

## UC Davis Policy and Procedure Manual

### Chapter 380, Personnel--General

#### Section 66, Income Tax Withholding and Reports of Earnings for Nonresident Aliens

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#### I. Purpose

This section discusses the tax regulations applicable to payments by the University to certain aliens with respect to employment, receipt of personal services, or scholarships and fellowships. Whether an alien may receive salary, an honorarium, or other compensation for services, as well as reimbursement for travel and subsistence expenses, is governed by the rules and regulations of the U.S. Citizenship and Immigration Services (USCIS) and is ordinarily reflected in the type of visa held by the alien (refer to [Section 380-64](#)). The tax status of the alien is governed by rules and regulations of the Internal Revenue Service (IRS). It is essential to establish the status of any alien engaging in any form of compensated service for the University so that the rules and regulations of both USCIS and IRS are met.

#### II. Definitions

- A. Resident alien--a citizen of a foreign government who is considered by the IRS to be U.S. citizen for income tax purposes if the individual: (1) is a lawful permanent resident (immigrant) of the U.S. at any time during the calendar year; or (2) meets the requirements of the "substantial presence" test (see III.A, below).
- B. Nonresident alien--an alien who does not qualify under either of the above tests (II.A) as a resident alien for income tax purposes.

#### III. Determination of Residency Status

Since tax withholding requirements are different for resident and nonresident aliens, the residency status of any alien receiving payments from the University must be determined by completing a Statement of Citizenship and Federal Tax Status (available on the Web at <http://accounting.ucdavis.edu/Forms/>). This form should be provided to the alien by the department requiring the services; however, aliens are encouraged to visit Accounting & Financial Services (Payroll, Accounts Payable, or Student Accounting) to obtain assistance in completing the form.

##### A. Substantial presence test

Except as described in III.B and C, below, an alien meets the substantial presence test with respect to any current calendar year if: (1) he or she was present in the U.S. for at least 31 days during the current calendar year; and (2) the sum of the number of days on which he or she was present in the U.S. during the current year and the two preceding calendar years equals or exceeds 183 days--as computed under the formula on the Statement of Citizenship and Federal Tax Status form.

##### B. Individuals exempt from the substantial presence test

Generally within limitations, certain individuals, although actually present in the U.S., are not treated as being present. A specified period of time must elapse before the substantial presence test is applied to these individuals, and during this initial period they are considered nonresident aliens for income tax purposes. An exempt individual is one who is a foreign government-related individual, teacher or trainee, or student, as described in 1-4, below.

1. An individual holding a Type A visa or Diplomatic or Consular status.
2. An individual holding a J-1 visa and in the U.S. as a teacher, trainee, researcher, or

student on a J-1 or F-1 visa for less than two calendar years of the preceding six years.

3. A student holding an F-1 or J-1 visa and in the U.S. for five or fewer calendar years.
4. A student holding an F-1 or J-1 visa and in the U.S. for more than five calendar years and has established with the IRS that he/she does not plan to reside in the U.S. when his/her education is completed.

C. Exceptions to substantial presence test

1. Closer connection tax home

An individual who has been in the U.S. for fewer than 183 days during the calendar year, pays taxes in his/her country of residence, and has a closer connection to that country than to the U.S. is not considered to be a resident.

2. Commuters from Canada or Mexico

An individual who regularly commutes to employment in the U.S. from a place of residence in Canada or Mexico is not considered as present in the U.S. on commute days.

3. Medical condition

An individual who is unable to leave the U.S. on any day because of a medical condition that arose while he or she was in the U.S. is not considered as present in the U.S.

4. Transit between two foreign points

An individual who is in transit between two points outside the U.S. and is physically present in the U.S. for fewer than 24 hours is not considered as present in the U.S.

#### IV. Federal Taxation of Aliens

A. Resident and nonresident status

1. Resident aliens are subject to income tax in the same manner as U.S. citizens; that is, they are subject to the graduated income tax rates on income received from all sources, both within and outside the U.S., and are allowed the same deductions for exemptions as are citizens (see [Section 380-65](#)).
2. Nonresident aliens are taxed only on income received from sources within the U.S. Such income may be subject to taxation either on the basis of the graduated income tax rates or at a flat rate of 30% depending on the nature of the income and the applicable tax laws. In general, nonresident aliens are allowed only a single personal exemption for withholding purposes, regardless of marital status or the number of dependents.
  - a. Residents of Canada or Mexico may claim the same personal exemptions as a U.S. citizen, but in order to claim a personal exemption for a spouse, the spouse must have no income subject to U.S. tax for the year.
  - b. Residents of Japan and Korea, in certain cases, may claim exemptions for a spouse and children who are present in the U.S.
  - c. Residents of India who are students may be able to claim exemptions for their spouse and dependents who are present in the U.S.

B. Tax treaties

The United States has entered into tax treaties with a number of foreign countries. These treaties supersede Federal tax laws and provide tax benefits to aliens who are residents of treaty countries. Such aliens may be eligible for reduced tax rates or exemption from Federal tax and withholding if they meet the requirements of the particular treaty. Generally, two types

of tax treaty articles--the "personal services" articles and the "teaching" articles--most frequently apply to payments by the University.

1. Personal services articles

Most applicable personal services articles provide that a resident of the tax treaty country is exempt from Federal income tax on compensation for personal services performed in the U.S., if the individual is temporarily in the U.S. for a period or periods not exceeding a certain number of days during the taxable year and if total compensation does not exceed a certain amount. The personal services articles relate to either Dependent Personal Services (employment) or Independent Personal Services (nonemployment). Although most treaties allow one or the other or both, some treaties require that the income be paid from a foreign source. Individuals may not qualify for tax-exempt status on those treaties when the University compensates them for services.

2. Teaching articles

The teaching articles generally provide that a professor, teacher, or researcher who is a resident of the tax treaty country and who visits the U.S. to teach or do research at an educational institution is exempt from Federal income tax on compensation received for such services, generally for a period of two or three years.

3. Other articles

Other tax treaty articles that may be applicable to payments by the University provide tax benefits to recipients of royalty payments, scholarships and fellowships, or compensation during education and training. Contact Accounting & Financial Services--Tax Accounting (530-757-8936), for current rules and regulations.

Because tax treaties are lengthy and the provisions vary from treaty to treaty, either the specific treaty or related IRS publications should be consulted to determine what benefits may be available to the alien. Copies of full treaties are available at many public libraries and at Accounting & Financial Services--Payroll as well as the IRS Web site (<http://www.irs.gov>, Publications 515, 519, and 901). University treaty articles are located at <http://www.ucop.edu/ucophome/cao/paycoord/taxstate.html>.

C. Federal tax withholding and reporting procedures

If it becomes necessary to seek a ruling from the IRS in order to apply the correct rate for withholding of Federal income tax on payments to an alien, Accounting & Financial Services will request a ruling and abide by the IRS written decision.

1. Salary and wages

- a. If it appears from the Statement of Citizenship and Federal Tax Status that the employee is a resident alien, the employee is subject to regular graduated tax withholding and may claim withholding exemptions on the same basis as U.S. citizens.
- b. Nonresident aliens employed by the University (with the exception of residents of Canada, Mexico, Japan, and Korea as stated above) are subject to regular graduated tax withholding at the single marital status rate and are allowed only one personal exemption.

2. Scholarships and fellowships

a. Degree candidates

Undergraduate or graduate scholarship or fellowship payments to aliens who are degree candidates are subject to tax withholding or reporting when the amount

represents the excess of or does not relate to tuition, fees, and course-related expenses (books, supplies, and equipment required for courses of instruction). The IRS defines a degree candidate as an undergraduate or graduate pursuing studies or conducting research to meet requirements for an academic or professional degree.

b. Nondegree candidates

- 1) If it appears from the completed Statement of Citizenship and Federal Tax Status that a nonresident alien is not a candidate for a degree, no exclusion is allowed unless a claim is made under a tax treaty.
- 2) Payments to nonresident aliens who hold F-1 (Student), J-1 (Exchange Visitor), or M-1 (Vocational Student) visas are taxed at the rate of 14% on the full amount of the grant. Before applying the 14% rate, the alien is allowed a deduction for one personal exemption, prorated on a daily basis for the period during which the payment is received.
- 3) Exchange visitors in the U.S. under the United States Information and Educational Exchange Act are also taxed at the 14% rate.
- 4) All other nonresident aliens are taxed at the rate of 30% on the amount of the grant. No personal exemption is allowed in computing the amount of tax to be withheld.

Note: Degree and nondegree candidates receiving payments that represent compensation for teaching, research, or other services in the nature of part-time employment are considered to be employees and are subject to Federal tax withholding.

3. Nonpayroll payments to nonemployee aliens for independent personal services

The following procedures apply to payment of honoraria, consulting fees, performance fees, or other stipends for services ordinarily initiated by a DaFIS Direct Charge document and submission of a Request for Document Action--Honorarium Payments for Nonemployees ([http://accounting.ucdavis.edu/Forms/AP\\_HonorReq.pdf](http://accounting.ucdavis.edu/Forms/AP_HonorReq.pdf)) to Accounts Payable.

- a. If it appears from the Statement of Citizenship and Federal Tax Status that a nonresident alien qualifies for exemption under a tax treaty, in order to claim the exemption the alien must complete, sign, and file with Accounting & Financial Services IRS Form 8233, Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual, and if applicable, a Certification of Academic Activity (both forms are available from Accounts Payable and on the Web at <http://accounting.ucdavis.edu/Forms>). Accounting & Financial Services completes the withholding agent certification and forwards the form to the IRS.
- b. If a nonresident alien (with other than F-1, J-1, or M-1 visa status) claims the personal exemption amount, procedures regarding IRS Form 8233, as described in 3.a, above, must be followed. One personal exemption is allowed a nonresident alien who is not a resident of Canada, Mexico, Japan, or Korea. Payments are then subject to withholding at a flat 30% rate.
- c. Payments to nonresident aliens who hold F-1, J-1, or M-1 visas are subject to withholding in the same manner as wages of U.S. citizens or resident aliens, except that (with the exception of residents of Canada, Mexico, Japan, or Korea) only one personal exemption is allowed. IRS Form 8233 is not required to claim personal exemptions. The Daily or Miscellaneous pay scale (IRS Circular E, Employer's Tax Guide) is used to determine the tax to be withheld.

- d. Payments to all other nonresident aliens are subject to withholding at a flat 30% rate. However, in order to alleviate overwithholding that may result when tax is withheld at the 30% rate, an alien may obtain a reduced withholding rate in one of the following two ways:
    - 1) Withholding agreement. Prior to receiving any payments in the tax year, an alien may enter into an agreement with the IRS as to the amount of withholding required. Accounting & Financial Services retains one copy, and the alien should retain a copy.
    - 2) Final payment. The 30% amount is withheld in full from all payments except the final payment to the alien during the tax year. Before receipt of the final payment, the alien may obtain from the IRS a letter stating the amount of the final payment that is exempt from withholding and the amount (which would otherwise be withheld) that may be paid to the alien due to the exemption. The alien must file a copy of the letter with Accounting & Financial Services. Accounting & Financial Services retains one copy, and the alien should retain a copy.
  - e. Upon receipt of the completed Statement of Citizenship and Federal Tax Status (and when appropriate, IRS Form 8233), Accounting & Financial Services completes and sends to the alien the Withholding Tax Status--Nonemployee form, which provides notification of the withholding category that applies.
4. Tax clearance for departing aliens
- a. Generally, departing aliens must obtain a certificate of compliance from the IRS. This certificate, also known as an exit permit or sailing permit, demonstrates that the alien has either satisfied Federal income tax requirements for the current and preceding years or that the alien's departure will not jeopardize the collection of income taxes due. These tax clearance procedures are required even when no income was received during the year or when income received is exempt from tax under a tax treaty. However, if there was not taxable income from U.S. sources during their stay, these procedures are not required for: (1) visitors who entered the U.S. with a B-1 or B-01/B-02 visa if their total stay during the taxable year does not exceed 90 days, or (2) students who entered with an F-1 visa.
  - b. Upon notification of an alien's intended departure, Accounting & Financial Services will prepare a provisional tax statement and send it to the alien, together with a copy of the Provisional Tax Statement Instructions, which provides information regarding obtaining a sailing permit.
5. Year-end tax reporting
- a. Federal income tax withheld from salaries and wages paid to nonresident alien employees is reported on IRS Form W-2 in accordance with the same rules that apply to tax withheld from citizens.
  - b. Federal income tax withheld from nonpayroll payments to nonresident aliens and payments (payroll or nonpayroll) made to nonresident aliens exempt from withholding are reported on IRS Form 1042S on or before March 15 each year.
- D. Social Security tax

Nonresident aliens holding F-1, J-1, or M-1 visas are exempt from Social Security tax on University earnings, provided that such earnings are in payment for services performed to carry out the purposes for which the nonresident aliens were admitted to the U.S. All other aliens employed by the University are subject to Social Security tax only if they become eligible for and are members of UCRP. In the case of an alien employee who would otherwise be subject to

Social Security taxes, earnings that are subject to taxes or contributions under the social security system of a foreign country with which the U.S. has an agreement are exempt from Social Security taxes, when the exemption is properly substantiated. However, all aliens expecting to receive income subject to tax reporting must apply for a Social Security Number or Individual Taxpayer Identification Number (ITIN), since it will be required as the taxpayer identification number on their tax returns and on Forms W-2 and 1042S.

## V. California State Tax

Regardless of their Federal income tax status, all aliens are subject to State tax in the same manner as U.S. citizens if they are temporarily residing in California and performing services for the University.

## VI. References and Related Policy

### A. UC Accounting Manual:

1. [Chapter D-371-12.1](#), Disbursements: Accounting for and Tax Reporting of Payments Made Through the Vendor System.
2. [Chapter D-371-77](#), Disbursements: State Tax Withholding from Nonwage Payments to Nonresidents of California.
3. [Chapter P-196-77](#), Payroll: State Tax Withholding from Employees.
4. [Chapter T-182-27](#), Taxes: Federal Taxation of Aliens.

### B. UCD Policy & Procedure Manual:

1. [Section 380-14](#), Employment of Aliens (Noncitizens).
2. [Section 380-64](#), Conditions of Visas for Alien (Noncitizen) Students, Scholars, and Visitors.
3. [Section 380-65](#), Income Tax Withholding and Reports of Earnings for Citizens and Resident Aliens.

### C. Academic Personnel Manual:

1. [Section 530](#), Noncitizens.
2. [Section UCD-530](#), Recruitment and Appointment of Aliens (Noncitizens).