

MEMORANDUM

DATE: September 18, 2009

TO: Deans, Directors, and Department Heads

FROM: Ken Miller, University Controller

SUBJECT: US Citizenship and Immigration Service Laws Governing Payments to Short-Term Foreign National Visitors

The purpose of this memo is to inform you that the US Citizenship and Immigration Service (USCIS) and Internal Revenue Service (IRS) have several laws you must observe in inviting and compensating foreign nationals, a.k.a. Nonresident Aliens, or NRAs. **In particular, these foreign national individuals must possess the proper visa type to receive an honorarium.** USCIS is very serious about the enforcement of these laws, and penalties can be severe if it is determined that an institution is not complying. These penalties range from stiff monetary fines to denying an institution's ability to sponsor foreign national visitors altogether. Please review the following procedures before you begin the process of inviting a foreign national to campus.

Unfortunately, we cannot rely on the US embassies or consulates to properly counsel our foreign national visitors about obtaining the proper visa. Therefore, if you are responsible for inviting a foreign visitor to whom you wish to make some form of payment or restitution, please contact Gerald Berkley-Coats, Assistant Director for International Support Services, at 231-6459. This will ensure your visitor arrives with the proper visa to that the university can pay what you have promised.

There are two different payment options for short-term foreign national visitors. **The IRS imposes less complex rules in paying travel reimbursements than honoraria.** Travel reimbursements are made to NRAs for the purpose of reimbursing travel, meals and lodging expenses they are not subject to withholding taxes. Since these payments are excludable from their gross income and are not reportable to the IRS, we will not require a copy of their passport, visa, I-94 card, or tax identification number. A travel voucher form with attached receipts should be completed using standard university travel reimbursement procedures.

The only visa types that USCIS specifically allow compensation for an honorarium are B-1, B-2, WB, and WT. The B-1, B-2, WB, and WT visa holders can be paid honoraria only if they are at the university no longer than 9 days and have not accepted payment or expenses from more than 5 institutions in the previous 6 month period (**9-5-6 rule**). The B-1 and B-2 visas are obtained by NRAs in their home country. Canadians admitted without an I-94 card are considered to be visitors for pleasure (B-2). A WB and WT visa waiver stamp is given to citizens of the following countries by simply completing the I-94W form upon entry into the US, so long as certain requirements are met. The current visa waiver countries are: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. Please refer to the following US State Department website for additional information and detailed visa requirements: <http://travel.state.gov>.

For visitors who are to receive payment and will exceed the 9-5-6 rule, the department will need to contact Gerald Berkley-Coats to ascertain the appropriate visa type needed for the services

to be performed and the payment to be received. **Other visa types usually require 4 to 8 weeks of advanced planning.** Before we can compensate a foreign national **sponsored by another university**, we are required to have **prior written authorization from that university's "responsible officer"**, such as their International Student Advisor. Permission letters their academic departments are not acceptable for this purpose.

Honoraria payments are subject to US federal income tax withholding at 30% unless specifically exempted by an income tax treaty. There are tax treaties with over 45 countries (see IRS Publication 901). Each treaty is unique. To claim tax treaty exemption, the IRS requires the NRA to have either a US SSN or a US ITIN number and submit a completed Form 8233 at least 10 days prior to payment. If not exempted by tax treaty, the department should notify the NRA that taxes must be withheld. For honoraria payments, the IRS and university procedures also require the following:

- The NRA must have either a US Social Security Number (SSN) or a US Individual Tax Identification Number (ITIN) to claim tax treaty benefits. If you have a SSN or ITIN you must provided the number to the university before payment can be processed.
- The NRA must complete a W-8 Honorarium form.
- The NRA must complete a Foreign National Data Form.
- The NRA must file a US tax return using the 1042-S form which will be sent to them by the university at the end of the calendar year.

The following documents must be submitted for any foreign national who will be receiving an honorarium payment, legible copies of the first page of the passport and the unexpired passport expiration date; visa; I-94 or I-94W card; the NRA completed Foreign National Data Form; the NRA completed W-8 honorarium form; the department completed Employee/Independent Contractor Evaluation Form (20 Questions), tax treaty documents, if applicable; and a copy of the SSN or ITIN if applicable. Submit the voucher and all required information to the International Tax Specialist, mail stop 0339. **Honoraria checks to foreign nationals may processed only after a complete packet of documentation is received and reviewed by the Controller's Office for compliance with IRS and USCIS regulations.** Payments to NRAs cannot be prepared in advance as we are never sure of the person's visa until they actually arrive. If it is determined that the individual does not have the proper visa for the type of payment, the university will not process the payment. As this can be extremely embarrassing to the university and to you please ensure your visitors are properly informed well in advance of their departure.

We cannot make any exceptions to these federal requirements. If you need any additional information, forms or assistance, please feel free to call out International Tax Specialist at 231-3754 or the Accounts Payable Manager at 231-6418. Thank you.