

Nonresident Alien Payments Policy

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Revision History	Dennis Miller
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POLICY STATEMENT

It is the policy of the University to comply with the immigration and tax laws and regulations published by the United States Citizenship and Immigration Services (USCIS) and the Internal Revenue Service (IRS), respectively, in making payments to its nonresident alien students, employees, visiting scholars, and other foreign individuals. In order to comply with these laws and regulations, the University must correctly classify payments made to its foreign visitors and apply the appropriate immigration and tax treatment.

Departments are not authorized to deviate from the procedures set forth in this Policy. See **Authorization**.

REASON FOR POLICY

This Policy summarizes the tax withholding and reporting requirements for payments made to nonresident alien individuals through the University's accounts payable, payroll, and student systems, in accordance with regulations published by the IRS.

WHO SHOULD READ THIS POLICY

Any employee responsible for approving payments to a nonresident alien; the members of the Leadership Team, as well as supervisors and Business Managers who supervise an employee with such responsibilities.

POLICY TEXT

A nonresident alien is generally subject to federal income tax on his or her U.S. source income. The tax treatment of payments made to nonresident aliens, however, is governed by separate reporting and withholding rules not applicable to U.S. citizens. In order to ensure that the tax on payments to nonresident aliens is paid, the Office of Accounting and Business Services (ABS) is required to withhold the appropriate amount of tax from the payment, remit the tax to the IRS, and report the payment and withholding on the correct information return. Even though this tax is imposed on the foreign individual, the University can be held liable for any amount of tax not properly remitted to the IRS. In addition, a number of penalties can be imposed against the University if it does not meet its withholding and reporting obligations.

Tax Residency Status

In determining the appropriate tax treatment of a payment made to a foreign visitor, the University must first document the individual's tax residency status. IRS regulations used to determine an individual's residency status are related to, but are not the same as, the residency rules for immigration purposes, which are administered by the USCIS. There are four categories of residency for tax purposes:

- U.S. citizen,
- Permanent resident alien (i.e., a green card holder),
- Resident alien (i.e., has met substantial presence test), and
- Nonresident alien.

Under IRS regulations, a foreign individual is presumed to be a nonresident alien unless he or she is a resident alien under the "green card test" or the "substantial presence test." Resident aliens are taxed in the same manner as U.S. citizens, i.e., they are subject to the same withholding and reporting rules applicable to U.S. citizens.

While it is fairly straightforward to determine whether an alien has been granted a green card (and, therefore, meets the green card test), the substantial presence tests looks at the number of days the alien is physically present in the U.S. during the current calendar year and in the two preceding calendar years. Under this test, a foreign individual will be classified as a resident alien if he or she is present in the U.S. for at least 31 days in the current year and a total of 183 days in the current year and two preceding years, as determined by an IRS formula used for counting the days. See **Definitions**.

An important exception to the substantial presence test is available for teachers/trainees and students temporarily present in the U.S. who are in substantial compliance with their visa status. A teacher or trainee who is in the U.S. on a J or Q visa is exempt from counting his or her days of physical presence for two (2) calendar years. A student visiting the U.S. under an F, J, M, or Q visa is exempt from having to count days of presence for five (5) calendar years.

Undocumented Aliens

An alien in the U.S. in an undocumented status must count his or her days in accordance

with the substantial presences test. If the alien meets this test, the individual will be treated as a resident alien for tax purposes. Accordingly, any payments made to the alien will be subject to the same withholding and reporting requirements that apply to U.S. citizens.

GLACIER Nonresident Alien Tax Compliance System

Because of the significant complexity inherent in the immigration and tax rules applicable to nonresident aliens, the University has implemented the GLACIER Nonresident Alien Tax Compliance System to determine the federal tax treatment of payments made to its foreign students, employees, and other visitors.

GLACIER is a secure, web-based system that foreign visitors should use to provide their immigrant and tax data to the University. GLACIER helps determine an individual's tax residency status, including the calculation of the substantial presence test based on information provided by the alien about his or her prior visits to the U.S. GLACIER also determines an individual's income tax treaty eligibility and the correct rate of withholding. In addition, GLACIER manages a nonresident alien's paperwork, maintains his or her data, and prepares tax forms and required statements that the individual will need to file with the University. GLACIER also electronically generates the IRS Forms 1042-S in connection with any reportable payments received by the individuals during the calendar year.

Types of Payments

This Policy applies to all payments made by the University to or on behalf of a nonresident alien. Such University payments include, but are not limited to, the following:

- Salaries and wages,
- Independent contractor payments,
- Honoraria and guest speaker fees,
- Scholarships and fellowships, and
- Prizes and awards.

Payments made to a nonresident alien, or on his or her behalf, for travel expenses are not taxable if the payments are made in accordance with the **Travel and Entertainment Policy**. Payments for moving and relocation expenses are subject to the **Moving Allowance Policy**. Any taxable moving and relocation payments made to, or on behalf of, a nonresident alien would be subject to withholding based on the individual's business relationship with the University and other factors. See **U.S. Tax Withholding**.

In order to ensure the correct tax withholding and reporting treatment, payments to nonresident alien payees must be processed through the appropriate University payment system, i.e., the accounts payable, payroll, or student systems. See **Policy on Tax Treatment of Payments Made to Individuals**.

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California Tax Withholding

Form 1042-S Reporting

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RELATED INFORMATION

Type	Title
USF	Honorarium Payments Policy
USF	Moving Reimbursement Policy
USF	Independent Contractor Policy - under construction
USF	Policy on Tax Treatment of Payments Made to Individuals
USF	Travel and Entertainment Policy
External	IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
External	IRS Publication 901, U.S. Tax Treaties
External	IRS Publication 970, Tax Benefits for Education
External	External FTB Publication 1017, Resident and Nonresident Withholding Guidelines

DEFINITIONS

Term	Definition
Business Manager	A University employee, designated by the President, Vice President, Vice Provost, or Dean who is the financial manager for the University account(s) being used for the expense. This may include the President, Vice Presidents, Vice Provosts, or Deans.
FICA (Federal Insurance Contribution Act)	A two-part employment tax consisting of social security and Medicare. Half of the payment is made by the employee and half by the University. Employees normally pay 6.2% of their wages for social security, up to the wage

limit, and 1.45% of their total covered wages for Medicare. The University also pays 6.2% and 1.45% for social security and Medicare, respectively. An additional .09% in Medicare tax is withheld from an employee's wages in excess of \$200,000. The additional .09%, however, applies only to employees, not the University.

Green Card Test

A foreign individual is considered a resident alien under the green card test if he or she was a lawful permanent resident of the U.S. for any time during the calendar year. A lawful permanent resident is a foreign individual who has been granted a United States Permanent Resident Card (USCIS Form I-551). This card, which is commonly referred to as "green card," authorizes the individual to reside permanently in the U.S.

Individual Taxpayer Identification Number (ITIN)

A nine-digit taxpayer identification number issued by the IRS to a foreign individual who is not eligible to receive a social security number (SSN). An ITIN is required by a nonresident alien to obtain treaty benefits in connection with non-employee income received from the University and for purposes of filing a U.S. tax return.

Nonresident Alien

A person who is not a U.S. citizen or a resident alien for tax purposes.

Resident Alien

A foreign individual who meets either the green card test or the substantial presence test for the calendar year.

Social Security Number

A nine-digit number issued by the Social Security Administration (SSA) to U.S. citizens and non-citizens authorized to work in the U.S. An SSN is required by a nonresident alien employed by the University in order to obtain treaty benefits and for purposes of filing a U.S. tax return.

Substantial Presence Test

Under this test, a foreign individual is considered a resident alien if he or she was physically present in the U.S. for at least:

31 days during the current calendar year, and 183 days during the current calendar year and 2 preceding years, counting all of the days of physical presence in the current year, but only 1/3 the number of days of presence in the first preceding year, and only 1/6 the number of days in the second preceding year.

ADDITIONAL CONTACTS

Subject	Contact	Phone	Email
Disbursement Services	Dennis Miller	415.422.2102	milderd@usfca.edu
Tax Compliance	Dominic Daher	415.422.5124	dldaher@usfca.edu
ABS	Neva Nguyen	415.422.2402	nnguyen25@usfca.edu
Athletics (Admin 2)	<i>vacant</i>	415.422.6698	
ISSS (Admin 2)	Ying-Sing Lai	415.422.2654	ylai9@usfca.edu
Payroll Services	Gale Bettencourt	415.422.2575	gbettencourt@usfca.edu
Tax Compliance	Quyen Tu	415.422.2723	qtu@usfca.edu

FORMS

Form	Use	Location
Form I-9	Used by an employer to verify an employee's identity and eligibility to work in the U.S.	USCIS
Form SS-5	Used to apply for a social security card.	SSA
Form W-7	Used to apply for an ITIN.	IRS
Form W-8BEN	Used by a nonresident alien to claim treaty benefits in connection with a scholarship, fellowship, or royalty payment.	IRS
Form 592-B	Used to report California withholding on non-wage payments made to nonresidents.	FTB
Form 8233	Used by a nonresident alien to claim treaty benefits in connection with compensation received for employee or independent contractor services.	IRS
Form 1042-S	Used to annually report income and applicable withholding in connection with income paid to a nonresident alien.	IRS

RESPONSIBILITIES

Department/Business Manager

- Responsible for ensuring payments made to its foreign employees, students, and other individuals are made in accordance with this Policy and applicable University policies.

- Coordinates with Admin 1 in establishing GLACIER individual records for foreign visitors who will be paid through the accounts payable system. Informs visitor if his or her payment will be subject to federal and/or California withholding.

Accounting and Business Services

- Processes all accounts payable, payroll, and student payments made by the University in accordance with applicable federal, state, and local tax laws and regulations.
- Reviews any requests for an exception to this Policy in consultation with the Director of Internal Audit and Tax Compliance.

Internal Audit and Tax Compliance (Admin 1)

- Administers the GLACIER system and prepares Forms 1042-S for distribution to foreign payees and the IRS.
- Creates GLACIER individual records as requested for foreign individuals paid through accounts payable.
- Reviews GLACIER Tax Summary Reports and attachments for accuracy and completeness; assists foreign individuals in submitting follow-up information.
- Prepares Forms 592-B for distribution to California nonresident payees and the FTB.
- Reviews any requests for an exception to this Policy in consultation with the Associate Vice President for Accounting and Business Services.

Admin 2s

- Promptly notifies foreign individuals who are required to establish an individual record in the GLACIER system.
- Updates individual records in GLACIER, as necessary.
- Follows up with visitor to obtain information (e.g., an SSN) required for treaty benefits (Payroll Services Admin 2 only).

President, Vice Presidents, Vice Provosts, and Deans

Ensures that departments within his or her division are in compliance with this Policy and related University policies.

FREQUENTLY ASKED QUESTIONS

(N/A)

REVISION HISTORY

07/14/2014 - First publication of Policy.

APPENDICES

(N/A)

PROCEDURES

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California Tax Withholding

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Violations

AUTHORIZATION

Payments made by the University to nonresident aliens are subject to reporting and withholding as set forth in this Policy and applicable IRS regulations. Departments are not authorized to implement procedures that deviate from those described in this Policy. Any request for an exception to this Policy requires approval by the Associate Vice President for Accounting and Business Services and the Director of Internal Audit and Tax Compliance.

DETERMINING IF A GLACIER RECORD IS REQUIRED

The determination of whether a foreign visitor needs to complete a GLACIER individual record is dependent on the individual's relationship with the University, as follows:

Employment Relationship

An individual employed by the University must complete the USCIS Form I-9, Employment Eligibility Verification. If the employee checks the box "An alien authorized to work until ..." in Section 1 of the Form I-9, a GLACIER individual record is required. A GLACIER record is not required if the employee checks any of the following boxes in Section 1 of the Form I-9:

- A citizen of the United States,
- A noncitizen national of the United States, or
- A lawful permanent resident.
- A GLACIER record is also not required for a nonresident alien employee who will be working outside of the U.S.

Non-Employee Relationships

A GLACIER individual record must be completed for a foreign visitor who will be receiving a non-employee payment from the University, unless the visitor is a lawful permanent resident or a noncitizen national of the U.S. Visitors requiring a record include foreign students receiving taxable scholarship or fellowship payments and foreign scholars, speakers, consultants, and other visitors who receive payments.

If the visitor will be receiving a payment initiated in the accounts payable system, it is

essential that the sponsoring department contact the Office of Internal Audit and Tax Compliance so that a GLACIER record can be established for the individual before he or she enters the U.S. See **Admin 1 Responsibilities**.

If the foreign individual will be receiving a payment for non-employee services performed outside of the U.S., a GLACIER record is not required.

GLACIER PROCEDURES

The responsibility for administering the GLACIER system has been assigned to several departments within the University. In accordance with the protocol established under the GLACIER system, there is a single lead University administrator (Admin 1) who has the highest level access to GLACIER and has overall responsibility for the operation of the system. The Admin 1 works in Internal Audit and Tax Compliance. Individuals in other University departments are assigned Admin 2 responsibilities and have the second highest level access to GLACIER. Admin 2s have been appointed in the following departments:

- Athletics
- International Student and Scholar Services (ISSS)
- Payroll Services

Finally, the University's foreign visitors play a key role in the GLACIER process since they are typically responsible for entering their own personal data into the system.

The GLACIER responsibilities of the University and its foreign visitors are summarized as follows:

Admin 2 Responsibilities

Admin 2s are responsible for creating a new individual record in GLACIER in order to process an initial payment to a foreign individual. The Admin 2 advises the foreign visitor that he or she will receive an e-mail from "support@online-tax.net" and that the e-mail is not spam. The e-mail will direct the individual to access GLACIER and provide the requested information within ten (10) days of receiving the message.

Foreign Visitor Responsibilities

The foreign visitor should enter his or her information in GLACIER within 10 days of receiving the e-mail from support@online-tax.net. Although it is not mandatory that the visitor use GLACIER, use of the system will expedite the granting of any treaty benefits available to the individual and the timely payment of such benefits.

After entering his or her data, the individual must print, review, date, and sign the Tax Summary Report and all supporting forms (e.g., IRS Forms W-4, 8233, W-8BEN, etc.) and statements generated by GLACIER. The individual must then forward the signed Tax Summary Report and attachments to the Admin 1 in Internal Audit and Tax Compliance, as instructed on the Tax Summary Report.

If the individual is claiming treaty benefits on a Form 8233 (employee or independent

contractor compensation) or a Form W-8BEN (scholarship, fellowship, and royalty payments), he or she will need to provide a valid social security number (SSN) or an individual taxpayer identification number (ITIN) before any treaty benefits may be granted. In such cases, GLACIER will place a hold on the visitor's record until he or she has applied for and obtained an SSN or ITIN, as appropriate. After ABS receives evidence that the individual has obtained an SSN or ITIN, treaty benefits (i.e., reduced withholding of income taxes or exemption from withholding) will be granted on a *prospective* basis, subject to University payment processing deadlines.

For additional information on the income tax withholding benefits available under a tax treaty between the U.S. and a particular country, see **IRS Publication 901, U.S. Tax Treaties**.

Admin 1 Responsibilities

The Admin 1 will review the Tax Summary Report to ensure that it is accurate and that all attached forms and documents are complete. Copies of all documents will be retained by Internal Audit and Tax Compliance for use in filing the IRS Forms 1042-S.

If the foreign visitor will be receiving a payment initiated in the accounts payable system, the sponsoring department should contact the Admin 1 in advance so that an individual record is created for the visitor in the GLACIER system. The Admin 1 will inform the department if the visitor is eligible for treaty benefits and will provide the department with a copy of the Tax Summary Report and attachments required for obtaining such benefits. Because treaty benefits are granted on a prospective basis, it is essential that the department contact the Admin 1 before the visitor enters the U.S. and not at the time payment will be requested. If the payment will be subject to withholding, the department must inform the visitor in advance that his or her payment will be reduced due to mandatory federal and/or California withholding (see below).

If the foreign visitor will be hired as an employee, Payroll Services, in coordination with the Admin 1, will follow up with the visitor to obtain any required information needed to obtain treaty benefits, including evidence that a visitor has applied for an SSN.

U.S. TAX WITHHOLDING

The withholding of tax on a payment made to a nonresident alien is dependent on a number of factors, including the type of payment, whether the payment is sourced to the U.S., the availability of a treaty exemption, the individual's visa type, and other factors. See **IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities**. The following summary describes the tax procedures established by ABS for the treatment of payments commonly made by the University to nonresident aliens:

Salaries and Wages

Nonresident aliens employed by the University are subject to the normal graduated income tax withholding rules applicable to U.S. citizens, unless the income is exempt under a tax treaty. The services performed by the nonresident alien, however, must be performed

within the U.S. If the services are performed outside of the U.S., then the salaries and wages are foreign-source and no withholding is required.

Although salaries and wages paid by the University to a nonresident alien are subject to graduated withholding, the individual is limited to a filing status of "single," regardless of his or her actual marital status. In addition, with certain exceptions, the individual may claim only one personal exemption. The GLACIER system will produce a modified Form W-4 for the nonresident alien, taking into account any exceptions that may be available to the individual.

Salaries and wages paid to a nonresident alien are also subject to withholding for FICA tax (see **Definitions**), unless an exception applies. The most common exception available to a nonresident alien is based on the individual's immigration status. A nonresident alien holding an F-1, J-1, M-1, or Q-1 visa is exempt from FICA tax on his or her University earnings, provided that such earnings are in payment for services performed to carry out the purpose for which the individual was admitted to the U.S.

A nonresident alien student employee may also qualify for the student FICA exception based on his or her enrollment status and hours of work. The student FICA exception is administered by Payroll Services, in accordance with IRS regulations. In addition, a nonresident alien employee may be exempt from FICA tax under a totalization agreement between the U.S., and his or her home country. In order to claim this exemption, the nonresident alien must provide Payroll Services with a certificate of coverage supplied by the agency that administers the social security system in the alien's home country.

Independent Personal Services

Payments made to a nonresident alien for the performance of independent personal services within the U.S., including payments for consulting, speaking and performance fees, honoraria, and similar payments are subject to income tax withholding at a rate of 30%, unless a tax treaty exemption applies. Such payments are not subject to the withholding of FICA tax. If the services are performed outside of the U.S. the income is foreign source and not subject to income tax withholding or reporting.

Special rules apply to B-1 (business) and B-2 (tourist) visa holders paid an honorarium or similar payment for performing an academic activity at the request of the University. The activity must not last more than nine (9) days at a single institution and the individual must not have received similar payments from more than five (5) institutions in the previous six-month period. B visa holders receiving such payments from the University will be required to sign a statement to this effect generated by the GLACIER system.

The same payment restrictions applicable to B-1 and B-2 visitors also apply to individuals traveling under the Visa Waiver Program in a WB (business) or WT (tourist) status.

A nonresident alien engaged as independent contractors to provide consulting and other independent personal services must meet the requirements set forth in the Independent Contractor Policy. An honorarium paid to a nonresident alien is subject to the **Honorarium Payments Policy**.

Scholarships and Fellowships

A scholarship or fellowship provided to a nonresident alien is sourced based on the residence of the person or entity making the grant. Thus, grants made by the University or another U.S. entity are treated as U.S. source income to the recipient. Grants made by a foreign entity are considered nontaxable foreign-source income; the University is not required to report or withhold tax on such grants.

A U.S. source scholarship or fellowship is not taxable to the extent that the funds provided under the grant are used for “qualified expenses” and there is no expectation that the recipient perform any substantial services (i.e., either past, present, or future services) in return for receiving the grant. The portion of a grant related to the performance of services represent wages, which must be paid to the recipient through the payroll system.

Assuming that a scholarship or fellowship includes no service requirement, any funds used for qualified expenses are not taxable. Qualified expenses include tuition, fees, books, supplies, equipment, and other mandatory fees required for classes or enrollment. The amount used to pay required health insurance premiums in order for a student to be enrolled is also considered a qualified expense and is not taxable. Any portion of a scholarship or fellowship used to pay for “nonqualified expenses” such as room and board, travel, moving expenses, and other living expenses is taxable to the recipient. This would be the case regardless of how the funds were paid, i.e., directly to the student or on his or her behalf (e.g., applied to the individual’s student account). **See IRS Publication 970, Tax Benefits for Education.**

The taxable portion of a scholarship or fellowship provided to a nonresident alien present in the U.S. on an F-1, J-1, M-1, or Q-1 visa is subject to income tax withholding at a rate of 14%, unless a treaty exemption applies. Such grants are not subject to withholding for FICA taxes.

Prizes and Awards

A prize or an award given by the University to a nonresident alien is generally subject to income tax withholding at a rate of 30%. There are no tax treaties that exempt prizes and awards from taxation.

CALIFORNIA TAX WITHHOLDING

Salaries and wages paid to a nonresident alien are subject to withholding for California Personal Income Tax in the same manner as U.S. citizens and are reportable to the Franchise Tax Board (FTB) on Form W-2.

Non-wage payments (e.g., consulting, honoraria, etc.) made to a nonresident alien for the performance of services in California are subject to California withholding at a rate of 7% if the total payments made to the individual are more than \$1,500 for the calendar year. These payments are reportable to the nonresident and the FTB on Form 592-B, prepared by Internal Audit and Tax Compliance. For additional information, see **FTB Publication**

1017, Resident and Nonresident Withholding Guidelines.

FORM 1042-S REPORTING

The Form 1042-S is used to report income paid to a nonresident alien and any withholding taken from such income. A separate Form 1042-S must be provided to each nonresident alien payee and the IRS by March 15 of the year following the year in which the income was paid.

The following are examples of payments made by the University that are reportable on a Form 1042-S:

- Salaries and wages that are within the maximum exemption amount under a tax treaty. (Earnings paid to a nonresident alien in excess of the exemption limit would be reportable on a Form W-2 and taxed at the graduated withholding rates. In such cases, the individual would receive both a Form 1042-S and a W-2 for the same calendar year.)
- Honoraria, consulting, and other payments for independent personal services.
- Scholarship and fellowship payments used for nonqualified expenses. The portion of a grant used for qualified expenses is not reportable on a Form 1042-S.

The Forms 1042-S are produced annually by the GLACIER system and may be received electronically by those nonresident aliens electing to do so.

VIOLATIONS

A violation of any portion of this Policy may result in disciplinary action, up to and including termination of employment and/or legal action.