

Baylor University

Tax Guide for Foreign Visitors

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Introduction

The purpose of this manual is to provide faculty and staff with basic information regarding tax and immigration laws of the United States. The manual provides guidance for the most common scenarios encountered by the University, but does not cover all tax situations. The material contained herein should not be viewed as either a complete treatment of all tax questions or an official University position as to each matter under review. The intent of this material is to provide useful information that will assist University personnel in making correct decisions concerning the tax implications of payments made to foreign visitors. Specific questions regarding this information should be directed to the Payroll Office. Under no circumstance should University personnel use the information contained in this manual to provide any tax advice.

I. Tax Compliance Requirements for Foreign Visitors

A. University Responsibilities

Baylor University is responsible for complying with all federal laws as applicable to foreign visitors. This requirement includes compliance with both tax and immigration laws. Thus, the University's requirement is twofold:

1. The University must make sure any foreign visitor that comes to campus as a student, employee, or independent contractor is legally present in the United States under the requirements of the law and Immigration and Naturalization Service authority.
2. The University must make sure any foreign visitor that receives any type of payment (wages, honorariums, scholarship or fellowship, etc.) from the University is properly reported to the Internal Revenue Service.

B. Sponsoring Departments Responsibilities

The University department that hosts a foreign visitor bears the responsibility for ensuring that the foreign visitor completes the proper paperwork so that payments made to the foreign individual are in compliance with all requisite tax and immigration laws. The Payroll Office is available to assist and answer questions and provide all necessary forms.

Important Note: No contractual arrangement to pay a foreign visitor should be made prior to contacting the Payroll Office. This procedure helps ensure that the University does not violate the requisite tax and immigration laws.

II. Definitions

A. Candidate for a Degree - A candidate for a degree includes any full-time or part-time student enrolled in a course which may lead to a degree, whether or not the student's particular educational program leads to a degree.

B. FICA (Federal Insurance Contribution Act) - United States tax that provides for a Federal system for old age, survivors, and disability insurance and Medicare hospital insurance.

C. Immigration and Naturalization Service (INS) - The United States government agency that is responsible for overseeing and issuing visas to foreign visitors.

D. Internal Revenue Service (IRS) - The United States government agency that enforces tax laws and collects federal taxes.

E. Nonresident Alien for Tax Purposes - A Nonresident Alien is an individual who is not a citizen of the United States, or has not been admitted to the United States and does not meet either the “[green card](#)” test, the [substantial presence test](#) or is a [dual status alien](#). (See Section III).

F. Resident Alien for Tax Purposes - A Resident Alien is an individual who is either a United States citizen, or has been legally admitted to the United States and meets either the “[green card](#)” test, the [substantial presence test](#) or is a [dual status alien](#). (See Section III).

III. Residency Determination for Tax Purposes

An alien will become a Resident Alien under one of the following three conditions:

- A. [Green Card Test](#)
- B. [Substantial Presence Test](#)
- C. [Dual Status Alien](#)

A. Green Card Test

1. Alien Registration Card

An individual is a Resident Alien for tax purposes if the person is a lawful permanent resident of the United States at any time during the calendar year. An individual achieves this status if the INS has issued the individual an alien registration card, also known as a “green card.”

Starting/Ending Date: If the green card test is met at any time during the calendar year (but the substantial presence test is not met, see [Section III.B.](#)), the residency starting date is the first day in the calendar year in which the individual is present in the United States as a lawful resident. The ending date for residency under the green card test is the individual’s last day of presence in the United States.

However, a green card holder that resides outside the United States is still considered a Resident Alien for tax purposes unless: (1) the person voluntarily turns in his/her green card to the INS or IRS and renounces his/her United States immigration status; (2) immigration status is administratively revoked by the INS; or (3) immigration status is judicially revoked by a United States federal court.

2. *Procedures for Green Card Test*

The international visitor must show proof of the “green card” to the Payroll Office or sponsoring department.

B. Substantial Presence Test

1. *Calculation*

An individual is a Resident Alien for tax purposes if the person meets the “substantial presence” test for the calendar year. To fulfill the requirements of this test, the individual must be physically present in the United States on at least:

- a. 31 days during the current year, **and**
- b. 183 days during the three-year period that includes the current year and the two preceding calendar years.

(1) Current year days in U.S. x 1	= _____	days
(2) First preceding year days in U.S. x 1/3	= _____	days
(3) Second preceding year days in U.S. x 1/6	= _____	days
(4) Total Days in U.S.	= _____	days

If line (4) equals or exceeds 183 days, then the 183-day test has been established.

Example: An individual was physically present in the United States for 70 days in 2002, 100 days in 2001, and 212 days in 2000. To determine if the substantial presence test is met, first determine if the individual was present for at least 31 days in the current year (70 days in 2002). If yes to the first question, then determine if the 183-day test is met. Since the total for the three year period is 138.66 days (70 days + 33.33 days + 35.33 days), the individual is not considered a Resident Alien under the substantial presence test for 2002.

Starting/Ending Date: If the substantial presence test is satisfied for a calendar year, the residency starting date is the first day the individual is present in the United States during that calendar year. The ending date under the substantial presence test is the individual’s last day of presence in the United States followed by a period which: (1) the individual is not present in the United States; (2) the individual has a closer connection to a foreign country than to the United States; and (3) the individual is not a resident of the United States during the calendar year following that of the person’s last day of presence in the United States.

2. *Procedures for Substantial Presence Test*

The foreign visitor will complete a "[Foreign National Information Form](#)" and provide copies of the passport, visa, and I-94 card. The offices/departments responsible for distributing and receiving the proper paperwork are as follows:

- a. International Office: Student Workers and Teachers/Researchers on F-1 and J-1 visas are handled through the International Office. This office can be contacted by calling 710-1461.
- b. General Counsel Office: H-1B visas are handled through the General Counsel's Office.
- c. Sponsoring Department: The sponsoring department handles non-employee visitors (i.e., visiting lecturer). **Important note: Prior to making any arrangements with an international visitor, the department must contact the Payroll Office to discuss immigration, tax residency and tax laws.**

All paperwork is to be forwarded to the Payroll Office which will review the forms and perform the calculations for the substantial presence test to determine whether the visitor is a Nonresident or Resident Alien.

3. *Exceptions to the Substantial Presence Test*

The following days of presence in the United States are not counted for purposes of the substantial presence test:

- a. individual commutes from residence in Canada or Mexico;
- b. individual was in United States less than 24 hours in transit;
- c. individual was unable to leave United States due to medical condition that developed while in the United States; and/or
- d. individual was an exempt person.

An exempt person is defined as follows:

- a. foreign government related individual;
- b. teacher, trainee, researcher on J or Q visa, who substantially complies with the requirements of the visa – do not count days for the first two calendar years (does not include students on J visas);
- c. student with F, J M or Q visa, who substantially complies with the requirements of the visa – do not count days for the first five calendar years*; or
- d. professional athlete temporarily present in United States to compete in a charitable sports event.

The counting rules are based on calendar years, not twelve month periods. For example, a J visa holder arrives on November 15, 1999. Under the substantial presence test, 1999 is the first calendar year, even though the alien arrived in November.

** A foreign student can exceed the 5 year limitation if the student can establish (1) the student does not intend to reside permanently in the United States; (2) the student has not taken any steps to change his/her United States*

*immigration status toward permanent residency; (3) the student has substantially complied with the requirements of his/her visa; and (4) the student has maintained a closer connection with a foreign country than with the United States. **The University will continue to treat the student as a Nonresident Alien only if the student provides a copy of a letter from the IRS stating that the student should continue to be treated as a Nonresident Alien under the Closer Connection Exception.***

Closer Connection to Foreign Country – Even if an individual meets the substantial presence test, the person can be treated as a Nonresident Alien by establishing:

- a. individual was present in the United States fewer than 183 days in the current year;
- b. individual's tax home is in a foreign country;
- c. individual maintained a closer connection to the foreign country than to the United States; and
- d. individual has not taken any steps to change United States immigration status to permanent residency, or taken any steps to adjust immigration status in the United States.

Once the substantial presence test is met, the University will treat the individual as a Resident Alien. The individual must make the closer connection claim on Form 8840 which should be attached to the individual's income tax return.

C. Dual Status Alien

An alien may elect to be treated as a Resident Alien for part of the prior tax year if the alien becomes a Resident Alien in the current tax year. IRS Publication 519 provides the tests that must be met in order to make this claim. The alien must make this claim on his/her individual tax return.

IV. Federal Income Tax Withholding and Reporting for Nonresident Alien

A. Types of Payments

Payments fall into the following four categories:

1. Employee Wages
2. Fellowships and Scholarships
3. Independent Contractor Payments and Honorariums
4. Travel/Lodging/Meal Expenses

1. Employee Wages

- a. Payments for services performed by an individual for the University in which the services performed by an employee are subject to the direction and control of the University, its faculty or staff. Unless exempted by a treaty, the payments are subject to U.S. tax withholding; however, the payment of wages is exempt from FICA.
- b. The University shall comply with the following procedures with respect to the reporting and withholding of federal income taxes for aliens:
 - (1) Identify all aliens on the payroll.
 - (2) Divide the aliens into two groups: Resident Aliens and Nonresident Aliens.
 - (3) For tax purposes (barring the application of a treaty), treat Resident Aliens in the same manner as United States citizens.
 - (4) The tax treatment of Nonresident Aliens should be treated as follows:
 - (a) A W-4 should be completed unless the individual is exempt under a tax treaty.
 - (b) [Form 8233](#) shall be filed with the Payroll Office if the individual is claiming an exemption from federal income tax withholding because of a tax treaty.
 - (c) The Payroll Office shall report wages paid to a Nonresident Alien exempt under a tax treaty on Forms 1042 and 1042-S. Any wages paid to a Nonresident Alien exceeding the exempt amount shall be reported on Form W-2.

c. Common Employee Visa Types

F-1	Student in academic or language program May be employed at the institution authorized to attend.
J-1	Exchange Visitor Student Employment May be employed at the institution authorized if the employment is related to the students' course of study or there is urgent financial need. Other Employment May engage in employment as stated on their Form IAP-66.
H-1B	Temporary Worker of distinguished merit and ability Restricted employment. Authorized to work only for the petitioner.

2. Fellowships and Scholarships

a. Payments made to an individual for educational purposes. Qualified scholarships are not taxable if:

- (1) The scholarship or fellowship is awarded to a candidate for a degree; and
- (2) The scholarship or fellowship is used to pay for tuition, fees and books required for a particular course.

b. All scholarships, fellowships and grants paid to Resident Aliens are not required to be reported to the IRS. All such amounts paid to a Nonresident Alien are not reported to the IRS if such payments are a “qualified scholarship” as defined by Internal Revenue Code section 117. Payments that are not qualified scholarships must be reported to IRS on Forms 1042 and 1042-S. The taxable portion of a scholarship or fellowship paid to a Nonresident Alien is subject to federal income tax withholding at the rate of 30%, unless the payments are exempt under a tax treaty. However, Nonresident Aliens who are present in the United States in F-1, J-1, M-1, or Q nonimmigrant status are subject to withholding at only the rate of 14%.

c. **Form W-8BEN** must be completed by the Nonresident Alien and filed with the University if the Nonresident Alien claims that any part of the scholarship or fellowship is exempt from taxation because of a tax treaty. The University is responsible for monitoring the tax treaty benefit eligibility period and must withhold federal income tax at 14% or 30% on the taxable portion of the scholarship or fellowship after the tax treaty period has expired. The Form W-8BEN is valid for three years. The University cannot accept a Form W-8BEN if it does not contain a valid Tax Identification Number (TIN). If a TIN is not provided, the University shall withhold tax on the taxable portion of the scholarship or fellowship.

d. Any stipends, tuition waivers or any other type of financial aid paid to a Nonresident Alien that requires services in exchange for the financial aid will be taxable as wages and reportable on Forms 941 and W-2 (see Section IV.A.1. regarding employment of Nonresident Aliens). If the Nonresident Alien is receiving both a taxable scholarship and wages and the Nonresident Alien wants to claim a treaty exemption for both types of payments, he or she may choose to claim both treaty exemptions on Form 8233 and not use Form W-8BEN.

3. Independent Contractor Payments and Honorariums

a. Payments made for services that are not considered employee wages. Unless exempted by a treaty, payment is subject to 30% tax. The Nonresident Alien may claim the lesser tax treaty rate by filing Form 8233 and submitting the form to the Payroll Office. The Payroll Office will report the payment on Forms 1042 and 1042-S, even if the entire amount of compensation is exempt under a tax treaty.

b. Unless the visitor is from a treaty country, has completed a Form 8233, **and** has a United States Social Security Number or TIN, the payment **must** be taxed at a rate of 30%. This issue must be addressed at the time an agreement is made with the international visitor.

c. Non-Employee Visa Types

B-1 Visitor for Business

No employment permitted. May reimburse for expenses only.

Except for honoraria from a college or university if the visitor meets the 9/5/6 rule

No more than 9 days at the University and has not been paid by more than 5 other universities within the last 6 months. ([Compliance Statement for Payment](#))

B-2 Visitor for Tourism

No employment permitted.

Except for honoraria from a college or university if the visitor meets the 9/5/6 rule.

No more than 9 days at the University and has not been paid by more than 5 other universities within the last 6 months.

WB Visa Waiver - Business

Same as B-1

WT Visa Waiver - Tourist

Same as B-2

TN-1 Treaty NAFTA (Canada)

Restricted employment.

Authorized to work only for the petitioner

TN-2 Treaty NAFTA (Mexico)

Restricted employment.

Authorized to work only for the petitioner

4. Travel/Lodging/Meals Expenses

Payment made for travel and travel-related expenses. Substantiated expenses (i.e., expense statement and receipts) considered part of an accountable plan are not taxable. All payments are subject to the restrictions of the [University Travel Policy and Procedures](#). Non-substantiated expenses are taxable at 30%.

B. Foreign Source Income Exclusion

Payments made by the University to Nonresident Aliens for services performed in a country outside of the United States, are not subject to taxes, nor is there any U.S. reporting obligation. This exclusion only applies to individuals who are not U.S. residents or citizens. The services are considered to be “sourced” in the foreign country and therefore not subject to U.S. tax laws.

V. **Tax Treaties**

The United States has tax treaties with over 50 countries. The treaty may exempt all or part of the payment made to the international. These treaties are complex and dependent on the individual treaty, international visitor status and type of income.

For the treaty exemption to be granted, the visitor must provide their passport, visa status, I-94 card and fill out the proper treaty exemption form. The international visitor must contact the Payroll Office to determine if he/she is eligible for the exemption.

Appendix A

Employment Taxes

Social Security Taxes (FICA)

Resident Aliens Subject to FICA

Non-Resident Aliens

J-1 Exempt from FICA

F-1 Exempt from FICA

H-1B Subject to FICA

Federal Withholding Taxes

Resident Aliens Subject to WH taxes as US citizen

Non-Resident Aliens Subject to WH taxes as US citizen
unless exempt by Tax Treaty

Other Taxes

Resident Aliens Taxed as US citizen

Non-Resident Alien

Non-Employee/Independent Contractor Subject to 30% tax
unless exempt by Tax Treaty

Non-Qualified Scholarships/Fellowships Subject to 30% or 14% tax for F, J,
M, Q visas
unless exempt by Tax Treaty

Appendix B

Tax Forms

W-4	Employee's Withholding Allowance Certificate
8233	Exemption for Withholding on Compensation
W8-BEN	Certificate of Foreign Status of Beneficial Owner for US Tax Withholding
W-2	Annual Information Form for Employee Compensation
1042S	Annual Information Form for Treaty Exempt Employee Compensation & Other Taxable NRA income
1040 NR	NRA Income Tax Return

Appendix C

VISAS

B-1	Visitor for Business
B-2	Visitor for Pleasure
F-1	Student
F-2	F-1 Dependent
H-1B	Aliens in Specialty Occupations
H-4	H-1 Dependent
J-1	Student/ Teacher or Researcher
J-2	J-1 Dependent
M-1	Vocational Student
M-2	M-1 Dependent
Q-1	Participant in an International Cultural Exchange Program
Q-2	Q-1 Dependent
TN	Canadian Professionals
WB	Business Visa Waiver
WT	Tourist Visa Waiver