

TAX POLICY AND PROCEDURE GUIDE FOR INCOME PAYMENTS TO ALIEN INDIVIDUALS

Revised as of November 2007

University of Alabama at Birmingham

PREFACE

The Tax Policy and Procedure Guide for Income Payments to Alien Individuals was developed by UAB's Alien Tax Compliance Committee to improve compliance with tax law. The Guide is not intended to provide individual tax advice. For individual tax advice, alien individuals must consult a tax professional.

In developing this Guide, the Committee examined the alien tax withholding/payment requirements of the United States, State of Alabama, City of Birmingham, and Jefferson County. The policies and procedures contained in this Guide are subject to change, and they periodically will be updated to reflect changes in tax laws, rules, regulations, and their interpretation.

For more information on alien tax withholding/payment requirements, the UAB International Scholar and Student Services ("ISSS") may be contacted at (205) 934-3328.

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WEB SITE

<http://main.uab.edu/show.asp?durki=18928>

<http://www.ssa.gov/online/forms.html#Other>

<http://www.ins.usdoj.gov/graphics/howdoi/arrdepart.htm>

http://www.us-immigration.org/forms_index.htm

<http://www.ador.state.al.us/Withholding/index.html>

<http://www.ador.state.al.us/Withholding/index.html>

http://www.irs.treas.gov/prod/forms_pubs/forms.html

http://www.irs.treas.gov/prod/forms_pubs/forms.html

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SECTION 1: GENERAL

1.1 Scope of Guide:

Initially effective as of Winter Quarter 1997, this Tax Policy and Procedure Guide for Payments to Alien Individuals (referred to herein as the "Guide") applies to the following three (3) classes of payments:

- A. Employee compensation (see *Section 2.2* of this Guide);
- B. Scholarship/fellowship payments (see *Section 2.3* of this Guide); and
- C. Independent contractor compensation payments (see *Section 2.4* of this Guide).

The policies and procedures contained in this Guide do not apply to payments to individuals who are citizens or permanent residents of the United States of America.

1.2 Amendment of Guide:

Changes in tax laws, the legal interpretation of tax laws, positions taken by Internal Revenue Service (referred to herein as "IRS") or other tax authorities, or in UAB policies or procedures may require this Guide to be amended.

1.3 Definition of "Student":

For the purposes of this Guide, a "student" is an individual who, at either the undergraduate or graduate level, is enrolled at UAB and/or registered at UAB for research, thesis, or dissertation requirements. The UAB Payroll Department, with the assistance of other UAB Department(s) and UAB Administrative Office(s) as necessary, shall be responsible for monitoring the student status of individuals being paid as student employees. The UAB Office of Student Financial Aid shall be responsible for monitoring the student status of student scholarship/fellowship payment recipients. The definition of "student" for purposes of an exemption from the Social Security (FICA) Taxes is provided by the *UAB Student Tax Policy*.

1.4 Definitions of Alien, Nonresident Alien and Resident Alien:

1.4.1 An alien is a person who is not a citizen or a national of the United States of America.

1.4.2 Generally, a "nonresident alien" is an alien who does not meet either the Green Card Test or the Substantial Presence Test summarized in *Appendix 1* to this Guide. UAB International Scholar and Student Services (referred to in this Guide as "ISSS") should be consulted regarding the special rules that may apply in determining whether a person is a nonresident alien when the person; (1) has elected to be treated as a resident of the United States when filing a federal income tax return or; (2) has met either the Green Card Test or the Substantial Presence Test and is a resident of a foreign country that is a party to an income tax treaty.

1.4.3 A "resident alien" is an alien who meets either the Green Card Test or the Substantial Presence Test described

in *Appendix 1*. The same tax withholding and payment rules that apply to a U.S. citizen also generally apply to a resident alien; however, ISSS is responsible for determining whether the tax withholding and payment rules applicable to a resident alien differ from the rules applicable to a U.S. citizen (see the heading "Tax Residency Tests" in *Section 4.4.1* of this Guide). ISSS should be consulted regarding the special rules that may apply when a resident alien is also a resident of a U.S. possession or territory under the Green Card Test, Substantial Presence Test, or other laws of the possession or territory.

- 1.4.4 A nonresident alien student who meets the Substantial Presence Test (and does not meet the Green Card Test) may attempt to retain his or her nonresident status by demonstrating to the satisfaction of the IRS that he or she does not intend to reside permanently in the United States and has substantially complied with the requirements of his or her visa. ISSS shall verify whether a student has obtained IRS confirmation that a satisfactory demonstration has been made.

1.5 Cost Accounting Standards:

The policies and procedures contained in this Guide shall be administered in accordance with Office of Management and Budget Circular No. A-21 (revised as of April 26, 1996), which provides that the "costs of scholarships, fellowships, and other programs of student aid" may be charged to a grant, contract, or other agreement between UAB and the federal government only when (1) the purpose of such grant, contract, or other agreement is "to provide training to selected participants" (payment is not made in exchange for service), and (2) "the charge is approved by the sponsoring agency." To ensure consistency, the foregoing standard shall be applied to programs that are not sponsored by the federal government.

SECTION 2: CLASSIFICATION OF INCOME PAYMENTS

2.1 Three Classes of Income Payments to Alien Individuals:

This Guide covers the following three (3) classes of income payments to alien individuals:

- A. Employee compensation payments (see *Section 2.2* of this Guide);
- B. Scholarship/fellowship payments (see *Section 2.3* of this Guide); and
- C. Independent contractor compensation payments (see *Section 2.4* of this Guide).

An alien individual may receive an income payment from more than one of the three classes. In such a case, the tax withholding/payment procedures that correspond to each class of income payment shall be applied as required by this Guide. In other words, receipt of a combination of several classes of income payments does not affect the Guide's application to each class, and the tax withholding/payment requirements for each income payment class must still be separately applied.

2.2 Employee Compensation Income Payments:

Employee compensation income payments are made by the UAB Payroll Department to an individual who performs a service for UAB as an employee.

Employee compensation income payments may only be paid to an alien individual who has been granted an appropriate employment authorization and immigration status by the United States Citizenship & Immigration Service (referred to herein as "USCIS"). The work authorization and tax status of an alien individual shall be reviewed by ISSS before approving the ACT document in Oracle.

An alien individual receiving employee compensation may be a student. Assistantships, which include graduate research and teaching assistants, are forms of financial assistance provided to students to aid them in pursuing a course of study. Assistantship payments are designated as employee compensation because work (service) is performed in exchange for compensation.

2.3 Scholarship/Fellowship Income Payments:

Scholarship/fellowship income payments are a means of providing financial assistance to an individual to cover the cost of (1) tuition and fees necessary for enrollment or attendance, (2) fees, books, supplies and equipment required for courses of instruction, and/or (3) other expenses, such as living expenses. Scholarship/fellowship income payments are not provided to the recipients in exchange for the past, present, or future performance of services, and they are not loans. In addition, the award of a scholarship/fellowship is not contingent upon the recipient's choice of a particular faculty mentor or participation in a specific research, teaching, or service project.

Normally, scholarship/fellowship income payments are disbursed to (or on behalf of) students through the UAB Office of Student Financial Aid and are not subject to withholding/payment of taxes by UAB. However, special rules apply when scholarship/fellowship payments are made to nonresident aliens, and these special rules are explained in

Section 3.1 of this Guide. These special rules require that scholarship/fellowship income payments to nonresident aliens be made through the UAB Payroll Department to the extent the payments may be used by a recipient for a purpose (such as payment of living expenses) that would require inclusion of the payments in the recipient's income for federal income tax purposes.

If a scholarship/fellowship income payment recipient is also an employee, those provisions of this Guide that pertain to employee compensation income payments shall apply to the employee compensation income payments disbursed in connection with the individual's employment. Employee compensation income payments shall be reasonable in all cases, taking into account, among other things, the nature and extent of the service performed.

2.4 Independent Contractor Compensation Income Payments:

Independent contractor compensation income payments are made in exchange for personal service performed by an individual who does not have an employee-employer relationship with UAB. Upon receiving a Personal Services Form, the UAB Office of the Executive Director of Accounting shall determine whether a worker is an independent contractor. In making this determination, the UAB Office of the Executive Director of Accounting shall apply the UAB Personal Services Policy and any personal service classification listing(s) issued pursuant thereto.

Independent contractor compensation income payments may be made to an alien individual whose immigration status allows the receipt of such payments as a matter of law. ISSS must approve all independent contractor compensation income payments to alien individuals, and such payments shall be processed through the UAB Payroll Department upon approval by ISSS. In determining whether an independent contractor compensation income payment may be made, ISSS shall review the immigration status of each alien independent contractor, including any restrictions applicable to the immigration status. ISSS is also responsible for conducting a tax analysis and assisting the independent contractor with applying for the tax identification number (ITIN) if needed to ensure compliance with IRS tax withholding and reporting requirements. **

NOTE: ** UAB cannot process the payment until the ITIN or SSN is issued.

SECTION 3: FEDERAL, STATE, CITY, AND COUNTY TAXES

3.1 Federal Income Tax:

In general, the UAB Payroll Department shall withhold federal income tax from all income payments made to alien individuals at the applicable rate, unless the income payment is wholly or partially exempt from withholding under federal law, federal regulation, and/or a tax treaty between the U.S. and the alien's country of residence. A list of effective tax treaties is attached to this Guide as *Appendix 2*. Questions regarding effective tax treaties should be addressed to ISSS.

To apply for a complete or partial tax withholding exemption based on a tax treaty, an individual receiving employee compensation income, or independent contractor compensation income must complete IRS Form 8233/W9 and submit it to ISSS (see the heading "IRS Form 8233" in *Section 4.4.3* of this Guide).

An individual receiving a scholarship/fellowship income payment must complete IRS Form W8BEN/W9 and submit it to ISSS to apply for a withholding exemption based on a tax treaty (see the heading "IRS Form W-8 BEN" in *Section 4.4.4* of this Guide).

3.1.1 Employee Compensation Income Payments:

Unless otherwise provided by federal law and/or an applicable tax treaty, the UAB Payroll Department shall withhold federal income tax from employee compensation income payments to alien individuals (including student employees) pursuant to IRS withholding tables. A personal withholding allowance may be claimed by an alien individual who completes an IRS Form W-4 and submits it to ISSS (see the heading "IRS Form W-4" in *Section 4.4.9* of this Guide).

Federal income tax withholding shall not apply to employee compensation income payments to nonresident aliens that are not "U.S. source payments." The UAB Payroll Department and ISSS are jointly responsible for determining whether a payment to a nonresident alien is a "U.S. source payment." The source of an employee compensation income payment (including employee prizes and employee awards) generally is the country where services are performed. Employee prizes and employee awards are considered compensation income, and are included in a recipient's gross income for federal income tax purposes if made in cash. If a prize or award received by an employee in recognition of either length of service or safety achievement is tangible personal property (not cash), the recipient's gross income generally will include, for federal income tax purposes, the greater of (i) the cost of the prize/award minus \$400 (but not in excess of the value of the prize/award) or (ii) the value of the prize/award minus \$400.

3.1.2 Scholarship/Fellowship Payments:

Scholarship/fellowship income payments are not included in an alien individual's income for federal income

tax purposes if they are used by the alien individual (as permitted by the terms under which the payment is made) for (i) tuition and fees required for enrollment or attendance, and/or (ii) fees, books, supplies, and equipment required for courses of instruction. A scholarship/fellowship payment is subject to withholding of federal income tax if it is a U.S. source payment that may be used by an alien individual for a purpose (such as payment of living expenses) that would cause the scholarship/fellowship payment to be included in his or her income.

The UAB Payroll Department and ISSS are jointly responsible for determining whether a payment to a non-resident alien is a "U.S. source payment." The source of a Scholarship/fellowship income payment generally is the country where the payer is located, regardless of the location of an agent who disburses payments for the payer. However, a scholarship/fellowship income payment that is received by a person who is not a U.S. citizen or resident with respect to activities to be conducted outside the U.S. shall not be treated as a U.S. source payment.

Unless different procedures are provided by federal law and/or an applicable tax treaty, special federal income tax rules require that the UAB Payroll Department withhold at the rate of 30% from that part (or all) of a "U.S. source" scholarship/fellowship payment that is included in a nonresident alien's income for federal income tax purposes.

A reduced withholding rate of 14% (instead of the 30% tax withholding rate) may be applied by the UAB Payroll Department if the following requirements are met:

- A. The nonresident alien is an F, J, M or Q visa holder who is present in the U.S. to pursue study, training, or research; and
- B. The scholarship/fellowship payment is funded, without regard to any agent who disburses it for the entity providing the funding, by UAB, an organization exempt from the federal income tax under Section 501 (c) (3) of the Internal Revenue Code, the U.S. Government (including an instrumentality, possession, political subdivision, or agency thereof), a State, the District of Columbia, a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Education and Cultural Exchange Act of 1961.

3.1.3 Independent Contractor Compensation Income Payments:

Unless otherwise provided by federal law and/or an applicable tax treaty, the UAB Payroll Department shall withhold federal income tax from independent contractor compensation income payments to nonresident aliens at the rate of 30%.

Federal income tax withholding shall not apply to independent contractor compensation income payments to nonresident aliens that are not "U.S. source payments." The UAB Payroll Department and ISSS are jointly responsible for determining whether a payment to a nonresident alien is a "U.S. source payment." The source of an independent contractor compensation income payment generally is the country where services are performed. Independent contractors must provide a completed IRS Form W-8BEN and/or IRS Form 8233 to ISSS. (See the heading "IRS Form W-8BEN" in *Section 4.4.4* of this Guide).

3.2 Federal Insurance Contributions Act (Social Security) Taxes:

The FICA taxes (the Old-Age, Survivors and Disability Insurance Tax and the Medicare Tax), which are commonly referred to as the "Social Security Tax," apply to remuneration for "employment." "Employment" generally means any service, of whatever nature, performed by an employee (including a student employee) within the U.S. for an employer, regardless of the citizenship or residence of the employee. Employees, through withholding, pay half of the FICA taxes, and employers are responsible for paying the other half of the FICA taxes. The FICA taxes shall apply to employee compensation income payments to alien individuals in accordance with the rules provided in this *Section 3.2*.

3.2.1 Employee Compensation Income Payments:

The UAB Payroll Department shall withhold the employee portion of the FICA taxes from all employee compensation income payments and pay the corresponding employer portion of the FICA taxes. Employee prizes and employee awards are subject to the FICA taxes to the extent they are considered employee compensation income payments for federal income tax purposes (see *Section 3.1* of this Guide).

An alien employee and/or UAB may be entitled to a withholding/payment exemption from the FICA taxes based on the employee's nonresident alien immigration status, the employee's student status, a Social Security "totalization agreement," or a tax treaty.

3.2.1.1 Immigration Status of Nonresident Alien:

For an employee and UAB to be exempt from the employee and employer portions of the FICA taxes based on the employee's immigration status, the employee shall be temporarily present in the U.S. as a nonresident alien under an F-1, J-1, M-1 or Q-1 visa and be in substantial compliance with the requirements of his or her visa. ISSS shall apply the Substantial Presence Test (see *Appendix 1* to this Guide) to visa holders in accordance with federal tax law rules.

A nonresident alien employee who is an F-1, J-1, M-1, or Q-1 student visa holder generally is exempt from counting days of U.S. presence for purposes of the Substantial Presence Test, provided that he or she has not already been exempt from counting days of U.S. presence for five (5) calendar years due to student or non-student immigration status.

A nonresident alien employee who is a J-1 or Q-1 non-student visa holder generally is exempt from counting any days of U.S. presence for purposes of the Substantial Presence Test, provided that he or she has not already been exempt from counting days of U.S. presence for any two (2) of the six (6) preceding calendar years due to student or non-student immigration status.

A nonresident alien employee who claims to be exempt from counting days of U.S. presence due to his or her student or non-student immigration status should file IRS Form 8843 with his or her tax return each year. If no tax return is due to be filed, IRS Form 8843 still should be filed on or before the deadline for the filing of a tax return.

When a nonresident alien has met the Substantial Presence Test during a calendar year, he or she retroactively shall be classified as a resident alien for tax purposes by ISSS as of January 1 of that same calendar year. However, a student may attempt to retain nonresident alien status by making the demonstration to IRS referred to in *Section 1.4.4* of this Guide.

IRS Publication 519 ("U.S. Tax Guide for Aliens") and the Instructions to IRS Form 8843 provide guidance to students and non-students on establishing and maintaining nonresident alien status.

3.2.1.2 **Student Status:**

An alien employee and UAB may be exempt from the employee and employer portions of the FICA taxes based on the student status of the employee. To determine whether employee and employer withholding/payment exemptions are available based on student status, the provisions of the UAB Student Tax Policy shall be applied.

3.2.1.3 **Totalization Agreement:**

For an alien employee and UAB to be exempt from the employee and employer portions of the FICA taxes based on a social security totalization agreement, the employee must establish that social security tax is being paid to his or her country of residence with regard to the employee compensation income earned in the U.S. The employee must obtain a "coverage certificate" from the social security authorities in his or her country of residence and submit the coverage certificate to ISSS. The coverage certificate must contain the following.

- The employee's name, address, and taxpayer identifying number (if known);
- The employer's name, address, and taxpayer identifying number, if any;
- A statement that an agreement is in effect between the foreign country and the U.S. under which wages received by or paid to the employee by the employer are subject to taxes or contributions under the social security system of the foreign country; and

- The date on which the agreement began to apply and the date, if determined, when it will cease to apply.

If an employee's country of residence will not issue such a coverage certificate, either the employee or UAB may secure a statement issued by the U.S. Social Security Administration, Office of Research, Statistics, and International Policy, stating that the employee's compensation income for a specified period (including the beginning date and, if determined, the ending date), are not covered by the U.S. Social Security System. Upon receipt of the coverage certificate, ISSS shall retain the certificate and inform the UAB Payroll Department of the application of the totalization agreement. The certificate is not to be filed with IRS. For a list of countries with which totalization agreements are effective (see *Appendix 2* to this Guide).

3.2.1.4 Treaty:

To apply for a withholding exemption based on a tax treaty with regard to the Federal income tax, an alien employee must complete IRS Form 8233/W9 (see the heading "IRS Form 8233" in *Section 4.4.3* of this Guide) and submit Form 8233/W9 and other necessary documentation to ISSS.

- For a list of countries with which the U.S. has entered tax treaties, see *Appendix 2* of this Guide.

3.2.2 Scholarship/Fellowship Income Payments:

The employee portion of the FICA taxes shall not be withheld from scholarship/fellowship income payments, and UAB shall not pay the employer portion of the FICA taxes.

3.2.3 Independent Contractor Compensation Income Payments:

The employee portion of the FICA taxes shall not be withheld from independent contractor compensation income payments, and UAB shall not pay the employer portion of the FICA taxes.

3.3 State Income Tax:

The UAB Payroll Department shall withhold State of Alabama Income Tax (referred to herein as "State Income Tax") according to the rules provided in this *Section 3.3*.

3.3.1 Employee Compensation Income Payments:

The UAB Payroll Department shall withhold State Income Tax at the applicable rate from employee compensation income payments to an alien employee (including a student employee) and shall apply appropriate withholding exemptions. However, State Income Tax withholding shall only apply to employee compensation income payments made with regard to service performed within the State of Alabama, regardless of the citizenship or residence of the employee.

- Employee prizes and employee awards are subject to State Income Tax withholding to the extent they are considered employee compensation income payments for federal income tax purposes (see *Section 3.1* of this Guide).
- All employees must submit either a completed State Income Tax Form A-4 (see the heading "State Income Tax Form A-4" in *Section 4.4.12* of this Guide) or a completed State Income Tax Form A-4E (see the heading "State Income Tax Form A-4E" in *Section 4.4.13* of this Guide) UAB Payroll.
- Currently, The Alabama Department of Revenue does not recognize withholding exemptions based on tax treaties; therefore, State income tax withholding cannot be adjusted based on the provisions of tax treaties.

3.3.2 **Scholarship/Fellowship Income Payments:**

State income tax shall not be withheld from scholarship/fellowship payments.

3.3.3 **Independent Contractor Compensation Income Payments:**

State income tax shall not be withheld from independent contractor compensation payments.

3.4 **City Tax and County Tax:**

The UAB Payroll Department shall withhold the Birmingham City Occupational Tax (referred to herein as the "City Tax") and the Jefferson County Occupational Tax (referred to herein as the "County Tax") according to the rules provided in this *Section 3.4*.

3.4.1 **Employee Compensation Income Payments:**

The UAB Payroll Department shall withhold the City Tax and the County Tax at the applicable rates, from all employee compensation income payments (including such payments to student employees) that are classified as "Gross Receipts and Compensation" under applicable City Tax and/or County Tax rules and regulations. The City Tax applies to employee compensation income payments made with regard to service performed within the City of Birmingham, Alabama, and the County Tax applies to employee compensation income payments made in exchange for service rendered within Jefferson County, Alabama.

Withholding exemptions available under the City Tax and the County Tax rules and regulations shall be applied by the UAB Payroll Department. Although the City Tax rules and regulations and the County Tax rules and regulations are similar, they are not identical; therefore, the exemptions under each set of rules and regulations must be separately applied.

- A. Certain non-cash fringe benefits with a value of less than \$100, "non-de minimis awards" of \$100 or less, and certain non-cash employee achievement awards exceeding \$100 are each exempt from withholding

under the City Tax rules and regulations. No such withholding exemptions are available for purposes of the County Tax.

- B. Withholding exemptions based on tax treaties are recognized under the City tax rules and regulations to the extent that a tax treaty provides that employee compensation income is exempt from state and local taxation. Currently, however, there is no recognized County tax exemption based on tax treaties, and the County tax must be withheld regardless of the provisions of any tax treaty. ISSS shall be responsible for determining the applicability of a tax treaty.
- C. Employees may apply for refunds of the City tax and the County tax through the City of Birmingham, Department of Finance, Revenue Division, and the Jefferson County Department of Revenue, respectively.

3.4.2 Scholarship/Fellowship Income Payments:

The City tax and the County tax shall not be withheld from any scholarship/fellowship payments.

3.4.3 Independent Contractor Compensation Income Payments:

The City tax and the County tax shall not be withheld from independent contractor compensation payments.

SECTION 4: IMPLEMENTATION AND COMPLIANCE RESPONSIBILITIES OF UAB DEPARTMENTS AND UAB ADMINISTRATIVE OFFICES

4.1 UAB Departments and UAB Administrative Offices:

According to the policies and procedures contained in this Guide, UAB shall comply with federal, state, city, and county laws and regulations, as well as immigration laws, for purposes of tax withholding/payment. Tax withholding and payment are an essential part of UAB's compliance effort, and payments to alien individuals must be properly reported and taxes transmitted to the appropriate government agencies.

UAB's compliance effort requires a sharing of responsibility by UAB Departments and UAB Administrative Offices. A single UAB Department or UAB Administrative Office cannot do all that is required to maintain compliance; therefore, a coordinated effort is essential to effective compliance.

Before hiring an alien individual, a UAB Department should do the following to ensure that our compliance efforts are not compromised and that the individual receives prompt payment. Immediately notify ISSS upon becoming aware that you intend to hire an alien individual who will be seeking payment of any kind from UAB. ISSS can verify if the U.S. Citizenship and Immigration Service (USCIS) has imposed any employment restrictions on the individual. The individual's eligibility to work can be verified and any other restrictions can be identified such as a limitation on the number of hours per week the individual can work.

- 4.1.1 Verify that the alien individual is not already employed on or off campus. If the individual is employed, it is the responsibility of the department and the individual to ensure that any employment limitations are not exceeded. ISSS can assist the department in determining if the individual has any employment restrictions or limitations.
- 4.1.2. Provide a social security number (referred to herein as a "SSN") or individual tax identification number (referred to herein as an "ITIN") on an appointment paper and/or requisition. ISSS shall assist the UAB Department and the alien in obtaining a SSN or ITIN (see the headings "Social Security Administration Form SS-5-SSN" and "IRS Form W-7-ITIN" in *Section 4.4.7* of this Guide).
- 4.1.3. Provide a clear description of the reason for payment if payment is being made pursuant to a requisition, as well as a statement indicating that the individual is an alien.
- 4.1.4. Submit a Personal Services Form referred to herein as a "PSF", prior to submitting a requisition for independent contractor compensation income payment. The approved PSF should be attached to the requisition along with IRS Form W-8BEN or IRS Form 8233 as required by ISSS. The PSF form must be completed to clearly indicate that the individual is an alien.
- 4.1.5. Route appointment papers and requisitions through the department's normal approval path. This Guide does not

change the approval path for these documents.

4.2 UAB Personnel Records Office:

When the UAB Personnel Records Office receives an appointment paper, an evaluation shall be made to determine whether the appointee is an alien individual. After the entry of an appointment paper for an alien individual, the appointment paper shall be forwarded to ISSS for a tax status determination.

4.3 UAB Office of the Executive Director of Accounting:

A requisition to pay for personal service shall be reviewed by the UAB Office of the Executive Director of Accounting. If the accompanying PSF form indicates that the payee is an alien individual, the form shall be forwarded to ISSS for a tax status determination. The UAB Office of the Executive Director of Accounting also shall be responsible for determining whether an alien worker is an independent contractor (see *Section 2.4* of this Guide).

4.4 UAB International Scholar and Student Services (ISSS):

ISSS is designated as the UAB Department responsible for coordinating UAB's effort to comply with tax laws applicable to alien individuals, developing procedures to implement this Guide, and determining the tax status of alien individuals. ACT documents shall be evaluated by ISSS to ensure that a tax status determination has been made and entered into UAB's windstar tax system. These documents shall be signed and forwarded to the UAB Payroll Department by ISSS. ISSS shall verify the alien individual's work authorization and tax status before a payment is made.

No payments shall be made to alien individuals, by the UAB Payroll Department, UAB Office of Student Financial Aid or any other department, unless approved by ISSS.

In determining the tax status of an alien individual, ISSS shall consider the following information, utilize the following forms, and carry out the following responsibilities:

4.4.1 Tax Residency Tests (*Appendix 1*):

Each alien individual shall be evaluated by ISSS in accordance with the requirements of the "Green Card Test" and the "Substantial Presence Test." ISSS shall carry out the following responsibilities:

- A. Inform the UAB Payroll Department whether an alien individual who receives an employee compensation income payment, a student scholarship/fellowship income payment, or an independent contractor income payment is a nonresident or resident alien for tax purposes;
- B. Promptly report to the UAB Payroll Department any change in the nonresident or resident status of an alien individual who receives an employee compensation income payment, a scholarship/fellowship income payment, or an independent contractor income payment;

- C. Inform the UAB Payroll Department of those tax withholding/payment rules that apply to each resident alien that would be inapplicable to a U.S. citizen (for example, when a tax treaty applies to a resident alien).

4.4.2 Tax Treaties and Totalization Agreements in Effect (*Appendix 2*):

The U.S. currently is a party to tax treaties and/or social security totalization agreements with a number of countries.

- A. ISSS is responsible for reviewing and determining the application of tax treaties and totalization agreements currently in effect, obtaining information regarding new tax treaties and totalization agreements, and monitoring the expiration or amendment of tax treaties and totalization agreements.
- B. ISSS is responsible for maintaining the current list of tax treaties and totalization agreements attached to this Guide as *Appendix 2*.

4.4.3 IRS Form 8233:

Alien individuals must complete IRS Form 8233 to receive tax treaty benefits related to employee compensation income payments, or independent contractor compensation income payments.

- A. The distribution and review of IRS Form 8233 shall be the responsibility of ISSS, and ISSS shall oversee the accurate completion of IRS Form 8233. To be effective, IRS Form 8233 must be examined by ISSS and accepted by ISSS on UAB's behalf.
- B. An IRS Form 8233 shall not be accepted if ISSS has reason to know that any of the facts or assertions on the IRS Form 8233 may be false or that eligibility for treaty benefits cannot be readily determined.
- C. If ISSS accepts IRS Form 8233 and subsequently finds that any of the facts or assertions contained on the form may be false or that eligibility for treaty benefits can no longer be readily determined, notify the UAB Payroll Department to discontinue treaty benefits as to any amounts unpaid.
- D. If ISSS is notified by IRS that eligibility for treaty benefits is in doubt or that no treaty benefits apply, then treaty benefits shall be unavailable.
- E. ISSS must promptly forward each completed IRS Form 8233 to IRS within five (5) days of its acceptance by ISSS.

F. ISSS shall notify the UAB Payroll Department of the tax treaty benefits to be provided and the date the benefits are effective. After December 31, 1999, treaty benefits generally are effective for payments made at least ten (10) days after the IRS Form 8233 is forwarded to IRS. However, treaty benefits shall not be effective if IRS objects to the IRS Form 8233 (If the IRS does not object to treaty benefits within the aforementioned 10-day period, we may conclude that there is no objection). After expiration of the 10-day period, UAB may rely upon the IRS Form 8233 retroactive to the date of the first payment covered by the form. The fact that IRS does not object to the IRS Form 8233 within the 10-day period does not preclude IRS from later questioning its validity.

4.4.4 **IRS Form W-8BEN:**

Once notified by a UAB department, ISSS shall be responsible for the distribution of IRS form W-8BEN to nonresident aliens. Nonresident aliens should complete Part I of IRS Form W-8BEN to ISSS to certify his or her foreign status. Further, to claim a tax treaty exemption for a student scholarship / fellowship payment, an alien individual must complete Part II of IRS Form W-8BEN. A completed IRS Form W-8BEN is not to be filed with IRS, but ISSS shall retain it and notify the UAB Payroll Department of the individual's foreign status and, if applicable, the tax treaty benefits to be provided.

4.4.5 **IRS Form 8843:**

The current version of IRS Form 8843 and its instructions may be obtained from IRS by alien individuals who claim to be entitled to exclude days of U.S. presence for purposes of the Substantial Presence Test (see *Appendix 1* to this Guide). The instructions to IRS Form 8843 provide guidance on establishing and retaining nonresident alien status.

4.4.6 **Personal Services Form:**

ISSS shall review the ACT documents for all alien individuals and update their tax status. ISSS shall approve the ACT documents and update UAB Payroll Department.

4.4.7 **Social Security Administration Form SS-5--SSN:**

If an alien individual is receiving (i) an employee compensation income payment, (ii) a student scholarship/fellowship income payment, or (iii) an independent contractor income payment, he or she must have a SSN or an ITIN. If an alien individual is eligible for a SSN, it must be obtained before payment may be made. ISSS shall assist alien individuals in filing Form SS-5 to obtain a SSN.

4.4.8 **IRS Form W-7--ITIN:**

IRS Form W-7 is used to obtain an ITIN. Alien individuals who are not eligible to receive a SSN must obtain an ITIN before payment may be made. ISSS shall assist alien individuals with the application process for obtaining an ITIN.

4.4.9 **IRS Form W-4:**

IRS Form W-4 is used for the purpose of withholding federal income tax from employee compensation income. An alien individual who desires to claim a personal withholding allowance must complete IRS Form W-4. ISSS shall forward to UAB Payroll a completed IRS Form W-4 (which generally is not filed with IRS) and shall inform the UAB Payroll Department of the applicable withholding rate and correct number of personal withholding allowances. Unless otherwise provided by federal law and/or an applicable tax treaty, the following special rules shall apply when a nonresident alien completes an IRS Form W-4 and submits it to ISSS:

- A. Regardless of actual marital status, "Single" must be checked on Line 3;
- B. Only one (1) withholding allowance may be claimed on Line 5; and
- C. "Exempt" withholding status may not be claimed on Line 7 of IRS Form W-4.
- D. The mandatory provisions of federal law, federal regulations, or a tax treaty that modify the foregoing rules shall be applied to the extent required.

4.4.10 **INS Form I-94--Admission/Departure Record:**

The USCIS Form I-94 is used by ISSS to document an alien individual's entrance date, work authorization status, and period of time admitted to the U.S.

4.4.11 **INS Form I-9--Employment Eligibility Verification:**

An USCIS Form I-9 shall be completed at orientation for an alien individual if necessary and submitted along with other documentation.

4.4.12 **State Income Tax Form A-4:**

State Tax Form A-4 must be completed and submitted to payroll by each recipient of employee compensation income. Employee compensation income payment recipients use form A-4 to claim exemption(s) for State Income Tax withholding purposes. If a completed Form A-4 cannot be obtained by ISSS, State Income Tax must be withheld on the basis of no exemption(s). IRS Form W-4 cannot be used in place of Form A-4.

A completed Form A-4 generally is effective until a new or amended Form A-4 is submitted to ISSS. ISSS shall forward to UAB Payroll the completed Form A-4 (which generally is not filed with the Alabama Department of Revenue) and shall notify the UAB Payroll Department of the correct number of withholding exemption(s).

4.4.13 State Income Tax Form A-4E:

To submit a completed State Income Tax Form A-4E (instead of a State Income Tax Form A-4) to Payroll and qualify for a complete exemption from State Income Tax withholding, the recipient of employee compensation must:

- A. Be a full-time student enrolled for five (5) calendar months during the year for a number of hours that amount to full-time enrollment,
- B. Be engaged in temporary employment,
- C. Expect to earn less than \$1,800.00 during the year, and
- D. Expect to owe no State Income Tax for the year.

UAB Payroll shall retain the completed Form A-4E (which generally is not filed with the Alabama Department of Revenue) to verify the UAB Payroll Department that the employee compensation recipient or compensatory payment recipient is exempt from State Income Tax withholding.

4.4.14 IRS Publication:

The current version of IRS Publications that provide guidance regarding tax withholding and payment may be obtained from IRS at http://www.irs.ustreas.gov/prod/forms_pubs/. The following is a list of helpful publications:

- A. Publication 519 U.S. Tax Guide for Aliens
- B. Publication 15 Circular E, Employer's Tax Guide
- C. Publication 15-A Employer's Supplemental Tax Guide
- D. Publication 17 Your Federal Income Tax for Individuals
- E. Publication 513 Tax Information for Visitors to the United States
- F. Publication 515 Withholding of Tax on Nonresident Aliens and Foreign Corporations
- G. Publication 676 Catalog of Federal Tax Forms
- H. Publication 901 U.S. Tax Treaties
- I. Publication 1187 Specifications for Filing Form 1042S
- J. Publication 1915 Understanding Your IRS Individual Taxpayer Identification Number

4.4.15 Immigration Status:

ISSS shall evaluate (and communicate to the UAB Payroll Department) the immigration status of each alien

individual to determine whether he or she is permitted to work while in the U.S. The expiration date of immigration status shall be reviewed by ISSS.

4.4.16 Social Security Totalization Agreement Coverage Certificate:

Coverage certificates shall be provided to and retained by ISSS in accordance with the procedures set forth in *Section 3.2.1.3* of this Guide.

ISSS's compliance responsibilities are specified in the foregoing *Sections 1.4, 2.2, 2.5, 3.1, 3.2, 3.3, 3.4 and 4.1-4.4* of this Guide. For information regarding the implementation of any aspect of this Guide, contact the following:

International Scholars and Student Services
University of Alabama at Birmingham
1400 University Boulevard, HUC 250
Birmingham, AL 35294-1150
(205) 934-3328

4.5 UAB Office of Student Financial Aid:

Student scholarships/fellowships shall be awarded by the UAB Office of Student Financial Aid. The UAB Office of Student Financial Aid shall disburse only that portion of a student scholarship/fellowship payment that is not subject to federal income tax withholding under *Section 3.1* of this Guide. See *Sections 1.3, 2.3, and 4.4* of this Guide for additional compliance responsibilities.

4.6 UAB Payroll Department:

The UAB Payroll Department shall be responsible for issuing all employee compensation income payments referred to in *Section 2.2* of this Guide, and the portion of student scholarship/fellowship income payments that is subject to federal income tax withholding under *Section 3.1.2* of this Guide. The UAB Payroll Department's compliance responsibilities are specified in *Sections 1.3, 2.2-2.4, 3.1-3.4, 4.4, and 4.6* of this Guide.

4.5.1 IRS Form 1042 and IRS Form 1042-S:

The UAB Payroll Department is responsible for preparing and timely filing IRS Form 1042 (including the attachments thereto) and IRS Form 1042S with respect to all income payments to nonresident aliens. However, to the extent that all or a portion of a payment is not covered by a tax treaty and is subject to federal income tax withholding pursuant to IRS withholding tables, an IRS Form W-2 shall be used to report such payment, not an IRS Form 1042S.

The UAB Payroll Department also is responsible for reporting payments to resident aliens on IRS 1042 and IRS Form 1042S when appropriate (see the heading "Tax Residency Tests" in *Section 4.4.1* of this Guide). For example, a payment to a resident alien employee that is covered by a tax treaty should be reported on IRS Form

1042S.

4.5.2 **Transmission of Withholdings and Payments:**

The UAB Payroll Department shall be responsible for reporting and transmitting all tax withholdings and tax payments to the appropriate federal, state, city, and county tax authorities.

TAX RESIDENCY TESTS

GREEN CARD TEST: The Green Card Test is satisfied if a nonresident alien individual meets each of the following requirements:

- Lawful permanent resident status has been granted to the individual.
- An alien registration card (i.e., a "Green Card") either has been issued to or will be received by the individual.

Unless revoked or determined to have been abandoned in an administrative or judicial proceeding, lawful permanent resident status remains in effect.

WHEN AN INDIVIDUAL SATISFIES THE GREEN CARD TEST DURING A CALENDAR YEAR, HE OR SHE IS CLASSIFIED AS A RESIDENT ALIEN RETROACTIVELY TO JANUARY 1 OF THAT CALENDAR YEAR.

SUBSTANTIAL PRESENCE TEST: The Substantial Presence Test is satisfied when a nonresident alien individual has been physically present in the U.S. for (1) 31 days during the current calendar year (the "31-Day Test") and (2) 183 days during the three-year period that includes the current calendar year and the two preceding calendar years (the "183-Day Test"). AN INDIVIDUAL'S IMMIGRATION STATUS DICTATES THE NUMBER OF DAYS, IF ANY, THAT MAY BE COUNTED. Section 3.2 of the UAB Tax Policy and Procedure Guide for Payments to Alien Individuals explains how student or non-student immigration status may affect the application of the Substantial Presence Test.

- To apply the 31-Day Test, count the days in the current calendar year during which the individual has been physically present in the U.S. If they total 31 days or more, the 31-Day Test is met.
- To determine whether the 183-Day Test is met for the three-year period consisting of the current calendar year and the two preceding calendar years, count
 - all of the days that the individual was present in the U.S. during the current calendar year,
 - $\frac{1}{3}$ of the days the individual was present in the U.S. during the first preceding calendar year, and
 - $\frac{1}{6}$ of the days the individual was present in the U.S. during the second preceding calendar year.

The Substantial Presence Test is applied every calendar year, and it requires consideration of the two preceding calendar years.

WHEN AN INDIVIDUAL SATISFIES THE SUBSTANTIAL PRESENCE TEST DURING A CALENDAR YEAR, HE OR SHE RETROACTIVELY IS CLASSIFIED AS A RESIDENT ALIEN AS OF JANUARY 1 OF THAT CALENDAR YEAR.

NOTE: Provided that a number of requirements are met, an individual may elect to be treated as a U.S. resident for the calendar year that immediately precedes the calendar year during which the individual meets the Substantial Presence Test. Additional information regarding this election may be obtained from the UAB office of International Scholars and Student Services.

TAX TREATIES AND TOTALIZATION AGREEMENTS IN EFFECT

<u>Country</u>	<u>Tax Treaty General Effective Date</u>	<u>Totalization Agreement Effective Date</u>
Armenia (CIS)	January 1, 1976	-----
Australia	December 1, 1983	-----
Austria	April 1, 1998	November 1, 1991
Azerbaijan (CIS)	January 1, 1976	-----
Barbados	April 1, 1986	-----
Belarus (CIS)	January 1, 1976	-----
Belgium	January 1, 1971	July 1, 1984
Canada	October 1, 1984	August 1, 1984
China, People's Republic of	January 1, 1987	-----
Cyprus	January 1, 1986	-----
Czech Republic	January 1, 1994	-----
Denmark	January 1, 1947	-----
Estonia	January 1, 2000	-----
Egypt	February 1, 1982	-----
Finland	February 1, 1991	November 1, 1992
France	February 1, 1996	July 1, 1988
Germany	January 1, 1990	December 1, 1979
Georgia (CIS)	January 1, 1976	-----
Greece	January 1, 1953	September 1, 1994
Hungary	November 1, 1979	-----
Iceland	January 1, 1976	-----
India	January 1, 1991	-----
Indonesia	February 1, 1991	-----
Ireland	January 1, 1998	September 1, 1993
Israel	February 1, 1995	-----
Italy	February 1, 1986	November 1, 1978
Jamaica	February 1, 1982	-----
Japan	January 1, 1973	-----
Korea	January 1, 1980	-----
Kazakhstan	February 1, 1997	-----
Kyrgyzstan (CIS)	January 1, 1976	-----
Korea, Republic of	December 1, 1979	-----
Latvia	January 1, 2000	-----
Lithuania	January 1, 2000	-----
Luxembourg	January 1, 1964	November 1, 1993
Mexico	January 1, 1994	-----
Moldova (CIS)	January 1, 1976	-----
Morocco	January 1, 1982	-----
Netherlands	January 1, 1994	November 1, 1990
New Zealand	January 1, 1984	-----
Norway	November 29, 1972	July 1, 1984
Pakistan	January 1, 1959	-----
Philippines	January 1, 1983	-----
Poland	January 1, 1974	-----
Portugal	January 1, 1996	August 1, 1989
Romania	January 1, 1974	-----
Russia	February 1, 1994	-----
Slovak Republic	January 1, 1993	-----
South Africa	January 1, 1998	-----
Spain	January 1, 1991	April 1, 1988
Sweden	January 1, 1996	January 1, 1987
Switzerland	February 1, 1998	November 1, 1980
Tajikistan	January 1, 1976	-----
Thailand	January 1, 1998	-----
Trinidad and Tobago	January 1, 1970	-----
Tunisia	January 1, 1991	-----
Turkey	January 1, 1998	-----
Turkmenistan (CIS)	January 1, 1976	-----
Ukraine (CIS)	January 1, 1976	-----
United Kingdom	January 1, 1975	January 1, 1985
Uzbekistan (CIS)	January 1, 1976	-----
Venezuela	January 1, 2000	-----

*The U.S.S.R. tax treaty remains in effect as to those former Soviet Republics that have not yet entered a tax treaty of their own with the U.S.

