

# University of Utah Payments to Non Resident Aliens

## Nonresident Alien Visitors Non-Employee Payments

### Visa Types:

- B-1 Business visitor
- B-2 Tourist visitor
- WB Business visitor (through visa waiver program)
- WT Tourist visitor (through visa waiver program)
- J-1 Exchange visitor can pay consultants and independent contractors

### B-1, B-2, WB and WT Visa Visitors:

WB/WT is issued to an individual from a designated country participating in the Visa Waiver Program. Not all countries participate in this program currently only 27 participate. See [www.travel.state.gov/visa/temp/without/without\\_1990.html](http://www.travel.state.gov/visa/temp/without/without_1990.html) for more information on WB/WT visas. Canadian individuals through NAFTA are not required to enter on a visa or passport when they are short-term U.S. visitors. They are considered the same as the B-1/B-2 visa holder and would complete the same documents for payments except for the visa & passport.

Honorarium or Guest Lecturer payments on a B-1/B-2 or WB/WT visa require the completion of the Form "Certification of Academic Activity". The individual must certify that they have not accepted Honoraria (or Guest Lecture fees) and/or incidental expense reimburses from more than four institutions of higher education during the past six months or have their activity at that institution exceed nine days.

Required documents attached to a check request to pay an Honorarium:

#### SSN/ITIN and Tax Treaty Benefit

1. Visa copy
2. Passport copy
3. Completed Form 8233
4. W-8BEN
5. Certification of Academic Activity

#### SSN/ITIN and no Tax Treaty Benefit *Required 30% withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. Certification of Academic Activity

#### No SSN/ITIN *Required 30% withholding*

1. Visa copy
2. Passport copy

3. W-8BEN
4. Certification of Academic Activity

Required documents attached to a check request to pay a Guest Lecturer:

**SSN/ITIN and Tax Treaty Benefit**

1. Visa copy
2. Passport copy
3. Completed Form 8233
4. W-8BEN
5. Certification of Academic Activity
6. Guest Lecturer Form

**SSN/ITIN and no Tax Treaty Benefit *Required 30% withholding***

1. Visa copy
2. Passport copy
3. W-8BEN
4. Certification of Academic Activity
5. Guest Lecturer Form

**No SSN/ITIN *Required 30% withholding***

1. Visa copy
2. Passport copy
3. W-8BEN
4. Certification of Academic Activity
5. Guest Lecturer Form

**J-1 Visa:**

A J-1, exchange visitor visa, is required for Consultants or Independent Contractors to perform services in the United States.

Required documents attached to a check request for payment to a Consultant or Independent Contractor:

**SSN/ITIN and Tax Treaty Benefit**

1. Visa copy
2. Passport copy
3. Completed Form 8233
4. Consultant/Independent Contractor agreement
5. W-8BEN

**SSN/ITIN and no Tax Treaty Benefit *Required 30% withholding***

1. Visa copy
2. Passport copy
3. Consultant/Independent Contractor agreement
4. W-8BEN

**No SSN/ITIN Required 30% withholding**

1. Visa copy
2. Passport copy
3. Consultant/Independent Contractor agreement
4. W-8BEN

**Tax Treaties:**

Many countries have negotiated tax treaties with the United States. Treaty provisions vary by country and by the type of payment. Treaties will often be re-negotiated and lose some of their benefits. To receive tax treaty benefits the individual must have a SSN or ITIN and there must be a treaty article covering that type of payment. They also must have a visa that allows the treaty benefit.

**Form 8233:**

This is the IRS form used to apply for the tax treaty benefit. It needs to be completed and signed by the individual who is to be paid. To qualify, the individual must have a SSN/ITIN and an applicable tax treaty. Without both of these, we are required to withhold tax at 30% and submit to the IRS.

**Social Security number:**

Many foreign individuals have Social Security Numbers. They will use that same SSN for the rest of their lives, the same as a U.S. individual. This number does not expire.

For this type of payment only the J-1 visa holder may apply for a Social Security Number. They must apply in person at the Social Security Office. It may take several weeks for the SSN to be issued. All of the visitor's information must be cleared through the Department of Homeland Security. The B-1/B-2 WB/WT visa types may apply for an Individual Taxpayer Identification Number. The IRS Form W-7 is completed by the individual and sent to the IRS along with the required documents included in the instructions. If an individual qualifies to receive a SSN, they cannot apply for an ITIN.

**EXPENSE REIMBURSEMENTS**

Payments made to, or on behalf of an NRA for the purpose of reimbursing travel and lodging expenses are not reportable to the IRS on the condition that accountable plan rules are met. The benefits of this IRS position are that if "accountable plan" rules are followed:

1. The NRA is not required to provide a taxpayer identification number
2. The NRA is not required to file Form 8233 to eliminate withholding tax if the NRA is from a treaty country
3. There is no withholding required on travel expense reimbursements even if the NRA is not from a treaty country: and

4. The University is not required to report travel expense reimbursements for NRAs to the IRS

The requirements of the accountable plan rules are found in Treasury Regulation 1.62-2; and they require that the payee must:

1. Establish the business purpose and connection of the expenses
2. Substantiate the expenses claimed to the payer within a reasonable time period; and
3. Return any amounts to the payer, which are over the amount of the substantiated expenses within a reasonable period of time.

Amounts which are over the amount of the substantiated expenses, or which are not accounted for within a reasonable time period, are reportable to the IRS on Forms 1042S and are subject IRC Section 1441 withholding (generally 30%).

Documents required for a travel reimbursement to a nonresident alien :

- \* Copy of their visa
- \* Travel receipts

### **General Tax Information for University of Utah Nonresident Alien Employees**

New Nonresident Alien Employees should make an appointment with tax services to complete applicable tax documents.

**The following is general information offered as a resource to nonresident alien (NRA) University of Utah employees. It is not to be considered as tax advice. Your individual circumstances may not be covered in this information sheet. If you would like to consult additional resources, please refer to the list at the end of this information sheet. The Tax Services Office cannot provide you with individual tax consultation.**

As a University of Utah employee your paychecks may have the following taxes deducted from your gross earnings:

- Federal (United States) income tax
- Utah state income tax
- Federal Social Security tax (also called FICA)

### **Federal income tax**

People who earn payroll income must pay federal income taxes unless such income is exempt under a tax treaty (see below.) The amount of income that is taxable and the percentage of taxes withheld depends in part on whether you are a resident or a nonresident for tax purposes. Residence or nonresidence for tax purposes is not the same as residence (immigrant status) or nonresidence (non-immigrant status) as for immigration purposes. If you are a Resident, the University will withhold a portion of

your income each time you are paid and submit that amount to the federal government on your behalf as federal taxes withheld. The amount withheld is computed based on your income level and the number of exemptions you claim for your spouse and children. According to Internal Revenue Service (IRS) regulations an NRA withholding is based on one exemption for himself or herself, plus \$7.60 per week extra tax withholding effective 1/1/2000 (or \$16.60 semi-monthly). In general, an NRA is not entitled to exemptions for a spouse or children.

### **Tax Treaties**

An NRA's payroll earnings may be exempt from federal and state income tax pursuant to an income tax treaty between their country of residence and the United States. For a current list of tax treaties please consult IRS publication 901 or the following website provides access to current tax treaties: [www.windstar-tech.com](http://www.windstar-tech.com). If you would like to apply the benefit of a tax treaty to your payroll earnings you must complete IRS Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. Please make an appointment to fill out Form 8233 at the Tax Services office. You can make an appointment by calling 581-5414. You will need to bring your passport and visa with you to your appointment to fill out Form 8233. A fully completed Form 8233 requires a social security number. Once you have fully completed Form 8233, Tax Services will verify the information and forward the Form to the IRS. The IRS has a ten day review period to accept or reject the form. We cannot apply the treaty benefits to payroll withholding until the ten day review period is over. Form 8233 is required for each calendar year.

### **Federal Tax Return**

All NRAs present in the United States under an F, J, M, or Q visa must file a federal tax return, even if they had no U.S. source income. In the tax return you compute the actual income for the year and the exact amount of taxes owed and compare that to the amount of taxes withheld by your employers. You either pay additional taxes to the government or request a refund from the government based on the difference between the amount owed and the amount actually paid. Federal tax returns are generally due for the calendar year by April 15 of the following year. NRA's file tax return Form 1040NR or 1040NR-EZ. Once an NRA becomes a resident alien for tax purposes, they are entitled to file Form 1040, 1040-EZ or 1040A. However, if an NRA becomes a resident for tax purposes and still is entitled to treaty benefits, they must file Form 1040NR to claim the treaty benefits.

### **Utah State Tax**

Each state makes its own rules on the taxation of individuals and businesses. Some states have no income tax and others have tax systems which are quite different from the federal system. Utah has an income tax that starts with the federal adjusted gross income. Therefore, if you have a federal tax treaty which exempts all of your income from tax,

generally you will owe no Utah income tax. The Utah State Tax form you would complete is the TC-40.

### **FICA Tax**

Social security or FICA taxes are required on payroll earnings at a rate of 15.3%. Half of that is paid by the employer and half is paid by the employee and withheld from the employee's gross pay. NRAs may be exempt from FICA tax. F-1 students and J-1 students and scholars are exempt from social security taxes for the period of time they are nonresident aliens for tax purposes if their employment is directly related to their purpose for being in the United States.

Generally, authorized F-1 and J-1 employment, including practical or academic training, is exempt from social security taxes provided you are a nonresident for tax purposes. Students who have been in the U.S. for more than five calendar years will be treated as residents for tax purposes. Non-students with J-1 visas who have been in the U.S. for more than two calendar years are considered residents for tax purposes and are required to pay FICA taxes.

F-2 and J-2 visa holders are not exempt from FICA tax. The primary purpose of the F-2 and J-2 visa holders are to accompany the "-1" visa holder not to be a student, teacher or researcher.

Student visa holders who become resident aliens may be entitled to claim a "student FICA" exemption from FICA tax. The payroll department administers the student FICA exemption.

### **General Tax Information for University of Utah Nonresident Alien Scholarship/Fellowship Recipients**

**The following is general information offered as a resource to nonresident alien (NRA) University of Utah scholarship/fellowship recipients. It is not to be considered as tax advice. Your individual circumstances may not be covered in this information sheet. If you would like to consult additional resources, please refer to the list at the end of this information sheet. The Tax Services Office cannot provide you with individual tax consultation.**

### **Federal income tax**

Nonresident Alien recipients of a scholarship/fellowship must pay federal income taxes unless such income is exempt under a tax treaty (see below.) The 14% tax withholding depends in part on whether you are a resident or a nonresident for tax purposes.

Residence or nonresidence for tax purposes is not the same as residence (immigrant status) or nonresidence (non-immigrant status) as for immigration purposes. If you are a Resident for tax purposes, the University will not withhold taxes from your scholarship/fellowship check. If you are a Nonresident for tax purposes, 14% will be withheld unless exempt under a tax treaty. Students on an F-1 or J-1 visa who have been in the U.S. for more than five calendar years will be treated as residents for tax purposes. Non-students with J-1 visas who have been in the U.S. for more than two calendar years are considered residents for tax purposes. Scholarship/fellowship recipients on F-2 and J-2 visas are not eligible for tax treaty benefits. The primary purpose of the F-2 and J-2 visa holders is to accompany the “-1” visa holder, not to be a student.

### **Tax Treaties**

An NRA’s scholarship/fellowship may be exempt from federal tax pursuant to an income tax treaty between their country of residence and the United States. For a current list of tax treaties please consult IRS publication 901 or the following website provides access to current tax treaties: [www.windstar-tech.com](http://www.windstar-tech.com). If you would like to apply the benefit of a tax treaty to your scholarship/fellowship, you must complete IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Please make an appointment to fill out Form W-8BEN at the Tax Services office. You can make an appointment by calling 581-5414. You will need to bring your passport and visa with you to your appointment to fill out Form W-8BEN. A fully completed Form W-8BEN requires a social security number. Once you have fully completed Form W-8BEN, Tax Services will verify the information and keep it on file. This form will remain valid until a change in circumstances makes any of the information on the form incorrect. If a change in circumstances makes any of the information on the form W-8BEN incorrect, you must notify us within 30 days.

### **Federal Tax Return**

All NRAs present in the United States under an F, J, M, or Q visa must file a federal tax return, even if they had no U.S. source income. In the tax return you compute the actual income for the year and the exact amount of taxes owed and compare that to the amount of taxes withheld by the payee. You either pay additional taxes to the government or request a refund from the government based on the difference between the amount owed and the amount actually paid. Federal tax returns are generally due for the calendar year by April 15 of the following year. NRA’s file tax return Form 1040NR or 1040NR-EZ. Once an NRA becomes a resident alien for tax purposes, they are entitled to file Form 1040, 1040-EZ or 1040A. However, if an NRA becomes a resident for tax purposes and still is entitled to treaty benefits, they must file Form 1040NR to claim the treaty benefits.

### **Utah State Tax**

Each state makes its own rules on the taxation of individuals and businesses. Some states have no income tax and others have tax systems that are quite different from the federal system. Utah has an income tax that starts with the federal adjusted gross income.

Therefore, if you have a federal tax treaty that exempts all of your income from tax, generally you will owe no Utah income tax. The Utah State Tax form you would complete is the TC-40.

### **Additional Resources**

You may wish to consult the following resources in order to gain further understanding of your tax situation:

Analysis of current tax treaties [www.windstar-tech.com](http://www.windstar-tech.com)

Internal Revenue Service [www.irs.gov](http://www.irs.gov)

Try-

Publication 4, Student's Guide to Federal Income Tax

Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Corporation

Publication 519, U.S. Tax Guide for Aliens

Publication 901, U.S. Tax Treaties

Publication 970, Tax Benefits for Higher Education

You can also print IRS forms from the IRS website.

Utah State Tax Commission [www.tax.utah.gov](http://www.tax.utah.gov)