

# COLLEGE OF CHARLESTON

## APPLICATION FOR PAYMENT TO NONRESIDENT ALIEN

### INSTRUCTIONS:

*This application provides guidance to facilitate the requests for payments of non-resident aliens and to ensure that the College complies with Federal tax and immigration laws. The application contains four sections: Section I which captures general information regarding the proposed payment transaction, Section II provides an overview of the applicable laws, Section III ensures that the College receives the required information from the payee, and Section IV ensures that a College official reviews/collects the required information. **Upon the completion of and collection of the documents specified in the application, forward the forms to the Controller's Office (CO).** The Internal Revenue Service (IRS) requires review of certain forms and ten days processing time. Please allow several weeks for processing of the Visa application by the U. S. State Department. Contact the College's Office of International Education and Programs for assistance with the Visa application process. **The CO will advise you within 15 days of receipt of the application packet as to its status.***

### I. GENERAL INFORMATION

NAME OF PAYEE:

U. S. FEDERAL TAX IDENTIFICATION #:

ADDRESS OF PAYEE:

Street, Apt.#

City, Town

State, Province, Zip

Country

EMAIL ADDRESS:

TELEPHONE NUMBER:

DATE(S) OF SERVICE/EVENT:

Start

End

AMOUNT OF PAYMENT:

DESCRIPTION OF SERVICES:

COLLEGE OFFICIAL MAKING REQUEST

DEPARTMENT

TELEPHONE NUMBER

DATE OF REQUEST

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### SECTION II. OVERVIEW

The regulations regarding tax withholding and reporting of payments made to nonresident aliens, including employee compensation, honoraria, scholarships, fellowships, grants, stipends, royalties, dividends, and interest, have been in effect for many years. The College is required by Federal IRS law (See Publication 515- Withholding of Tax on Nonresident Aliens and Foreign Entities) to act as the withholding agent for the taxation of all such payments. In addition, the individual must comply with the Immigration Act of 1990 and Title 8 of the Code of Federal Regulations, Part 214, Non-immigrant Classes.

Why should the withholding agency be concerned about applying the wrong tax "scheme" to a particular payment? Unlike the U. S. tax scheme where it is the individual who is ultimately responsible for his or her own tax liability, under the nonresident alien tax scheme, if a withholding agent is required to withhold tax from a payment and does not, the withholding agent may be held responsible for the tax that should have been withheld, in addition to any penalties for failure to do so plus the interest from the time the tax was not withheld. The issue of how to withhold tax from and report payments of any individual depends first and foremost on the combination of the 1) residency status of the payee and 2) the type of payment being made.

**Please do not assume anything about any payee's tax or residency status without first collecting complete and correct information directly from the individual in question in order to make or confirm such a determination. Making tax decisions based on the spelling of a person's name, accent, address, social security number, or factors other than those set forth in the Internal Revenue Code may expose the College (withholding agent) to issues of tax liability as well as discrimination. The withholding agent must ask every payee to provide certain basic information in order to perform the appropriate tax withholding and reporting.**

### SECTION III. TO BE COMPLETED BY PAYEE

#### 1. Are you a U. S. citizen or permanent resident alien?

- Yes If yes, apply the tax withholding and reporting rules applicable to a U. S. citizen. This process is, in effect, the application of the "green-card" test. Basically, if an individual is a permanent resident alien (I.e., a green-card holder) at any time during the calendar year, he or she will have met the green-card test and be treated as a resident alien for tax purposes for that year.
- No If no, apply the substantial presence test (see below).

#### 2. The Substantial Presence - Two-part test.

##### Part One

- a. **31-Day Test** - Have you been present or will you be present in the U. S. during the current calendar year for at least 31 days?

- Yes If yes, proceed to part two, the 183-Day Test.
- No If no, you have not been or will not be present in the U. S. during the current calendar year for at least 31 days, you will be automatically treated as a nonresident alien, regardless of the fact that you would have otherwise met the 183-Day Test described below.

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**Part Two**

b. **183-Day Test** - To apply the Substantial Presence test, you must first supply to the withholding agent the appropriate data. The withholding agent needs to collect only **four** pieces of data to determine the residency status for tax purposes for any payee. Please provide written documentation of the following information.

Check	Description of Data to Collect	List Information
<input type="checkbox"/>	Date of first arrival in the U. S. for primary purpose of current visit.	
<input type="checkbox"/>	Current immigration status (often withholding agents incorrectly refer to the payee's "visa" status or type, which may or may not be the same as the immigration status; it is, however, the immigration status that is needed to determine the residency status.	
<input type="checkbox"/>	Primary purpose of current visit (this information is generally only necessary to the extent the individual is present in the U. S. under a "J" immigration status because an individual may have one of several primary purposes under the "J" status).	
<input type="checkbox"/>	Prior visits or prior primary purposes under same visit (for each prior visit or other primary purposes during the current visit, each of the pieces of information set forth above must be collected, e.g., if the individual studied in the U. S. several years ago, the withholding agent must collect information about the arrival and departure dates, immigration status, and primary purpose of the previous visit).	

<b>Of the days present in the U. S., count:</b>					
All of the days during the current calendar year	1/3	of the days during the previous calendar year	1/6	of the days during the second preceding calendar year	The total number of days for the substantial presence test.
	█		█		0

**Exempt Individual status-** Individuals who are in the U.S. as 1) foreign government-related individuals; 2) professional athletics; 3) students (with their dependents) present in the U.S. under an "F," "J," "M," or "Q," immigration status for five calendar years; and 4) teachers and trainees including research scholars (and their dependents) present in the U. S. under a "J" or "Q" immigration status for two of the current and past six calendar years must exclude days of actual physical presence in the U. S. from the calculation of the substantial test. These individuals are required to take the substantial presence test, even though he or she may have no days to include in the test's calculation.

- IF THE TOTAL IS EQUAL TO OR GREATER THAN 183 DAYS, THE INDIVIDUAL IS A RESIDENT ALIEN FOR TAX PURPOSES AND WILL BE TREATED AS A U. S. CITIZEN TAX RULES APPLY.**
- IF THE TOTAL IS LESS THAN 183 DAYS, THE INDIVIDUAL IS A NONRESIDENT ALIEN FOR TAX PURPOSES AND WILL BE TAXED AT 30% PROVIDING A TAX TREATY DOES NOT EXIST BETWEEN THE U. S. AND THE FOREIGN COUNTRY.**

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3. Do you want to claim an exemption for a tax treaty at the time of payment?

- Yes. If yes, please complete and submit the applicable IRS Form W-8BEN, Form 8233, or Form W-9.
- Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for U. S. Tax Withholding)** This form is used for non-service payments, including scholarship, fellowship and royalty payments. The form is valid for three calendar years. The withholding agent is not required to sign the form or submit it to the IRS but must keep the form on file and present it in the event the IRS requests it.
- Form 8233 (Exemption from Withholding on Compensation for Independent and Certain Dependent) Personal Services of a Nonresident Alien Individual)** This form is used by the nonresident alien to claim a tax treaty exemption for compensation payments including honoraria, regardless of whether the individual is an employee or independent contractor. The form must be reviewed, signed and submitted to the IRS by the withholding agent. The form is valid for one year, and a new form must be collected, reviewed, signed and submitted each calendar. The form generally requires a ten-day waiting period or withhold the tax. Students, trainees, and non-students who are performing should include a statement containing the following language.
- Form W-9 (Request for Taxpayer Identification Number and Certification)** This form should be used when a resident alien qualifies to claim an exemption from tax withholding at the time of payment. The withholding agent must attach a document to include the residency status, basis for residency status, tax treaty country, tax treaty article number and details of tax treaty benefit.
- No. If no, you may file for IRS Form 1040NR or 1040NREZ to apply for a tax refund.

### SECTION IV. TO BE COMPLETED BY THE COLLEGE OFFICIAL (WITHHOLDING AGENT)

4. List the Types of Visas - The categories and types of Visas are vast; the following list describes those most applicable to colleges and universities. **An individual may possess and/or be required to have multiple Visas depending on the purpose of the visit and the type of payment requested. The individual must contact the U. S. Department of State-Consular's Office to ensure he/she possesses the type of visa required to receive payment for services.**

- B-1 - Temporary visitor for business
- F-1 - Academic student
- H-1B - Specialty Occupations, DOD workers,
- H-2B - Temporary worker: skilled and unskilled
- H-3 - Trainee
- J-1 - Visas for exchange visitors
- L-1A - Executive, managerial
- L-1B - Specialized knowledge
- O-1 - Extraordinary ability in Sciences, Arts, Education, Business, or Athletics
- P-1 - Individual or team athletes or Entertainment groups
- P-2 - Artists and entertainers in reciprocal Exchange programs
- P-3 - Artists and entertainers in culturally unique programs
- Q-1- International cultural exchange visitors
- Other (Explain) \_\_\_\_\_

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5. **Primary Purpose of Presence in the U. S. - The withholding agent (the College) should look to the immigration documents for verification of the primary purpose (e.g., Form DS-2019 for J immigration status individuals or Form I-797 for H-1B immigration status individuals). See Section II above.**

- Verify the copies of the documents verifying immigration status and primary purpose
- Retain copies of the document verifying immigration status and primary purpose

6. **Type of Payment (Check One) - Start with the premise that all payments from U. S. sources made to or on behalf of a nonresident alien are taxable unless the payment can be excluded or exempted from tax withholding.**

- Employee (Contact the College's Human Resources Office.)
- Fellowship/Scholarship (Contact the College's Financial Aid Office)
- Honorarium
- Independent Contractor
- Other Compensation
- Reimbursement for travel and related expenses (Not Reportable to IRS)

7. **When Tax Withholding is not Required (Check if applicable)**

- Foreign-sourced income - Not taxable to nonresident aliens. The sourcing rules for non-service scholarship and fellowship grant payments are foreign sourced and not taxable if either the payer of the activity is foreign. Compensation to an employee or independent contractor is foreign-sourced if the work took place outside the U. S.
- Excludable under the Internal Revenue Code - Many exclusions may apply but the most noteworthy for colleges and universities is Section 117 of the IRS code, which applies to scholarship and fellowship payments. All references to payments in a tax context are for which no service is required as a condition of payment. The effect of 117 is applicable to all students and scholars who receive non-service scholarship or fellowship payment, regardless of residency status.
- Exempt under an income tax treaty - An income tax treaty is a bilateral agreement between two countries to reduce or eliminate double taxation. The benefits of an income tax treaty may be claimed in one two ways: 1) the first way is for an individual to make an exemption claim at the time of payment by completing the applicable treaty exemption form; 2) the individual may file for a refund of tax withheld by making the claim for tax treaty exemption when filing his or her income tax return.

8. **The nonresident alien must provide one of the following forms in order to claim the tax treaty. (Check the box and provide the completed form.)**

- Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for U. S. Tax Withholding)**
- Form 8233 (Exemption from Withholding on Compensation for Independent and Certain Dependent) Personal Services of a Nonresident Alien Individual)**
- Form W-9 (Request for Taxpayer Identification Number and Certification)**