Ball State University
Procedure for Disbursing Awards, Prizes, Scholarships and Payments for Services to Foreign Nationals

EFFECTIVE DATE: January 1, 2015

LAST REVISION: May 19, 2016

PROCEDURE ISSUED FROM: Office of University Controller

I. PURPOSE: This procedure ("Procedure") is hereby adopted for the purpose of detailing the proper channel through which to process payments administered by Ball State University ("University") for the benefit of foreign national students and vendors.

II. BACKGROUND: Internal Revenue Code ("Code") section 1441 requires the University to withhold tax on any items of income paid to any foreign national. The prescribed withholding rate is 30%. The University utilizes International Tax Navigator to determine the proper amount of withholding, if any, that the University must remit to the Internal Revenue Service ("IRS").

III. APPLICABILITY: This procedure applies to any payment to a student or vendor funded or administered by the University who is, for tax purposes, considered a nonresident alien.

IV. PROCEDURE DEFINITIONS: Many of the terms used when discussing nonresident and resident alien taxation are a bit confusing. In an effort to simplify a complex concept, frequently referred to concepts are defined below for your reference. Additionally, terms describing payments made by the University are often used interchangeably which makes for very confusing discussions. For the purposes of this Procedure, all amounts paid to students which are not payments for services or a prize won in a contest will be called an “award.”

**Award**
Gift aid awarded based on any number of criteria, such as academics, achievements, hobbies, talents, and affiliations with various groups, or career aspirations. An award may be won through a contest if the following conditions apply:
- The amount won must be used for educational expenses,
- The winner has to be a Ball State student, and
- The contest is related to the student’s coursework, studies or degree completion.

**Fixed or Determinable Annual or Periodical Income “FDAP”**

*Fixed*- Income is fixed when it is paid in amounts known ahead of time.

*Determinable*- Income is determinable whenever there is a basis for figuring the amount to be paid.

*Periodic*- Paid from time to time, not paid annually or at regular intervals.

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1 This policy applies to payments made to foreign nationals only. For payments made to residents and U.S. citizens, please see the [Procedure for Disbursing Awards, Prizes, Scholarships and Payments for Services](#).
Income can be determinable or periodic, even if the length of time during which the payments are made is increased or decreased. Common examples of FDAP income include:

- Compensation for personal services
- Rents
- Royalties
- Scholarships and fellowship grants
- Prizes and Awards

**Form 1042-S**

Foreign Person’s U.S. Source Income Subject to Withholding

Amounts subject to reporting on Form 1042-S are amounts from U.S. sources paid to foreign persons (including persons presumed to be foreign), even if no amount is deducted and withheld from the payment because of a treaty or Code exception to taxation or if any amount withheld was repaid to the payee. Amounts subject to reporting are amounts from sources within the United States.

**Form 8233**

Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual

Any foreign national who claims that part of or the entire amount of a service-based payment is exempt from taxation because of a tax treaty must file Form 8233 with the Director of University Tax Compliance annually. **A Form 8233 must include a valid ITIN (individual taxpayer identification number) or Social Security number.**

**Form W-8BEN**

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)

Any foreign national who claims that part of or the entire amount of a non-service-based payment is exempt from taxation because of a tax treaty must file Form W-8BEN with the Director of University Tax Compliance. **A Form W-8BEN presented for the purpose of claiming a tax treaty benefit must include a valid ITIN (individual taxpayer identification number)** or Social Security number.

Generally, a Form W-8BEN will remain in effect for purposes of establishing foreign status for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8BEN signed on September 30, 2015, remains valid through December 31, 2018.

**Grant**

Gift aid of financial support based on criteria such as need analysis, geographic factors, academic achievement or other factors. Recipient is selected based on specific criteria set by the awarding organization and the amount must be used for educational expenses.

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**Green Card Test**

An individual is a resident for tax purposes if they are a lawful permanent resident of the United States at any time during the calendar year. An individual is a lawful permanent resident of the United States at any time if they have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. An individual generally has this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued them an alien registration card, also known as a “green card.” An individual continues to have resident status under this test unless the status is taken away or is administratively or judicially determined to have been abandoned.

**Nonresident**

A non-U.S. citizen who does not meet either the “green card” test or the “substantial presence” test³

**Prize**

Payment won in a contest that does not have to be used for educational expenses. Prizes may include cash, gift cards, tangible personal property (e.g., an iPad) or complimentary services. Prize recipients are not required to be students and the contest is not required to relate to student’s coursework, studies or degree completion.

**Resident**

An individual meeting either the “green card” test or the “substantial presence” test

**Scholarship**

A scholarship is a cash amount paid to or for the benefit of an individual to aid the individual in the pursuit of study or research. Scholarships are gift aid, which is not repaid. Scholarships are awarded on merit, need or other criteria set by the donor (which may be a University department or a private entity). A scholarship recipient has no service obligations other than to remain enrolled and maintain qualifying requirements of the award.

A reduced withholding rate of 14% is available for individuals temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and with income items which are incident to a qualified scholarship.

A scholarship can be qualified (excludable from income) or non-qualified (includable in income) based on the following definitions:

- A “non-qualified scholarship” is any amounts received to cover *incidental expenses*⁴ of a candidate for a degree at an institution of higher education or by a non-degree candidate.
- A “qualified scholarship” is any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the scholarship, such amount was used for qualified tuition and related expenses⁵.

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³ As described in IRS Publication 519, U.S. Tax Guide for Aliens
⁴ For example, amounts used to pay optional fees, room, board, travel and personal expenses.
⁵ Prop. Reg. 1.117-6(c)(3) Qualified tuition and related expenses includes tuition and fees required for the enrollment or attendance of a student at an institution of higher education, as well as fees, books, supplies and equipment required for the course of instruction at the institution.
Service-based Payments

Any amount paid to or allowed to, or on behalf of, a recipient (even if the amount is designated for educational expenses) is NOT gift aid if the amount:

- represents compensation for past, present, or future employment services
- represents payment for services which are subject to the direction or supervision of the grantor; or
- subsidizes studies or research “primarily for the benefit of the grantor”

Substantial Presence Test

A criterion used by the IRS to determine whether an individual who is not a citizen or lawful permanent resident in the recent past qualified as a “resident for tax purposes” or a “nonresident for tax purposes”

One is considered a U.S. resident for tax purposes when the substantial presence test for the calendar year is met. To meet this test, one must be physically present in the United States on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
   - All the days one was present in the current year, and
   - 1/3 of the days one was present in the first year before the current year, and
   - 1/6 of the days one was present in the second year before the current year.

Do not count days for which one is an exempt individual. The term "exempt individual" does not refer to someone exempt from U.S. tax, but to anyone in the following categories who is exempt from counting days of presence in the U.S.:

- An individual temporarily present in the United States as a foreign government-related individual
- A teacher or trainee temporarily present in the United States as a nonimmigrant under subparagraph (J) or (Q) of section 101(a)(15) of the Immigration and Nationality Act, who substantially complies with the requirements of the visa
- A student temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, who substantially complies with the requirements of the visa

V. PROCEDURE DETAILS: Ball State University, in compliance with federal student aid regulations, requires that all scholarships, grants and academic award payments to foreign national students be made through the Office of Scholarships and Financial Aid.

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6 Treasury Reg. §1.117-4(c)(1)
In compliance with tax law, any amount paid to a foreign national student which represents a prize or a payment for teaching, research, or other services performed by the student as a condition for receiving the funds will be reported as taxable income each year as required.

VI. REPORTING:
Foreign National Information System
The University utilizes International Tax Navigator’s database called Foreign National Information System (“FNIS”) to gather specific information pertaining to an individual’s immigration and tax status. When a payment will be made to a foreign national, a request for FNIS access form should be completed and sent to bsutax@bsu.edu. Once this form is received the individual will get an e-mail with a username and password to login at https://fnis.thomsonreuters.com/ballstate. The foreign national will utilize FNIS to prepare their Form W-8BEN or Form 8233. FNIS will also prompt the individual to consent to receiving Form 1042-S electronically at the end of the calendar year. Note: FNIS may only be utilized by individuals. Foreign entities with which the University does business will be required to submit a completed Form W-BEN-E outside of FNIS. If an individual does not complete the information requested in FNIS, the University will not be in a position to verify their tax status and will withhold any applicable tax per the Code.

Tax Treaties
In addition to the lesser withholding rate due to their immigration status and receipt of a qualified scholarship, residents of certain countries may be entitled to further reduced tax rates, or exemption from tax, under an applicable tax treaty between their country and the United States. Using information provided by the individual in FNIS, the University determines if an individual is eligible to claim a tax treaty benefit. The existence of a tax treaty between the U.S. and a visitor’s resident country does not guarantee that an individual may take advantage of any benefits. An individual must have a U.S. taxpayer identification number in order to be eligible to claim a tax treaty.

Source of the Payment
Awards made to foreign nationals are a bit more complex than those awarded to U.S. citizens and resident for tax purposes due to sourcing rules.

Income is generally considered “U.S. source” if the location of the activity for which the payment is being made is in the U.S. This is the rule for compensation paid for services performed in the United States and royalties for intellectual property being used in the United States. Payments made for royalties, copyrights, or permission fees are generally considered U.S. source income.

Scholarships, prizes and awards received from a country other than the United States (e.g. Brazil, or an agency on its behalf, pays the University directly for students from its country to study here) are considered to be foreign source and not subject to reporting or the withholding prescribed by section 1441. The residence of the payor determines the source, not where the funds are used.

When a scholarship, prize or award originates from a U.S. source (e.g. Ball State University, a U.S. government agency or any other U.S. entity) some part of the award may become taxable. All U.S. source amounts paid to a foreign national which are not excludible from gross income as a “qualified scholarship” must be reported to the Internal Revenue Service on Form 1042-S.

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<thead>
<tr>
<th>Type of Income</th>
<th>Source Determined by</th>
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<tbody>
<tr>
<td>Pay for Personal Services</td>
<td>Where services are performed</td>
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<tr>
<td>Scholarships or Grants</td>
<td>In most cases, the residence of the payor</td>
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Revenue Ruling 89-67, (1989-1 C.B. 233)
Prizes and Service-based payments

If a payment is not an award to be reported through the Office of Financial Aid and Scholarships, the payment amount is reportable income and section 1441 withholding of up to 30% may apply. The value of any prize must be reported by the originator of the prize on the Cash Payment or Prize Tax Form. The form must be signed by the recipient indicating their understanding of the taxable nature of the prize. The completed form will be reviewed by University Tax Compliance. If a student wins a non-cash prize or award with withholding required, the student’s account with the Bursar\(^8\) will be charged.

A payment for services to an individual who is not an employee of the University is taxable income and must be paid via the Accounting Office\(^9\). (Note: This type of payment will likely be one-time events as continued services by an individual would lend that individual to being an employee of the University.) Each amount paid to a non-employee along with any withholding done on the individual’s behalf will be reportable on a Form 1042-S at the end of each calendar year.

VI. Examples:

1. A foreign national student receives a scholarship of $2,500. As a condition for receiving the scholarship, this student must serve as a part-time teaching assistant. Of the $2,500 scholarship, $1,000 represents payment for teaching. The University will issue this student a Form W-2 showing $1,000 as payments for services. The remaining $1,500 of the student’s scholarship is subject to section 1441 withholding at 14%. The student will see a charge on their student account for tax withholding in the amount of $210. The $1,500 scholarship and $210 of withholding will be reported to the student on a Form 1042-S issued by the University by the March 15th deadline for this form.

2. Same facts as above, but the student has a Form 8233 complete with their Social Security number on file with the University and hails from a country with a treaty exemption for U.S.-sourced income and scholarships. The student will receive the full $1,500 (not subject to withholding) scholarship and will receive a Form 1042-S issued by the University by the March 15th deadline showing the scholarship, wages and the applicable treaty section allowing these payments to be exempt from withholding.

3. Late Nite randomly selects a non-employee student at their Saturday night party to be the winner of an iPad. The iPad is a prize and is an item of taxable income. The value of any prize must be reported by the originator of the prize on the Cash Payment or Prize Tax Form. The form must be signed by the recipient indicating their understanding of the taxable nature of the prize. If withholding is required, the student’s account with the Bursar will be charged.

4. The same facts as above, but the winner of the iPad is a student employee. The value of the iPad must be reported to the Office of Payroll and Employee Benefits on the Cash Payment or Prize Tax

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\(^8\) Via detail code X410. Completed form will be sent to Bursar with instructions on how much withholding is due from recipient. University Tax Compliance will make necessary deposits to the IRS via EFTPS.

\(^9\) A non-employee payment is done through a “Non PO Payment Request Form” request in SciQuest. Information on how to complete the form can be found here.
Form to be recorded on the employee’s wage record. The value of the prize will be included in the amounts reflected on the employee’s Form 1042-S or Form W-2 for the calendar year in which the prize was won.

5. The Architecture Department has a design contest open only to students of its program. The winner of the contest will receive $1,000 which must be used for the student’s educational expenses. The winner of this contest should be awarded the $1,000 via the Scholarship Authorization Form. This will be a U.S. source scholarship so it may be subject to withholding.

6. Same facts as above, but the contest winner is free to use the $1,000 contest winnings as they please. This is now a prize so the Cash Payment or Prize Tax Form will be submitted to the Accounting Office as an attachment to a Non-PO Payment Request Form. The Accounting Office will issue the student a Form 1042-S at the end of the calendar year to report the winnings and any amount withheld.

7. Same facts as in #5 above, but the winner is a student employee. Cash Payment or Prize Tax Form will be submitted to the Office of Payroll and Employee benefits so that the amount will be reflected on the student’s Form W-2 or Form 1042-S at the end of the calendar year.

Contact in Case of Questions: University Tax Compliance, Office of University Controller, 765.285.8444 or bsutax@bsu.edu

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