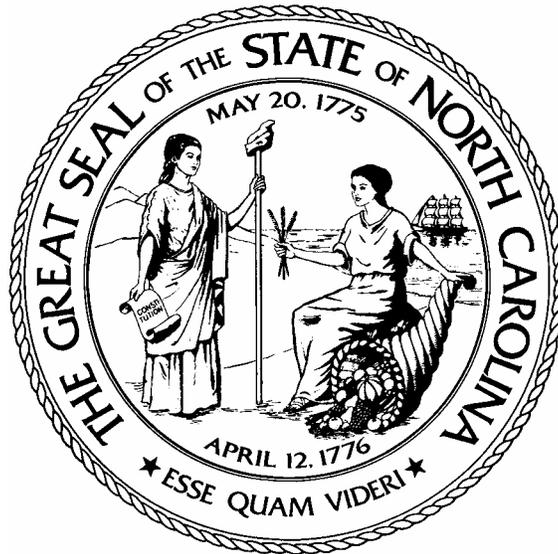


**POLICY AND PROCEDURES
PERTAINING TO PAYMENTS AND
COMPENSATION OF
FOREIGN NATIONALS, GOVERNMENTS,
AND CORPORATIONS**



AUGUST, 2004

**Policy and Procedures Pertaining to Payments and Compensation of Foreign Nationals,
Governments, and Corporations**

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Policy and Procedures Pertaining to Payments and Compensation of Foreign Nationals, Governments and Corporations

POLICY:

The reporting and withholding of taxes associated with payments made to non-U.S. citizens by universities, 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). The U.S. Citizenship and Immigration Services define what payments may be made to aliens who perform services in the United States. The Internal Revenue Service defines which payments made to aliens are reported and subject to taxes, as well as establishes the tax rates for those payments. In depth discussion of the alien tax system is provided in Appendix I.

Note: Although the preferred term for identifying a person who is not a U.S. citizen is “Foreign National”, the Internal Revenue Service 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.

Procedures for Paying or Compensating an Alien:

The 6-step process detailed 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.

This procedure is intended to provide guidance in the majority of situations facing the state entities. The procedure is not inclusive. Tax and immigration laws are voluminous. Any situations not covered by this procedure should be handled on a case-by-case basis and receive additional guidance from the Office of the State Controller.

Step 1 - The Payee - Payment Eligibility and Tax Residency Status

A Foreign National Information Form, Appendix IV should be completed and presented with copies of the specified immigration documentation. This information is used to:

- Determine eligibility for payments to be made based on the type of visa issued. Refer to the Visa Matrix (Appendix V). (An explanation of U.S. Immigration Law as it applies to employment can be found in Appendix II and descriptions of the more commonly used nonimmigrant visas are discussed in Appendix III.)
- Determine if the Payee's tax status is Nonresident Alien or Resident Alien. Refer to the Substantial Presence Test (Appendix VI)

Step 2 - The Type of Payment

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

- 1) Dependent personal services: Wages, service related scholarship/fellowship payments;
- 2) Independent personal services: Consulting fees, guest speaker, honoraria
- 3) Scholarships/Fellowships:
 - a) Qualified component (for degree candidates): Educational expenses, tuition, fees, books, etc.
 - b) Nonqualified component: Living expenses, stipend
- 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 payor of the income and their residence also has bearing for determining U.S. federal reporting and taxation.

A **resident alien’s** income is generally subject to tax in the same manner as a U.S. citizen. Therefore, worldwide income is reported.

A **nonresident alien** is usually subject to U.S. income tax only on U.S. source income. The U.S. source payor is responsible for reporting income paid to the nonresident alien. Refer to the **Summary of Source Rules for Income of Nonresident Aliens** (Appendix VII).

A determination is made as to the source of income in the following manner:

- For compensation paid to employees and independent contractors, income is sourced to the country where services are performed.
- For non-compensation payments such as scholarships/fellowships, grants, prizes, and awards, the source of the income is the residence of the payor 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** follows the same withholding tax rules as U.S. citizens. The federal withholding rates for resident aliens are the same as rates for U.S. citizens.

All U.S. sourced income paid to a **nonresident alien** 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, J, M, Q visa holders)	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%

- * Nonresident alien employees must complete the federal withholding form, W-4, in a specified manner.

Tax forms and other documents the alien must complete for withholding purposes are referenced in Appendix VIII.

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, then the alien may exempt part or all of his income from U.S. federal withholding taxes as specified in the article. In depth information is referenced in Appendix IX. Countries with tax treaties containing applicable articles are referenced in Appendix X.

The alien must file a Form 8233, *Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual* and statement -if required- with the designated reporting agency.

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 by the Federal Insurance Contribution Act 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 is subject to social security and Medicare taxes for the entire year on his subject wages. More information concerning Federal Insurance Contribution Act taxes is referenced in Appendix XI.

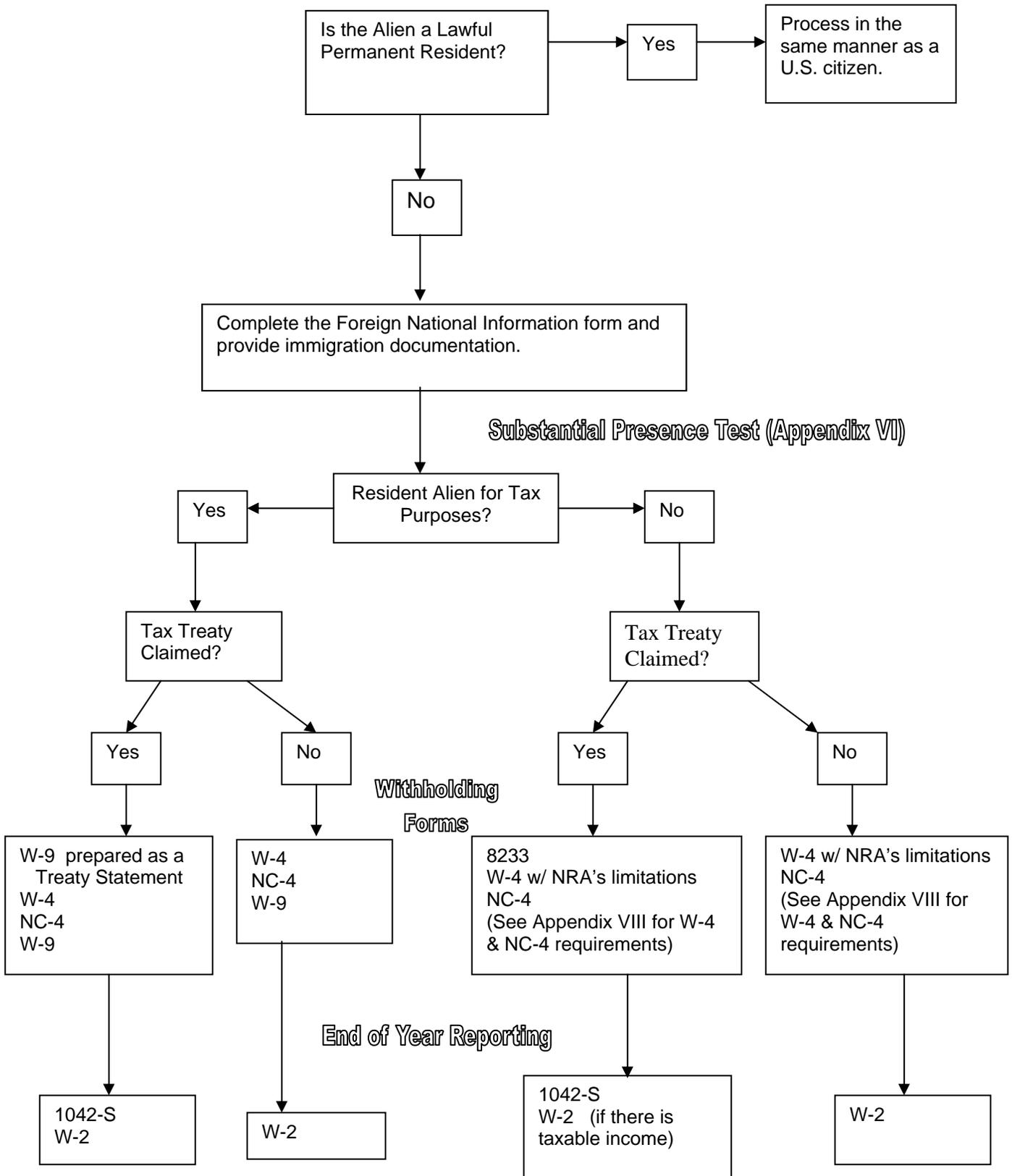
Step 6 - Determining if a Payment is Reportable and How to Report It

Resident alien 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 resident alien uses a tax treaty, he will receive a Form 1042-S for tax reporting purposes.

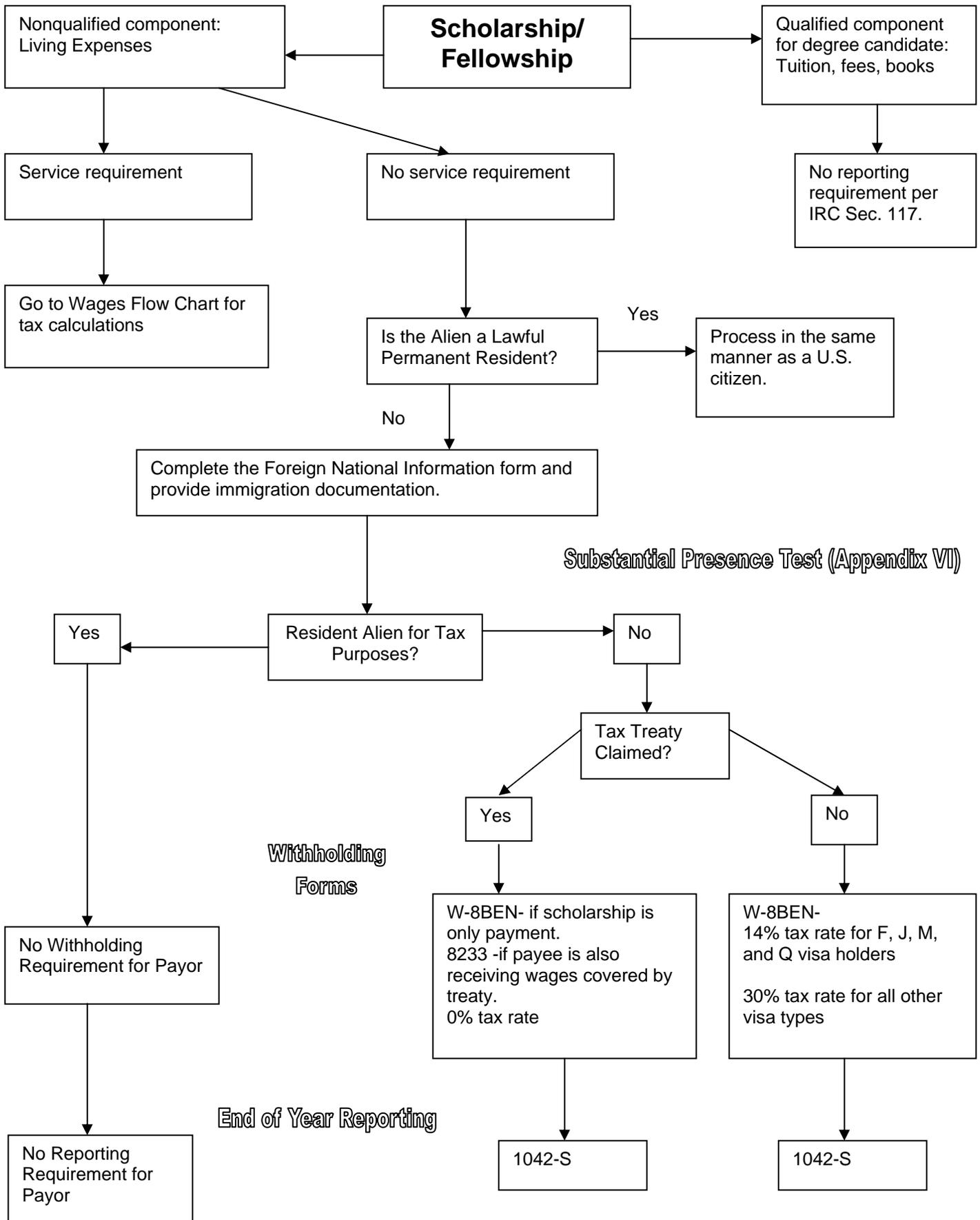
Nonresident alien payments subject to taxes are reported to the federal government. Forms issued to the nonresident alien are Form W-2, *Wage and Tax Statement* for wages subject to income taxes and/or FICA taxes and the Form 1042-S, *Foreign Person's United States Source Income Subject to Withholding* for non-wage compensation. Form 1099 cannot be issued to nonresident aliens.

Appendix XII lists the reporting requirements for the withholding agent at year-end.

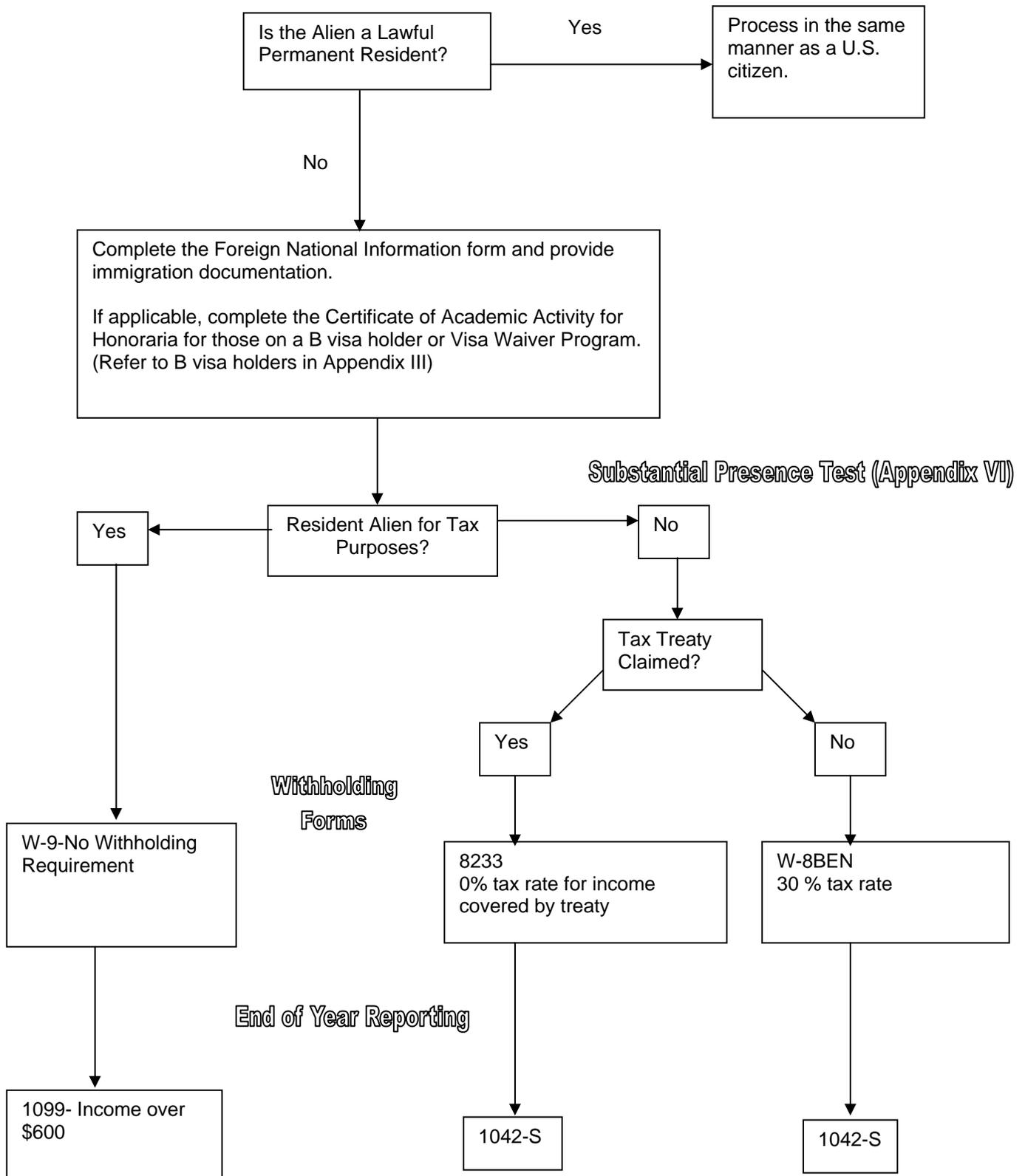
FLOW CHART FOR WAGE COMPENSATION TAX FORMS AND REPORTING



FLOW CHART FOR SCHOLARSHIP/FELLOWSHIP TAX FORMS AND REPORTING

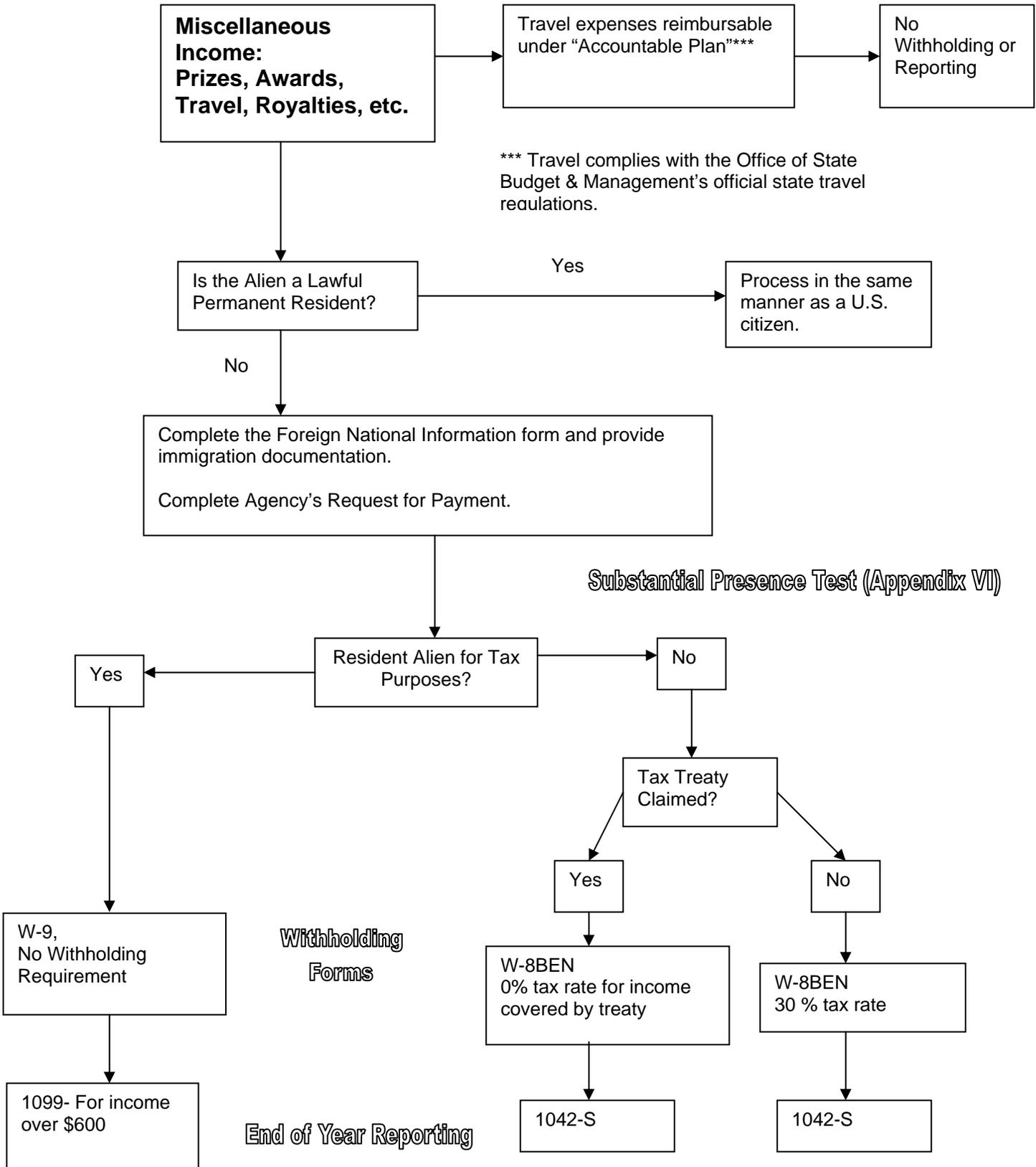


FLOW CHART FOR INDEPENDENT PERSONAL SERVICES (CONTRACTORS* AND HONORARIA) TAX FORMS AND REPORTING



* Determination has been made that the individual is not an employee and satisfies the requirements for independent contractors.

FLOW CHART FOR MISCELLANEOUS INCOME: PRIZES, AWARDS, TRAVEL EXPENSES, AND ROYALTIES TAX FORMS AND REPORTING



Withholding of Tax on Foreign Entities other than Individuals

The reporting and withholding of taxes associated with payments made to non U.S. entities, besides individuals by universities, community colleges, and other agencies of the State of North Carolina, are in accordance with the laws and regulations of the Internal Revenue Service (IRS).

A 3-step process is used to determine the withholding agents reporting and taxing of payments referred to as “NRA withholding”. The steps are:

Step 1 - The Payee - Tax Residency Status

NRA withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons. The types of foreign entities besides nonresident aliens that receive income from U.S. payors include foreign corporations (with or without U.S. branches), foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations. Payments made to U.S. agents of foreign persons are subject to NRA withholding.

To determine if a non-U.S. entity is classified as a foreign person use the following Standards of Knowledge:

- (1) Actual Knowledge of the status of the Payee, or “reason to know otherwise” (i.e., information on the status of the payee is available if a reasonable effort is made to secure it);
- (2) Documents presented by, for, or about the payee;
- (3) The filing of a withholding certificate by the payee (Forms W-8BEN, W-8ECI, W-8EXP, W-8IMY, 8233, or W-9); or
- (4) Presumption Rules: The regulatory presumptions listed at Treas. Reg. 1.1441-1(b)(3)(iii) et seq. See the **Presumption Rules in the Absence of Documentation** table on page 11.

Step 2 - The Income Subject to NRA Withholding

Generally, a payment is subject to NRA withholding if it is from sources within the United States and it is either:

- Fixed or determinable annual or periodical (FDAP) income, or
- Certain gains from the disposition of timber, coal, and iron ore, or from the sale or exchange of patents, copyrights, and similar intangible property.

Specific examples of FDAP income as well as income that is not subject to NRA withholding are found in IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

This income falls into one of two categories:

- Effectively connected income. Generally, when a foreign person engages in a trade or business in the United States, all income from sources within the United States other than fixed or determinable annual or periodical (FDAP) income is considered effectively connected with a U.S. business. FDAP income may or may not be effectively connected with a U.S. business. Or,
- Income not effectively connected. A payment is subject to NRA withholding if it is U.S. source income and it is either FDAP or certain gains.

Step 3 - Withholding Requirements

Different kinds of income are subject to different withholding requirements.

Effectively Connected Income:

Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. For exceptions to the 30% withholding, refer to the **Withholding Tax Rates** table below. ECI taxable income is reportable on the Form 1042 and Form 1042-S.

Withholding Exemption: If Form W-8ECI, *Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States* is received, the withholding agent does not need to withhold tax on nor report ECI income. This form indicates that:

- The foreign payee is the beneficial owner of the income,
- The income is effectively connected with the conduct of a trade or business in the United States, and
- The income is includible in the payee's gross income.

This withholding exemption applies to income for services performed by a foreign partnership or foreign corporation (unless item (4) below applies to the corporation). The exemption does not apply to:

1. Pay for personal services performed by an individual,
2. Effectively connected taxable income of a partnership that is allocable to its foreign partners,
3. Income from the disposition of a U.S. real property interest, or
4. Payments to a foreign corporation for personal services if all of the following apply:
 - a. The foreign corporation otherwise qualifies as a personal holding company for income tax purposes (Refer to IRC Section 542),
 - b. The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has no right to designate, and
 - c. 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

Income Not Effectively Connected:

Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. For exceptions to the 30% withholding, refer to the **Withholding Tax Rates** table on page 11.

Tax Treaty: The payee must provide the withholding agent Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding* to claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty, if applicable to the type of payment.

Foreign Governments and Certain Other Foreign Organizations

Foreign Governments

Investment income earned by a foreign government is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on money deposited by a foreign government in banks in the United States. A foreign government must provide a Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding* or, in the case of a payment made outside the United States to an offshore account, documentary evidence to obtain this exemption.

Investment income that is paid to a foreign government is subject to reporting on Form 1042-S. Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to NRA withholding. In addition, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity is subject to NRA withholding.

A government of a U.S. possession is exempt from U.S. tax on all U.S. source income. This income is not subject to NRA withholding. These governments should use Form W-8EXP to receive this exemption.

International Organizations

International organizations are exempt from U.S. tax on all U.S. source income. This income is not subject to NRA withholding. International organizations are not required to provide a Form W-8 or documentary evidence to receive the exemption if the name of the payee is one that is designated as an international organization by executive order.

IRC Section 7701(a)(18) provides the definition of international organization.

Foreign Tax Exempt Organizations

A foreign organization that is a tax exempt organization under section 501(c) of the Internal Revenue Code is not subject to a withholding tax on amounts that are not income includible under section 512 of the Internal Revenue Code as unrelated business taxable income. However, if a foreign organization is a foreign private foundation, it is subject to a 4% withholding tax on all U.S. source investment income. For a foreign tax-exempt organization to claim an exemption from withholding because of its tax exempt status under section 501(c), or to claim withholding at a 4% rate, it must provide Form W-8EXP. However, if a foreign organization is claiming an exemption from withholding under an income tax treaty, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN or Form W-8ECI. Income paid to foreign tax-exempt organizations is subject to reporting on Form 1042 and Form 1042-S.

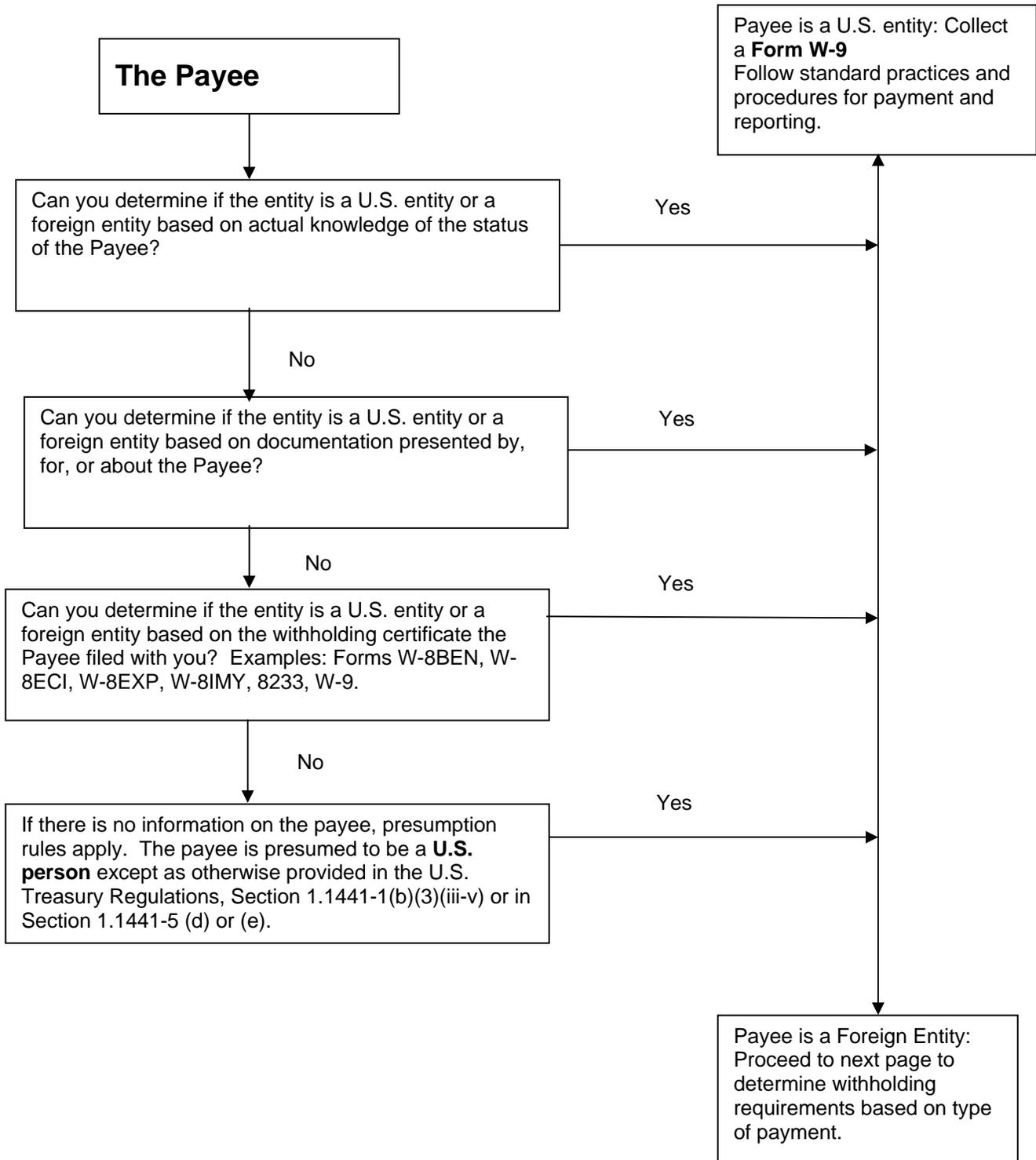
Presumption Rules in the Absence of Documentation

For the presumption rules related to	See regulation section
Payee’s status	1.1441 – 1(b)(3); 1.6049 – 5(d)
Effectively connected income	1.1441 – 4(a)(2)
Partnership and its partners	1.1441 – 5(d)
Estate or trust and its beneficiaries or owner	1.1441 – 5(e)(6)
Foreign tax-exempt organizations (including private foundations)	1.1441 – 9(b)(3)

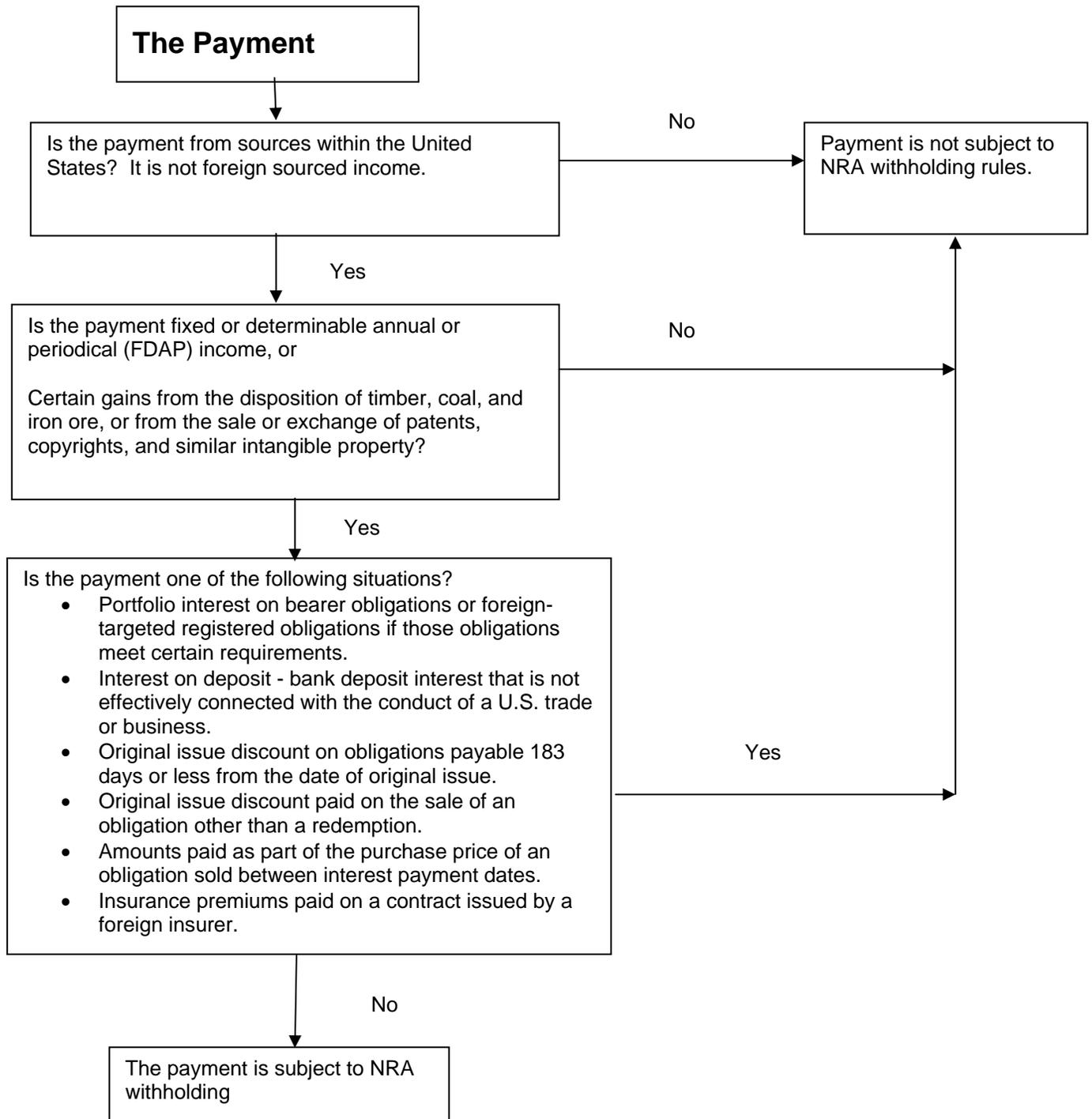
Withholding Tax Rates

Type of Income	Rate
Taxable part of U.S. scholarship or fellowship grant paid to holder of “F” “J” “M” or “Q” visa (see <i>Scholarship and Fellowship Grants</i> , later)	14%
Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation	4%
Pensions — part paid for personal services (see <i>Pensions, Annuities, and Alimony</i> , later)	Graduated rates in Circular A or Circular E
Wages paid to a nonresident alien employee (see <i>Pay for Personal Services Performed</i> , later)	Graduated rates in Circular A or Circular E
Each foreign partner’s share of effectively connected income of the partnership (see <i>Partnership Withholding on Effectively Connected Income</i> , later)	35%
Distributions of effectively connected income to foreign partners by publicly traded partnerships (see <i>Publicly Traded Partnerships</i> , later)	35%
Dispositions of U.S. real property interests (see <i>U.S. Real Property Interest</i> , later)	10% (or other amount)
All other income subject to withholding	30%

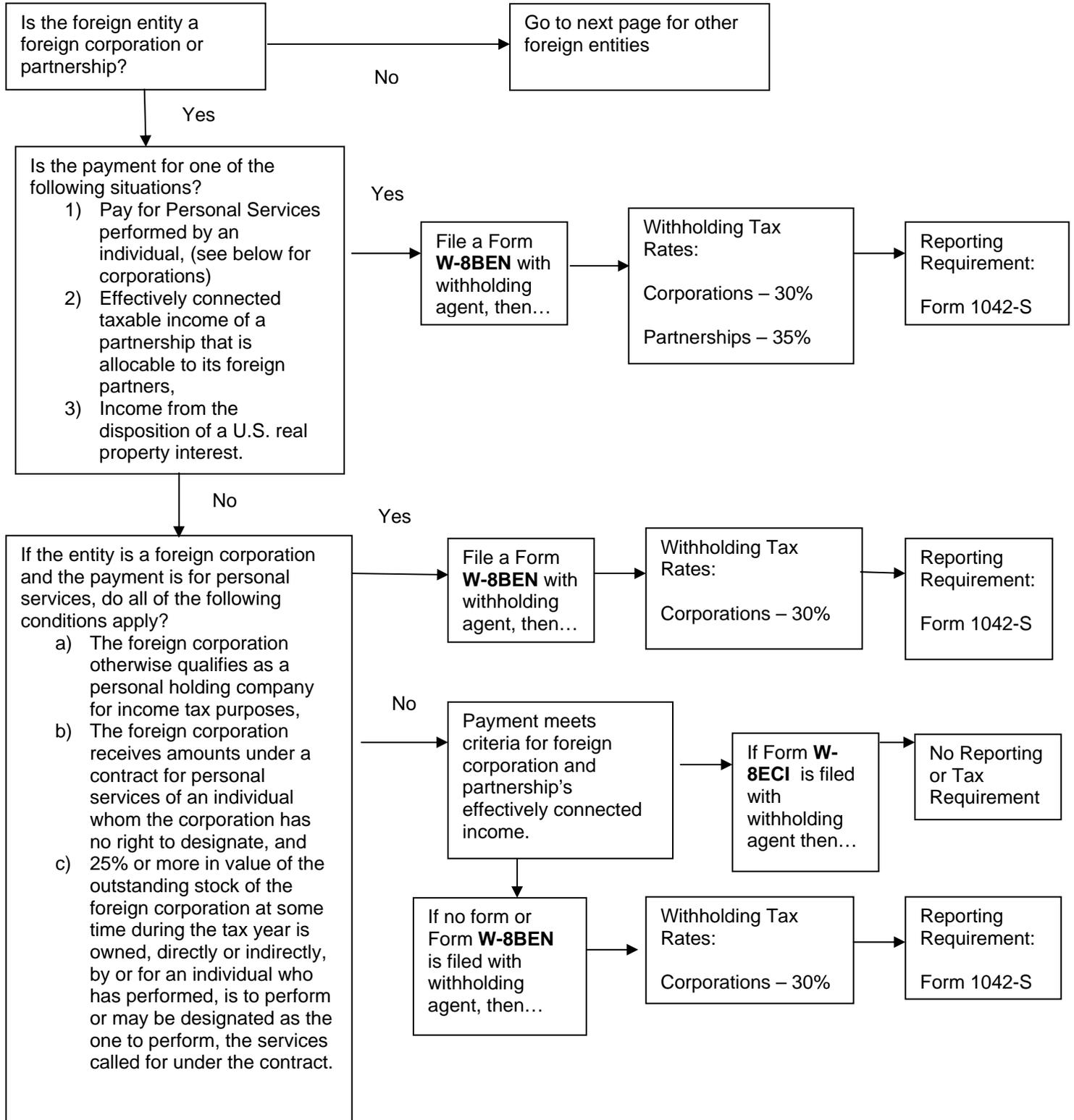
Step 1- Determining the tax status of the Payee



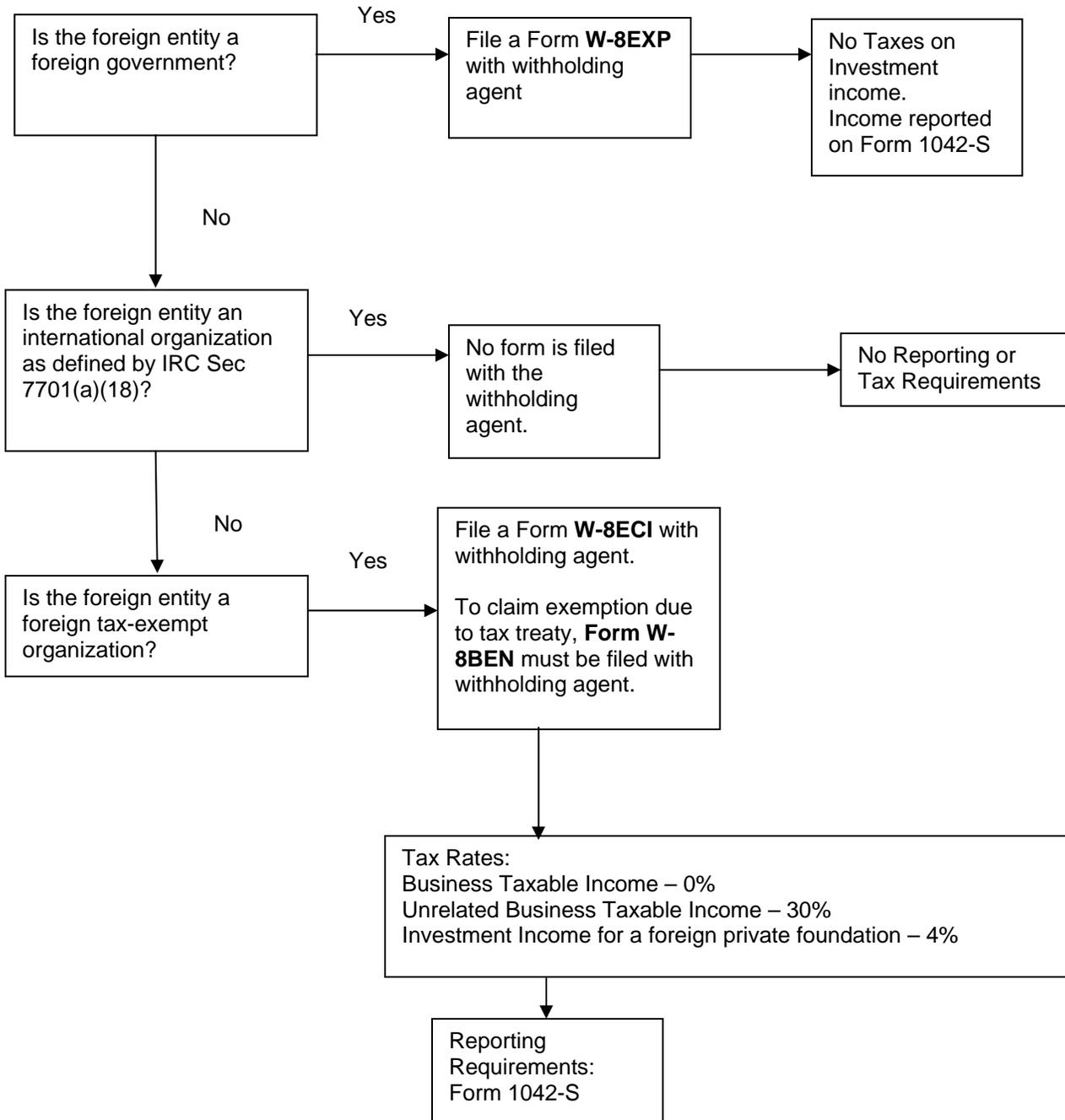
STEP 2- DETERMINING IF INCOME IS SUBJECT TO NRA WITHHOLDING



STEP 3- PROCESSING, REPORTING, AND TAXING EFFECTIVELY CONNECTED INCOME PAYMENTS SUBJECT TO NRA WITHHOLDING – FOREIGN CORPORATIONS AND FOREIGN PARTNERSHIPS



STEP 3- PROCESSING, REPORTING, AND TAXING EFFECTIVELY CONNECTED INCOME PAYMENTS SUBJECT TO NRA WITHHOLDING – OTHER FOREIGN ENTITIES



APPENDIX I

Nonresident Alien and Resident Alien Tax System – General Information

Generally, every person born or naturalized in the U.S. and subject to its jurisdiction is a citizen. All other individuals are referred to as "aliens" for immigration and taxation 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. Agencies making payments to nonresident aliens are subject to different tax withholding, reporting and liability requirements. It is important to understand that the definition of nonresident alien for tax purposes is different from that for immigration purposes. The special rules to determine whether or not an individual is a nonresident alien for tax purposes are included in this manual.

The general tax rule regarding nonresident aliens is that 30 percent must be withheld on all fixed and determinable payments of U.S. source income made to nonresident aliens unless the income is excluded under a specific provision in the Internal Revenue Code. Income includes, but is not limited to:

- Personal services of employees,
- Personal services of independent contractors (e.g. consulting fees, guest speaker fees, honoraria, prizes and awards),
- Scholarships and fellowships awarded to students (e.g. tuition, room and board, stipend/living allowance, books),
- Royalty for the right to use some type of intangible property, or
- Other purposes.

Payments to aliens are handled through different departments, i.e. the Payroll System or the Accounts Payable System within the agency, depending upon the tax residency status of the individual (resident or nonresident), the worker's classification (an employee or independent contractor), and the source of the payment (foreign or U.S.). These factors also affect the applicability of federal reporting and taxation.

Care should be taken to ensure that the proper amount of tax is withheld from payments made to nonresident aliens. Section 1461 of the Internal Revenue Code states that a withholding agent is liable for the income tax that must be withheld from payments made to or on behalf of a nonresident alien. Thus, if the agency fails to withhold the requisite tax and the nonresident alien payee fails to pay the tax due, the agency will be liable for the tax required to be withheld. There are also penalties associated with the failure to correctly report the income to the IRS, or failure to pay or deposit the tax when due. Agencies may also be liable for penalties and interest, unless it can be shown that the failure to pay or file was due to reasonable cause and not willful neglect.

All compensation paid to nonresident aliens for services performed in the U.S. is subject to these requirements and procedures. Agencies that employ or contract with nonresident aliens are required to maintain an understanding of the Internal Revenue Code and Treasury Regulations related to nonresident aliens. A person should also be designated to maintain a working knowledge of the Immigration Act of 1990, amendments to the Act and regulations promulgated pursuant to the Act.

APPENDIX II

U.S. Immigration Law and Authorization to receive U.S. payments

This section is authored by Lowell G. Hancock, Issue Specialist, IRS Foreign Payments Branch, Washington, DC.

"A very basic knowledge about U.S. immigration laws is essential to understanding the taxation of aliens in the United States because the treatment of aliens under the internal revenue and social security laws of the United States is based, in part, on the status of such aliens under the immigration laws of the United States.

An alien is any person who is not a citizen of the United States. The immigration laws of the United States are administered by the Immigration and Naturalization Service (INS); although the U.S. Department of State in its embassies and consulates abroad determines initially which aliens will be allowed to enter the United States. **The immigration laws classify all aliens into three basic categories: (1) immigrants, (2) nonimmigrants, and (3) illegal aliens.**

Immigrants have the right to reside permanently in the United States, and sooner or later will come into possession of that most coveted of documents known as the "green card" (INS form I-551). The green card is the tangible evidence of a person's immigrant status. It allows the alien who possesses it to reside permanently in the United States, to enter and leave the United States at will without having to resort to visas or reentry permits, and to earn self-employment and employment income in the United States under the same conditions as would apply to a U.S. citizen.

A 'nonimmigrant' is an alien who is allowed to reside temporarily in the United States. A nonimmigrant has represented to the U.S. Department of State and to the INS that he is a permanent resident of a foreign country to which he fully intends to return after his temporary stay in the United States has come to an end. Most nonimmigrants enter the United States with the permission of the U.S. Department of State, and they bear written evidence of this fact in their passports in the form of a 'visa' which is usually stamped by a U.S. embassy or consulate abroad on one of the pages in the nonimmigrant's passport.

A nonimmigrant visa allows a nonimmigrant to enter the United States in one of several different categories that correspond to the purpose for which the nonimmigrant is being admitted to the United States. For example, a foreign student will usually enter the United States on an F-1 visa, a visitor for business on a B-1 visa, an exchange visitor (including students, teachers, researchers, trainees, alien physicians, au pairs, and others) on a J-1 visa, a diplomat on an A or G visa, etc. The categories of nonimmigrant visas correspond exactly to the "nonimmigrant status" assigned to each nonimmigrant upon his arrival, based on the purpose for which the nonimmigrant was admitted to the United States. A description of traditional visa types is provided in Appendix III."

A matrix of acceptable visa types for eligible state entity payment to aliens is provided in Appendix IV.

APPENDIX III

Traditional Alien Visa Types and Descriptions for State Payments

The type of visa that an employee, student, or independent contractor holds determines the types of payment remuneration that an individual may receive. Certain visas are not eligible to receive any type of payments.

1. Immigration Visas

The U.S. Department of State is responsible for the issuance of U.S. passports and immigrant visas to the United States. An immigrant visa is issued to an individual who intends to reside in the U.S. permanently. Immigrant visas are usually obtained when a relative of the prospective immigrant or a U.S. employer wishing to provide work for the alien files a petition with the INS. Individuals entering the United States with an immigrant visa are issued a photo-identification card, commonly known as the "green card." Green cards are **I-551 cards** containing the bearer's photo, fingerprint, and signature.

2. Non-Immigration Visas

- **A-1, A-2, and A-3** visa holders are foreign government officials. They are aliens coming temporarily to the United States who have been accredited by a foreign government to function as ambassadors, public ministers, career diplomat or consular officers, other accredited officials, or attendants, servants or personal employees of an accredited official, and all of the above aliens' spouses and unmarried minor (or dependent) children.
 - **A-1 and A-2** visa holders are only authorized to work for the foreign government, which accredited them. **A-1 and A-2** immediate family members may obtain work authorization in the form of a fully executed Form I-566, endorsed by the Department of State. **A-3 visas** are only authorized to work for the A-1 or A-2 visa holders who hired them. Immediate family members of **A-3** visa holders are not authorized to work and cannot be paid.
- **B visas** are issued to nonresident aliens who are visiting the United States temporarily for business or for pleasure. The B classification is divided into two types, visitors for business (B-1) and visitors for pleasure (B-2). Under the American Competitiveness and Workforce Improvement Act of October 21, 1998, B-1/B-2 visa holders under special circumstances may receive honorarium payments and reimbursement of associated incidental (usually travel) expenses for services in the U.S.

The payments must be for usual academic activities such as giving a speech or lecture, presenting a paper, participating in a panel, or other similar activities lasting no longer than 9 days at any single institution, and must be made by an institution of higher education, a related or affiliated nonprofit entity, or a nonprofit or Governmental research organization. The alien cannot accept such payments from more than 5 institutions or organizations in a six-month period.

If the above mentioned criteria are not met, the B visa holder may only receive the remuneration allowed under the current INS regulations that are in effect. Under these regulations B-1 visa holders are only eligible to receive reimbursement for travel expenses and per diem. B-2 visa holders are not eligible to receive reimbursements for any expenses. These visa holders may not accept employment or perform services for which they are paid from a U.S. source. They are only eligible to receive an expense allowance or reimbursement for expense incidentals that relate to their temporary stay.

- **F-1 visa holders** are students with an academic studies classification. They are permitted to have temporary employment on the campus to which they are a student. They are limited to 20

hours/week during school sessions, but may work full time during holidays and summer break. F-1 students may only be employed when school is not in session if the student intends and is eligible to register for the next term or session. This requires an Employment Authorization Document from INS, which should be expected to take 90 days to process. On-campus employment may be performed either on the school's premises or at an off-campus location that is educationally affiliated with the school.

F-1 students may also be employed as part of their curricular practical training while they are students. This may consist of alternate work/study, internship, cooperative education, or any other type of required internship or practicum offered by sponsoring employers through cooperative agreements with the school. The document required to establish employment eligibility to employers is the Form I-20 ID certified by the foreign student advisor (FSA) from the student's approved institution. Curricular practical training authorization is job specific, employer specific and date specific. *The employing agency is not responsible for any part of this process or for reviewing documentation other than the Forms I-94 and endorsed I-20.*

Upon graduation, the F-1 student is permitted to continue their visa status under the Optional Practical Training program. They are permitted to work full time to gain a maximum of 12 months of professional work experience in their field of study after completion of studies. The student is issued an Employment Authorization Card, I-765 Card and permitted to work until the expiration date of the card.

- **F-2** visa holders are dependents of F-1 students and are not authorized to work.
- **H-1** visas are issued to professionals who have completed a degree program at an accredited college or university or have accumulated equivalent experience. Normally, an H-1 visa holder performs services as an employee. The employer and the duties will be specified. Work is only authorized for the sponsoring employer.
- **J-1** visas are issued to exchange visitors including students, scholars and trainees. A J-1 scholar may only work for the sponsoring employer. Sponsors may allow professors and research scholars to participate in occasional lectures and short-term consultations. Such lectures and consultations must be incidental to the exchange. The occasional lectures or short-term consultations must be directly related to the objectives of the exchange visitor's program, incidental to the exchange visitor's primary program activities; and not delay the completion date of the visitor's program.

To obtain authorization to engage in occasional lectures or short-term consultations involving wages or other remuneration, the exchange visitor shall present to the responsible officer a letter from the officer setting forth the terms and conditions of the offer to lecture or consult. The letter must include the duration, number of hours, field or subject, amount of compensation, and description of such activity; and a letter from his or her department head or supervisor recommending such activity and explaining how it would enhance the exchange visitor's program.

The responsible officer shall review the letters and make a written determination whether such activity is warranted and satisfies the above criteria. At the discretion of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing, unless disallowed by the sponsor. Because these activities are so intertwined, such a change of activity will not be considered a change of category necessitating a formal approval by the responsible officer or approval by the Agency.

Although the studies that a **J-1 exchange visitor student** performs may be virtually indistinguishable from foreign students in F-1 status, different rules apply. Some exchange programs allow participants to be employed in their specialty fields, while other programs restrict participants to study or research. In all cases, as with F-1 students, agencies must insure that J-1 employees not only are lawfully permitted to work (and, if so, to work for them) but that they are

only employed during the period for which they have been approved to remain in the U.S. Permissible employment, if any, should be indicated on the Form DS-2019 of those J-1 visitors whose USIA (U.S. Immigration Act)-approved program guidelines permit employment. Generally, this employment is employer specific, meaning that the individual may work only for the employer that sponsored him/her for J-1 status or has been approved by the applicable USIA program. In cases where the DS-2019 is not clear with respect to given employment, employers may wish to review the individual's Form I-94 and/or written approval of the J-1 program official.

- A **J-2** spouse may be employed if authorized by the INS. An economic necessity must be demonstrated to receive this authorization.
- **M-1** visa holders are nonimmigrant aliens entering the United States as a student for vocational training. The rules for employment are the same as the F-1 visa holders.
- **O-1** visa holders are nonimmigrant aliens with extraordinary ability in the areas of science, education, business, athletics or the arts. Work is authorized for sponsoring employer only.
- **Q** visas are issued to participants in international cultural exchange programs for the duration of the program, but no longer than fifteen months. The purposes of these exchange programs are to provide practical training, employment and the sharing of the history, culture and traditions of the country of the alien's nationality. Q visa holders are authorized to work only for the sponsoring employer.
- **VWT** is a visa waiver for tourism. No work authorization. Eligible to receive reimbursement for travel expenses and per diem.
- **VWB** is a visa waiver for business purposes. No work authorization. Eligible to receive reimbursement for travel expenses and per diem.

Note: Visa Waiver Countries

Individuals may enter the U.S. for up to 90 days without a visa if they are nationals from the following countries: Andorra, Argentina, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Republic of Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. This list of participating countries changes on an on-going basis, thus, you should consult the web site of the Bureau of Consular Affairs of the U.S. State Department at <http://travel.state.gov> to obtain the latest list. Individuals entering the U.S. under the visa waiver project should be treated as if they had entered with a temporary visitor visa, either B-1 or B-2 according to the nature of the visit.

APPENDIX IV

FOREIGN NATIONAL INFORMATION FORM (Page 1)

All applicable questions below must be answered. A copy of both sides of your I-94 Form, "Arrival and Departure Record", copy of your US Visa from your passport, and visa documentation, for example I-20, DS-2019, or I-797 must be submitted with this form. This form and accompanying documentation must be submitted to the withholding agent before any steps can be taken to adjust taxation. Instructions are on the back of the form.

(1) Last or Family Name _____ First _____ Middle _____

(2) Social Security # _____ (3) Employee/Vendor ID # _____

(4) LOCAL ADDRESS IN U.S.:

Address Line 1: _____

Address Line 2: _____

Address Line 3: _____

City: _____

State: _____ Zip _____

(5) FOREIGN RESIDENCE ADDRESS:

Address Line 1: _____

Address Line 2: _____

City: _____

Postal Code: _____ Province/Region _____

Country: _____

(6) Country of Citizenship: _____ (7) Country that issued Passport: _____

(8) Passport #: _____ Expiration Date _____ mm/dd/yy (9) Visa # (control number): _____

(10) Have you been to the United States prior to this visit? Yes No. If yes, see Page 2.

(11) IMMIGRATION STATUS:

U.S. Immigrant/ Permanent Resident F-1 Student J-2 Spouse or Child of Exchange Visitor

J-1 Exchange Visitor H-1 Temporary Employee

Other: _____

(12) IF IMMIGRATION STATUS IS J-1, WHAT IS THE SUBTYPE? CHECK ONE:

01 Student 05 Professor 12 Research Scholar

02 Short Term Scholar Other: _____

(13) WHAT IS THE ACTUAL PRIMARY ACTIVITY OF THIS VISIT? CHECK ONE:

01 Studying in a Degree Program 05 Observing 09 Demonstrating Special Skills

02 Studying in a Non-Degree Program 06 Consulting 11 Temporary Employment

03 Teaching 07 Conducting Research 12 Here with Spouse

04 Lecturing 08 Training 21 Summer Work/Travel

(14) WHAT IS THE ARRIVAL DATE OF YOUR FIRST VISIT TO THE UNITED STATES?

_____/_____/_____
Month Day Year

(15) WHAT IS THE START DATE OF YOUR VISA FOR THIS PRIMARY ACTIVITY?

_____/_____/_____
Month Day Year

(16) WHAT IS THE PROJECTED END DATE OF YOUR VISA PRIMARY ACTIVITY?

_____/_____/_____
Month Day Year

(17) WHAT IS YOUR POSITION AND DEPARTMENT?

e.g. Professor of Chemistry

(18) WHAT TYPE OF STUDENT?

Undergraduate Masters

Doctoral Other _____

(19) IS YOUR SPOUSE IN THE US?

Yes No

Number of dependents _____

(20) HONORARIUMS:

Do you / will you have an office (fixed base) in the USA?

Yes No If yes, how many days in this tax year did you/ will you have the office (fixed base)? _____ Days

(21) COUNTRY OF TAX RESIDENCE IF DIFFERENT FROM FOREIGN RESIDENCE ADDRESS:

Did tax residency end? Yes No If yes, when?

_____/_____/_____
Month Day Year

I hereby certify that all of the above information is true and correct. I understand if my status changes from that which I have indicated on this form I must submit a new Foreign National Information Form to the withholding agent.

Signature: _____ Contact Tel. No. or E-mail address: _____ Date: _____

FOREIGN NATIONAL INFORMATION FORM (Page 2)

PREVIOUS HISTORY

PLEASE LIST ALL VISA IMMIGRATION ACTIVITY FOR THE LAST FIVE (5) YEARS AND ALL F, J, M, OR Q VISAS SINCE 1/1/85:

Date of Entry	Date of Exit	Visa Type Immigration Status (if on a J-1 Visa)	Subtype of Visa	Primary Activity	Did you use treaty benefits?
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No
					<input type="radio"/> Yes <input type="radio"/> No

HOW TO COMPLETE THE FOREIGN NATIONAL INFORMATION FORM:

- Name: List full name
- Social Security Number: Enter either the social security number issued the US Social Security Administration or ITIN (Individual Taxpayer Identification Number). If you have not received your social security number yet, leave blank.
- Employee/Vendor ID#: Enter the Identification Number issued by the agency for in house operations.
- Local Street Address: List your US mailing address
- Foreign Residence Address: List your permanent residence in your home country.
- Country of Citizenship
- Country that issued Passport: Enter Country that issues the passport not the country where it was issued.
- Passport Number and Expiration Date
- Visa #: The control number in the upper right hand corner of the US visa.
- Original entry to the United States: If you have been to the US before this time, check yes.
- Immigration Status: Check the type of immigration status you currently hold. If you check U.S. Immigrant/ Permanent Resident and have a Permanent Resident card, you may proceed to the bottom of the form, sign and date.
- Specific details for J-1 Visas: Check the appropriate type that matches your DS-2019.
- Actual Primary Activity: Check one activity
- Actual Entry Date into the United States: Must include month, day, and year of the first time ever into the US. Approximate if you don't know.
- Start Date: The start date of your first visa for this primary activity.
- End Date: The projected end date on your visa documentation, i.e.DS-2019 or I-20.
- Occupation: Describe in general the services you are being compensated for.
- Check appropriate box if applicable.
- Is your spouse in the USA?: Check appropriate box. Enter number of dependents in the USA other than spouse.
- Honorariums are Consultants/ Self Employed Individuals: Check the appropriate box. This includes any office at any location specifically identified with you.
- Tax residence is where you last paid taxes as a resident and can be different from legal residence. Do not include the USA.

APPENDIX V

VISA/ PAYMENT MATRIX

ELIGIBLE PAYMENTS TYPES BASED ON VISA TYPES

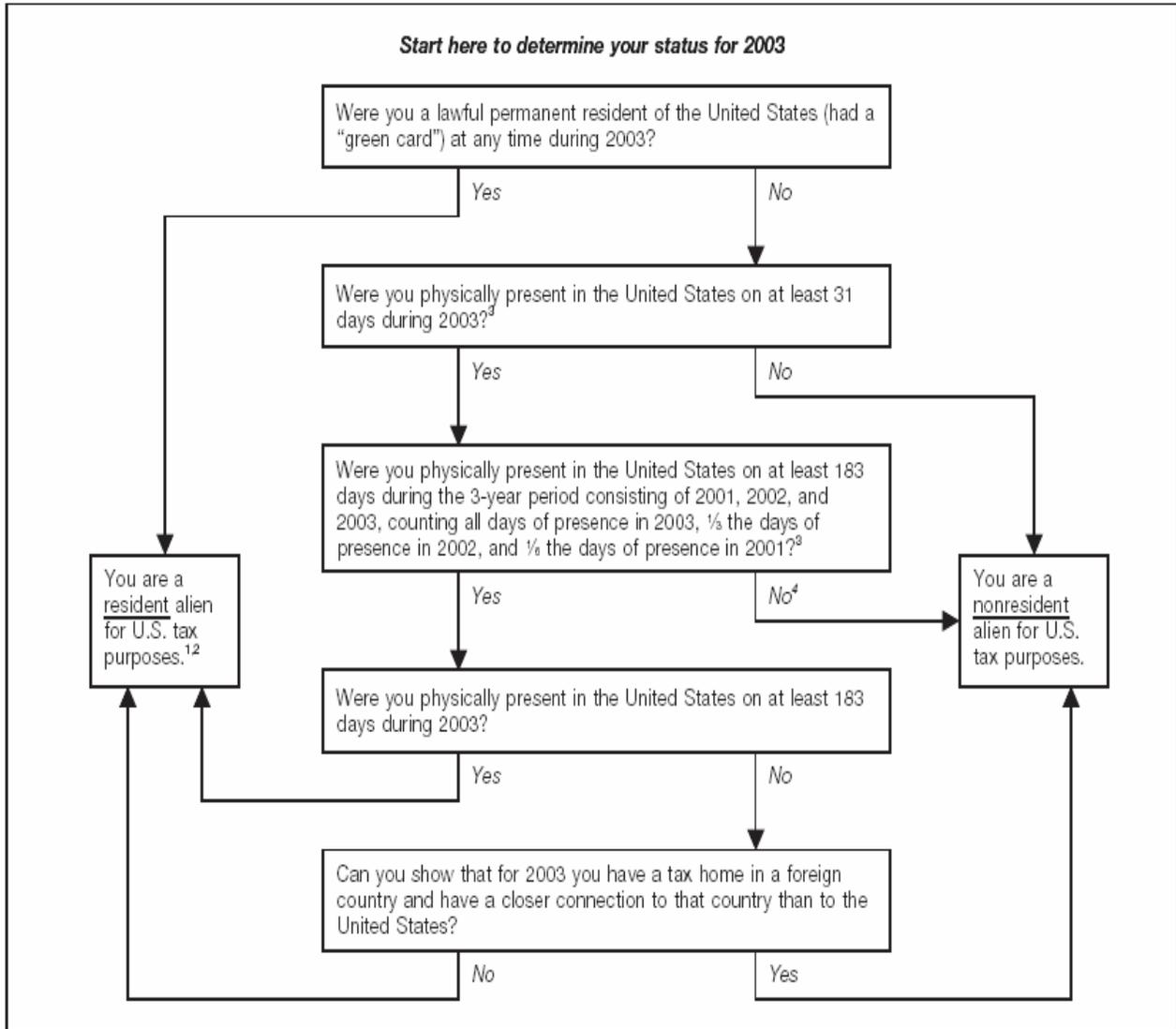
Visa Type	Visa Description	Employee Wages	Independent Contractors	Honoraria	Travel Reimbursement	Scholarships / Fellowships
A-1	Foreign Gov't Officials	No	No	No	Yes	Yes
A-2	Foreign Gov't Officials	Yes ^①	No	Yes ^①	Yes	Yes
B-2 & VWT	Visitor for Pleasure	No	No	Yes ^②	Yes	Yes
B-1 & VWB	Visitor for Work	No	Yes ^④	Yes ^②	Yes	Yes
F-1	Students	Yes	Yes	No	Yes	Yes
F-2	F-1 Spouse or Dependent	No	No	No	No	Yes
H-1A	Aliens in Health Spec. Occupations	Yes	No	No	Yes	Yes
H-1B	Professional	Yes	No	No	Yes	No
H-4	H-1 Dependent	No	No	No	No	Yes
J-1 (agency sponsored)	Exchange Visitor (students, scholars, trainees)	Yes	Yes	Yes	Yes	Yes
J-1 (sponsored by another agency)	Same as above	Yes ^③	No	Yes ^③	Yes	Yes
J-2	J-1 Spouse or Dependent	Yes ^①	Yes	Yes ^①	Yes	Yes
O-1	Extraordinary Ability in Sci., Edu., Bus., Art or Athletics	Yes	Yes	No	Yes	Yes
P-1	International Athlete or Ent. Group	Yes	Yes	Yes	Yes	No
Q-1	Intl cultural exchange	Yes	Yes	Yes	Yes	Yes
TN	NAFTA Professionals	Yes	No	No	Yes	No
TD	TN Spouse or Dependent	No	No	No	No	Yes

Note: Honoraria payments are limited to individuals who are not present for more than 9 days on site.

- ① Must have work authorization card issued by INS.
- ② May not visit more than 5 institutions in 6 months.
- ③ Must have permission from host sponsor for J-1 to receive any payment.
- ④ Independent Contractors on a B1 visa or VWB has a time limitation to 9 days.

APPENDIX VI

Substantial Presence Test from IRS Publication 519,
 U.S. Tax Guide for Aliens (<http://www.irs.gov>)



¹ If this is your first or last year of residency, you may have a dual status for the year. See *Dual-Status Aliens* in chapter 1.
² In some circumstances you may still be considered a nonresident alien under an income tax treaty between the U.S. and your country. Check the provisions of the treaty carefully.
³ See *Days of Presence in the United States* in this chapter for days that do not count as days of presence in the United States.
⁴ If you meet the substantial presence test for 2004, you may be able to choose treatment as a U.S. resident alien for part of 2003. For details, see *Substantial Presence Test* under *Resident Aliens* and *First-Year Choice* under *Dual-Status Aliens* in chapter 1.

Special Notes for Days of Presence (Footnote 3)

- 1) F, J, M, Q visa holders who are students do not count days towards substantial presence test during the first five calendar years of their student status. Maximum time for exempting days as a student is 5 calendar years one time.
- 2) J and Q visa holders who are not in student status do not count days towards substantial presence test for two years out of seven. The seven years consist of current year and the six years prior to it.

APPENDIX VII

Summary of Source Rules for Income of Nonresident Aliens

Item of Income	Factor Determining Source
Dependent Personal Services: Wages, salaries	Where service is performed
Independent Personal Services: honoraria, independent contractors, consulting fees	Where service is performed
Business income: Personal services Sale of Inventory	Where services performed Where sold
Interest	Residence of payor
Dividends	Whether a U.S. or foreign corporation
Rents	Location of Property
Royalties: Natural Resources Patents, copyrights, etc.	Location of property Where property is used
Sale of real property	Location of property
Scholarships/Fellowships	Residence of payor**
Pensions	Where services were performed that earned the pension
Prizes and awards	Residence of payor**
Sale of natural resources	Allocation based on fair market value of product at export terminal.
<p>** Activities to be performed outside of the United States. Scholarships, fellowship grants, targeted grants, and achievement awards received by nonresident aliens for activities to be performed; outside the United States are not U.S. source income.</p>	

APPENDIX VIII

Forms and Other Documents to Establish Withholding for Aliens

Resident Aliens Forms:

- **Form W-9, Request for Taxpayer Identification Number and Certification**
Aliens complete this form and file it with the withholding agent to establish their tax status as resident alien when they pass the substantial presence test.
- **Federal Tax Withholding (Form W-4)**
Resident aliens may claim filing status and withholding allowances using the same rules as U.S. citizens (complete the Personal Allowance Worksheet to determine allowances). The form is filed with and kept by the withholding agent.
- **State Tax Withholding (Form NC-4)**
Resident aliens may claim filing status and withholding allowances using the same rules as U.S. citizens (complete the Personal Allowance Worksheet to determine allowances). The form is filed with and kept by the withholding agent.
- **Form W-9, Modified to Claim Tax Treaty Benefits by a U.S. Person**
If an individual entered the United States as a nonresident alien, but is now a resident alien for U.S. tax purposes, the treaty exemption will continue to apply if the tax treaty has an exception to the treaty's saving clause. If the resident alien qualifies under an exception to the treaty's saving clause and the payor intends to withhold U.S. income tax on the scholarship, fellowship, or other remittance, they can avoid income tax withholding by giving the payor a Form W-9 with an attachment that includes the following information:
 - Their name and U.S. identification number
 - A statement that you are a resident alien and whether you are a resident alien under the green card test, the substantial presence test, or a tax treaty provision
 - Tax treaty and article number under which you are claiming a tax treaty exemption, and description of the article
 - A statement that you are relying on an exception to the saving clause of the tax treaty under which you are claiming the tax treaty exemption

The form is filed with and kept by the withholding agent.

Nonresident Aliens Forms:

- **Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding**
The alien completes this form and files it with the withholding agent to establish his tax status as nonresident alien. It puts the withholding agent on notice to withhold taxes at the prescribed rates for nonresident aliens. The withholding agent retains the form.

- **Federal Tax Withholding (Form W-4)**

Because of the restrictions on a nonresident's filing status, the limited number of personal exemptions a nonresident is allowed, and the fact that a nonresident alien cannot claim the "standard deduction," the Form W-4 must be completed using the following instructions taken from Internal Revenue Service (IRS) Publication 519, *U.S. Tax Guide For Aliens*. ("You" refers to the nonresident alien.)

1. Check "Single" filing status on line 3 (regardless of actual marital status).
2. Claim only one withholding allowance on line 5, unless you are a resident of Canada, Mexico, Japan, or South Korea, or U.S. National (American Samoa or Northern Marianna Islands). Residents of Canada and Mexico may claim withholding allowances using the same rules as U.S. citizens (complete the Personal Allowance Worksheet to determine allowances). Residents of Japan and South Korea may claim an exemption for a spouse or child(ren) who have lived with the alien in the U.S. at some time during the tax year. Students from India also have special withholding rules (see IRS Publication 519).
3. In addition to following these instructions, you must request that the state entity withhold an additional amount of \$7.60 per week (line 6 of Form W-4). If wages are paid based on a biweekly payroll, the additional amount will be \$15.30. If wages are paid on a monthly payroll, the additional amount will be \$33.10.
4. Nonresident aliens may not file "Exempt" status.

The form is filed with and kept by the withholding agent.

- **State Tax Withholding (Form NC-4)**

Nonresident aliens not from tax treaty countries use Form NC-4 for state income tax withholding and should claim the same filing and withholding status for state income tax withholding as for federal tax. The form is filed with and kept by the withholding agent.

- **Form 8233, *Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual***

Nonresident aliens who want to receive an exemption from, or a reduced rate of withholding for certain income types must file Form 8233 with the withholding agent. The withholding agent is responsible for filing one copy of the completed Form 8233 plus statement referenced in the next paragraph with the Internal Revenue Service within 5 days of acceptance. A copy is given to the nonresident alien. A copy is kept on file with the withholding agent.

Students, teachers, and researchers must attach the appropriate statement to the Form 8233 and give it to the withholding agent.

APPENDIX IX

Income Tax Treaties

An income tax treaty is an agreement entered into between two governments under which each country agrees to limit or modify the application of its domestic tax laws in an attempt to avoid having the same income taxed by both countries. Nonresident aliens of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under a tax treaty between their country of residence and the U.S. These individuals must notify you that they are residents of a country with which the United States has an income tax treaty and qualify for reduced rates of, or exemption from, income tax withholding.

Most tax treaties to which the U.S. is a party provide for at least a partial exemption from tax for pay for labor or personal services performed in the United States by a qualified individual. Most tax treaties also include specific articles designed to foster education and cultural exchanges. These articles are directed at the taxation of students, trainees, teachers, and researchers.

Generally, the qualifying individual must be a resident of the treaty country. In some cases the individual must be a citizen of the treaty country. An issue sometimes arises where an individual is a resident of both the U.S. and a foreign country. Usually, when this dual residency occurs the determination is made by ascertaining where the individual's permanent home is, the country in which he/she is a citizen or national, and where personal and economic relations are closer.

Residency under the tax treaties is determined primarily by one's "residency" and not by one's citizenship or nationality. In addition, the domestic tax laws of most countries determine residency for tax purposes by criteria other than by citizenship or nationality. For example, the U.S. tax treaties with both China and Sweden determine residency first and foremost by the domestic law of each country. If dual residency results from the application of the domestic law of both countries, then the tiebreaker rules of each treaty come into play.

The tax laws of China require that a resident of China must have a "place of abode" in China to be considered a resident. The domestic law of Sweden states that anyone who resides in Sweden longer than 6 months shall be considered a resident of Sweden for tax purposes.

IRS Publication 901, *U.S. Income Tax Treaties*, provides an overview of the income tax treaties in force as of the publication date. This publication should not be relied upon to determine if an individual qualifies for the benefits of a tax treaty. The exemptions from or reduced rates of U.S. tax vary under each treaty. Therefore, you must check the provisions of the tax treaty that applies.

After a new tax treaty enters into force, the Treasury Department prepares a "technical explanation" of the text of the tax treaty provisions. The technical explanations are useful for interpreting the tax treaties. The information in IRS Publication 901 is not all-inclusive and tax treaties are regularly updated. Therefore, you should not rely solely on this publication, but should ensure that you have access to current and complete information about tax treaties if you deal with nonresident alien employees on an on-going basis. The Internal Revenue Service has tax treaty information on their web site at <http://www.irs.gov/businesses/international>.

When reviewing an income tax treaty article, it is important to pay close attention to the qualifications for exemption specified in the text of the article. For example, the article may limit the exemption to payments made by a certain type of payor (i.e., a foreign resident). To determine an individual's eligibility for a tax treaty an analysis must be made using the following criteria:

- What is the residency status of the individual as defined by their home country and by the U.S.?
- Does this status qualify for a potential exemption from tax?
- What is the primary purpose of the individual's presence in the U.S.? Is there an article in the tax treaty that could exempt this type of activity?

- What is the type of payment (scholarship, fellowships, independent personal service, and dependent personal service)? Is there an article in the tax treaty that could exempt this type of payment?
- How long will the individual be in the U.S.? This question is extremely important when dealing with tax treaties with a retroactive clause. These treaties will take away all benefits if an individual remains in the U.S. beyond the specified time period. Currently, countries with tax treaties that include a retroactive clause are Germany, India, the Netherlands, Thailand and the United Kingdom.
- Who is the payor?

The tolling of the time limitations in tax treaties varies between tax treaties. Article 20 of the U.S. -United Kingdom Tax Treaty limits the visit to the U.S. to two years. If the individual stays longer than two years the benefit of the treaty is lost retroactively. In this situation, if the state entity has reason to believe that the individual will be staying longer than two years they should not grant the tax treaty exemption. The treaty with Canada allows a tax exemption on up to \$10,000 of remuneration paid in the calendar year. However, if the individual earns more than \$10,000, the entire benefit of the tax treaty is lost retroactively.

APPENDIX X

Countries with Tax Treaties Containing Applicable Articles

U.S. TAX TREATIES WITH ARTICLES FOR TEACHER/RESEARCHER COMPENSATION (INCOME CODE 18)				
Country of Residence	Tax Treaty Article	Maximum Time Limit of Tax Treaty (Years)	Maximum \$ Amount Exempt per Year	Can resident aliens for tax purposes use the treaty article?
Belgium	20	2	No Limit	Yes
Canada ④	XV	None	\$10,000	No
China, Peoples' Republic of	19	3	No Limit	Yes
Commonwealth of Independent States (CIS) ①	V(1)(c)	2	No Limit	No
Czech Republic	21(5)	2	No Limit	Yes
Egypt	22	2	No Limit	Yes
France	20	2	No Limit	Yes
Germany②	20(1)	2	No Limit	Yes
Greece③	XII	3	No Limit	No
Hungary	17	2	No Limit	Yes
Iceland	21	2	No Limit	Yes
India②	22	2	No Limit	Yes
Indonesia	20	2	No Limit	Yes
Israel	23	2	No Limit	Yes
Italy	20	2	No Limit	Yes
Jamaica	22	2	No Limit	Yes
Japan	19	2	No Limit	Yes
Korea, Republic of South	20	2	No Limit	Yes
Luxembourg②	21(2)	2	No Limit	Yes
Netherlands②	21	2	No Limit	Yes
Norway	15	2	No Limit	Yes
Pakistan	XII	2	No Limit	No
Philippines	21	2	No Limit	Yes
Poland	17	2	No Limit	Yes
Portugal	22	2	No Limit	Yes
Romania	19	2	No Limit	Yes
Slovak Republic	21(5)	2	No Limit	Yes
Slovenia	20(3)	2	No Limit	Yes
Thailand②	23	2	No Limit	Yes
Trinidad & Tobago	18	2	No Limit	Yes
United Kingdom②	20A	2	No Limit	Yes
Venezuela	21(3)	2	No Limit	Yes

- ① Commonwealth of Independent States: Former U.S.S.R.-U.S. tax treaty that still covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
- ② Treaty benefit is lost if individual overstays the period of exemption.
- ③ Treaty Article provides benefits to teachers only.
- ④ The U.S./Canadian tax treaty does not have a specific article for teachers/researchers. It does have a Dependent Services Article that will exempt income to a maximum of \$10,000 for individuals in nonresident tax status.

IMPORTANT NOTICE:

Treaty information above is current as of March 25, 2004. Due to the constant review of existing treaties plus the addition of new treaties, you should refer to the Internal Revenue Service website and the most current IRS Publication 901, *U.S. Tax Treaties* to confirm treaty status is still valid.

U.S. TAX TREATIES WITH ARTICLES FOR STUDENT COMPENSATION (INCOME CODE 19)				
Country of Residence	Tax Treaty Article	Maximum Time Limit of Tax Treaty (Years)	Maximum \$ Amount Exempt per Year	Can resident aliens for tax purposes use the treaty article?
Belgium	21(1)	5	\$2,000	Yes
Canada ①	XV	None	\$10,000	No
China, Peoples' Republic of	20(c)	Reasonable period to complete studies	\$5,000	Yes
Cyprus	21(1)	5	\$2,000	Yes
Czech Republic	21(1)	5	\$5,000	Yes
Egypt	23(1)	5	\$3,000	Yes
Estonia	20(1)	5	\$5,000	Yes
France	21(1)	5	\$5,000	Yes
Germany②	20(4)	4	\$5,000	Yes
Iceland	22(1)	5	\$2,000	Yes
Indonesia	19(1)	5	\$2,000	Yes
Israel	24(1)	5	\$3,000	Yes
Japan	20(1)	5	\$2,000	Yes
Korea, Republic of South	21(1)	5	\$2,000	Yes
Latvia	20(1)	5	\$2,000	Yes
Lithuania	20(1)	5	\$5,000	Yes
Morocco	18(1)	5	\$2,000	Yes
Netherlands	21	Reasonable period to complete studies	\$2,000	Yes
Norway	16(1)	5	\$2,000	Yes
Pakistan	XIII(1)	No limit	\$5,000	No
Philippines	22(1)	5	\$3,000	Yes
Poland	18(1)	5	\$2,000	Yes
Portugal	23(1)	5	\$5,000	Yes
Romania	20(1)	5	\$2,000	Yes
Slovak Republic	21(1)	5	\$5,000	Yes
Slovenia	20(1)	5	\$5,000	Yes
Spain③	22(1)	5	\$5,000	Yes
Thailand	22(1)	5	\$3,000	Yes
Trinidad & Tobago	19(1)	5	\$2,000	Yes
Tunisia	20	5	\$4,000	Yes
Venezuela	21(1)	5	\$5,000	Yes

- ① The U.S./Canadian tax treaty does not have a specific article for students. It does have a Dependent Services Article that will exempt income to a maximum of \$10,000 for individuals in nonresident tax status.
- ② Treaty benefit is lost if individual overstays the period of exemption.
- ③ Spain's exempt amount includes personal allowance exemption to total \$5,000.

IMPORTANT NOTICE:

Treaty information above is current as of March 25, 2004. Due to the constant review of existing treaties plus the addition of new treaties, you should refer to the Internal Revenue Service website and the most current IRS Publication 901, *U.S. Tax Treaties* to confirm treaty status is still valid.

U.S. TAX TREATIES COVERING CONSULTING FEES, GUEST SPEAKER FEES, HONORARIA, MISCELLANEOUS INCOME				
Country of Residence	Maximum Presence In U.S. (Years)	Maximum Amount Exempt (Per Year)	Honoraria Article	Prizes & Awards Article
Australia	183 Days	No Limit	14	21
Austria	No Limit	No Limit	14	21
Barbados ¹	89 Days	\$5,000	14	21
Belgium	182 Days	No Limit	14(2)	22
Canada	No Limit	No Limit	XIV	XXII
China, People's Republic of	183 Days	No Limit	13	21
Cyprus	182 Days	No Limit	17	NA
Czech Republic	183 Days	No Limit	14	22
Denmark	No Limit	No Limit	14	21
Egypt	89 Days	No Limit	15	NA
Estonia	183 Days	No Limit	14	21
Finland	No Limit	No Limit	14	21
France	No Limit	No Limit	14	21
Germany	No Limit	No Limit	14	21
Greece ¹	183 Days	\$10,000	X	NA
Hungary	183 Days	No Limit	13	19
Iceland	182 Days	No Limit	18	NA
India	89 Days	No Limit	15	23
Indonesia	119 Days	No Limit	15	NA
Ireland	No Limit	No Limit	14	22
Israel	182 Days	No Limit	16	NA
Italy	183 Days	No Limit	14	22
Jamaica ¹	89 Days	\$5,000	14	23
Japan	183 Days	No Limit	17	NA
Kazakhstan	183 Days	No Limit	14	20
Korea, South ²	182 Days	\$3,000	18	NA
Latvia	183 Days	No Limit	14	21
Lithuania	183 Days	No Limit	14	21
Luxembourg	No Limits	No Limit	15	21
Mexico	182 Days	No Limit	14	23
Morocco ²	182 Days	\$5,000	14	NA
Netherlands	No Limit	No Limit	15	23
New Zealand	183 Days	No Limit	14	21
Norway	182 Days	No Limit	13	NA
Pakistan ³	183 Days	No Limit	XI	NA
Philippines ²	89 Days	\$10,000	15	NA
Poland	182 Days	No Limit	15	NA
Portugal	182 Days	No Limit	15	24

U.S. TAX TREATIES COVERING CONSULTING FEES, GUEST SPEAKER FEES, HONORARIA, MISCELLANEOUS INCOME (CONTINUED)				
Country of Residence	Maximum Presence In U.S. (Years)	Maximum Amount Exempt (Per Year)	Honoraria Article	Prizes & Awards Article
Romania	182 Days	No Limit	14	NA
Russia	183 Days	No Limit	13	19
Slovak Republic	183 Days	No Limit	14	22
Slovenia	No Limit	No Limit	14	21
South Africa	183 Days	No Limit	14	21
Spain	No Limit	No Limit	15	23
Sweden	No Limit	No Limit	14	22
Switzerland	No Limit	No Limit	14	21
Thailand ²	89 Days	\$10,000	15	24
Trinidad & Tobago ¹	183 Days	\$3,000	17	3
Tunisia ²	183 Days	\$7,500	14	21
Turkey	183 Days	No Limit	14	21
Ukraine	No Limit	No Limit	14	21
United Kingdom	183 Days	No Limit	14	22
U.S.S.R., former ⁴	183 Days	No Limit	VI(2)	NA
Venezuela	No Limit	No Limit	14	22

Note: Some of the treaties with "No Limit" to the maximum presence in the U.S. do not extend treaty benefits to individuals who are residents of the U.S. Individuals who are in the U.S. on a non-J visa and who are paid an honorarium will be treated as U.S. residents once they are in the U.S. for at least 183 days. Therefore, even though the treaty provision may not impose a maximum presence limit, as a practical matter, once the person is in the U.S. for 183 days, he will be treated as a resident alien and will not be eligible for the tax treaty exemption.

Special footnotes:

¹ The exemption is not available if the dollar limit is exceeded. ² The maximum presence test and dollar limits operate independently. If the maximum presence test is met, the exemption applies to the full amount of compensation. Compensation less than the maximum dollar amount is exempt even if the maximum presence test is not met. ³ Applies only if services are performed for a resident of Pakistan. ⁴ The tax treaty with the former U.S.S.R. covers Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

IMPORTANT NOTICE:

Treaty information above is current as of March 25, 2004. Due to the constant review of existing treaties plus the addition of new treaties, you should refer to the Internal Revenue Service website and the most current IRS Publication 901, *U.S. Tax Treaties* to confirm treaty status is still valid.

U.S. TAX TREATIES WITH ARTICLES FOR SCHOLARSHIPS & FELLOWSHIPS (INCOME CODE 15)

Country of Residence	Tax Treaty Article	Maximum Time Limit of Tax Treaty (Years)	Maximum \$ Amount Exempt per Year	Can resident aliens for tax purposes use the treaty article?
Belgium	21(1)	5	No Limit	Yes
China, Peoples' Republic of	20(b)	No Limit	No Limit	Yes
Commonwealth of Independent States (CIS) ①	V(1)(d)	5	\$9,999	No
Cyprus	21(1)	5	No Limit	Yes
Czech Republic	21(1)	5	No Limit	Yes
Egypt	23(1)	5	No Limit	Yes
Estonia	20(1)	5	No Limit	Yes
France	21(1)	5	No Limit	Yes
Germany	20(3)	4	No Limit	Yes
Iceland	22(1)	5	No Limit	Yes
Indonesia	19(1)	5	No Limit	Yes
Israel	24(1)	5	No Limit	Yes
Japan	20(1)	5	No Limit	Yes
Kazakhstan	19(1)	5	No Limit	Yes
Korea, Republic of South	21(1)	5	No Limit	Yes
Latvia	20(1)	5	No Limit	Yes
Lithuania	20(1)	5	No Limit	Yes
Luxembourg	21(1)	5	No Limit	Yes
Morocco	18(1)	5	No Limit	Yes
Netherlands	22(2)	3	No Limit	Yes
Norway	16(1)	5	No Limit	Yes
Philippines	22(1)	5	No Limit	Yes
Poland	18(1)	5	No Limit	Yes
Portugal	23(1)	5	No Limit	Yes
Romania	20(1)	5	No Limit	Yes
Russia	18(1)	5	No Limit	Yes
Slovak Republic	21(1)	5	No Limit	Yes
Slovenia	20(1)	5	No Limit	Yes
Spain	22(1)	5	No Limit	Yes
Thailand	22(1)	5	No Limit	Yes
Trinidad & Tobago	19(1)	5	No Limit	Yes
Tunisia	20	5	No Limit	Yes
Ukraine	20(1)	5	No Limit	Yes
Venezuela	21(1)	5	No Limit	Yes

① Commonwealth of Independent States: Former U.S.S.R.-U.S. tax treaty that still covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

IMPORTANT NOTICE:

Treaty information above is current as of March 25, 2004. Due to the constant review of existing treaties plus the addition of new treaties, you should refer to the Internal Revenue Service website and the most current IRS Publication 901, *U.S. Tax Treaties* to confirm treaty status is still valid.

APPENDIX XI

Income Subject to the Federal Insurance Contribution Act (FICA) Taxes

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of the employee or employer. In limited situations, these taxes apply to wages for services performed outside the United States. These taxes are required for wages of employment as defined by Section 3121 of the Internal Revenue Code. These taxes are not voluntary so contributions cannot be made if no taxes are due.

For individuals in an alien status, the Internal Revenue Code does exempt one group's wages from social security and Medicare taxes in Section 3121(b) (19):

Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

Translation: Individuals who are on a F, J, M, or Q visa and in compliance with the terms of their visa are exempt from FICA taxes while they are in nonresident tax status. Nonresident status means they have not passed the substantial presence test. Important Note: The exemption is only permitted during the years, the F, J, M, or Q visa holder is in a nonresident tax status for the entire year. If they pass the substantial presence test during the year, their wages are subject to the FICA taxes from the beginning of the calendar year they changed.

Students- For individuals who are in student status, this nonresident period consists of either the first five (5) years as a student when the days do not count towards the substantial presence test or their countable days have not passed 183 days in the sixth year.

Nonstudents- For individuals on a J or Q visa, this nonresident period is either during the two years when the days do not count towards the substantial presence test out of seven years (current and six years prior) or their countable days have not exceeded the 183 days.

Social Security Totalization Agreements

The federal government has entered into bilateral social security agreements with a number of different foreign countries. As of 2004, agreements were in effect with the following countries: Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea (South), Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

These bilateral agreements, which are sometimes called "Totalization" agreements, eliminate dual social security coverage, the situation that occurs when an employee from one country works in another country and is required to pay social security taxes--together with the employer--to both countries on the same earnings. A Totalization agreement assigns coverage to just one country and exempts the employer and employee from social security taxes in the other country.

Reporting Social Security Tax Withholding

Social security and Medicare taxes as well as the income subject to social security and Medicare taxes are reported on the Form W-2, *Wage and Tax Statement*.

APPENDIX XII

End of Year Reporting for the Withholding Agent

The annual tax reporting statements for reportable alien payments are listed below.

Form W-2 Wage and Tax Statement

Wages, tips, and other compensation paid to resident and nonresident alien employees that are subject to income and/or FICA taxes are reported on Form W-2, Wage and Tax Statement. The payments are processed in the same manner as such payments made to U.S. citizens.

Form 1099 Miscellaneous Income

Payments for consulting fees, guest speaker fees, honoraria, awards and prizes made to resident alien independent contractors are reported on Form 1099.

Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding

IRS tax regulations require that certain payments be reported to the nonresident alien recipients after each calendar year on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Form 1042-S is issued to nonresident aliens in the following categories:

- Employees using a tax treaty for withholding exemption
- Independent contractors
- Scholarship/fellowship recipients who receive nonqualified scholarship money

Form 1042 Annual Withholding Tax Return for U.S. Source Income of Foreign Persons

Form 1042 is used to report the federal government income and income tax withheld on payments made to nonresident aliens and resident aliens who used tax treaty benefits.

APPENDIX XIII

Forms, Publications, and References

State of North Carolina

- **Foreign Information National Form**, is to be prepared by nonresident alien individuals and submitted with each voucher and other documentation for payments to nonresident alien independent contractors. (Refer to Appendix IV)
- **Certificate of Academic Activity** (Refer to Appendix XIV)
- **Form NC-4, Employee's Withholding Allowance Certificate [State]**. Used as the basis for calculating state income tax withholding from pay.

U.S. and Naturalization Service Forms and Documents

- **Employer Information Bulletin 96-08: Employee or Independent Contractor?**, provides information on how to identify an independent contractor for INS purposes.
- **Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status**, required for nonimmigrant exchange visitors.
- **Form I-151, Alien Registration Card** (Green Card) replaced effective March 20, 1996 with the I-551.
- **Form I-9, Employment Eligibility Verification**, must be completed by each worker and is used by the agency to determine the worker's citizenship status, employment authorization and identification and registration numbers.
- **Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status**, is to be completed by an official of the school attended by the F-1 holder. The form is a certification concerning the educational program and financial support of the student.
- **Form I-551, Alien Registration Receipt Card**, issued by the Immigration and Naturalization Service, is the official document to identify permanent resident aliens.
- **I-94 Card, Departure Record**, issued to non-immigrant aliens upon arrival in the U.S. The departure record contains the alien's name, country of citizenship, date of birth, visa type and the date through which the alien may stay. Changes in the alien's status, extensions of stay and eligibility for employment may be noted.
- **Visa**, an official endorsement of a passport indicating the owner has permission to enter or cross a particular country. The visa type further identifies the primary purpose of the visit and relates to a section of law. In most instances, the section of law refers to the Immigration and Nationality Act. Nonimmigrant visas have one letter and one number or one letter. Immigrant visas have either two letters and one number or one letter and two numbers, and the holders are classified as resident aliens.

Internal Revenue Service Forms and Publications

- **Form 1042-S, Foreign Person's United States Source Income Subject to Withholding**, is prepared by the state agency, university, or community college business offices to record compensation exempt under tax treaty, honoraria, and amounts for qualified and nonqualified fellowships, paid to nonresident alien employees and independent contractors.

- **Form 8233, Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual**, is required to be completed by the nonresident alien when he or she claims a treaty exemption. The agency or college is responsible for monitoring the tax treaty benefit eligibility period for each individual who has filed a Form 8233.
- **Form W-4, Employee's Withholding Allowance Certificate [Federal]**. Used as the basis for calculating federal income tax withholding from pay.
- **Form W-7, Application for IRS Individual Tax Identification Number, (ITIN)**, is for individuals not otherwise eligible to receive a social security number.
- **Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding**, a statement of nonresident alien tax status.
- **Form W-9, Request for Taxpayer Identification Number and Certification**, a statement of resident alien tax status.
- **IRS Publication 15, Employer's Tax Guide**
- **IRS Publication 15A, Employer's Supplemental Tax Guide**
- **IRS Publication 515, Withholding of Tax on Non-resident Aliens and Foreign Corporations**
- **IRS Publication 519, U.S. Tax Guide for Aliens**
- **IRS Publication 520, Scholarships and Fellowships**
- **IRS Publication 570, Tax Guide for Individuals With Income From U.S. Possessions**
- **IRS Publication 597, Information on the United States--Canada Income Tax Treaty**
- **IRS Publication 901, United States Tax Treaties**
- **IRS Publication 1542, Per Diem Rates**
- **IRS Publication 1915, Understanding Your IRS Individual Taxpayer Identification Number**

IRS forms and publications may be ordered:

By Phone	1-800-829-3676
By Mail	IRS FORMS DISTRIBUTION CENTER EASTERN AREA DISTRIBUTION CENTER POST OFFICE BOX 85074 RICHMOND VA 23261-5074

With a Computer Download them from the IRS web site <http://www.irs.gov>

Social Security Administration Forms

Form SS-5, Application for Social Security Card, is required to be completed and submitted to the Social Security Administration by eligible individuals. Additional forms may be obtained from your local Social Security Office, ordered by calling 1-800-772-1213 or at <http://www.ssa.gov>.

Reference Sources

- The Florida Nonresident Alien Taxation Handbook, http://www.dbf.state.fl.us/bosp/nra_man.pdf
- The University of North Carolina – Chapel Hill, Payroll Services Handbook, <http://www.ais.unc.edu/busman/pay/paysc.html>,
- *Handbook for Employers*, Booklet M-274, U.S. Immigration and Naturalization Service
- Lowell G. Hancock, Issue Specialist, Internal Revenue Service, International, Foreign Payments Division
- *Immigration Procedures Handbook*, Fragomen, Austin T., Jr., Del Rey, Alfred J., Jr., and Bell, Steven C., Clark Boardman Callagan, 1997.
- *Immigration Law Report*, U.S. Taxation of Foreign Students and Scholars, Singer, Paula N. Vol I. 15, No. 8, April 15, 1996 <http://www.windstar-tech.com/>
- Internal Revenue Code
- Internal Revenue Publications, <http://www.irs.gov/formspubs/index.html>
- Manual from Nonresident Alien Tax Compliance Immigration Workshop in Washington, D.C., September 11, 1996, written by Eleanor Pelta and Laura Fotte Reiff, immigration attorneys
- *Nonresident Alien Tax Compliance: A Guide for Institutions Making Payments to Foreign Students, Employees, and Other International Visitors*, Kepley, Donna E., Arctic International, 2000, Washington, D.C. <http://www.arcticintl.com/>
- Siskind's Immigration Bulletin, <http://www.visalaw.com/>
- U.S. Treasury Regulations
- U.S. Citizen and Immigration Services Web Site, <http://uscis.gov/graphics/index.htm>
- United States Information Agency, <http://dosfan.lib.uic.edu/usia/>

APPENDIX XIV

Certificate of Academic Activity

Compliance Statement for the American Competitiveness and Workforce Improvement Act,
Section 431

I, <<INSERT NAME>> have performed the compensated activities for honoraria payment . These activities occurred for 9 days or less while at <<INSERT NAME OF STATE ENTITY>>.

I also have not been compensated by more than 5 other entities in the United States during the previous 6 months.

Signature: _____ Date: _____

SSN or ITIN: _____

Our department, <<INSERT DEPARTMENT NAME>> is sponsoring, <<INSERT NAME>> at, <<INSERT NAME OF STATE ENTITY>> and the activities he is being compensated for fall within the broad realm of customary academic activities associated with teaching, research, public service, or academic administration or operations.

Signature: _____ Date: _____

Title: _____