

|                                      |  |                       |
|--------------------------------------|--|-----------------------|
| <b>HAYWOOD<br/>COMMUNITY COLLEGE</b> | <b>BUSINESS SERVICES<br/>FOREIGN NATIONAL<br/>COMPLIANCE</b> | Procedure<br>6.3.11.1 |
|--------------------------------------|--|-----------------------|

## **Introduction**

The reporting and withholding of taxes associated with payments made to non-U.S. citizens by community colleges, and other agencies of the State of North Carolina are in accordance with the laws and regulations of the U.S. Citizenship and Immigration Services (USCIS) and the Internal Revenue Service (IRS).

1. The USCIS define what payments may be made to aliens who perform services in the United States.
2. The IRS defines which payments made to aliens are reported and subject to taxes, as well as establishes the tax rates for those payments.

In accordance with Haywood Community College Policy 6.3.11, Haywood Community College must withhold and report payments to foreign national (employees, contractors, vendor and students) in accordance with Internal Revenue Service (IRS) Code of Regulations 1441 and with policies established by the Office of the State Controller.

It is the responsibility of Haywood Community College to gather all data for each individual or vendor who must be tracked through the Windstar (Tax Navigator) software, and forward it to the North Carolina Community College System (NCCCS). The Foreign National Information Systems (FNIS) Data Gathering Form for individuals or the Foreign National Information Systems Data Gathering Form for Vendors, is used to gather the data.

Per Internal Revenue Code 1461, the withholding agent, in this case Haywood Community College, will be liable for a tax amount resulting from failing to withhold or deposit amounts subject to withholding. Both Haywood Community College and the foreign recipient may be held liable for taxes, applicable interest, and any penalties resulting from a withholding failure.

Compliance with this policy requires a collaborative effort involving:

1. Business Office
2. Haywood Community College employees that submit requisitions to procure goods and services
3. Student Services
4. Human Resource
5. Accounts Payable

## **Definition**

A foreign national is “a person who was born outside the jurisdiction of the United States, is a citizen of a foreign country, and not become a naturalized United States citizen under United States law. This includes legal permanent residents; also known as permanent resident aliens.” A foreign national owes allegiance to or is under the protection of a country other than the United States.

***It is important to understand that the definition of Nonresident Alien (NRA) for tax purposes is different from that for immigration purposes.***

Aliens are classified as either "Nonresident Aliens" or "Resident Aliens". Section 1441 of the Internal Revenue Code provides a separate tax system with a different set of tax rules and regulations for individuals deemed to be Nonresident Aliens. Colleges making payments to NRAs are subject to different tax withholding, reporting and liability requirements.

A Resident Alien's income is subject to tax in the same manner as a U.S. citizen. RAs are generally taxed in the same way as U.S. citizens. This means that their worldwide income is subject to U.S. tax and must be reported on their U.S. tax return. Income of RAs is subject to the graduated tax rates that apply to U.S. citizens.

A Nonresident Alien's income is subject to federal income tax only on income which is derived from sources within the United States and/or income that is effectively connected with a U.S. trade or business. NRAs are taxed according to special rules contained in certain parts of the Internal Revenue Code.

*Note: Although the preferred term for identifying a person who is not a U.S. citizen is "Foreign National", the IRS and the U.S. Citizenship and Immigration Services use the word "alien". Therefore, all non-U.S. citizens will be referred to as "aliens" in this text to minimize confusion with the federal government publications.*

## **6-Step Process**

The 6-step process below must be followed to ensure that aliens are paid according to prevailing tax and immigration rules/regulations with appropriate taxes withheld and payments properly reported.

The procedures are intended to provide guidance in the majority of situations facing Haywood Community College. The procedures are not inclusive. Tax and immigration laws are voluminous. Situations not covered by these procedures should be handled on a case-by-case basis.

### **A. Procedures for Paying or Compensating an Alien**

#### **Step 1 – Payment Eligibility and Tax Residency Status**

1. **Employees** – Human Resources is responsible for identifying Foreign National Employees, collecting, and maintaining documentations.

*Copies of the completed FNIS form and backup documentations should be sent to the Systems Office.*

2. **Students** – The Vice President of Student Services is responsible for identifying Foreign National Students. This position is responsible for:
  - a. Collecting and copying documents to identify status
  - b. Maintaining documents in a secure location
  - c. Submitting documentations to the Systems Office
  - d. He/she is also responsible for entering the data into Colleague and communicating the status to Financial Aid and the Business Office. *Communication must be done following Add/Drop but before Financial Aid Refund Checks are issued.*

A student enrolled in Haywood Community College, who is a Foreign National must complete the FNIS form and provide documentations.

*Copies of documentations and FNIS form must be sent to the Systems Office for all foreign national students receiving income, scholarships/fellowships, stipends, etc.*

3. **Vendors and Contractors** – A Haywood Community College department, either contracting directly with a foreign individual or foreign contractor, or submitting a requisition to the Business Office, must include the IRS tax withholding form W-8BEN, W-8BEN-E, W-8ECI, W-8IMY or W-8EXP, as well as a FNIS Vendor Data Gathering Form, before a purchase order or contract for services is issued. No agreement can be made (Purchase Order, Contract) until the Haywood Community College end user has the documentation for appropriate tax withholding. These forms must be submitted to the Business Office for appropriate withholding and reporting. The foreign vendor/contractor must submit a tax form to claim tax treaty exemption.

*The Business Office must submit copies of tax withholding forms, invoices, and FNIS Gathering Form to the Systems Office.*

Important items to note:

- a. The NC E-Procurement registration process does not include gathering information on foreign vendors/contractors status. Haywood Community College must obtain the proper tax withholding forms along with the FNIS Vendor Data Gathering Form from foreign vendors/contractors paid through E-Procurement.
- b. The Continuing Education, Economic Workforce Development Department must confirm the status of its foreign vendors/contractors, and maintain required documentation, before entering into a contract.
- c. The IRS tax withholding forms must be completed to include:
  - o A US taxpayer identification number (TIN) or a Foreign TIN (FTIN)
  - o Claim of treaty benefits- e.g. W-8BEN-E (Part 111 #14 and #15) must be completed
  - o Certification- certify that information is true, correct, and complete
- d. Colleges submit copies of documentations (detailed invoices, FNIS Data Gathering Form, and W-8s) to the Systems Office.

***It is the responsibility of the colleges to collect the required information on the forms***

## **Step 2 – The Type of Payments**

The type of payment made to the alien falls into four primary categories:

1. Dependent personal services: wages, service related scholarship/fellowship/assistantship payments, travel reimbursements;
2. Independent personal services: consulting fees, guest speaker, honoraria;
3. Scholarships/fellowships:
  - a. *Qualified* components for degree candidates: educational expenses, tuition, fees, books, etc.,
  - b. *Nonqualified* component: including living expenses, stipend, housing allowances
4. Miscellaneous income types: prizes and awards, royalties, etc.

## **Step 3 – The “Source” of the Income**

As important as the recipient’s tax status, the payer of the income and their residence also has bearing for determining U.S. federal reporting and taxation.

1. A Resident Alien’s income is generally subject to tax in the same manner as a U.S. citizen. Therefore, worldwide income is reported.
2. A Nonresident Alien is usually subject to U.S. income tax only on U.S. source income. Haywood Community College as the U.S. source payer is responsible for reporting income it paid to the NRA.
  - a. A determination is made as to the source of income in the following manner:
    - o For compensation paid to employees, and independent contractors, income is sourced to the country where services are performed.
    - o For non-compensation payment such as scholarships/fellowships, grants, prizes, and awards, the source of income is the residence of the payer regardless of who actually disburses the funds. If the activity is performed outside the United States, it is not considered U.S. sourced income.

## **Step 4 – Is the Payment Subject to Income Tax Withholding?**

Income paid to a Resident Alien (RA) follows the same withholding tax rules as U.S. citizens. The federal withholding rates for RAs are the same as rates for U.S. citizens.

All U.S. sourced income paid to a Nonresident Alien (NRA) is taxable with the exception of interest income and qualified scholarships/fellowships. The federal withholding rates for nonresident aliens are:

| Type of Income   | Federal Tax Rate         |
|--|--------------------------|
| Compensation (employees)   | Standard graduated rates |
| Nonqualified Scholarships/Fellowships (F-1, J-1, M-1, Q-1 or Q-2 visa holders)   | 14%                      |
| Travel Grants (Expense)  | 14%                      |
| Housing Allowances   | 14%                      |
| Nonqualified Scholarships/Fellowships (all other visa holders)   | 30%                      |
| Independent personal services (e.g. consulting fees, guest speaker fees, honoraria, awards, travel reimbursement and prizes) | 30%                      |
| Royalties  | 30%                      |
| Prizes and awards  | 30%                      |
| All other payments   | 30%                      |

NRA payments of taxable scholarships, fellowships, financial aid, and grants not excludible from gross income as a “qualified scholarship” are reportable to the IRS and are subject to withholding of federal income tax. Income must be reported on forms 1042 and 1042-S unless the grant is from sources outside the US.

Tax Treaties – If an alien is a resident of a country that has an income tax treaty with the United States AND the treaty contains an article covering the primary activity the alien is being compensated for, the alien may exempt part or all of the income from U.S. federal withholding taxes as specified in the article.

The alien must submit a Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual and statement with the college to claim treaty benefits. The 8233 must be filed with the IRS.

**Step 5 - Is the Payment subject to Social Security and Medicare Taxes (FICA)?**

Yes, all aliens, regardless of resident or nonresident tax status are subject to the same Social Security and Medicare taxes for wages as U.S. citizens. Wages earned in the employment groups as defined used to calculate the Federal Insurance Contribution Act or FICA withholding is the income subject to these taxes.

As a general rule, the only aliens exempt from social security and Medicare taxes are F-1, J-1, M-1, and Q-1 visa holders while they are in Nonresident tax status.

Note: If one of these designated visa holder changes to resident tax status during a year, he/she is subject to social security and Medicare taxes for the entire year on his subject wages.

**Step 6 - Determining if a Payment is Reportable and How to Report It**

1. Resident Alien (RA) payments are reported to the federal government in the same manner as U.S. citizens. Forms issued to the resident alien regarding reportable income are the Form W-2, *Wage and Tax Statement* for wages and the various Forms 1099 for non-wage compensation. Note: If the RA uses a tax treaty, he/she will receive a Form 1042-S for tax reporting purposes.

2. Nonresident Alien (NRA) payments subject to taxes are reported to the federal government. Forms issued to NRAs are W-2, *Wage and Tax Statement* for wages subject to income taxes and/or FICA taxes, and the form 1042-S- *Foreign Person's US Source Income Subject to Withholding* for compensation if they claimed a tax treaty that exempted tax for all or part of their wages. A form 1099 cannot be issued to NRAs.

## **B. NCCCS Workflow and Procedures for Foreign National Payment Certification**

The North Carolina Community College System Office requires the following work flow and reporting be followed for colleges managed through the System Office:

1. College identifies a foreign national or foreign vendor that will be compensated via payroll, accounts payable or student services. The appropriate Haywood Community College department, (Human Resources, Student Services, etc.). must maintain a copy of evidentiary and supporting documentation, such as I-9, I-20, I-94, I-797, passport, Employment Authorization Document (EAD), visa, DS-2019, W-8BEN, W-8BEN-E, W-ECI, etc. The appropriate department will also keep the tax forms and forward a copy to the Business Office. The Business Office will withhold the applicable taxes from employee, student or vendor payments.
2. College completes the FNIS Data Gathering Form or FNIS Vendor Data Gathering Form and submits via email with supporting documentation to the System Office to [balazsij@ncccommunitycolleges.edu](mailto:balazsij@ncccommunitycolleges.edu). To do this the Haywood Community College department gives a copy of the data gathering form, preferably in electronic format, to the Business Office Director who will forward the FNIS to the System Office.
3. System Office establishes the record containing demographic data in Tax Navigator, performs the Substantial Presence Test (SPT) and/or Treaty Analysis, if applicable, and notifies the college contact via email of the appropriate taxation rules.
4. College certifies payment and withholding information to the System Office on the Foreign National Payment Certification Form for each individual or company added to the system for tracking. This form will be submitted on a quarterly basis to update the information in the Tax Navigator. The Business Office Director will gather this information from the appropriate departments and submit required form to the System Office.
5. System Office will update all records quarterly from the payment information submitted by the college.
6. At the end of the calendar year, IRS Forms 1042, 1042-T and 1042-S will be created by the System Office and sent to the college to be submitted to the IRS by March 15 each year. Form 1042-S must also be distributed by the college to the foreign national individuals and companies by March 15 each year.

Foreign National Payment Certification is made to the NCCCS. A reminder email is sent with the due date and certification form attached.

The Business Office Director gathers the data, completes the form and submits it to the NCCCS. The steps for this are:

- a. Send an email to the Director of Human Resources, and Director of Enrollment Management asking for a list of Foreign National employees and students, respectively.
- b. Obtain employee payroll information from Web Advisor (the Director of Human Resources assists with this step) and fill in the payment certification.
- c. Using the list of Foreign National Students determine if there were payments made to them. Using Colleague run, VENI, EERN, WAGS to find out if students received payments. Enter that information on the certification form.
- d. All foreign vendor payments will be included on the form.
- e. Complete the form and send it to [Jessica Balazsi: balazsij@ncccommunitycolleges.edu](mailto:Jessica.Balazsi@ncccommunitycolleges.edu).

## **C. Colleague Set-Up**

1. Nonresident Aliens (NRAs) are subject to wage withholding using special NRA wage withholding and reporting rules. Follow the directions to set up Federal and State withholding adjustments in Colleague.
  - a. Contact Midge Miller or Pam Stutts for assistance in Colleague set-up: [millerm@nccommunitycolleges.edu](mailto:millerm@nccommunitycolleges.edu)

**D. Tax Information- Corporations/Vendors**

The Internal Revenue Service (IRS) requires that all payments made to foreign vendors be made in accordance with IRS regulations. These regulations require that, when services are provided inside the U.S., taxes be withheld from payments made to foreign vendors unless the income is exempt under a provision of a tax treaty between the foreign vendor's country and the U.S. To avoid withholding, foreign vendors that are business entities must have a U.S. Taxpayer Identification Number (TIN) or Foreign Taxpayer Identification Number (FTIN). They need to submit IRS Form W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY.

Foreign individuals (owner) who want exemption from withholding must claim a tax treaty exemption. They must have a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) and submit IRS Form 8233 or W-8BEN.

Payments made to foreign vendors will be subject to U.S. Federal income tax withholding of 30% unless:

1. The appropriate IRS forms have been completed and accepted by Haywood Community College as valid, and
2. Payments made to foreign vendors are:
  - a. Exempt (or subject to a lower withholding rate) due to a tax treaty
  - b. Effectively connected with the conduct of a trade or business in the U.S. (i.e., the vendor files a U.S. income tax return. This applies to payments to foreign business entities only), or
  - c. Made to a foreign entity with U.S. tax-exempt status

| Type of Income  | Federal Tax Rate | State Tax Rate |
|---|------------------|----------------|
| Federal Withholding Tax on Foreign Vendors/Corporations (with TIN/FTIN) | 30%              |                |
| NC Withholding Tax  |                  | 4%             |

**E. Tax Payments**

1. Your department will need to send the tax payment electronically to the IRS via the Electronic Federal Tax Payment System Processing (EFTPS).
2. How to Pay Foreign Tax through EFTPS

**F. Links**

1. FNIS Data Gathering and FNIS Vendor Data Gathering Forms

<http://www.nccommunitycolleges.edu/finance-operations/foreign-national-compliance-program>

2. W-8(s)  
<http://www.irs.gov/pub/irs-pdf/fw8bene.pdf>  
<http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>  
<http://www.irs.gov/pub/irs-pdf/fw8eci.pdf>
3. W-9  
<http://www.irs.gov/pub/irs-pdf/fw9.pdf>
4. 8233  
<http://www.irs.gov/pub/irs-pdf/f8233.pdf>
5. I-9  
<http://www.uscis.gov/sites/default/files/files/form/i-9.pdf>
6. E-verify  
<http://www.uscis.gov/e-verify>
7. The North Carolina “Policy and Procedures Pertaining to Payments and Compensation of Foreign Nationals, Governments, and Corporations”: [http://ncosc.s3.amazonaws.com/s3fs-public/documents/Policies/docs\\_for\\_policy\\_links/Foreign\\_Nationals-Payments\\_Policy\\_Procedures\\_Final\\_0311.pdf](http://ncosc.s3.amazonaws.com/s3fs-public/documents/Policies/docs_for_policy_links/Foreign_Nationals-Payments_Policy_Procedures_Final_0311.pdf)

## References

<http://www.irs.gov>

<http://www.uscis.gov>

<http://www.ncosc.net>

<http://www.dhs.gov>

Adopted: 06-7-2017