Vendor Payments to Nonresident Aliens

Section: General Operations
Title: Vendor Payments to Nonresident Aliens
Number: 56.450

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POLICY

.100 POLICY STATEMENT

This policy sets forth basic system-wide standards for reporting and/or withholding on vendor payments made to nonresident aliens (NRAs) and foreign entities.

.110 POLICY RATIONALE
Generally, payment made to a nonresident alien or foreign entity on U.S. source income is tax reportable and may be subject to tax withholding. Exemption or partial exemption from withholding is applied if the nonresident alien’s resident country has a tax treaty with the United States and the nonresident alien or entity files the appropriate form to claim treaty benefits. Applicable nonresident alien vendor payments are reported to the IRS on Form 1042-S. Failure to report nonresident vendor payments may result in IRS fines and/or penalties against OUS. The purpose of this policy is to provide guidance for the Chancellor’s Office and OUS institutions to ensure that OUS is following the withholding and reporting obligations that apply to nonresident alien vendor payments.

.120 AUTHORITY

- IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
- IRS Publication 519, U.S. Tax Guide for Aliens
- IRS Publication 901, U.S. Tax Treaties

.130 APPROVAL AND EFFECTIVE DATE OF POLICY

Approved by the Associate Vice Chancellor for Finance and Administration/Controller on April 14, 2010. The effective date of this policy is April 14, 2010.

.140 KNOWLEDGE OF THIS POLICY

All institutional and Chancellor’s Office personnel who administer contracts and have disbursement responsibilities for accounts payable, scholarship, and fellowship disbursements should be knowledgeable of this policy.

.150 DEFINITIONS

Nonresident Alien: An individual who is not a U.S. citizen or a resident alien.

Resident Alien: An individual that is not a citizen or national of the U.S. He/She either holds a green card or meets the substantial presence test for tax purposes only.

ITIN (Individual Taxpayer Identification Number): Issued by the Internal Revenue Service to individuals who are required to have a U.S. taxpayer identification number, but who are not eligible to receive a Social Security Number. An individual may apply for an ITIN by submitting IRS Form W-7 with the Internal Revenue Service.

U.S. Source Income:

- For personal service contracts, the place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.
- Scholarships, fellowships, and grants are sourced according to both the residence of the payer and the location of the activity.
• Royalties, if paid by U.S. income, is considered U.S. Source regardless of the residence of the recipient.

160 RESPONSIBILITIES

1. Institutions

Each OUS institution is responsible for the following (see See IRS Publication 515, http://www.irs.gov/publications/p515/index.html, for additional information):

A. Verifying eligibility of the nonresident alien or entity to receive payments.
B. Identifying nonresident alien payment recipients and obtaining the necessary paperwork and documentation from the recipient.
C. Processing payments correctly to facilitate proper tax withholding and year end reporting.
D. Determining tax withholding requirements on payments made to nonresident aliens.
   a. The most common types of payments are listed below; refer to IRS Publication 515 to determine appropriate withholding rate:
      ▪ Independent Personal Service Contracts: Generally, OUS must withhold 30% federal tax for Personal Service Contracts paid to NRAs, unless the individual qualifies for full or partial exemption due to a tax treaty. The amount of income subject to withholding may be reduced if a personal exemption is claimed on IRS Form 8233.
      ▪ Scholarship and Fellowship Grants: The withholding rates on scholarships or fellowship grants paid to nonresident aliens depend on whether the recipient is a candidate for a degree or is a non-degree candidate, and on the nonresident alien’s immigration status. Tax treaty benefits may apply.
      ▪ Royalty or Passive Income: Typically a payment for a right to use some type of intangible property. Generally, OUS must withhold 30% federal tax for royalties paid to foreign entities or nonresident aliens unless the individual qualifies for exemption or reduced rate of withholding due to a tax treaty.
      ▪ Payments to Foreign Entities: Payments made to Foreign Entities that are U.S. Source Income are generally subject to 30% federal tax withholding unless the entity is eligible for treaty benefits or qualifies for exemption under IRS code due to its organizational status.
   b. In order to claim tax treaty benefits, a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) is required and the individual must file the appropriate tax treaty document (dependent upon the type of income). Form 8233 is used for independent personal services income. Form W-8BEN is used for scholarship or royalty income. Foreign entities may claim exemption from tax withholding by indicating the income is effectively connected to business conducted in the U.S. by filing Form W8-ECI.
E. The institution is responsible for notifying the Chancellor’s Office of tax withholdings deducted from payments made to NRAs on, at least, a monthly basis. This information can be submitted on Chancellor’s Office NRA Tax Withholding Deposit - 1042-S form
(see appendix .700 Forms) or the same information can be emailed to the Controller’s Division.

F. At the beginning of each calendar year, the institutions will provide all nonresident alien vendor payment information for the previous year to the Controller’s Division (see section .180 for a list of required information).

2. Chancellor's Office

A. The Controller’s Division receives withholding information from the institutions and makes tax deposits throughout the year. The Controller’s Division will journal voucher (jv) the tax withholding from the institution to the Chancellor’s Office (CO) NRA tax payment clearing fund.

B. Annually, the CO gathers nonresident alien payment information from each institution for the previous year (see section .180). This information is compiled into individual 1042-S forms to be mailed to the nonresident aliens who received reportable payments during the year. This information is also submitted to the IRS. The University of Oregon (UO) prepares and distributes its own individual 1042-S forms, but reports the totals to the CO to be added to the 1042 Return.

C. The CO consolidates information from the 1042-S files, UO, and aggregate Payroll; then reports the totals on a single 1042 Return to the IRS.

.180 ANNUAL REPORTING

By February 15 of each year, each campus will provide to the Controller’s Division a listing of all personal service, royalty, scholarship, and fellowship payments made to non-resident aliens. This information must include:

- Name
- SSN, US EIN or ITIN, if available
- Addresses (foreign and U.S. mailing address if available)
- Country of residence
- Type of payment or income code
  - 10, 11, 12 – royalty payments
  - 15 – scholarship or fellowship payment
  - 16 – personal services contract
  - 50 – other income
- Gross amount of reportable income
- Percentage of tax withholding
- Amount of tax withheld
- Exemption Code (if applicable)

.350 ACCOUNTING

Each campus will reconcile their non-resident alien tax withholding fund on a monthly basis to determine if all tax withholdings have cleared. Withholding that has not been cleared in a timely manner should be investigated as this could be an indication that a tax withholding has not been
reported to the Controller’s Division. IRS fines and/or penalties due to late payments may be
applied to the campus responsible.

.360 FORMS

IRS Forms that are required to establish tax withholding status and OUS forms that may be
required to pay a nonresident alien on a Personal Services Contract are shown in the policy
appendix, section .700 Forms.

.690 CONTACT INFORMATION

Direct questions about this policy to the following offices:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>General questions from institutional personnel and from foreign vendors</td>
<td>Institution Office of Business Affairs</td>
</tr>
<tr>
<td>General questions from institutional central administration</td>
<td>Chancellor's Office - Controller's Division</td>
</tr>
<tr>
<td>Request for copy of a 1042-S Form</td>
<td>Chancellor's Office - Controller's Division</td>
</tr>
</tbody>
</table>

.695 HISTORY

04/14/10 - Approved

Policy Last Updated: 04/14/10

APPENDIX

.700 FORMS

IRS Forms at www.irs.gov:

- Form 8233, Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
- Form W-7, Application for IRS Individual Taxpayer Identification Number
- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
• Form W8-ECI, Certificate of Foreign Person’s Claim That Income Is Effectively Connected With the Conduct of a Trade or business in the United States
• Form W8-IMY, Certificate of Foreign Intermediary, Foreign Flow-Throw Entity, or Certain U.S. Branches for United States Tax Withholding
• Form W8-EXP, Certificate of Foreign Government or Other Foreign Organization for United State Tax Withholding

OUS Forms:

• [link]

.995 HISTORY

04/14/10 Approved

Appendix Last Updated: 04/14/10