RESIDENT ALIEN AND NONRESIDENT ALIEN DEFINED

RESIDENT ALIEN

A resident alien is an alien who meets either the green card test (defined later) or the substantial presence test (defined later) for a given calendar year. A resident alien (for tax purposes) must pay tax to the United States (U.S.) Government on all sources of income, worldwide, and may, in certain limited circumstances, enjoy the benefits of tax treaty exemptions. Resident aliens must annually file a tax return on IRS Form 1040, 1040A, or 1040EZ on or before April 15th.

NONRESIDENT ALIEN

A nonresident alien is an individual who is not an U.S. citizen or resident for a given calendar year. A nonresident alien (for tax purposes) must pay tax to the U.S. government only on income sources within the U.S. with certain exceptions made for those nonresident aliens qualifying for tax treaty benefits. Nonresident aliens must file an annual income tax return on IRS Form 1040NR on or before April 15.

Residency Tests

- **Green Card Test**: An alien is a U.S. resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test because these aliens hold immigrant visas (also known as "green cards").

- **Substantial Presence Test**: An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:
  1. 31 days during the current calendar year; and,
  2. 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only 1/3 the number of days of presence in the first preceding year, and only 1/6 the number of days in the second preceding year.
PAYMENTS TO NONRESIDENT ALIENS

- If the recipient of a University salary, scholarship, or other type of payment is a nonresident alien, special withholding and reporting rules apply. These rules generally provide for reporting on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Visitors and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding (which is a form that is comparable to Form W-2 and Form 1099). With the exception of certain wage payments, which will be reported on Form W-2, ALL payments made to nonresident aliens must appear on Form 1042 and Form 1042-S.
- In general, payments to nonresident aliens are subject to federal income tax withholding at a flat rate (14% for scholarships/fellowships and 30% for all non-wage payments, unless a tax treaty operates to reduce those percentages).
- The United States has over 40 tax treaties with foreign nations which serve, in some instances, to reduce the withholding requirements, or exempt the tax completely, on payments made to citizens of that particular country.
- All nonresident aliens who receive some type of payment from the University must have either a social security number or an Individual Taxpayer Identification Number (ITIN) prior to receipt of those payments. An ITIN, which is discussed later, is required for any nonresident alien who is eligible to obtain a social security number.

WITHHOLDING REQUIREMENTS ASSOCIATED WITH PAYMENTS TO NONRESIDENT ALIENS

Wage Payments to Nonresident Alien Employees

In general, for income tax withholding purposes treat resident aliens the same as U.S. Citizens.

For income tax withholding purposes, nonresident aliens are treated according to the following special withholding rules that apply to nonresidents as described by the IRS:

a. A nonresident alien cannot write "exempt" on line 7 of Form W-4.

b. A nonresident alien may claim only "single" filing status on line 3 of Form W-4, even if married.

c. With certain exceptions, a nonresident alien cannot claim more than one personal exemption on Form W-4.

d. For wages paid prior to January 1, 2006, a nonresident alien (NRA) was required to write in an additional withholding amount on line 6 of Form W-4. Beginning January 1, 2006, employers are required to add an amount to the wages of a nonresident alien employee solely for the purpose of calculating income tax withholding. The specific amount depends on the payroll period. This adjustment does not apply to students.
and business apprentices from India. Effective January 2015 this amount is:

<table>
<thead>
<tr>
<th>Payroll period—</th>
<th>Add</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly</td>
<td>$44.20</td>
</tr>
<tr>
<td>Biweekly</td>
<td>$88.50</td>
</tr>
<tr>
<td>Semimonthly</td>
<td>$95.80</td>
</tr>
<tr>
<td>Monthly</td>
<td>$191.70</td>
</tr>
<tr>
<td>Quarterly</td>
<td>$575.00</td>
</tr>
<tr>
<td>Semiannually</td>
<td>$1150.00</td>
</tr>
<tr>
<td>Annually</td>
<td>$2300.00</td>
</tr>
<tr>
<td>Daily or Miscellaneous (each day of the payroll period)</td>
<td>$8.80</td>
</tr>
</tbody>
</table>

*Note: This additional amount will not be reported on the employee's Form W-2, Wage and Tax Statement.*

e. Some nonresident aliens are eligible for exemptions from federal income tax withholding on wages because of tax treaties. To claim the exemption they must file Form 8233 with the employer.

f. Nonresident aliens who fail to file, or file an invalid Form W-4, as required by IRS regulations shall have federal income taxes withheld at the rates pertaining to single status, zero exemptions.

g. Employers must report wages exempt under a tax treaty paid to a nonresident alien on Forms 1042 and 1042-S. Any additional wages paid to a nonresident alien over and above the exempt amount are reported on Form W-2 in the normal manner.

*Payments Made to Nonresident Alien Independent Contractors*

In general, federal income tax is withheld at the rate of 30% (plus 5% state withholding), unless specifically excluded from tax by operation of a tax treaty. To claim exemption under a tax treaty, the nonresident alien must complete Form 8233, Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien.

*Travel and Living Expense Reimbursements Made to Foreign Independent Contractors*

In general, travel and living expense reimbursements made to nonresident alien independent contractors are not subject to taxation or reporting. Receipts substantiating the expenses incurred must be provided prior to reimbursing the nonresident alien.

*Payments Made to Nonresident Alien Scholarship/Fellowship Recipients*

In general, federal income tax is withheld at the rate of 14% (plus 5% state withholding) on the taxable portions of the scholarship/fellowship (i.e., amounts not used for tuition, books, fees, and course required supplies and materials), unless specifically excluded from tax by operation of a tax treaty. In addition, scholarship recipients can also claim a
withholding allowance. To claim exemption under a tax treaty the nonresident alien must complete IRS Form W8-BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). To claim a withholding allowance the nonresident alien must complete IRS Form W-4 (Employee's Withholding Allowance Certificate).

UNIVERSITY REPORTING REQUIREMENTS

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

- This is an annual report submitted to the IRS listing all payments, whether tax was withheld from those payments or not, made to nonresident alien individuals.
- The purpose of this form is to summarize the total amount of income paid and tax withheld from specific payments made to nonresident aliens (i.e., non employee payments and employee compensation payments that were exempt from U.S. taxation because of operation of a tax treaty or through the specific operation of tax law).
- Form 1042 is due no later than March 15th of the subsequent year in which withholding occurred.

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

- The purpose of Form 1042-S is to replace Form W-2 and Form 1099 for the reporting of all income paid to a nonresident alien (except for employee payments which are still reported on the W-2) irrespective of the taxability of those payments.
- Form 1042-S is due no later than March 15th of the subsequent year in which payment occurred. These forms are submitted to the IRS and the nonresident alien.