



SUBJECT: *Payments to Foreign Vendors or Foreign Individuals Paid through Accounts Payable*

DATE: **June 2012**

Purpose: U.S. withholding agents (i.e. South Texas College) are subject to reporting and withholding requirements with regard to payments to foreign vendors. This notice provides information, responsibilities, controls and procedures for payments to foreign vendors or foreign individuals paid through accounts payable to ensure compliance with IRS and immigration regulations.

Summary: This notice is applicable for payments of U.S. sourced fixed or determinable annual or periodic income to foreign individuals or entities who are neither U.S. citizens nor permanent residents of the United States. U.S. withholding agents (i.e. South Texas College) are required to generally withhold 30% from the gross payment to be made to foreign vendors/individuals, unless the foreign vendor/individual has a tax treaty with the U.S. that may allow for a reduced withholding rate. The foreign vendor/individual must provide documentation and the appropriate forms to South Texas College to determine the appropriate tax withholding and reporting requirements. This notice also ensures compliance with U.S. immigration laws regarding the types of payments that can be made to an individual based on his or her immigration status.

Types of Payments (not a comprehensive list)

1. *Good or Products* – These types of payments are not subject to U.S. tax reporting or withholding.
2. *Personal Services*
 - a. Payments for services provided in the U.S. are subject to U.S. tax reporting and withholding when applicable.
 - b. Payments for services provided outside the U.S. are considered foreign source and are not subject to U.S. tax reporting or withholding.
3. *Dividends*
4. *Interest*
5. *Real Property Income, such as Rents, other than Gains from the Sale of Real Property, and Natural Resources Royalties*
6. *Royalties* – industrial (patents, trademarks, goodwill, franchises), motion picture or television copyright, other royalties (copyrights on books, periodicals, articles, etc.)

Types of Services (not a comprehensive list)

1. *Independent Personal Services* – compensation paid to an individual for labor or personal services performed as self-employment
 - a. Personal services performed by an independent contractor
 - b. Payments for professional services, such as fees of an attorney, physician, or accountant
 - c. Honoraria paid to visiting teachers, lecturers, and researchers - gratuitous payment of money or any other thing of value to a person for the person's participation in a usual academic activity for which no fee is legally required and that an honorarium may be of any dollar amount with no minimum or maximum dollar amount required. In accordance with the American Competitiveness and Workforce and Improvement Act of 1998, covered aliens may be paid honorarium payment and associated incidental expenses for usual academic activity or activities not lasting longer than 9 days at any single institution if such payment is offered by an institution or organization and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.
 - d. Payments made for performances by public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes for services performed as independent contractors

Types of Visas (not a comprehensive list)

1. B-1: Business Visitor Visas
2. B-2: Pleasure, Tourism, Medical Treatment-Visitor Visas
3. J: Certain exchange visitors
4. O-1: Foreign nationals who have extraordinary ability in the science, arts, education, business, or athletics

Types of Federal Forms (not a comprehensive list)

1. *Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.*

Request Form W-8BEN from any foreign person or organization to which you are making a payment if it is the beneficial owner of the income, whether or not it is claiming a reduced rate of, or exemption from, withholding. If you are a partnership, request Form W-8BEN for purposes of section 1446 from any foreign partner that is allocated ECTI, other than a foreign partner that is a partnership, grantor trust, or person or organization that qualifies to file Form W-8EXP.

2. *Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States.*

Request Form W-8ECI from any foreign person or organization to which you are making a payment if it is the beneficial owner of the income and it claims that the income is effectively connected with the conduct of a trade or business in the United States. However, request a Form W-8BEN from a foreign partner that is allocated income that is

effectively connected with the conduct of the partnership's trade or business in the United States, unless the foreign partner has made an election under section 871(d) or section 882(d).

3. *Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.*

Request Form W-8EXP from any foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to which you are making a payment if such person is claiming an exemption from withholding under section 115(2), 501(c), 892, or 895, or claiming a reduced rate of withholding under section 1443(b). For all other purposes, request Form W-8BEN or W-8ECI.

4. *Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.*

Request Form W-8IMY from any person that is an intermediary (whether a qualified intermediary or a nonqualified intermediary), a withholding foreign partnership, a withholding foreign trust, or a flow-through entity.

A flow-through entity includes a foreign partnership (other than a withholding foreign partnership), a foreign simple or grantor trust (other than a withholding foreign trust), and, for any payments for which a treaty benefit is claimed, any entity to the extent it is treated as fiscally transparent under section 894.

If this form is submitted and the entity is a foreign partnership then request a W-8BEN for each of the foreign partners (or W-9 for any U.S. person who is a partner in the foreign partnership).

5. *Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*

Provided by the foreign vendor to the withholding agent if some or all of the compensation is exempt from withholding for independent or dependent personal services.

Procedures for Payments to Foreign Vendors

1. Prior to entering into any agreement or authorizing vendor payments, the department or individual engaging a foreign vendor must review and make copies of the necessary documentation to verify that the vendor's status allows for payment to be received. You may contact the Business Office Tax Department for assistance.
2. Appropriate communication should be made with the foreign vendor by the department or individual engaging the foreign vendor regarding the tax withholding and reporting process prior to entering into any agreement. You may contact the Business Office Tax Department for assistance.
3. The department or individual engaging a foreign vendor must contact the Purchasing and Business Office Tax Departments on these types of payments.

4. The foreign vendor must submit the appropriate Form W-8 (Form W-9 is only submitted by U.S. citizens or resident alien individuals) and other necessary documentation. Original forms must be submitted to the Purchasing Department.
5. The Purchasing Department will review all the necessary documentation for completion and approval for purchase. Copies of the documentation will be provided to the Business Office Tax and Accounts Payable Department. You may contact the Business Office Tax Department for assistance.
6. The Business Office Tax Department will confirm any tax withholding and/or reporting and provide the necessary information to the Business Office Accounts Payable Department for proper payment.

Procedures for Payments to Foreign Individuals Paid Through Accounts Payable

1. Prior to entering into any agreement or authorizing vendor payments the department or individual engaging a foreign individual must review and make copies of the alien individual's immigration documentation to verify that the individual's status allows the individual to receive compensation. You may contact the Business Office Tax Department for assistance.
2. Appropriate communication should be made with the foreign individual by the department or individual engaging the foreign individual regarding the tax withholding and reporting process prior to entering into any agreement. You may contact the Business Office Tax Department for assistance.
3. The department or individual engaging a foreign individual must contact the Purchasing and Business Office Tax Departments on these types of payments.
4. The foreign individual must submit the appropriate Form W-8 (Form W-9 is only submitted by U.S. citizens or resident alien individuals), Foreign Status for Federal Tax Withholding Form (BO-3420), Honoraria Eligibility Certification Form (BO-9300) if applicable, visa copies and other necessary documentation. Original forms must be submitted to the Purchasing Department and copies must be submitted to the Business Office Tax Department except for BO-3420, in which the original form is submitted to the Business Office Tax Department.
5. The Purchasing Department and Business Office Tax Department will review all the necessary documentation for completion and approval for entering into an agreement. Copies of the documentation will be provided to the Business Office Accounts Payable Department.
6. The Business Office Tax Department will confirm any tax withholding and/or reporting and provide the necessary information to the Business Office Accounts Payable Department for proper payment.

Sources

1. Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
2. U.S. Citizenship and Immigration Services (www.uscis.gov) – list of various types of visa classifications

If you have any questions, please call Fernando Lamas (Purchasing) at 872-4683, Cynthia Villarreal (Business Office Accounting Group Supervisor) at 872-4610, or Maricarmen Ramirez (Business Office Accountant-Accounts Payable) at 872-4609.

Thank you for your continued cooperation.