

*Payments to Nonresident Alien Individuals*

A. General

1. Taxpayer classification and reporting of Nonresident Aliens shall be in accordance with Internal Revenue Service specifications. See Section E-7-4 of the Business Procedures Manual for guidelines for taxpayer classifications.
2. Requests for payments must be in compliance with University of Kentucky Purchasing Policies and Regulations.
3. Forms
  - a. Internal Revenue Service Forms – These forms are available at the web address given in Section E-7-1 of the Business Procedures Manual.
    - 1) *W-8BEN Form*, “Certificate of Foreign Status”
    - 2) *8233 Form*, “Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual” (Note: Be sure you use the December 2001 revised form. The IRS no longer accepts older versions.)
    - 3) Additional Statements – Please call Accounts Payable to obtain the appropriate statement for use with some 8233 Forms.
  - b. Immigration and Naturalization Service Documents – These forms should be in the possession of the nonresident alien.
    - 1) Visa or Visa Waiver Form
    - 3) *I-94 Arrival/Departure Record*
    - 4) Visa type and number
  - c. University of Kentucky Forms
    - 1) *Independent Contractor Form*, “Agreement Between Independent Contractor and Client”
    - 2) “Departmental Authorization and Voucher” (DAV)

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A. Procedures

1. Determine the taxpayer status of the non-US Citizen. Keep documentation showing calculations for the alien's residency status in the department as backup.
2. Nonresident aliens must be eligible to receive payments.
  - a. Determine the nonresident alien's eligibility for payment at the time the arrangements are made for the individual to come to the University. Only individuals who hold specific Visa types are allowed to work and receive payment for those services. Note: payments to nonresident aliens for royalties, rents, awards, or reimbursed guest expenses are not required to have a copy of the visa attached to the DAV.
  - b. For independent contractor and student payments, obtain a copy of the nonresident alien's Visa or I-94 form and attach the copy to the payment document. If the individual is authorized to work for a specific purpose, obtain copies of either the IAP-66 (J Visa) or the I-20 (F Visa) forms and attach the copy to the payment document. Other Visa holders may be authorized to work for a sponsoring employer or by virtue of the particular Visa category into which the nonresident alien falls. Direct specific questions about Visa types or work eligibility requirements to the Immigration and Naturalization Service.
  - c. See Attachment A for a list of common Visa types and each Visa's eligibility for compensation.
3. Ascertain the type of payment to be made to the Nonresident Alien.
  - a. Non-service Related Payments
    - 1) Non-service related compensation includes cash disbursements for rents, royalties, scholarships, non-service fellowships and related expenses.
    - 2) Prepare a DAV including the payee's complete name, address, and US taxpayer identification number. Include a complete description and reason for the payment. Attach all receipts, invoices and other required documentation.
    - 3) Exemptions and reduced rates of tax withholding may be applied to the nonresident alien's payment based on a tax treaty with his/her country of primary residence.

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- a. Publication 901 “U.S. Tax Treaties” from the IRS should be examined carefully before each payment so the nonresident alien understands the withholding requirements based on his or her country’s tax treaty. This publication may be obtained from the IRS web address listed in Section E-7-1 of the Business Procedures Manual.
  - b. Scholarships
    1. Any enrolled student on a qualified scholarship is exempt from state and federal tax on payments that cover tuition, fees, books, and supplies.
    2. Payments for items such as room, board, or travel expenses will qualify for reduced withholding of 14% federal and 6% state tax for students with a valid tax treaty on F, J, M, or Q Visas only.
  - c. Rents, Royalties and Related Expenses

Rent, royalty, and related expense payments may have reduced rates or exemptions from tax withholding based on the alien’s country of residence. However, not all countries will have the same withholding rates.
  - d. Form W-8BEN should be completed and signed by the nonresident alien claiming reduced withholding for all non-service related payments. Attach this form to the payment documents.
- 4) Withholding rates of 30% federal and 6% state tax will be assessed if any of the following apply:
- a. The exemption forms are improperly completed
  - b. The nonresident alien does not request an exemption
  - c. The alien is not eligible for an exemption because the individual’s country of primary residence does not allow for reduced withholding or the time or monetary limitations have been reached.
  - d. Student payments are for individuals who are on Visas other than F, J, M, or Q Visas

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- 5) Attach the following documents to the DAV:
  - 1) W-8 Form (If not claiming exemption)
  - 2) Copy of Visa OR I-94 Form (except royalty, rent payments)
  - 3) W-8BEN (If claiming exemption)
- 6) Obtain the appropriate approvals and forward all student payments to your Student Financial Aid Office. All other payments need to be sent to the Purchasing Department for approval before Accounts Payable can process the documents.

b. Service Related Payments

- 1) Payments related to services provided for the University include associated expenses, honorariums, service-based stipends, and independent contractor disbursements for individuals such as consultants and visiting speakers.
- 2) Prepare a DAV including the payee's complete name, address, and US taxpayer identification number. Include a complete description and reason for the payment. Attach all receipts, invoices, and other required documentation.
- 3) Exemptions from tax withholding may be applied to the nonresident alien's payment based on a tax treaty with his/her country of primary residence.
  - a. Publication 901 "U.S. Tax Treaties" from the IRS should be examined carefully before each payment so the nonresident alien understands the withholding requirements based on his or her country's tax treaty. This publication may be obtained from the IRS web address listed in Section E-7-1 of the Business Procedures Manual.
  - b. Determine if the nonresident alien is from a country that has a tax treaty with the United States. The individual is eligible for an exemption from tax withholding based on that agreement. Be sure that the disbursement is within the time and compensation limits.

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- c. If eligible for a tax treaty exemption, have the nonresident alien complete and sign the 8233 Form for all service-related payments. Send three copies with the DAV. Note: The IRS has imposed a waiting period of fifteen business days for all payments to nonresident aliens who wish to claim a tax treaty exemption. The check will be cut fifteen days after the documents are processed in Accounts Payable.
  - d. Additional Statements must accompany payments to students, teachers, or researchers for service-related disbursements. Attach a copy of the Statement, based on the nonresident alien's Visa status and country of residency, to each of the copies of the nonresident alien's 8233 Forms to be submitted for payment. The Additional Statements may be obtained by calling the Accounts Payable Department.
- 4) If no exemption is requested, the exemption forms are improperly completed, or the nonresident alien is not eligible for a tax treaty exemption, withholding of 30% federal and 6% state tax will be assessed.
  - 5) An Independent Contractor Form is required for all payments to individuals for services. Note: The Independent Contractor Form *must* be completed for honorarium payments to nonresident aliens.
  - 6) Attach the following forms to each service payment DAV as applicable:
    - 1) W-8BEN Form
    - 2) Copy of Visa OR I-94 Form
    - 3) Independent Contractor Form
    - 4) 8233 Form (3 copies – Only used if claiming exemption)
    - 5) Additional Statements (If required for exemption)
  - 7) Obtain the appropriate approvals and forward all student payments to your Student Financial Aid Office and all other payments to the Purchasing Department for approval before Accounts Payable can process the documents.

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c. Awards

- 1) Awards always require federal tax withholding of 30% and state tax withholding of 6%.
- 2) The IRS stipulates that awards given to nonresident alien employees, friends of the University, and students are *not* exempt under any tax treaties.
- 3) Prepare a DAV including the payee's complete name, mailing address, and US taxpayer identification number. Include a complete description and reason for the payment. Attach all receipts, invoices, or other required documentation. Note: A copy of the nonresident alien's visa is not required.
- 4) Attach a W-8BEN Form for each nonresident alien award recipient to the DAV.
- 5) Obtain appropriate approvals and forward the documents to the Purchasing Department for approval before Accounts Payable can process the documents.

d. Guest Expenses

- 1) Guest expenses can be reimbursed to the nonresident alien based on the individual's receipts for airfare, lodging, meals, and other expenses.
- 2) Any guest expenses with no receipts or that are for amounts in excess of the receipts will be considered taxable income to the nonresident alien.
  - a. If the individual is performing a service for the University, see the procedures for paying nonresident alien independent contractors. The guest expenses will be considered part of the individual's fee.
  - b. Expense payments for individuals who do not perform services will be subject to withholding of 30% federal tax and 6% state tax. Attach the following forms to each DAV for guest expenses with no receipts or amounts in excess of the receipts:
    - 1) W-8BEN Form
    - 2) Copy of Visa OR I-94 Form

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- 3) Prepare a DAV including the payee's complete name and mailing address. Include a complete description and reason for the payment. Attach all receipts, invoices, or other required documentation.
  
- 4) Obtain the appropriate approvals and forward the documents to the Purchasing Department for approval before Accounts Payable can process the documents.

**Attachment A**

**Common Visa Categories**

- A-1, A-2 Diplomats and foreign government officials and their dependents. Some dependents are granted work authorization.
- B-1 Business visitors. No work authorization. Eligible to receive reimbursement for travel expenses and per diem. Honorariums allowed.
- B-2 Visitors for pleasure. No work authorization. Eligible to receive reimbursement for travel expenses and per diem. Honorariums allowed.
- C-1 Transit visa. No work authorization.
- D-1 Foreign Crewmen. Work authorized for the sponsoring employer.
- E-1, E-2 Treaty trader, investor. Work authorized for sponsoring employer.
- F-1 Students. Work authorized under very limited circumstances.
- F-2 Dependents of students. No work authorization.
- G-1 to G-4 Employees of international organizations. Some dependents are granted work authorization.
- H-1A Professional nurses . Work authorized for sponsoring employer.
- H-1B Professionals. Work authorized for sponsoring employer.
- H-2A Temporary agricultural workers. Work authorized for the sponsoring employer.
- H-2B Temporary workers. Work authorized for the sponsoring employer.
- H-3 Trainee. Work authorized for the sponsoring employer.
- H-4 Dependents of H visa holders. No work authorization.
- I-1 Representative of foreign media. Work authorized for sponsoring employer. Dependents are not allowed to work.
- J-1 Exchange visitor such as student, scholar or trainee. Work authorized under certain circumstances.
- J-2 Dependents of exchange visitor. Work authorized under certain circumstances.

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K-1	Fiancée/fiancé of US citizen. Work authorized.
L-1A	Intra-company executive or managerial transferee. Work authorized for the sponsoring employer.
L-1B	Intra-company specialized knowledge transferee. Work authorized for the sponsoring employer.
L-2	Dependents. No work authorization.
M-1	Vocational student. Work authorized in particular situations only.
M-2	Dependents of M-1 aliens. No work authorized.
O-1	Individuals of extraordinary ability in science, education, business, athletics or the arts. Work authorized for sponsoring employer.
O-3	Dependents of O-1 aliens. No work authorization.
P-1	Internationally known athletes and entertainment groups. Work authorized for the sponsoring employer.
P-2	Performing artists under a reciprocal exchange program. Work authorized for the sponsoring employer.
P-3	Culturally unique entertainers. Work authorized for the sponsoring employer.
P-4	Dependents of P visa holders. No work authorization.
Q-1	Participants in international cultural exchange program. Work authorization for sponsoring employer.
R-1	Religious workers. Work authorized for the sponsoring employer.
R-2	Dependents of R-1 aliens. No work authorization.
TN	Trade NAFTA. Work authorization for sponsoring employer.
TD	Trade NAFTA dependent. No work authorization.
WB	Waiver of visa for business. No work authorization. Eligible to receive reimbursement for travel expenses and per diem.
WT	Waiver of visa for tourism. No work authorization. Eligible to receive reimbursement for travel expenses and per diem.

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Note: This list is not all-inclusive. Any questions about Visa status should be discussed with the nonresident alien and/or the Immigration and Naturalization Service (INS). Attach a copy of the nonresident alien's Visa to each individual's DAV that needs to be processed. Source for Visa categories is Nonresident Alien Tax Compliance by Donna Kepley, copyright Arctic International and Donna Kepley, 2000.