**Nonresident Alien Foreign Nationals (8/21/24)**

**General Information**

Eligibility for a foreign national to receive payments from a U.S. source depends on the person's visa status. A foreign national is subject to federal withholding tax on U.S. source income at a standard flat rate of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign national’s country of residence and the United States. Individuals who do not already have a U.S. tax ID (social security number or ITIN) are not eligible for treaty benefits. Their payment will be reduced by a mandatory 30% tax withholding. Additional paperwork and documentation is required BEFORE an invitation is extended.

**Note:** Please note that payments made to suppliers ( businesses or individuals) for **work performed outside of the United States are neither reportable nor taxable.** If this is the case, departments should indicate this on the Supplier Request in Workday (or Payment Works). The payee must provide a completed and signed W-8BEN-E (business) or W-8BEN (individual) and complete a “Certification of Foreign Source Income” for substantiation as required by the IRS.

Certification can be found here:  [**Foreign Source Income Certificate**](https://finance.emerson.edu/hc/article_attachments/24144096286996)

**Visa Status Restrictions and Prohibitions**

Both immigration and tax laws place a number of restrictions on payments made to short-term foreign visitors, including those on B visas or visa waivers. Most other visa types limit the nature and locations of work that the visitor can perform. **Please refer to the matrix “Common Visa Types of Foreign Nationals ” for information on the types of payments permitted for most foreign nationals who enter the United States. LINK**

Note: An individual already in the U.S. may not necessarily be here with the correct visa classification. Do not assume that an international visitor holds the correct visa classification, especially if he or she is already in the U.S..

Who's Eligible to Receive an Honorarium?

An honorarium **CANNOT**be paid for:

* Individuals bearing responsibility for grading or taking class attendance
* Forum, workshop, seminar, lecture series or multiple course lectures that qualify as personal and professional services
* A foreign national on H-1B, TN and O visas
* A foreign national on a B-1 (or WB) or B-2 (or WT) who does not meet the 9/6/5 Rule

Honorarium Rule ("9/5/6" Rule)

Honoraria payments made to B1/B2 visitors are subject to the 9-5-6 rule: the activity will not last longer than **NINE** days; and the visitor will not have accepted such payment or expenses from more than **FIVE** institutions or organizations in the past **SIX** months. Honoraria-type activities performed by visitors in any class other than B1/B2, are subject to the restrictions of the individual’s visa classification. Foreign nationals holding a B-1/WB or B-2/WT visa who exceed the rule are not prohibited from giving an invited lecture at Emerson College. However, they cannot receive an honorarium. Only foreign nationals holding a B-1/WB may receive reimbursement for travel and/or incidental expenses, up to nine days.

An honorarium may be paid if:

* Here on a B-1 or B-2 provided the individual meets the conditions of the Honorarium Rule.
* Here on a WB (Visa Waiver Business) or WT (Visa Waiver Tourist) provided the individual meets the conditions of the Honorarium Rule.  **An honorarium** **is not permitted to B2/WT visa holders except unless they fall under the exception to the rule which is if the individual is physically in the United States prior to being invited.***Note:* If the event for which the honorarium is offered is arranged before the individual travels to the U.S., the individual must seek admission as a B-1 or VWB non-immigrant.
* J-1 scholar or F visa type holder from another college/university for an occasional lecture at the Emerson, if permitted in writing, by the Responsible Officer at the sponsoring institution.
* H1-B, E3, TN and O-1 visa holders may receive an honorarium only if they are sponsored by Emerson College. **The payment must be initiated and processed through the HR/Payroll system meaning the individual must already be on the Emerson payroll.** H-1B, E3, and O-1 visa holders at another college/university may only receive reimbursement for travel and/or incidental expenses, not an honorarium for academic activity at Emerson College.
* Expense Reimbursements - Reimbursement of documented business or travel expenses must comply with the Emerson College Travel and Business Expense Policy. Unsubstantiated expenses, or expenses paid by Emerson for the visitor are taxable to the foreign visitor.

**Withholding and Reporting**

Federal Withholding

Payments made to Foreign Nationals for “US Source Income” are subject to a 30% federal withholding unless the tax rate is reduced or eliminated by the presence of a tax treaty. Prizes and awards are subject to 30% federal withholding; no treaty benefit is allowed. At the end of the calendar year, Emerson College will issue the individual a Form 1042-S and report all payments and withholdings made to the I.R.S. Emerson College is liable for any tax not withheld and associated fines and penalties. Any tax amount, fines and penalties determined to be owed by the IRS will be charged to the department responsible for the foreign national.

Withholding occurs on the gross amount of the payment. For example, if the College agrees to pay $1,000 to a foreign national, and such payment is subject to withholding at a rate of 30%, Emerson will pay $700 to the foreign national and $300 to the IRS.

Where withholding is required, a department may elect to "gross-up" the payment, in order to ensure that the foreign national receives the amount that the foreign national expected to receive from Emerson. The department will be charged for the payment and the taxes. If a payment is "grossed-up", the new total payment amount is equal to (Amount to be Received by Foreign National)/(1- withholding rate, expressed as a decimal). In order to pay a foreign national $1,000, the total cost would be $1,428.57 ($1,000/(1-0.30)). 70% of $1,428.57 ($1,000) would be paid to the foreign national, and 30% of $1,428.57 ($428.57) would be paid to the IRS, as required by law. The withholding amount paid by Emerson, is also reported to the IRS on Form 1042-S.

A travel reimbursement is not subject to withholding because it is generally not considered income. However, documentation for travel reimbursements are governed by the College’s Travel and Business Expense Policy (e.g. receipts and business purpose must be provided to Emerson) and would be processed as an Expense Reimbursement through Workday.

State Tax Withholding

In addition to federal withholding, payments may also be subject to state tax withholding.

Massachusetts performers’ tax withholding of 5.25% may also apply if the speaker receives $10,000 or more in speaking fees from Emerson in the calendar year.

Payments of more than $1,500 in one year, made to independent contractors who provide services in California, but are California nonresidents, are subject to 7% state withholding and are reported on Form 592-B.

**Note:** Certain per diems, living or travel expenses, and other payments made to nonresident aliens as recipients of grants or awards may be subject to 14% federal withholding.

**Procedures**

Departments wanting to offer an honorarium or travel reimbursement must submit the **“Eligibility Determination and Substitute Invitation Letter for Payment/Reimbursement to Foreign Nationals” prior** to the time of service. We would recommend a minimum of 10 business days. The purpose of this form is to collect information from the foreign national and the department to determine if the honorarium payment is allowed under the regulations, to know if a treaty exemption will be requested requiring additional information/documentation, and to secure certification under the Honorarium Rule (aka 9/5/6 Rule). Tax treaty benefits are not automatic and will take time to process. Please make sure your visitor knows that payment may be delayed depending on when they complete the forms and provide the required documentation.This process may be too cumbersome if relatively minor amounts are involved.

In all instances, Emerson College, in conjunction with the department, must secure other documents from the foreign national potentially required for honorarium payment such as:

* Foreign National Information Form (FNIF) if claiming a treaty benefit
  + Copy of the passport biographic page, and passport expiration page (if not on biographic page)
  + Copy of the visa
  + Most recent form I-94
  + IRS Form 8233, for claiming treaty benefits and Form W-8BEN (recipient's signature is required on both after Emerson processes FNIF)
  + Copy of social security card or ITIN
* If not claiming a treaty benefit
  + Copy of the passport biographic page, and passport expiration page (if not on biographic page)
  + Copy of the visa
  + Most recent form I-94
  + Form W-8 (BEN-E, ECI, IMY, or EXP)
* If here on a J-1 or F type visa sponsored by another institution, in addition to the above, written authorization from the Responsible Officer at the sponsor institution authorizing the activity and a copy of the DS-2019 form.
* For F-1 visa only: a copy of the I-20 form is required.

Tax Treaty Eligibility

Here is the list of current treaties: [www.irs.gov/publications/p901](http://www.irs.gov/publications/p901) (see Personal Services Income)

The foreign national will indicate if they wish to apply for a treaty benefit on the **“Eligibility Determination and Substitute Honorarium Invitation Letter for Honorarium Payment to Foreign Nationals”** Form. Contact Accounts Payable for instructions on the procedure for your visitor to complete this process in advance**.** To claim benefits under an existing tax treaty, an eligible foreign national will also need to already have a US tax ID, complete a Foreign National Information Form and provide specific documents BEFORE any payment is made. After Accounts Payable processes the treaty documents, and all final signatures are obtained, the tax treaty exemptions become effective for the payment(s). Tax Treaty forms are effective for the current calendar year only. Actual documents required will be determined by Accounts Payable/Finance. Final decisions on eligibility and taxation will be made by Accounts Payable/Finance. Please start this process at least 10 business days in advance of the payment to avoid payment delays.

**Instructions to Foreign Nationals**

Year-end IRS Tax/Reporting

Emerson College will send IRS Form 1042-S to the Foreign National by March 15th of the year following the year of the payment. Please consult your tax advisor on how to report this income or, if applicable, file a U.S. tax return to claim a tax refund. IRS tax publications, forms, and instructions are available on the IRS web site at [www.irs.gov](http://www.irs.gov/) under Forms and Publications, or you can order items by calling 1-800-TAX-FORM (1-800-829-3676). See Publications 515, 519 and 901 for additional information on withholding, treaties and tax guides.

**Forms:**

* Eligibility Determination and Substitute Invitation Letter for Honorarium Payment/Reimbursement to Foreign Nationals
* Foreign National Information Form (FNIF) if claiming a treaty benefit
* “Certification of Foreign Source Income” for work performed outside of the United States (business and individuals).