

## 2.012 Requirements When Paying Foreign Persons

### I. Definition of Foreign Persons

Foreign persons include the following:

- A. Nonresident alien individuals (individuals who are not U.S. citizens, permanent resident aliens, or resident aliens; a resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual for purposes of tax withholding).
- B. Foreign corporations.
- C. Foreign partnerships.
- D. Foreign trusts.
- E. Foreign estates.
- F. Foreign foundations.
- G. Any other individual or entity that is not a U.S. person (an entity is a foreign person if it was not created or organized in the United States or under the laws of the United States (any of its 50 states or the District of Columbia)).

Foreign persons who are married to U.S. citizens may elect to be treated as U.S. citizens for tax purposes.

Refer to [Policy 2.002 Definitions](#) for additional defined terms.

### II. Forms for Foreign Persons

- A. **IRS Forms W-8** – For entities that are paid U.S. source income (if the entity is paid only foreign source income, RCUH Form 60 may be used (see Section II.B, below)): The forms are required by the IRS for determining whether U.S. tax withholding is required, and if required, determining the withholding rate. All new foreign entity vendor records require one of the following IRS Forms W-8 (listed in the order that they most frequently apply to vendors paid by RCUH), unless RCUH Form 60 is appropriate.
  - 1. W-8BEN-E – For any foreign non-individual to which none of the other types of IRS Forms W-8 described below applies. Part III of IRS Form W-8BEN-E allows an entity to claim a tax treaty exemption. The IRS Form W-8BEN-E requires either a U.S. taxpayer identification number (TIN) or foreign taxpayer identification number.

2. W-8EXP – For any foreign government, international organization (refer to [Policy 2.002 Definitions](#)), foreign private foundation, government of a U.S. possession, or other foreign tax-exempt organization.
3. W-8ECI – For any foreign vendor with income that is effectively connected with the conduct of a trade or business within the United States.
4. W-8IMY – For any entity that is an intermediary, a withholding foreign partnership, a withholding foreign trust, or flow-through entity.

**B. RCUH Form 60** – Statement by a Foreign Vendor for a Foreign Source Income Payment

When IRS Form W-8BEN-E was updated to account for changes brought about by the Foreign Account Tax Compliance Act (FATCA), the complexity of the form was increased. Due to the fact that withholding and reporting is not required for foreign source income activity, RCUH Form 60 was created to be used in lieu of IRS Form W-8BEN-E, to verify when a foreign vendor is being paid for a foreign source income activity (for goods, rent and/or fees outside of the United States (50 states and the District of Columbia)). The IRS Form W-8BEN-E is required for the payment of U.S. source income, even if an RCUH Form 60 is on file.

**C. UH Form WH-1 for Individuals** – University of Hawai'i Statement of Citizenship and Federal Tax Status

1. A UH Form WH-1 is required for any individual who is not a regular employee of RCUH or UH. It is used in lieu of an IRS Form W-8BEN when no tax treaty exemption is being claimed, because it (1) includes the substantial presence test (SPT) which classifies a payee as a resident alien or nonresident alien, and (2) collects employment information. This information is necessary when making payments for expenses (non-service or service-related).

The UH Form WH-1 contains four (4) main sections and a signature section.

- a. *Section A: Personal Information* – All fields must be completed, except the “U.S. Social Security Number or ITIN Number” box, which may be left blank if the individual has neither number.
- b. *Section B: U.S. Immigration Activity* – Boxes 1-2 must be completed if the individual is a non-U.S. citizen present in the U.S. Box 3 may be left blank if the visa type is “B” and if the SPT result in Section C is “nonresident alien.”
- c. *Section C: Tax Status Determination* – The SPT must be completed to classify non-U.S. citizens and non-permanent resident aliens as either resident aliens pursuant to the SPT, or nonresident aliens.
- d. *Section D: Exemption from Withholding* – Claiming an exemption via a tax treaty requires (1) a tax treaty between the nonresident alien’s country of residence for tax purposes and the U.S., and (2) the nonresident alien to have a U.S. TIN (if the payment is for services, a foreign taxpayer identification number is also sufficient). If both conditions are met, either an IRS Form W-

8BEN IRS or Form 8233 must be completed; refer to Sections II.C.2.c and II.C.2.d, below.

2. Attachments to the UH Form WH-1

- a. The following must be attached to the UH Form WH-1:
  - i. Passport picture page (front and back).
  - ii. Admittance stamp page from passport.
- b. The following attachments are required for the following visa types (defined below):
  - i. [RCUH Certification of Academic Activity for Foreign Visitors \(Attachment 33\)](#) – For honoraria payments to B-1 & WB visa holders, and for any payment to a B-2 or WT visa holder.
  - ii. State Department Form I-20 – For F-1 visa holders.
  - iii. State Department Form DS-2019 – For J-1 visa holders.

See Section II.C.2.d (IRS Form 8233) below if making a tax treaty claim.

- c. *IRS Form W-8BEN* – Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding and Reporting
  - i. An IRS Form W-8BEN is used by nonresident alien individuals when claiming tax treaty exemptions for royalties and non-service payments (such as scholarship/fellowship payments).
    - (1) An IRS Form W-8BEN for the purpose of royalties may include either a U.S. TIN or a foreign taxpayer identification number.
    - (2) An IRS Form W-8BEN for the purpose of non-service payments (such as scholarship/fellowship payments) requires a U.S. TIN.
    - (3) An original or scanned signature is required on the IRS Form W-8BEN (facsimile copies are not permitted).
  - ii. An IRS Form W-8BEN is valid until December 31st of the third calendar year following the year in which the form was signed; however, an IRS Form W-8BEN becomes invalid on the day in which any of the information contained therein changes.
- d. *IRS Form 8233* – Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.
  - i. The IRS Form 8233 is attached to either a UH Form WH-1 or IRS Form W-8BEN for an individual (1) claiming a tax treaty exemption for services, or

(2) claiming a tax treaty exemption for both services *and* non-service scholarship/fellowship, if being provided from the same payer (RCUH).

- ii. The individual is required to have a U.S. TIN if non-service payments are made; otherwise a foreign taxpayer identification number is sufficient. An original or scanned signature is required on the form (facsimile copies are not permitted).
- iii. The IRS Form 8233 must be sent to the IRS within five (5) days of RCUH's receipt of IRS Form 8233, and there is a 10-day waiting period for the IRS to raise any objections. The IRS Form 8233 is valid for a single calendar year unless the information therein changes.

### **III. Immigration Requirements for Foreign Nationals (Permanent Resident Aliens, Resident Aliens, and Nonresident Aliens)**

RCUH reviews visitors' visa information to ensure that visitors are eligible to receive RCUH payments, and to prevent payments to unauthorized individuals. The following general guidance is being provided to help facilitate payments for travel assistance.

All temporary visitors to the U.S. must have a visa or status that allows entry into the United States. The visa type relates to the primary purpose of the visitor's trip. There are more than 20 non-immigrant visa types. More detailed information by visa type can be found at the State Department website: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>.

**A. B visa** – B visas are the most common type used by short-term visitors to the United States. B-1 visas are for visitors consulting with business associates, or attending a scientific, educational, or professional business meeting in the U.S. B-2 visas are for visitors on vacation or seeking medical treatment. The Visa Waiver Program of 1986 permits citizens of participating countries to travel to the United States for stays of 90 days or less without obtaining a visa. Waiver for Business (WB) and Waiver for Tourism (WT) visitors are treated like B-1 and B-2 visa holders, respectively.

1. B-1/WBs and B-2/WTs may not seek U.S. employment.
2. The American Competitiveness and Workforce Improvement Act (ACWIA) of October 1988, created the "B" Honorarium Rule. It permits educational and nonprofit research institutions to pay reimbursements of travel expenses and honoraria to international visitors on B-1/B-2 visa status for usual academic activities. This is often referred to as the "9/5/6 rule," and it only allows visitors to be paid for nine (9) days or less, and accept payments from no more than five (5) institutions within a previous six (6) month period.
  - a. *B-1/WB*

- i. Pursuant to the 9/5/6 rule, UH/RCUH can only pay a B-1/WB for *services rendered to UH/RCUH* for a maximum of nine (9) days (this includes an honorarium payment and related travel expenses).
    - ii. Reimbursements for travel expenses can only be made for more than nine (9) days if (a) an honorarium is not paid, *and* (b) the visitor is performing services on behalf of his/her employer.
  - b. *B-2/WT* – All payments (including honorarium payments **and/or** travel expense reimbursements) may only be made for a maximum of nine (9) days, in accordance with the 9/5/6 rule.
  - c. The [RCUH Certification of Academic Activity for Foreign Visitors \(Attachment 33\)](#) form must be completed by all B-2/WT visitors, and for any B-1/WB visitor that is paid an honorarium.
- B.** The most common types of visas held by visitors sponsored by a U.S. institution, who are temporarily living in the U.S., are listed below. These visa holders may receive travel expense reimbursements, but not all may receive additional income from a non-sponsor.
1. F visa – F-1 visas are held by foreign students who attend college in the U.S. They may be student employees for their sponsor, but they generally cannot receive additional income from a non-sponsor.
  2. J visa – J-1 visas are held by cultural and educational exchange visitors. There are various categories and a range of activities that J-1 visitors can engage in. J-1 visitors may be employed by their sponsor. Any additional income for services to a J-1 visitor requires his/her sponsor's approval.
  3. H-1B – This category is used for the employment of non-citizens in specialty occupations. They may be employed by their sponsor, but they generally may not receive additional income from a non-sponsor.
  4. NAFTA Professional (TN) visa – The NAFTA Professional visa allows citizens of Canada and Mexico to work in the U.S. in specific professional categories of prearranged business activities for U.S. or foreign employers. Self-employment is not permitted. They may be employed by their sponsor, but generally may not receive additional income from a non-sponsor.
- C. Compact of Free Association (CFA)** – The CFA is an international treaty between the U.S. and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The CFA permits visa-free travel for its citizens under certain conditions, and permits U.S. work authorizations.

#### **IV. Income Source**

Foreign persons who are nonresident aliens for tax purposes are only taxed on U.S. source income. Foreign source income is not subject to U.S. taxation. Sourcing rules are based on

multiple criteria depending on the type of income and the location of the activity, as described below:

- A. Compensation** – It is sourced to the country where the services are performed (i.e., payments for services performed in the U.S. are considered U.S. source income).
- B. Scholarships/Fellowships** – They are sourced based on a combination of the payer’s location and the location of the educational activity. They are only considered U.S. source income if both locations are within the U.S. For RCUH payments (U.S. location), a payment is U.S. source only if the recipient’s activity is in the U.S.
- C. Rents and Royalties** – Rents and royalties are sourced based on the location of the property. Refer to [Policy 2.007 Tax Treatment of Compensation \(Services, Rents, and Royalties\)](#) Section I.A, TYPES OF PAYMENTS, for additional details on sourcing software royalties.
- D. Prizes, Awards, and Other Income** – The tax residence of the payer determines the income source. Payments by RCUH are considered U.S. source.

## **V. Tax-Withholding Rates**

- A.** The standard statutory tax-withholding rate for foreign persons with U.S. source income is 30%.
- B.** The tax-withholding rate for non-qualified scholarship/fellowship payments may be reduced in the following situations:
  - 1. If the recipient attends a degree-granting educational institution on an F, J, M, or Q visa, the tax-withholding rate may be reduced to 14%.
  - 2. If an F, J, M, or Q visa recipient will be present in the U.S. for 365 days or less, and is not employed in the U.S., the withholding rate may be further reduced using a Revenue Procedure, depending on the type of expenses being paid; contact RCUH Disbursing for assistance.
  - 3. The rate is 0% for payments for lodging and meals under a U.S. Agency for International Development (USAID) grant for programs in the U.S. USAID was established under the Mutual Security Act of 1954.
- C.** The tax-withholding rate for payments to nonresident alien individuals and foreign entities may be reduced by tax treaty exemptions. Under these treaties, residents of foreign countries are taxed at a reduced rate, or are exempt from U.S. taxes on certain items of income they receive from sources within the United States. The reduced rates and exemptions vary among countries and based on the item of income. The United States has tax treaties with a number of foreign countries. See <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>.

Individuals may use IRS Form 8233 to claim a tax treaty exemption for services, and either a U.S. TIN or a foreign taxpayer identification number is required. An IRS Form W-8BEN should be used when claiming a tax treaty exemption for non-service payments made to an individual; only a U.S. TIN is acceptable. Entities may use IRS Form W-8BEN-E to claim a tax treaty exemption, and either a U.S. TIN or a foreign taxpayer identification number is required.

## **VI. Tax Reporting/Payment Processing**

- A. All payments made to or on behalf of a Foreign Person must be submitted manually to RCUH Disbursing.
- B. RCUH is required to issue an IRS Form 1042-S for all income payments regardless of whether the tax-withholding rate is reduced or excluded (with the exception of qualified scholarships).
- C. RCUH will perform the required tax withholding on a payment even if the foreign person does not have a U.S. TIN. Since a U.S. TIN is required on the IRS Form 1042-S, RCUH will request that the payee apply for a number and inform RCUH once it is received.
- D. **Third-Party Payments** – When payments are not made directly to a recipient, the RCUH financial system does not record the recipient’s name or dollar value of the actual amount of services received; hence, reportable and taxable payments cannot be identified. Therefore, when third-party payments are made, programs are responsible for the following:
  - 1. Identifying the recipient’s tax residency through the collection of the appropriate “IRS Form W-8” or UH Form WH-1 and required immigration documentation. Typically, a third-party payment recipient would be an individual. If the payee is determined to be a resident alien, refer to [Policy 2.011 Requirements When Paying U.S. Persons](#) (under TAX REPORTING/PAYMENT PROCESSING);
  - 2. If required,
    - a. Performing tax withholding if the payment is being made in cash (such as through a cash advance);
    - b. Grossing-up a third-party vendor payment by the appropriate tax rate if the recipient is known to be a nonresident alien and the payment is subject to tax withholding but cannot be withheld;
    - c. Issuing a payment to the IRS using the gross-up method to calculate the tax due on gift cards/goods/services given to a nonresident alien;
  - 3. Notifying the recipient to apply for a U.S. TIN (when a reportable payment is made) if the recipient does not have a U.S. TIN but is required to have one, and providing the U.S. TIN to RCUH;

4. Tracking the actual amounts received by the recipient(s); and
5. Working with RCUH Disbursing to ensure that the proper tax reporting and/or withholding is completed.

For more detailed requirements refer to the Third-Party Payment sections in these policies:

[Policy 2.006 Tax Treatment of Non-Service Financial Assistance for Individuals](#)

[Policy 2.007 Tax Treatment of Compensation \(Services, Rents, and Royalties\)](#)

[Policy 2.008 Tax Treatment of Business Expenses \(Service-Related\)](#)

Contact RCUH Disbursing if assistance is required.

## **VII. Relevant Documents**

<https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>

[Policy 2.002 Definitions](#)

[Policy 2.006 Tax Treatment of Non-Service Financial Assistance for Individuals](#)

[Policy 2.007 Tax Treatment of Compensation \(Services, Rents, and Royalties\)](#)

[Policy 2.008 Tax Treatment of Business Expenses \(Service-Related\)](#)

[Policy 2.011 Requirements When Paying U.S. Persons](#)

[IRS Form W-8BEN](#)

[IRS Form W-8BEN-E](#)

[IRS Form W-8EXP](#)

[IRS Form W-8ECI](#)

[IRS Form W-8IMY](#)

[RCUH Form 60](#)

[UH Form WH-1](#)

[RCUH Certification of Academic Activity for Foreign Visitors \(Attachment 33\)](#)

[IRS Form 8233](#)

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