

Foreign National Procedures

Sandhills Community College

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Proposed Foreign National Procedures

Overview

- Determine if vendor, contractor, individual, student, or employee is a foreign vendor
 - If payment is made to a third party the vendor, contractor, or individual must still be determined to be a Foreign National (example: US agency located in California is representing an individual from the Netherlands – individual is a Foreign National – payment is made to agency but will still be considered a Foreign National Payment for tax purposes)
- If a Foreign National is recognized, gather the following information:
 - Copy of Itinerary (*applicable for performers only*)
 - Passport
 - VISA
 - W-8BEN, W-8BEN-E, 8233
- Information will be sent to the System Office to Jessica Balazsi (for determination of tax liabilities)
- System Office then notifies College if taxes are to be withheld, and the percent to withhold, along with any Treaty notifications
- Decision to work with vendor, contractor, or individual can then be made by VP, Department Chair, or Supervisor.
- When payment to vendor, contractor, or individual is made ... required tax withholdings are calculated and electronically submitted to NCDOR and IRS.
- Once tax payment(s) are made, Joe Brown is notified to make the corresponding entries to the General Ledger.
- Quarterly reports are submitted to System Office.
- Year End 1042's are processed by System Office.

See the following Foreign National information for specific procedural processes provided by Jennifer Pacheco, NC Office of State Controller.

Steps for processing tax withholdings

Individual/Contractor Foreign National Artist/Performer

Including services, speaker fees, performances, etc.

Step 1 – Collect the following information **before** entering into a contract with an individual/Contractor.

W-8BEN Tax Withholding and Reporting form

****PART III is imperative to complete to receive any Tax Treaty Benefits****

Copy of individual's itinerary while in the United States

Copy of Passport/Visa

Copy of proposed contract

****BEWARE OF INDIVIDUALS USING AGENCIES LOCATED WITHIN THE UNITED STATES****

Step 2 – Gathered information sent to Accounts Payable and then forwarded to System Office to Jessica Balazsi.

Step 3 – System Office then notifies Accounts Payable if taxes are to be withheld and the percent to withhold along with any Treaty notifications.

Step 4 - Decision to work with Individual/Contractor can then be made by VP, Department Chair, and/or Supervisor.

Step 5 - When payment to Individual/Contractor is made ... required tax withholdings are calculated and electronically submitted to NCDOR and IRS.

Step 6 – Accounts Payable will provide payment confirmation of tax withholdings to Joe Brown.

Step 7 – All collected information will then be submitted to the System Office for quarterly reporting.

Step 8 – All information is stored in the Accounts Payable department.

Step 9 - Year End 1042's are processed by System Office.

NOTE: *No purchases made with P-Cards*

No purchases made with personal funds permitted for reimbursement

Foreign National Vendor's

Includes software and royalties, excluding **physical goods**.

Step 1 – Collect the following information **before** entering into a contract with a vendor.

W-8BEN-E Tax Withholding and Reporting form

****PART III is imperative to complete to receive any Tax Treaty Benefits****

Copy of proposed contract, quote and purchase order requisition

Step 2 – Gathered information sent to Accounts Payable and then forwarded to System Office to Jessica Balazsi.

Step 3 – System Office then notifies Accounts Payable if taxes are to be withheld and the percent to withhold along with any Treaty notifications.

Step 4 - Decision to purchase from vendor can then be made by VP, Department Chair, and/or Supervisor.

Step 5 - When payment to vendor is made ... required tax withholdings are calculated and electronically submitted to NCDOR and IRS.

Step 6 – Accounts Payable will provide payment confirmation of tax withholdings to Joe Brown.

Step 7 – All collected information will then be submitted to the System Office for quarterly reporting.

Step 8 – All information is stored in the Accounts Payable department.

Step 9 - Year End 1042's are processed by System Office.

NOTE: *No purchases made with P-Cards*

No purchases made with personal funds permitted for reimbursement

Foreign National Tax Payment Procedures

Step 1 – Collected information is forwarded to System Office

Step 2 – System Office will provide notification if tax payments are to be withheld. Exact dollar amounts are provided for Federal and State.

Step 3 – Information is provided to VP, Department Chair, Faculty or Staff responsible for contract or purchase order request for final approval.

Step 4 - Accounts Payable issues check to individual/contractor/vendor.

Step 5 – Payment is made via EFTPS and/or NCDOR payment center.

Step 6 – Confirmation is provided to Joe Brown for General Ledger Adjustments

Step 7 – All correspondence, backup, and other information is compiled and filed in Accounts Payable Filing.

Foreign National Helpful Information

NC Office of State Controller, Foreign Nationals Tax Compliance Program

Definition

- Owes allegiance to or who is under the protection of a country other than the United States
 - Nonresident Alien
 - Not US Citizen, permanent residents or resident aliens
 - Does not passes the Substantial Presence Test (SPT)
 - Different Tax System from US Citizens and Resident Aliens
 - Resident Alien
 - Means something different to IRS than USCIS
 - Passes the Substantial Presence Test (SPT)
 - Similar Tax System as US Citizens
- Special set of work restrictions and tax guidelines
- Must have the appropriate work authorization (including self-employment)
- Work authorization is linked to immigration status

Substantial Presence Test (SPT)

- Physically present in the US
 - 31 or more US Days in the calendar year
 - 183 – days based on the formula (includes partial days)
 - All days in the calendar year
 - 1/3 of US days in the prior calendar year
 - 1/6 of US days in the 2nd preceding calendar year
 - Examples of statuses exempt from counting days (gives no prior history)
 - F-1 & J-1 Students Visa Type -5 years
 - All other J Visa type – 2 years

Factors of Payment

- Who are you paying?
 - Individual or Entity
 - Who is the beneficial owner of the income?
 - No assignment
 - Determine cash value for the “in-kind” items
 - Payments to Foreign Performers
 - Agent for the Foreign National – CWA Required for tax exemption
 - Agent’s fee is not excluded from performers income
- What does your payment represent?
 - Employment
 - Scholarship
 - Vendor – Goods
 - Contracted Service/Independent Contractor?
 - Does the contract address tax withholding?
 - Location of services being performed?
 - Is there a taxable and non-taxable portion of the contract?
 - Have you been invoiced?
 - What is the source of the payment?
 - US Source
 - Foreign Source
 - What is the foreign liability in country of where services are performed?
 - Who is eligible to perform services?
 - What is the Tax Status (SPT)
 - How is payment being processed?
 - HR System
 - Student Financials
 - Accounting

Steps in Processing Vendor/Artist/Performer Payments

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

Suggested Procedural Steps

Step 1 – Tax Assessments/Checklist

Step 2 – Collection of Immigration Documentation

Step 3 – Assessing Tax Status

W-8 ECI, W-8BEN, W-8BEN-E, 8233, Treaty Benefit Eligibility

Step 4 – Tax Reporting

Step 5 – Final Review

Examples of Common Purchases

- Good from a foreign entity
 - No withholding/reporting required
- Services performed outside the US
 - No withholding/reporting required, in most cases
 - Document, document, document!
- Services performed within the US
 - Taxable at federal 30% unless Treaty exists
 - Taxable at state rate, (NC-4%) unless treaty exist
 - Independent Personal Services or Employment
- Royalties used in the US
 - Copyrights and Customized Software
 - Taxable at federal 30%, unless treaty exists

TIPS FOR IDENTIFYING A FOREIGN NATIONAL

- Immigration status from I-9's, Social Security Cards, Human Resource Databases
- For taxation purposes you are allowed to ask for immigration information and documentation
- Audit to determine your population:
 - Employees, Vendors, Contractors,
- Address Fields
 - Country, State, City, Zip
- Foreign Employer ID Number
 - Usually begins with 98-XXXXXXX
- Foreign ITIN
 - Usually begins with 999 and 4th digit is a "4" or "7"

RED FLAGS

- Country of Visa issuance or foreign residence is different than country of tax residency claimed by payee
- Situations where a business entity is payee, but the true beneficial owner of the income is an individual
- A payee asking you to make payment to a charity or foundation instead of them
- US Port of entry stamps or visas in an individual's passport that are not mentioned in the individual provides to you

Information copied from PowerPoint presentation by Jennifer Pacheco, NC Office of State Controller, Foreign Nationals Tax Compliance Program, Jennifer.pacheco@osc.nc.gov

Tax Withholding Forms

See links below to access the appropriate withholding forms:

Form W-8BEN-E

<https://www.irs.gov/pub/irs-pdf/fw8bene.pdf>

Form W-8BEN

<https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>

Revised Date: 7/5/2016

Foreign National Compliance Policy

All North Carolina state government agencies, universities, community colleges, and institutions have been tasked with the responsibility of withholding and reporting on payments to nonresident aliens (foreign nationals) and foreign vendors in accordance with Internal Revenue Code (IRC) Section 1441 and policies established by the Office of the State Controller (OSC). These policies and procedures can be accessed using the following link:

<https://www.osc.nc.gov/state-agency-resources/statewide-policies/600-foreign-nationals>

The Tax Navigator software package is contracted through OSC and provided at a cost to state entities to assist in properly withholding and reporting payments made to nonresident aliens working and studying in North Carolina. The software consists of components that calculate all applicable tax withholdings, and deliver all necessary tax analyses and required forms.

Five community colleges have licenses to use, manage, and maintain the software locally on their campuses, while the remaining 53 colleges are managed through a central database at the North Carolina Community College System Office (NCCCSO) Systems Accounting and Special Projects section of the Division of Finance and Operations. All licenses are funded and paid for by the System Office. The five colleges that have the software on campus are:

- Asheville-Buncombe Technical Community College
- Central Piedmont Community College
- College of The Albemarle
- Guilford Technical Community College
- Wake Technical Community College

A. All College Responsibilities

As part of the Foreign Nationals Compliance Program, all colleges must develop written internal policies and procedures that establish their own internal business flow process between Human Resources, Student Services and Accounts Payable. Any payments to foreign employees, vendors, contractors, or students must be tracked within each college. All colleges must designate a contact person or persons in the areas of Human Resources/Payroll, Student Services, and Accounts Payable/Purchasing to communicate with the System Office and the Office of the State Controller (OSC) on matters related to foreign nationals and the Tax Navigator software. Each college submits a Foreign National College Contacts form assigning the contact(s) for each area, and the System Office verifies and updates these contacts periodically. Colleges can select as many contacts in each area as needed, and the same person can be the contact for one or more areas.

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B. Colleges Managed by System Office Responsibilities

The fifty-three (53) colleges managed centrally through the System Office must also submit and maintain a Foreign National College Authorized Signature Form. The designated individuals are responsible for signing the Foreign National Data Gathering Form and the Foreign National Payment Certification Form, certifying that the information being submitted has been reviewed and is accurate to the best of his/her knowledge. These individuals are also responsible for signing the forms to be submitted to the IRS or foreign person or vendor when necessary. It is recommended that authorized signature designees for each college include the Chief Financial Officer and the Human Resources Director.

When presented with a foreign national vendor, contractor, student or employee, the college should complete either the Foreign National Vendor Data Gathering Form or the Foreign National Data Gathering Form found on the Business and Finance website and return to the Systems Accounting and Special Projects section of the Division of Finance and Operations. Once the form has been reviewed and processed, Systems Accounting staff will notify the college of the applicable taxation rules.

It is the college's responsibility to gather all data for each individual or company to be tracked through Tax Navigator, whether processing the data locally or through the System Office, before payment is issued. No payments should be made to foreign individuals or organizations until an analysis of the facts and circumstances surrounding the transaction has been performed.

If payments made by the college to the foreign vendor, contractor, student, or employee are taxable, the college must withhold federal and/or state taxes as instructed. Payments and tax withholdings must be certified to the Systems Accounting and Special Projects Division of Business and Finance every quarter using the Foreign National Payment Certification Form.

C. Workflow for Colleges Managed through the System Office

1. College identifies a foreign national or foreign vendor that will be compensated via payroll, accounts payable or student services. The appropriate department should maintain a copy of evidentiary and supporting documentation, such as I-9, I-20, I-94, I-797, passport, employment authorization card, visa, DS-2019, W-8BEN,

W-8BEN-E, W-ECI, etc.

2. College completes the FNIS Data Gathering Form or FNIS Vendor Data Gathering Form and submits via email with supporting documentation to the System Office to balazsij@nccommunitycolleges.edu.

3. System Office establishes the record containing demographic data in Tax Navigator, performs the Substantial Presence Test (SPT) and/or Treaty Analysis, if applicable, and notifies the college contact via email of the appropriate taxation rules.

Revised Date: 7/5/2016

4. College certifies payment and withholding information to the System Office on the Foreign National Payment Certification Form for each individual or company added to the system for tracking. This form will be submitted on a quarterly basis to update the information in the Tax Navigator.
5. System Office will update all records quarterly from the payment information submitted by the college.
6. At the end of the calendar year, IRS Forms 1042, 1042-T and 1042-S will be created by the System Office and sent to the college to be submitted to the IRS by March 15 each year. Form 1042-S must also be distributed by the college to the foreign national individuals and companies by March 15 each year.