

## Foreign Nationals Tax Compliance Boot Camp – Employees, Vendors & Students

**April 22, 2015**

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### 2015 Training Curriculum

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NC Office of the State Controller

This training is an Office of State Controller initiative and is part of the Foreign Nationals Tax Compliance curriculum for the 2015 calendar year. We are committed to the success of the Foreign Nationals Tax Compliance Program and will provide technical assistance to all State Agencies, Universities, Community Colleges, LEAs and Charter Schools.

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.

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### Training Objectives

- Basics of Chapter 4 and Chapter 3 Withholding
- Basics of North Carolina Withholding
- How immigration and tax status may impact your payment, and how these two must work together
- Become familiar with the various types of taxable compensations that can legally be paid to a contractor
- Review the required documentation necessary to process payments for foreign nationals and determination of source of income and any exceptions to taxation
- Understand the reporting requirements for federal and state taxation

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### Foreign National Contact

- Many of you have asked - WHY is it so important for a foreign national to meet/be processed by a tax specialist at your agency, university or college (entity)?
  - Foreign nationals have a special set of work restrictions and tax guidelines they must follow.
  - Ensure appropriate documents are received
  - Provide necessary communication to foreign nationals
  - Discussion should occur prior to foreign national's visit
  - COMPLIANCE ISSUES:
    - Each entity is at risk of very large penalties and fines
    - Potentially jeopardizes the foreign national's visa status

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### Foreign National Contact (cont.)

- Even if an individual or entity violates an immigration status and services are performed that are not authorized, you must pay the compensation, withhold tax and report the payment appropriately.
- Immigration violations can not be rectified by refusing to make payment for services.

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### FATCA Guidance

- Foreign Account Tax Compliance Act – Chapter 4
  - Imposes 30% withholding to entities on U.S. source payments of FDAP income
  - FATCA income is taxable – U.S. Source fixed and determinable, annual or periodic (FDAP) income.
  - Implementation 7/1/2014 for FATCA related payments
  - Implementation 12/31/2014, per Notice 2014-33 and IRS Official Public Statements for non-FATCA payments
  - New W-8BEN-E required use 1/1/2015
    - Provides the ability for the entity to document their FATCA status
  - Reportable on 1042-S
- Passes the FATCA Rules
- NRA Withholding – Chapter 3
  - Determine application and potential withholding exception, if available
  - Reportable on 1042-S

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### Withholdable FATCA Payments

- Examples of potential withholdable inclusions
  - Investment advisory, bank, brokerage, or other financial service fees
  - Premiums for life insurance, insurance contracts
  - Fees and other payments in connection with any lending transaction, including loan guarantees
- No treaty reductions
- Payments withheld under Chapter 4 are not subject to Chapter 3 withholding

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### Non-withholdable FATCA Payments

- Payments to Individuals
- Effectively Connect Income – W-8ECI
  - Requires U.S. TIN
  - Also, NO Chapter 3 withholding
  - Payments reportable on 1042-S
- Non-financial Payments made in the ordinary course of business
  - Non-financial services fees
  - Rentals on office and equipment leases
  - Payments for the use of other property
  - Software license fees
  - Transportation
  - Awards
  - Prizes
  - Scholarships
  - Compensation for Services

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### Chapter 3 – NRA Withholding

- **Internal Revenue Code 1441 to 1443 –**
  - Governs withholding on payments
  - Provides for the 30% tax
- **IRC Section 1461 –**
  - The withholding agent will be liable for a tax amount due to failing to withhold/deposit amounts subject to NRA withholding.
  - Both the withholding agent and the foreign recipient may be held liable for such tax, applicable interest and any penalties resulting from a withholding failure.
- **IRS Publication 515 –**
  - Directions for the withholding agents
    - Specifically, it describes the:
      - persons responsible for withholding (withholding agents)
      - the types of income subject to withholding, and
      - the information return and tax return filing obligations of withholding agents

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**Chapter 3 – NRA Withholding**

**IRS Publication 515 –**

- Defines Rules Relevant to Chapter 3 and Chapter 4
  - A payee is subject to withholding only if it is a foreign person.
  - A foreign person includes:
    - Nonresident alien individual
    - Foreign corporation
    - Foreign partnership
    - Foreign trust
    - Foreign estate
    - Any other person that is not a U.S. person

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**North Carolina Withholding**

- **General Statute 105-163 –**
  - Amended by 2009 General Assembly
  - Requires the withholding of 4% State Income Tax
    - For contractors with individual taxpayer identification numbers (ITINs)
    - ALL services performed by ITIN individuals in excess of \$1,500 cumulatively
- **House Bill 998 –**
  - Signed into Law on July 23, 2013
  - Established a new "Flat North Carolina Tax Rate"
    - 2014 tax rate 5.8%
    - 2015 and after tax rate 5.75%
    - Services performed by those not included in above statute will be taxed at the 2014 and 2015 rates, respectively.

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**NEW 2015 North Carolina – NRA Tax**

- Directive and Form Issued 12/22/2014
- Further Guidance Issued 1/20/2015
- Required of foreign nationals who are in NRA tax status
  - Based on length of stay – Substantial Presence Test
  - Removes the standard deduction from the standard tax tables (excluding India Student Treaty)
  - New Form NC-4-NRA is effective 1/1/2015
  - Goal: Tax Income at flat 5.75%
- DOR will honor federal tax treaties, if applicable
- NC law does not require withholding on Scholarship
  - NOTE: This does not mean there isn't an NC Tax on the non-qualified scholarship payments.
- Reference FAQ for potential unresolved questions

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### Contractors or ITIN Holders

- Subject to 30% federal tax, unless an exception applies
- 4% NC tax
  - >\$1,500
  - Contractor provides ITIN or NO SSN
- OR
- >\$1500
- Individual contractor provides SSN
- Nonresident of NC
- Providing personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program

- Exception = Treaty Benefits

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### Whose Who in the Tax Situation

- Withholding Agent
  - A U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding
  - Liable for taxes owed
- Foreign National
  - Owes allegiance to or who is under the protection of a country other than the United States
    - > Nonresident Alien
    - > Resident Alien
  - Special set of work restrictions and tax guidelines
    - > **MUST** have the appropriate work authorization (including self-employment)
    - > Work authorization is linked to immigration status

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### Audience Participation

Entry/Presence in the United States provides you the ability to be employed or receive payment for services?

True or False?

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### Immigration vs. Taxation Terms

<u>Immigration</u>		<u>Taxation</u>
> United States Citizens	=	United States Citizens
> Lawful Permanent Resident	=	Lawful Permanent Resident
> Foreign National		> Nonresident Alien for Tax Purposes <b>OR</b> > Resident Alien For Tax Purposes

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### WHO is an Nonresident Alien?

- Nonresident Alien for Tax Purposes
  - **Not** U.S. citizens, permanent residents, or resident aliens
  - **Does not** passes the Substantial Presence Test (SPT)
  - **Different Tax system** from U.S. Citizens and Resident Aliens.
- Resident Alien for Tax Purposes
  - Means something **different** to IRS than USCIS
  - **Passes** the Substantial Presence Test (SPT)
  - **Similar Tax system** as U.S. Citizens.

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### The Substantial Presence Test (SPT)

- Physically present in the U.S.:
  - 31 or more U.S. days in the calendar year
  - 183 – days based on the formula (includes partial days)
    - 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 2<sup>nd</sup> preceding calendar year
  - Examples of statuses **exempt** from counting days (given no prior history)
    - F-1 & J-1 Students Visa type – 5 years
    - All other J Visa type – 2 years

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**Factors of Payment**

- Who are you paying?
  - Individual or Entity
  - Who is the beneficial owner of the income
    - No assignment
    - Determine cash value for "in-kind" items
  - Payments to Foreign Performers
    - Agent for the Foreign National – CWA Required for tax exception
    - Agent's fee is not excluded from performers income
- What does your payment represent?
  - Employment
  - Scholarship
  - Vendor/Contracted Service/Independent Contractor?
    - Does the contract address tax withholding?
    - Location of services being performed?
    - Is there a taxable and non-taxable portion of the contract?
    - Have we been invoiced?

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**Factors of Payment (cont.)**

- What is the source of the payment?
  - U.S. Source
  - Foreign Source
    - What is the foreign liability in country of where services are performed?
- Who is eligible to perform services?
- What is the Tax Status (SPT)
- How is payment being processed?
  - HR System
  - Student Financials
  - Accounting

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**Factors of Payment (cont.)**

- Employment authorization
  - To perform services lawfully within the U.S., a foreign individual must have the appropriate work authorization
    - INCLUDING self-employment
  - Is specific to the activities noted in the application to enter the U.S.
  - Work authorization can be attached to immigration status
    - F-1 Students have authorization to work on sponsor's campus.
    - O and P must adhere to their approved itinerary when they applied for status
      - Potential to amend the itinerary prior to visit at entity's location
    - Tourists and Business visitors do not have work authorization
      - Potentially able to receive honorarium payments
        - » NOTE: State Agencies are not permitted to pay honorariums

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### Types of Taxable Payments

- **Dependent personal services:** Wages, service related scholarship/fellowship/assistantship payments, travel reimbursements
- **Independent personal services:** Consulting fees, guest speaker, etc.
- **Other Income Types:** Prizes and awards, royalties (copyrights, software purchases), etc.
- **Gift Cards** = Cash (one of the above)
- **Stipends** = One of the above

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### Types of Taxable Payments (cont.)

- **Qualified**
  - Include – tuition, required fees, books, supplies and equipment
  - Non-reportable/ Non-taxable if:
    - A degree candidate,
    - In F, J, M or Q immigration status **and**
    - Undergraduate/graduate student at a college/university
- **Non-Qualified**
  - All other scholarship payments not included above
  - Statutory Rate – 14% with/without U.S. SSN/ITIN

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### Types of Taxable Payments (cont.)

**Table 1-1. Tax Treatment of Scholarship and Fellowship Payments<sup>1</sup>**  
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	Not a degree candidate	Tax free <sup>2</sup>	Taxable
Tuition	X		X	
Fees	X	X	X <sup>3</sup>	X
Books	X	X	X <sup>3</sup>	X
Supplies	X	X	X <sup>3</sup>	X
Equipment	X	X	X <sup>3</sup>	X
Room	X			X
Board	X	X		X
Travel	X			X

<sup>1</sup> Does not include payments received for past, present, or future services.  
<sup>2</sup> Payments used for any expenses not included in this column are tax free only if the terms of the scholarship or fellowship do not prohibit the expense.  
<sup>3</sup> If required of all students in the course.

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**Types of Taxable Payments (cont.)**

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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**Types of Taxable Payments (cont.)**

**Honorarium vs. Contracted Services**

- **9/5/96 Rule:**
  - Visitor is limited to 9 days presence at an institution
  - Visitor cannot have visited more than 5 institutions in the past 6 months
- **Visa Type:**
  - B visa (preferably B-1, not B-2), or
  - JW national (Visa Waiver program)
  - Any other type of visa -- must determine if permitted to pay
- **Who is allowed to pay honorariums (subsection (p)(1)):**
  - The Payer is one of the below:
    - Institution of Higher Education;
    - Related or Affiliated Nonprofit Entity;
    - Nonprofit Research Organization;
    - Government Research Organization

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**Types of Taxable Payments (cont.)**

Honorarium Rules

- Payments characterized as **gratuities**
  - Tokens of Appreciation
- Per USCIS:
  - "for services conducted **for the benefit** of that institution or entity"
- Tax analysis focuses on whether payment would be made but for services rendered
  - Service required = **compensation**
  - Payee's U.S. Tax Residency is important
  - Subject to a 30% federal tax withholding rate
  - State Withholding (NC - 4% if threshold if met)
  - Treaty Benefit - with U.S. SSN or ITIN

**Services Required = Compensation ≠ Honorariums**

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### Source of the Income

Type of Income	Sourcing
Personal Services	Where Performed
Dividends	Where Incorporated
Interest	Residence of Payer
Rentals	Where Property is Located
Royalties - Patents/Copyrights	Where Property is Used
Royalties - Natural Resources	Where Property is Located
Scholarship, Fellowship Grants	Residence of Payer
Pensions	Where Services Were Performed, Rev. Proc. 2004-37

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### Examples of Common Purchases

- Goods from a foreign entity
  - No withholding/reporting required
- Services performed outside the U.S.
  - No withholding/reporting required, in most cases
  - Document, document, document!
- Services performed within the U.S.
  - Taxable at federal 30%, unless treaty exist
  - Taxable at state rate, (NC-4%, if threshold is met) unless treaty exist
  - Independent Personal Services or Employment
- Royalties used in the U.S.
  - Copyrights and Customized Software
  - Taxable at federal 30%, unless treaty exist

**Potential exceptions may exist.**

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### Steps In Processing Vendor Payments

- Foreign National Data Gathering Form (FNDG)
  - Completed by each foreign national
  - Original documents should be presented by the foreign national
  - Copies of documents should be maintained to support FNDG and provide the ability for a reviewer to ensure processing is correct
- Checklist
  - Pre-arrival planning
  - Documentation needed
  - Responsibilities of departments
- Processing data determines
  - Eligibility for payments dependent on visa type
  - Substantial Presence Test -
    - Tax status as Nonresident Alien or Resident Alien

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**Step 3:**  
**Assessing Tax Status**



- NRA vs. RA
- Tax Responsibility
  - Payor or Payee
- Treaty Eligibility
- Treaty Limitations
- Collect Appropriate Tax Documents

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**Step 3:**  
**Assessing Tax Status (cont.)**



- W-8 ECI
  - Effectively Connected Income
  - Business Location within the U.S.
  - Must have a U.S. TIN
- W-8 BEN (Individual)
  - New Form released February 2014
  - More Concise
- W-8BEN-E (Entity)
  - Implement by required January 1, 2015
  - 8 pages

**IRS - <http://www.irs.gov/uac/Form-W-8-Certificate-of-Foreign-Status>**  
**Instructions for the requester of the above forms -**  
**<http://www.irs.gov/uac/Form-W-8-Certificate-of-Foreign-Status>**

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**Step 3:**  
**Assessing Tax Status (cont.)**



- Treaty Benefit Eligibility and Payments to NRAs
  - The U.S. has treaties with over 60 countries around the world affecting payments to foreign nationals
  - Offer tax exemptions within the U.S. for foreign nationals who were or are tax residents (not citizens) of a treaty country and meet specific criteria

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**Step 3:**  
**Assessing Tax Status (cont.)**



Considerations When Granting Treaty Benefits:

- U.S. Tax Status: NRA or RA
- **Provide Social Security Number or TIN**
- **Entities can now use foreign TIN**
- **Country of tax residency**
- Primary purpose of visit
- Status of the organization (educational, research, medical, etc.)
- Type of Income Paid
- Form 8233 must be filed with the IRS
  - 5 days of acceptance
  - 10 day waiting period for rejection
- Form W-8 maintain in entity files
  - Determine whether tax treaty has been requested

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**Step 3:**  
**Assessing Tax Status (cont.)**



Considerations When Granting Treaty Benefits

- **Benefit Limitations**
  - > Retroactive Loss of Benefits
  - > Prospective Loss of Benefits
  - > One-Time Use
- **Requirement to Re-establish Residency**
  - > Back-to-back Rule
  - > Combine Benefit Period
- **Saving Clause and Exceptions**

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**Step 3:**  
**Assessing Tax Status (cont.)**



What does a tax treaty mean for Chapter 3 taxable payments:

- Exempt tax
  - 30% Federal
  - 4% State
- Not all states honor federal tax treaties
- Reduce amount of tax
- Exempt a certain portion of the income
  - Income from Employment Tax (\$3000-\$10,000 could potential be exempt)

Please note this is not an all inclusive list, just a few examples of treaty benefits.

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**Step 4:  
Tax Reporting**



U.S. Citizens or Resident Aliens	Nonresident Aliens
<ul style="list-style-type: none"> <li>• Tax on <b>Worldwide Income</b> <ul style="list-style-type: none"> <li>- Entities org. under U.S. laws</li> </ul> </li> <li>• W-4/W-2/NC-4                             <ul style="list-style-type: none"> <li>- Standard Wage Withholding</li> </ul> </li> <li>• W-9/1099                             <ul style="list-style-type: none"> <li>- 28% backup withholding</li> <li>- \$600 threshold for most reporting</li> </ul> </li> <li>• No treaty benefits (some exceptions)</li> <li>• Filing deadlines                             <ul style="list-style-type: none"> <li>- Payees: 1/31</li> <li>- IRS: 2/28-4/30</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Tax on <b>U.S. Source Income</b> <ul style="list-style-type: none"> <li>- Not org. under U.S. laws</li> </ul> </li> <li>• W-4/W-2/NC-4/NRA                             <ul style="list-style-type: none"> <li>- NRA Tax Rate</li> </ul> </li> <li>• W-8s/8233/1042-S                             <ul style="list-style-type: none"> <li>- 30% withholding</li> <li>- State Taxes (NC 4% &gt; \$1500)</li> <li>- No minimum dollar threshold for payments</li> </ul> </li> <li>• Treaty benefits or ECI to reduce U.S. tax/withholding, if qualify</li> <li>• Filing deadlines                             <ul style="list-style-type: none"> <li>- Payees: 3/15 (W-2: 1/31)</li> <li>- IRS: 3/15-4/14</li> <li>- Paper vs. Electronic Filing</li> </ul> </li> </ul>

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**Step 5:  
Final Review**



- Does the payment match the visa restrictions
- Documenting Decision Factors
  - Does a contract exist
  - Is your documentation complete - Complete immigration and tax documents
  - If you provided or denied tax treaty benefits
  - Do you need to follow-up on ITIN or SSN
- Maintain W-8 form in vendor files
- Have you submitted the 8233 to the IRS
  - REQUIRED ANNUALLY
- Checklist Examples
  - Independent Contractor
  - Royalties & Rents

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**Processing Documentation – Presumptions**



- Income for both FATCA and NRA withholding purposes is presumed to be U.S.-source income unless the payer has evidence that the payment is foreign-source
- Pay for services performed outside the United States which is foreign-source should be so indicated in contracts and invoices.
- An entity is presumed to be foreign unless the payer has a valid Form W-9 or other documentary evidence that the entity is domestic
  - No longer allowing the "eyeball test" to exempt U.S. Corporations and Financial entities from Form 1099 reporting.

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**Processing Documentation**

- Publication 515 – **Presumption Rules**, “if you cannot reliably associate a payment with valid documentation you must apply certain presumption rules or you may be liable for tax, interest, and penalties.”
- Deemed to Know
- Better to tax and have those taxes refunded by the IRS to the individual, than to not tax at all and face penalties and fines.



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**Tips for identifying a Foreign National**

- If your entity shares information you can learn about someone’s immigration status from:
  - I-9’s
  - Social Security Cards (Is there a notation on the card?)
  - Human Resource databases
- For taxation purposes – you are allowed to ask for immigration information and documentation
- Audit to determine you population:
  - Employees
  - Vendors
  - Contractors

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**IRS Recommendation for Identifying Foreign National**

- Address Field
  - Country – not U.S.A. or Blank
  - State – not a U.S. State or Blank
  - City – Foreign City
  - Zip – not a U.S. pattern – XXXXX-XXXX
- Foreign Employer I.D. Number
  - Usually begins with 98-XXXXXXX
- Foreign ITIN
  - Usually begins with 999 and 4<sup>th</sup> digit is a “4” or “7”
- Foreign Vendor Numbers
  - Required by accounting system?
  - Do you have a policy for establishing “fake” vendor numbers?

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**Challenges of Chapters 3 & 4 Withholding**

- Timely requesting new certification forms
  - Prior vendor forms W-8's will expire
- Determining the appropriate W-8 Form
- Reviewing forms to determine if there are any red flags to potential cause you to question the form
- Determining whether the payment is subject to FATCA withholding
- Identifying U.S. Source Income subject to 30% withholding
- Understand the importance of documentation
  - Invoices
  - Contracts
- Accounts Payable is taxed based on type of purchase
  - Reviewing each invoice is necessary
  - Potential additional W-8 Form to claim additional tax treaties

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**Frequent Questions**

- Form 8233 with Certifying Statement from NRA
  - Filed ANNUALLY!!!!
  - US TIN Required
    - > Can attach copy of SSN application receipt
  - Must submit to IRS within 5 days of accepting (signing)
    - > Must contain employer's EIN
  - IRS has 10 days to reject treaty
- Form 8843 – Statement of Exempt Individuals
  - Must be filed Annually by your FN who are exempt from SPT
  - Required for ACA Compliance
- FICA Exemption
  - Annual SPT
  - Errors must be correct by the employer
    - > 941X
    - > W-2C

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**Frequent Questions**

- Challenges of New Technology
  - Purchase vs. Royalty
    - > Digital books
      - Purchase 1 copy with the right to reproduce
      - Purchase 1 copy no right to reproduce
    - > 10 hard bound books
    - > Software
      - Purchase of software package
      - Purchase of License that is renewable annually
  - Questions
    - > Where is the item being used
    - > Form 1042-S and 30% withholding
    - > Claim treaty benefits on W-8BEN or W-8BEN-E

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### Frequent Questions

- Scholarships
  - Sourced by location/residence of payer, not location of services
    - Reporting and withholding obligations for payments you make to foreign students who are studying abroad while enrolled
  - Allowing Allowances
    - Procedures in place for only one semester enrolled
    - Do you know that your foreign national did not work during the year?
    - Standard deduction for 2015 is \$4,000
    - Standard deduction for 2014 was \$3,950

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### Frequent Questions

- Accountable Plan or NOT?
  - "Accountable Plan" Rules ONLY apply when there is a compensatory relationship
  - "Accountable Plan" Rules DO NOT apply if there isn't compensatory relationship
- Wires
  - What are your internal processes for completing payments overseas
- P-Cards
  - What is the manner for 1042-S withholdable payments
- Employee Reimbursements

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### WHEN Tax Deposits MUST be Made:



- Largest opportunity for IRS penalties and interest!!!

U.S. SOURCE WITHHOLDING ON FOREIGN PERSONS	
Amount of Deposit (Withholding)	IRS Deposit Requirements
Less than \$200	Annually with 1042T filing (Due March 15)
Between \$200 and Less than \$2,000	Within 15 days after the end of the month
\$2,000 or greater	Within 3 banking days

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### North Carolina Tax Deposits



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**Annual Withholding Reconciliation**

North Carolina Department of Revenue

Year: 2015 File By: **February 28**

Account ID: FID/IDR 0100

USE CAUTION! DO NOT SIGN YOUR NAME AND ADDRESS

Legal Name (Print or Character)

Street Address

City State Zip (Include 00 Zip)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

PLEASE PRINT to the best of my knowledge, the name, address and company

Date: \_\_\_\_\_ Printed: \_\_\_\_\_

Make, Top of Form (2015) (English, NC) (Character)

Quarter Ending	N.C. Income Tax Withheld
1. March 31	.00
2. June 30	.00
3. September 30	.00
4. December 31	.00
<b>6. Total Tax Withheld</b>	<b>.00</b>
<b>6a. Tax Withheld Per W-2 Statements</b>	<b>.00</b>
<b>6b. Tax Withheld Per 1042-S Statements</b>	<b>.00</b>
<b>7. Total Tax Withheld Per Statements</b>	<b>.00</b>

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- NC-5 used to make tax deposits for 1042-S withholding
- Make copies of the 1042-S to include with the tax annual reconciliation
- **1042-S due last day of January**

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### Two Types of Policies



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- High-level Policies
  - Define entity's commitment toward compliance:
    - Complying with:
      - Internal Revenue Services
      - State/Local Regulations
      - Immigration
- Internal Operational Policies
  - Day-to-day implementation policies
    - How to process most frequent payment types
    - Forms
    - Checklist
    - Process Flow

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### HOW to Be Successful



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- Ensure your departments keep you in the loop!!!!
- Are you ready for an IRS or USCIS Audit!!!
  - Scope:
    - > Post written Policies and Procedures
    - > Training for staff
    - > Self review/audit
  - Process Flow:
    - > Who is the Primary Contact(s) for each area
    - > Who will process documentation and how will it flow for processing
    - > Do you have an adequate filing/documentation system
    - > Determination of withholding and reporting prior to payments

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Questions?



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Contact Information:  
*Jennifer Pacheco*  
NC Office of State Controller  
*Foreign Nationals*  
Tax Compliance Program  
919-707-0764  
[jennifer.pacheco@osc.nc.gov](mailto:jennifer.pacheco@osc.nc.gov)

THANK YOU!

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Appendix

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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 or NC-4NRA and W-4
  - W-8BEN
  - ❖ You will collect the same documentation not only for employment, but also to pay travel reimbursements. Should not be paid as an independent contractor if in NRA tax status. Should not be issued a 1099 in NRA tax status.

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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 or NC-4NRA
  - W-4
  - W-8BEN
  - ❖ You will collect the same documentation not only for employment, but also to pay travel reimbursements. Should not be paid as an independent contractor if in NRA tax status. Should not be issued a 1099 in NRA tax status.

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**J-1 Student Visa**

**Documentation required for payments:**

- Immigration Documentation:
  - Passport
  - Visa
  - I-94 Card (now I-94 admission number)
  - DS-2019 (Approval notice: Must show student sub-category)
- Taxation Documentation:
  - NC-4 or NC-4NRA
  - W-4
  - W-8BEN
  - 8233 (If applicable)
  - ❖ You will collect the same documentation not only for employment, but also to pay scholarships, fellowships, and travel reimbursements. Can not be paid as an independent contractor. Should not ever be issued a 1099.

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### J-1 Visa (Curricular Practical Training)

**Documentation required for payments:**

- Immigration Documentation:
  - Passport
  - Visa
  - I-94
  - DS-2019 (Must show student sub-category)
- Taxation Documentation:
  - NC-4 or NC-4NRA
  - W-4
  - W-8BEN
  - 8233 (If applicable)
- Letter from Institution attached to DS-2019

❖ You will collect the same documentation not only for employment, but also to pay travel reimbursements. Should not be paid as an independent contractor if in NRA tax status. Should not be issued a 1099 in NRA tax status.

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### J-1 Visa (Optional Practical Training)

**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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### J-1 Visa (Student Intern)

**Documentation required for payments:**

- Immigration Documentation:
  - Passport
  - Visa
  - I-94
  - DS-2019 (Must show student intern sub-category)
- Taxation Documentation:
  - NC-4 or NC-4NRA
  - W-4
  - W-8BEN
  - No Treaty (Be extremely careful when entering this category into Windstar)

❖ You will collect the same documentation not only for employment, but also to pay travel reimbursements. Should not be paid as an independent contractor if in NRA tax status. Should not be issued a 1099 in NRA tax status.

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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 or NC-4NRA
  - 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 or NC-4NRA
  - W-4
  - W-8BEN (NRA) or W-9 (RA)

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**Employment Authorization Documents**

**Documentation required for payments:**

- Immigration Documentation:
  - Passport
  - Visa
  - I-94 Card
  - EAD Card
- Taxation Documentation:
  - NC-4 or NC-4NRA
  - W-4
  - W-8BEN (NRA) or W-9 (RA)

❖ You must review the authorization code. Taxation requirements correspond with the authorization codes.

❖ Link to EAD codes:  
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f3c02af9f0101310VqnVCM100000082ca60aRCRD>

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