | X | | X | |
| | | X | | X |
| Fees | X | | X ³ | |
| | | X | | X |
| Books | X | | X ³ | |
| | | X | | X |
| Supplies | X | | X ³ | |
| | | X | | X |
| Equipment | X | | X ³ | |
| | | X | | X |
| Room | X | | | X |
| | | X | | X |
| Board | X | | | X |
| | | X | | X |
| Travel | X | | | X |
| | | X | | X |

¹ Does not include payments received for paid services or future services.
² Payments used for any expenses indicated in this column are tax free only if the terms of the scholarship or fellowship do not prohibit the expense.
³ If required of all students in the course.


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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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Social Security and Medicare

F-1, J-1, M-1, Q-1/Q-2 VISAS
FOR FOREIGN STUDENTS

Wages are exempt from social security and Medicare as long as the non-immigrant is a "non-resident alien".

- Foreign Students who have been in the U.S. for more than 5 calendar years become "resident aliens".
- Social security and Medical tax exemption ceases when the payee becomes a "resident alien", unless
- The student FICA exception applies, allowing them to be exempt from social security and Medicare. See Revenue Procedure 2005-11.

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Federal Income Tax Withholding


F, J, M, AND Q VISAS
SCHOLARSHIPS AND FELLOWSHIP GRANTS

- There is no withholding on a qualified scholarship received by a candidate for a degree, regardless of whether the individual is a resident or nonresident alien.
- For nonresident alien student with an "F", "J", "M" or "Q" visa, who receive a U.S. source grant or scholarship that is not fully exempt, withhold tax at 14% (or lower tax treaty rate) on the taxable part of the scholarship or grant that is not a payment for services.
- However, if the student is not a candidate for a degree and the grant does not meet certain requirements, tax will be withheld at the 30% (or lower tax treaty) rate.

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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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Tax Treaties – Teacher/Researchers

- Important to note there are current tax treaties that have one-time use limitations
 - China
 - Czech Republic
 - France
 - Indonesia
 - Jamaica
 - Portugal
 - Slovak Republic
- Retroactive Loss Clause
- Prospective Loss Clause

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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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EMPLOYEE PAYMENTS


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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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Withholding on Aliens Employed in the U.S.


- Identify all aliens (non-U.S. Citizens) on the payroll who were paid for dependent personal services (wages).
- Divide the aliens into two groups: "Resident Aliens" and "Nonresident Aliens". Refer to IRS Publication 519 for more information on the residency status of aliens.
- Treat resident aliens the same as U.S. citizens. They are generally subject to social security, Medicare and federal income tax withholding, with some exceptions. A Form W-4 should be secured.
- Form W-4 is secured with respect to income not exempt, subject to special instructions, for the applicable number of withholding allowances claimed.

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Independent Contractor 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."

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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)

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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


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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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Reporting and Withholding Requirements on Independent Personal Services 

- In general, an entity must withhold 30% of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation that establishes:
 - the payee is a U.S. person
 - the payee is a foreign person who is the beneficial owner of the income and is entitled to a reduced rate of withholding
 - a beneficial owner is a person who has the right to the economic enjoyment of the income.

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Reporting and Withholding Requirements on Independent Personal Services (cont.)



- Resident Aliens who are recipients of U.S. source income from independent personal services are treated as U.S. persons and Form W-9 should be secured.
- For individuals, the taxpayer identification number (TIN) on Form W-9 is generally an SSN. However, some cases, an Individual Taxpayer Identification Number (ITIN) may be used.
- In the case of services provided you must withhold 4% NC tax as well as the 30%.

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Reporting and Withholding Requirements on Independent Personal Services (cont.)




DOCUMENTATION REQUIRED

- Foreign person who are recipients of U.S. source income need to submit one of several forms to document their identity and status for tax purposes.
 - Those discussed here are
 - Form W-8BEN
 - Form W-8ECI
 - Form 8233
- Payers are responsible for requesting a Form W-8 form any persons they presume, or otherwise believe to be a foreign person.

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Reporting and Withholding Requirements on Independent Personal Services (cont.)




Form W-8BEN

Foreign person use this form to:

- Establish payee is not a U.S. person.
- Claim the payee is the beneficial owner of the income for which the W-8BEN is being provided.
- If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the U.S. has an income tax treaty on income that is not personal services income (such as rental income). A U.S. TIN is required in most instances. A TIN maybe an SSN, EIN, or ITIN.

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Reporting and Withholding Requirements on Independent Personal Services (cont.) 

Form W-8ECI

Used by a foreign person to claim exemption from 30% withholding in cases in which the payee has Effectively Connected Income (ECI)

- Such as personal services income that is being treated as business profits under a tax treaty.
- Cannot be used by an NRA individual with personal service income.
- Must report payee's U.S. TIN, or it is invalid.

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Reporting and Withholding Requirements on Independent Personal Services (cont.) 

Form 8233

An NRA uses form 8233 to claim tax treaty exemption for some or all income from:


- Independent personal services (independent contractor services)
- Dependent personal services (wages)
- Personal services income and non-compensatory scholarship or fellowship income from the same withholding agent.
- And/or to claim a personal exemption amount to reduce independent personal services income.
- Generally required to have an SSN, however, an ITIN may be used.
- MUST be completed EVERY year.

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Special Rules for Independent Personal Services


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Personal Exemption


- Pay subject to the 30% (or lower tax treaty) rate may be reduced by a personal exemption amount (\$3,700 for 2011).
- NRA is generally allowed one personal exemption.
- Residents of Canada, Mexico, or South Korea; a student or business apprentice from India; and U.S. nationals are generally entitled to the same exemptions as U.S. citizens.
- Each allowable exemption must be prorated according to the number of days in the tax year during which the alien performs services in the U.S.

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Accounts Payable

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Procedures

Steps for Paying or Compensating Foreign Vendors:

- Step 1** – The Payee-Payment Eligibility and Tax Status
- Step 2** – The Income Subject to NRA Withholding
- Step 3** – Withholding Requirements
- Step 4** – Determine if Payment is Reportable and How?

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Documentation

- No documentation required 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 (signed original) in case of audit and document location of services

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Documentation-REQUIRED

- Required if:
 - Services are performed in the states (keep evidence for audit purposes)
 - Employer has reason to know worker is a
 - United States Citizen
 - Lawful Permanent Resident, or
 - Resident Alien
 - Services are effectively connected to a U.S. trade or business
- **Best practice:** collect form W-8BEN (signed original) and invoice/purchase order and send copies to State Controller's Foreign National Team
Foreign.National.Team@osc.nc.gov


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Annual Reporting

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Form 1042




Form 1042 is an annual withholding tax return used to report payments and income tax withholding from Forms 1042-S.

- It reports the aggregate of NRA payments;
- NRA withholdings; and
- Tax deposits made.

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Form 1042 (cont.)



- Reportable for any amount in excess of 0 – there is no minimum amount that triggers a filing requirement.
- Withhold at 30% or lesser tax treaty rate.
- Reportable to individuals, partnerships, corporations, trusts and estates.
- A Form 1042-S is required even if the entire amount of compensation is exempt from tax under tax treaty provisions.
- Failure to file and failure to furnish penalties under IRC 6721 and 6722 are applicable.

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Form 1042 (cont.)




Examples of payments to be reported on the Form 1042-S:

- Wages exempt under a tax treaty;
- Compensation and withholding for personal services performed in the U.S.
- Scholarships, fellowships, grants or financial aid paid to NRA that is not excludable from gross income as a "qualified scholarship."

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Reporting Wages Paid to Aliens Employed in the U.S.



- Resident Aliens – Reported on Forms 941 or Form 944 and W-2 in the normal manner.
- Nonresident Aliens – Report wages that are exempt under a tax treaty on Forms 1042 and 1042-S. Any additional wages paid over and above the exempt amount are reported on Forms 941 or Form 944 and Form W-2 in the normal manner.

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Reporting Wages Paid to Aliens Employed in the U.S. (cont.)



Even in situations in which all of a nonresident alien's wages are exempt from federal income tax under a tax treaty, and in which all federal wages would be reported on Form 1042-S, the filing of a Form W-2 is usually still required to report state and local wages and income taxes withheld.


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Summary



- We've learned more about these topics today:
 - The importance of U.S. Immigration law
 - Resident and nonresident alien tax status
 - U.S. Sourced income
 - Nonresident alien individuals as an employee or independent contractor.

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Training Objectives

You:

- Understand the policies your agency, university or community college must adhere to.
- Understand the importance of maintaining records of immigration and other taxation documents.
- Are familiar with the most common visa types and appropriate activities they can engage in.
- Are familiar with necessary documents to process a foreign national's record for employees, independent contractors and vendors.
- Understand the requirements of year-end reporting.

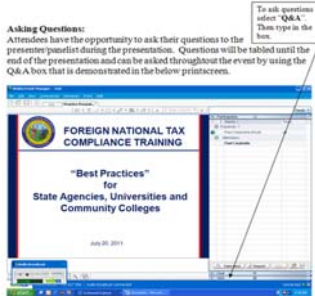
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Questions?

Asking Questions:
Attendees have the opportunity to ask their questions to the presenter via a list during the presentation. Questions will be tabbed until the end of the presentation and can be asked throughout the event by using the Q&A box that is demonstrated in the below printscreen.

To ask questions refer "Q&A". Then type in the box.




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Disclaimer

The information within this presentation does not constitute tax/legal advice and each participant should seek his/her own counsel in addressing specific situations. The NC Office of the State Controller is providing this training as a way of enhancing the knowledge of the participants who are implementing and maintaining the Foreign Nationals Tax Compliance Program within their University or Community College. Information presented is not intended to be used for the purpose of avoiding any penalties that may be imposed on the taxpayer by any taxing authority or agency.

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Contact Information

- Any questions that are not handled within the presentation will be responded to via email.
- Follow-up questions can be submitted to Jennifer Trivette, with the NC Office of the State Controller, at jennifer.trivette@osc.nc.gov or 919-707-0764.
- For additional training opportunities please visit:
 - http://www.osc.nc.gov/Foreign_Nationals/training.html
- Mark your calendars for the 1st Foreign National Tax & Immigration Compliance Workshop – September 26, 2012. More information to follow.

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THANK YOU!

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