University of North Carolina at Charlotte

Tax Guide for Foreign Nationals

Computing taxes for foreign students, researchers, and visitors to the University can be complex. Utilize this guide to make the task simpler. Departmental staff, faculty members, foreign scholars, foreign students, and Human Resources can all benefit from the information contained within this tax guide for Foreign Nationals.
# Table of Contents

Introduction ......................................................................................................................... 6  
Section 1: Definition of Terms ......................................................................................... 7  
1.1 Candidate for a Degree .............................................................................................. 7  
1.2 Employee Wages ....................................................................................................... 7  
1.3 Fellowships and Scholarships .................................................................................. 7  
1.4 FICA (Medicare Tax) ............................................................................................... 8  
1.5 Immigrant (Resident for Immigration Purposes) .................................................... 8  
1.6 United States Citizenship and Immigration Service (USCIS) (Formerly Immigration and Naturalization Service (INS)) ................................................................. 8  
1.7 Independent Contractor Payments .......................................................................... 9  
1.8 Internal Revenue Service (IRS) ............................................................................... 9  
1.9 Foreign National ....................................................................................................... 9  
1.10 Nonimmigrant (Nonresident for Immigration Purposes) ...................................... 10  
1.11 Nonresident (For Tax Purposes) ........................................................................... 10  
1.12 Resident (For Tax Purposes) ................................................................................. 10  
1.13 Taxable Income ...................................................................................................... 10  
1.14 Taxes ...................................................................................................................... 10  
1.15 Travel (Transportation, Meals, Lodging in Transit) ............................................... 11  
1.16 Withholding ........................................................................................................... 11  
Section 2: U. S. Tax Obligations of UNC Charlotte and Sponsoring Departments ....... 11  
2.1 University Responsibilities ...................................................................................... 11  
2.2 Sponsoring Department Responsibilities .................................................................. 12  
2.3 Classification of Payments for Withholding Purposes ............................................ 12  
2.4 Foreign Source Income Exclusion ........................................................................... 13  
2.4.1 For Services Performed Outside the United States ........................................... 13  
2.4.2 For Grants Funded from Outside the United States .......................................... 13  
2.5 Foreign Source Income Exclusion ........................................................................... 13  
2.5.1 For Nonresidents (Treaties are only available to individuals with U. S. Tax ID Numbers) ............................................................................................................ 13  
2.5.2 For Residents ...................................................................................................... 14  
2.6 FICA Tax (Social Security and Medicare) ............................................................... 15  
2.6.1 Employee Wages ............................................................................................... 15
2.6.2 Independent Contractor Payments................................................................. 16
2.6.3 Fellowships and Scholarships........................................................................ 16
2.6.4 Travel Reimbursements.................................................................................. 16
2.7 North Carolina State Income Tax...................................................................... 16
2.8 Exemptions from Withholding Tax.................................................................... 16
2.9 Required Forms................................................................................................ 17
2.10 Penalties and Sanctions................................................................................... 17

Section 3: U.S. Tax Obligations for Foreign Nationals........................................... 17
3.1 Tax Basics for Nonresidents............................................................................... 17
3.2 Social Security or Tax Identification Number.................................................... 18
3.3 Nonresidents – U.S. Nonresident Alien Income Tax Return (1040NR and 1040NR-EZ) .................................................................................................................... 19

3.3.1 What to File.................................................................................................... 19
3.3.2 When to File................................................................................................... 20
3.3.3 Where to File.................................................................................................. 20
3.3.4 Additional Tax Information Form Required .................................................. 20
3.3.5 Tax Return Record Keeping.......................................................................... 20

3.4 Residents – U.S. Individual Income Tax Return (Form 1040).......................... 20
3.5 Certificate of Compliance – “Sailing Permit” (IRS Form 1040C or Form 2063)..... 21
3.6 Penalties and Sanctions...................................................................................... 22

Section 4: Residency Determination for Tax Purposes.......................................... 22
4.1 Resident for Tax Purposes.................................................................................. 22
4.2 Nonresident for Tax Purposes.......................................................................... 23
4.3 Green Card Test.................................................................................................. 23
4.4 Substantial Presence Test................................................................................ 23

4.4.1 Counting Days.............................................................................................. 23
4.4.2 Days Not Counted...................................................................................... 24
4.4.3 Circumstances that Disqualify Foreigners from the Substantial Presence Test .. 25

Section 5: Short Term Visitors.................................................................................. 25
5.1 Immigration Law Restrictions.......................................................................... 25
5.2 B-1 and B-2 Visas.............................................................................................. 26
5.2.1 B-1 Visitor for Business.............................................................................. 26
5.2.2 B-2 Visitor for Tourism............................................................................... 26
5.3 Visa Waiver for Business (VWB) and Tourism (VWT) .............................................. 27
5.4 J-1 Visas for Short Term Visitors ............................................................................. 27
    5.4.1 Allowable Payments ......................................................................................... 27
    5.4.2 Tax Implications .............................................................................................. 27
5.5 Income Tax Withholding .......................................................................................... 27
5.6 Payment Processing .................................................................................................. 28
    5.6.1 Honoraria ......................................................................................................... 28
    5.6.2 Employment ..................................................................................................... 29
    5.6.3 Scholarships ..................................................................................................... 30
Section 6: Students on F-1 and J-1 Visas .................................................................... 30
    6.1 General Provisions .............................................................................................. 30
    6.2 Employment ........................................................................................................ 31
    6.3 Tax Implications .................................................................................................. 31
Section 7: Exchange Visitors (J-1) .............................................................................. 31
    7.1 Exchange Visitor Categories ............................................................................... 31
    7.2 General Provisions .............................................................................................. 32
    7.3 Employment ........................................................................................................ 32
    7.4 Tax Implications .................................................................................................. 33
Section 8: Specialty Visas (H-1B, O, P, and TN) ....................................................... 33
    8.1 General Provisions .............................................................................................. 33
    8.2 Employment ........................................................................................................ 34
    8.3 Tax Implications .................................................................................................. 34
Section 9: Tax Treaties .................................................................................................. 34
    9.1 Treaty Limitations ............................................................................................... 34
    9.2 Forms 8233 and W-8BEN ................................................................................ 34
    9.3 Current Tax Treaties ........................................................................................... 36
Appendix 1: Offices Providing Additional Assistance ................................................ 37
    University Offices ..................................................................................................... 37
    Government Offices – Charlotte, NC ........................................................................ 37
Appendix 2: IRS Forms and Publications ..................................................................... 38
Appendix 3: Nonresident Forms Processing Matrix ................................................... 39
Appendix 4: Visa Type – Tax Status Matrix .................................................................. 40
Introduction

The purpose of this guide is to inform foreign students, faculty and staff of the rules that the University of North Carolina at Charlotte (UNC Charlotte) operates under, based on the tax and immigration laws of the United States. In addition, this tax guide is to serve as a tool for University personnel who interact with foreign students, faculty and staff. UNC Charlotte employees are not permitted to act as a tax consultant, give personal tax advice, or represent an individual dealing with the IRS while in their official role at UNC Charlotte.

This guide does not cover all tax situations; it covers only the most common to the majority of foreign students, faculty and staff. It presents basic information regarding the tax status of various types of University payments to students, faculty and staff. By explaining some of these tax regulations and qualifications, the intent is to provide information that will assist foreign nationals and University personnel in making the correct decisions concerning the tax implications of payments made by UNC Charlotte.

Users of this guide should be aware of the necessary limitations on the information presented herein. While it is hoped that this material will be useful, it should not be viewed as either a complete treatment of all tax questions or an official University statement as to the subject matter reviewed.

Each year, tax return preparation assistance is provided to foreign nationals by local IRS representatives and Volunteer Income Tax Assistance (VITA) at various regional sites. Foreign nationals can call the International Students and Scholars Office (ISSO) during February or March for specific locations, dates and times. UNC Charlotte maintains tax software for nonresident aliens. This program produces Forms 1040NR, 1040NR-EZ and other appropriate forms. For more information on this program, contact the ISSO Office at 704-687-7781.

Foreign students, faculty and staff with tax questions are advised to seek assistance from the Internal Revenue Service (IRS). In the United States, the individual taxpayer is responsible for filing an appropriate and accurate tax return and negotiating all tax matters with the IRS. Taxpayer assistance is available from your local IRS office or by calling the IRS toll free taxpayer assistance number, 1-800-829-1040. For a list of local IRS offices near each UNC Charlotte campus, see Appendix 1.
Section 1: Definition of Terms

1.1 Candidate for a Degree

A candidate for a degree is broadly defined to include any full-time or part-time student enrolled at UNC Charlotte in a course(s) which may lead to a degree, whether or not the student’s particular educational program leads to a degree.

1.2 Employee Wages

Employee wages are payments for services that an individual performs or carries out for the University as an employee. Services performed by an employee are subject to the direction and control of the University, its faculty or staff. Employee wages are not the same as payments made to a foreign national for independent contractor payments. See the discussion of independent contractor payments at Section 1.7 for the definition of non-employment related services. Employee wages can only be paid to foreign nationals who have been granted an appropriate employment authorization and visa status by the U. S. Citizenship and Immigration Service (USCIS) to allow them to be compensated for services in this country. See further discussion at Sections 2.1 and 2.2.

1.3 Fellowships and Scholarships

Fellowship or scholarship payments are made to assist a person in pursuing a course of study or research. Since 1987, the IRS has allowed amounts paid to individuals as qualified scholarships and fellowships to be excluded from taxable income for citizens and foreign nationals. A scholarship or fellowship is qualified and not taxable if:

1. The scholarship or fellowship is awarded to a candidate for a degree; and
2. The scholarship or fellowship is used to pay for tuition and fees required for enrollment or attendance at UNC Charlotte. A student may also deduct other mandatory costs for books, supplies, or equipment required to be used by all students in a particular course of study on his or her annual tax return to reduce taxable scholarships.

Fellowship or scholarship payments made to foreign nationals may include a combination of the following:

- Tuition, fees, books and course-related materials
- Stipends for living expenses, including meals, lodging and other personal items
Medical insurance premiums paid to insurance companies
Airfare, lodging and other direct purchases from travel service providers

The portion of fellowship and scholarship payments that are used for any purpose other than tuition and specific course fees (qualified payments, as defined above) must be included in taxable income. Any amount of a fellowship or scholarship that is paid for services, including teaching and research, is taxable as compensation (wages). In some cases tax treaties can reduce these taxable amounts (see Section 9).

Post-doctoral fellowship awards are made to individuals to further their pursuit of a course of study or research beyond the doctoral level. The entire amount of a post-doctoral fellowship is taxable.

Fellowships or scholarships can only be paid to foreign nationals who have been granted the appropriate authorization and visa status by USCIS (a valid I-94 authorization). See Sections 2.1 and 2.2.

1.4 FICA (Medicare Tax)

FICA (Federal Insurance Contribution Act) is a tax that is assessed against the employee wages of individuals who are Residents for income tax purposes. FICA is divided into two components: Social Security and Medicare. The Social Security portion of FICA is 4.2% of gross wages; the Medicare portion is 1.45% of gross wages. These taxes are withheld and paid by the University each payroll cycle. Nonresident aliens in F, J, M or Q status are exempt from this tax under specific conditions. See the Tax Manager or Payroll Office for information on FICA exemptions.

1.5 Immigrant (Resident for Immigration Purposes)

An immigrant or resident alien for immigration purposes is a “green card” holder and is often referred to as a permanent resident. This is a non-U.S. Citizen who has been authorized to live and work in the United States. A foreign national being paid by the University will be required to produce a “Green Card” (Permanent Resident Authorization Card) prior to payment.

1.6 United States Citizenship and Immigration Service (USCIS) (Formerly Immigration and Naturalization Service (INS))

The Homeland Security Act eliminated INS and replaced it with two related organizations (USCIS and BCBP). USCIS is the U.S. government agency that is responsible for overseeing foreign nationals. The Bureau of Customs and Border Protection (BCBP) is the organization that
issues Form I-94 to new arrivals in the United States. The USCIS sets the restrictions that apply to the various visa categories and statuses. Most of the requirements discussed herein will be under the purview of the USCIS.

1.7 Independent Contractor Payments

Independent contractor payments are for services performed by individuals who are not considered employees for tax purposes. For foreign nationals, this type of payment is often referred to as an “honorarium”. Services treated as independent contractor payments or honoraria must have all of the following characteristics:

- The foreign national must not be under the direction or control of the University, its faculty, or staff in regard to the means and methods used to perform services for the University.

- The services or task being performed is of short duration and will not result in the foreign national entering a long-term working relationship with the University.

- A written agreement exists that identifies the services that are to be performed (e.g., invitation letter).

Independent contractor payments can only be made to foreign nationals who have been granted the appropriate authorization and visa status by the USCIS which allows them to be compensated for services in this country. See Sections 2.1 and 2.2.

1.8 Internal Revenue Service (IRS)

The IRS is the division of the U. S. Department of Treasury that collects internal revenue, including income taxes and excise taxes, and that enforces revenue laws. To make this process easier, the IRS issues various forms, withholding allowance certificates, income tax returns, etc., which are used to help foreign nationals pay the taxes that apply to them. A list of commonly used IRS forms and publications for foreign nationals can be found in Appendix 2.

1.9 Foreign National

A foreign national is an individual born outside the jurisdiction of the United States, is a citizen of a foreign country, and has not become a naturalized U. S. citizen under U.S. law. This includes Permanent Resident Aliens.
1.10 Nonimmigrant (Nonresident for Immigration Purposes)

A nonimmigrant for tax purposes, or nonresident for immigration purposes, is someone who is not a citizen of the U.S. and has been admitted to the U.S. for a temporary stay that will end when the purpose of that stay has been met.

1.11 Nonresident (For Tax Purposes)

A nonresident for tax purposes is someone who is not a citizen of the U.S., has been admitted to the U.S. for a specific purpose and time period, and does not meet either the “green card” test or the “substantial presence” test described in IRS Publication 519, “U.S. Tax Guide for Aliens”. Both of these tests are described in Section 4 of this guide.

1.12 Resident (For Tax Purposes)

A resident for tax purposes is someone who is either a U.S. citizen, or has been legally admitted to the U.S. and meets either the “green card” test or the “substantial presence” test described in IRS Publication 519, “U.S. Tax Guide for Aliens”. Both of these tests are described in Section 4 of this guide.

1.13 Taxable Income

Any money, goods, benefits or services paid to or on behalf of any person is income. All income is taxable unless there is a specific law which excludes it from taxability. The amount of a scholarship which is used to pay tuition, for example, is excluded by law and not subject to tax. The amount of income which is not excluded is called taxable income. Different governments have different laws, so taxable income can be different for Federal and North Carolina purposes. UNC Charlotte is required to withhold taxes for both of these taxing governments. Taxes are reported annually, so if you move during the year you may have to file returns and pay taxes in multiple states, cities, or school districts.

1.14 Taxes

Taxes are the primary source of income of the U.S. government, states and cities of this country. Every individual with earnings in the U.S. must pay taxes based on the amount of money or benefits received. Taxes pay for the various functions and services provided by state, local and federal governments. These include police and fire protection, parks, highways, road signs, the space program, etc. Paying taxes is not optional. Failure to file and pay taxes is a criminal offense.
1.15 Travel (Transportation, Meals, Lodging in Transit)

Payments can be made to most foreign nationals for travel and certain travel-related expenses. If receipts are provided with a written explanation of the business purpose of the trip, UNC Charlotte is able to make direct payments or reimbursements on a tax-free basis under the Accountable Plan. Expense payments or reimbursements excluded from taxable income in this fashion include:

- Meals and lodging costs while traveling
- Airfare, cab fare, auto rental
- Other related expenses incurred in transit

All payments are subject to the restrictions of the UNC Charlotte Travel Manual. There is no distinction under the law between payments made directly to travel service providers, such as airlines, and payments made directly to a foreign national (traveler). The taxability of the payment and its exclusion from income is the same.

1.16 Withholding

Withholding is the amount of tax that UNC Charlotte deducts from a foreign national payment and submits directly to the IRS. The amount of withholding depends upon the type of payment (employee wages, fellowships, scholarships, honoraria), and possible treaty exemptions. The amount of withholding for a foreign national receiving wages (without the benefit of a tax treaty), is based upon a graduated income scale; whereas, a foreign national receiving an honoraria payment (without a tax treaty), is typically a flat 30% of the payment amount. Qualified scholarship withholding rates are zero; whereas, unqualified scholarship rates are 14% to 30%.

Section 2: U. S. Tax Obligations of UNC Charlotte and Sponsoring Departments

2.1 University Responsibilities

UNC Charlotte is responsible for maintaining compliance with both the letter and intent of all federal, state and local laws. The implication is that, in order for University departments, faculty and staff to host foreign nationals, the University must comply with federal, state and local laws as they pertain to foreign nationals. UNC Charlotte must be able to maintain compliance in both tax and immigration laws.
UNC Charlotte has a responsibility to the foreign nationals who come to campus to pursue their education or other scholarly activities to ensure that payments made to them by the University are properly reported to the appropriate federal and state agencies. Properly reporting payments to foreign nationals will greatly reduce the risk of future tax and immigration problems. A number of University offices are available to assist departments, faculty, and foreign nationals in gathering and coordinating the appropriate information needed to maintain compliance with the tax and immigration laws. Refer to Appendix 1 for a list of University offices which provide specific assistance and the types of services provided.

2.2 Sponsoring Department Responsibilities

University departments that host foreign nationals will generally be aware that the visitor will be coming, in many cases far in advance of the actual arrival. Accordingly, the hosting department or faculty member bears primary responsibility for ensuring that the visitor acquires the correct visa so that payments made to the foreign individual are in compliance with all requisite tax and immigration laws. This responsibility is shared by those University offices available to assist and support departments and faculty in acquiring all the information and forms required by the federal government. (Refer to Appendix 1) Departments must insure that no payments of any kind are made to foreign nationals unless they have been granted the appropriate authorization and visa status in advance of their arrival in Charlotte. This means that the foreigner must have received a valid I-94 authorization prior to the visit.

The International Programs Office or the Tax Office must be contacted prior to making any contractual arrangement to pay a foreign national. This will ensure that violations of the immigration laws do not occur. (Such violations could lead to fines of up to $10,000 for the University as well as detention or deportation of the foreign national).

2.3 Classification of Payments for Withholding Purposes

Payments discussed in this guide fall into four broad categories:

- Employee wages
- Independent contractor payments (honoraria)
- Fellowship and scholarship payments
- Travel reimbursements
It is likely that certain types of payments to a foreign national are taxable, while other payments to the same individual are not. Also, certain payments that are taxable to one foreign national may not be taxable to a foreign national from a different country because of a difference in their tax treaties. Accordingly, it is important that the University determine the taxability (or non-taxability) of each type of payment made to each foreign national in order to correctly determine whether withholding is required and, if so, the rate of tax withholding required.

2.4 Foreign Source Income Exclusion

2.4.1 For Services Performed Outside the United States

Payments made by UNC Charlotte to nonresident aliens for services performed in a country outside of the United States, are not subject to federal income tax or tax withholding, nor is there any U.S. reporting obligation. The exclusion applies only to individuals who are not U.S. residents or citizens. The services are considered to be “sourced” in the foreign country and, therefore, are not subject to U.S. tax laws.

2.4.2 For Grants Funded from Outside the United States

Fellowship and Scholarship grants paid with funds that have come from the visitor’s country of residence (or another country outside the U.S.) are not subject to federal income tax or tax withholding, nor is there any U.S. reporting obligation. The exclusion applies only to individuals who are not U.S. residents or citizens. Such grants are considered to be “sourced” in the foreign country and, therefore, are not subject to U.S. tax laws.

2.5 Foreign Source Income Exclusion

All employee wages, independent contractor payments, scholarships, fellowships or grants from a U.S. source that a foreign national receives are taxable unless specifically exempt from tax by a U.S. law or a treaty. In general, the University is required to withhold federal income tax on foreign national income as follows.

2.5.1 For Nonresidents (Treaties are only available to individuals with U. S. Tax ID Numbers)
Employee Wages, generally, have income tax withheld at graduated rates unless specifically excluded from tax by a tax treaty between the U.S. and the foreign national’s country of residence. Exemption must be claimed on IRS Form 8233. In order to be eligible for a treaty benefit, the nonresident must go to the Tax or Payroll Office with passport, visa and I-94, I-20 or DS-2019 for the Form 8233 to be prepared and treaty benefit applicability determined (see Appendix 2 for IRS Form or Publication information).

Independent Contractor Payments (Honoraria) have income tax withheld at a flat rate of 30%, unless specifically excluded from tax by a tax treaty between the U.S. and the foreign national’s country of residence. A treaty exemption must be claimed by the contractor on IRS Form 8233, which is prepared in the Tax Office.

Fellowship and Scholarship Payments to F1 and J1 non-immigrants have income tax withheld at a flat rate of 14% on the taxable portions (amounts not used for tuition and fees), unless specifically excluded from tax by a tax treaty between the U.S. and the foreign national’s country of residence. Exemption must be claimed by the student on IRS Form W-8BEN, which is prepared only in the Tax Office.

Travel reimbursements are excluded from income tax as long as they are paid in accordance with an employer’s written reimbursement policy and travel receipts are submitted to the employer for reimbursement. The travel must be required by the employer in order to be considered tax free. Travel funds paid to nonemployees are reportable and often taxable.

2.5.2 For Residents

Employee Wages, generally, have income tax withheld at the same graduated rates that are used for U.S. citizens. Some countries have tax treaties that remain in effect even when a foreign national is a Resident.

Independent Contractor Payments do not have federal income tax withheld as the visitor is not considered an employee. Form 1099 will be issued for amounts over $600. The visitor is responsible for reporting and paying any taxes owed. North Carolina tax may be withheld if the payment is $1,500 or more.
Nonqualified Fellowship and Scholarship Payments do not have income tax withheld, but are reported on form 1098-T and included by the recipient on the annual income tax return. Qualified (tuition) scholarships are not taxable.

Travel reimbursements are excluded from income tax as long as they are paid in accordance with an employer’s written reimbursement policy and travel receipts are submitted to and retained by the employer. Travel funds paid to nonemployees are reportable and often taxable.

2.6 FICA Tax (Social Security and Medicare)

2.6.1 Employee Wages

Employee wages paid by UNC Charlotte are subject to the Social Security portion (4.2%) of FICA; and the Medicare portion of the FICA tax (1.45%). Both of these taxes are withheld from wages. A percentage (7.65%) is paid by the University on behalf of the individual. Special exemptions are available for FICA withholding as follows:

- A tax treaty between the U.S. and the NRA’s country of residence could exclude wages from FICA.

- If the nonresident is a student employee, regularly enrolled and attending classes on at least a half-time basis, all wages are excluded. (All such students are exempt from FICA, not just foreign nationals.)

- Services performed by visitors temporarily in the U.S. on an F-1, J-1 or M-1 visa are exempt as long as the services are consistent with the purpose of the visa status and the visitor is classified as a nonresident.

- Wages are exempt from FICA if services are performed for a foreign government or an international organization.

- A person exempt from counting days under the Substantial Presence Test (SPT) is exempt from FICA.
2.6.2 Independent Contractor Payments

Payments for independent personal services do not have FICA taxes withheld. If applicable, FICA taxes are paid by the contractor as Self-Employment Tax.

2.6.3 Fellowships and Scholarships

Payments for fellowships and scholarships do not have FICA taxes withheld.

2.6.4 Travel Reimbursements

Travel reimbursements do not have FICA taxes withheld.

2.7 North Carolina State Income Tax

All employee wages that a foreign national receives from the University are considered income for state income tax purposes. In general, the University is required to withhold state taxes in the same manner as is outlined in the discussion of federal income taxes in Section 2.5, above. If some or all of the payments are exempt from federal tax under a tax treaty, the exemption applies to state taxes as well.

Independent contractor payments a foreign national receives from UNC Charlotte are considered taxable income for state purposes, unless specifically exempt from the state by a tax treaty. All independent contractors who provide services in North Carolina are required to file a North Carolina income tax return and report payments earned in the State. 4% NC income tax will be withheld on all payments of $1,500 or more.

2.8 Exemptions from Withholding Tax

A number of possible exemptions from tax withholding may apply to a foreign national. Several have been mentioned above, but a more complete listing follows.

- Foreign Source income. Income that comes from a payer outside the U.S. to a nonresident alien is not taxable and therefore not subject to withholding.
- **Tax Treaty Exclusions.** Income excluded from tax by a treaty is not subject to Federal or North Carolina withholding. Since treaties differ on a year-to-year, country-by-country basis, please refer to Section 9 and Appendix 2.

- **Per Diem Payments for US AID Grants.** If the foreign national is involved in a USAID training program in the U.S., grant funds are exempt from withholding.

- **Payments exempt under the U. S. tax code have no withholdings.** Examples are tuition, scholarships, waivers, travel and other reimbursements.

### 2.9 Required Forms

Foreign nationals from countries that have entered into a tax treaty with the U.S. may be able to exclude all or a portion of their income from U.S. sources under the provisions of the treaty. If a tax treaty exists, the foreign national must provide certain documents to the University in order to take advantage of the treaty exemption. Appendix 3 contains a forms processing flowchart.

### 2.10 Penalties and Sanctions

The IRS has recently initiated a series of audits of colleges and universities that focus, among other things, on compliance with tax laws as they relate to foreign nationals. In cases where tax should have been withheld from a foreign national’s payments, a charge can be assessed against the University for the Full Amount of the tax, plus penalties and interest. This is true even if the foreign national paid the tax on a properly filed U.S. tax return.

### Section 3: U.S. Tax Obligations for Foreign Nationals

#### 3.1 Tax Basics for Nonresidents

A nonresident alien’s tax responsibility is complex. The definition of what is included in taxable income can be confusing. This section is designed to assist nonresident aliens in the basic tax rules, therefore the following information is provided in some detail. Income received by a nonresident alien may be subject to income tax. However, a nonresident may be exempt from paying U.S. income tax because of a tax treaty between their country of residence and the U.S. We currently have tax treaties with 66 countries. Each treaty is different. A payment must meet the strict requirements of the treaty in order to be exempt from
tax. If the income is not exempt, the nonresident alien pays U.S. tax only on income paid from sources **inside** the U.S. Most nonresidents receive no exemption for dependents (exceptions are Mexico, Canada, India and South Korea). All nonresidents should file Form 1040NR or 1040NR-EZ and Form 8843, even if all their income is exempt because of a treaty (see Section 3.2.2 below).

Striking differences exist between the taxation of residents and nonresidents of the United States. The basic characteristics of nonresident taxation follow:

- Tax is generally levied on U.S. source income only.
- Tax treaty provisions may exempt some income from tax.
- Interest income from U.S. Banks may be tax free.
- Nonresident aliens cannot file jointly with their spouse.
- Generally only one personal exemption is allowed regardless of family status.
- No standard deduction is permitted except by treaty (students and scholars from India).
- Itemized deductions are limited to:
  - State and local taxes withheld
  - Contributions to charity
  - Casualty and theft losses
  - Miscellaneous business deductions
- Investment income is generally taxed at a flat 30%.
- No child or dependent care credit is permitted.
- No educational credits or deductions are available.

A number of special rules regarding the standard deduction and spousal exemption are currently in effect for residents of India. Indians should contact the Tax or Payroll Office for additional information on these rules.

### 3.2 Social Security or Tax Identification Number

**SPECIAL NOTE:** Beginning January 2001, IRS regulations mandate that a nonresident alien visitor *must* have either a SSN or an ITIN in order to receive *any* treaty benefits. Without treaty benefits, any amount of income (including, but not limited to, travel/business reimbursements, honoraria, scholarships/fellowships, wages, etc.) will be subject to withholding.

A foreign national who will be receiving payments for dependent personal services (i.e., employee) in the U.S. must obtain a SSN. A SSN is obtained by filing Form SS-5 at the Social Security Administration Office, located at 5800 Executive Center Dr., Suite 300, Charlotte, North Carolina (phone: 1-800-772-1213). In addition to having a completed Form SS-5,
applicants must have their passport and at least one other piece of identification with them when they visit the Social Security Office. (Appendix 1 contains a list of Social Security Administration Offices nearest UNC Charlotte campuses.) In some countries, foreign nationals may apply for a SSN at the U.S. Embassy prior to their arrival in the United States. Starting in 2006, Social Security Offices are requesting foreign birth certificates as well as Passports as proof of identity. Birth certificates are not essential, but helpful in applying for a SSN.

Foreign nationals who wish to claim a tax treaty exemption for employee wages must have an SSN or proof of application prior to receiving any benefits. SSNs are assigned only once. One number is given to each individual, and that number belongs to that individual for life.

The Individual Taxpayer Identification Number (ITIN) is available only to nonresident aliens who are ineligible for a SSN. If a nonresident alien receives payments in the U.S. and is not eligible for a SSN (e.g., a consultant who is to receive an honorarium), that person should apply for an ITIN. UNC Charlotte’s Tax Manager and Payroll Manager are Certified Acceptance Agents and can collect the paperwork and file the forms for ITIN issuance. Applicants must have their passport and at least one other piece of identification to apply for an ITIN at UNC Charlotte. Once the ITIN is assigned by the IRS, the number will be sent to the individual. UNC Charlotte will also receive a copy.

3.3 Nonresidents – U.S. Nonresident Alien Income Tax Return (1040NR and 1040NR-EZ)

3.3.1 What to File

A nonresident with earned income or taxable scholarships files Form 1040NR or Form 1040NR-EZ — “U.S. Nonresident Alien Income Tax Return” each year with the IRS. UNC Charlotte will report earnings to nonresident aliens on Form W-2 and/or Form 1042-S. Nonresidents must file an annual tax return if they earned any U.S. source income during the year.

The tax system uses the calendar year for determining income for individuals. The W-2 and Form 1042-S supplied by UNC Charlotte and other employers are based on earnings during the calendar year. Taxes withheld should cover most of the tax due. If too much tax is withheld, a refund can be claimed from the IRS.
3.3.2 When to File

Nonresidents who were physically in the U.S. during any part of a calendar year should file required tax returns by April 15th of the following year.

3.3.3 Where to File

All nonresident returns are mailed to the same IRS office.
Internal Revenue Service Center
Austin, TX 73301-0215

3.3.4 Additional Tax Information Form Required

Form 8843 contains information about visa, residency, length of time in the U.S., study program, etc. and is the basis of the individual’s claim to nonresident alien status. It must be filed by all nonresidents. The Form 8843 must be filed each year with the Form 1040NR, 1040NR-EZ or by itself if a 1040NR is not required, on or before April 15th or the extended due date of the return.

3.3.5 Tax Return Record Keeping

Every taxpayer should retain a photocopy of the completed and signed return and any documentation submitted with it. Proper response to an IRS inquiry regarding a prior year’s tax return is virtually impossible without an exact copy of that return. Occasionally, circumstances require the taxpayer to submit a copy of a prior year’s tax return to the IRS, state or other taxing authority, also impossible without a copy. In addition, non-immigrants applying to the U.S. Citizenship and Immigration Service for permanent residency may be required to produce copies of prior year’s tax returns to show compliance with U.S. tax laws.

3.4 Residents – U.S. Individual Income Tax Return (Form 1040)

A resident alien pays U.S. tax on the same basis as U.S. citizens. Tax is based on income from all sources worldwide. Generally, no tax treaties can be used to reduce taxable income. As a general rule, individuals who are resident aliens can claim exemptions for dependents receive a standard deduction and file a joint return with a spouse. Determination of residency status is discussed at length in Section 4.

Foreign nationals who are residents for tax purposes must report all wages or other compensation, interest, dividends, gains, rental income, royalties or any other type of income whether it comes from U.S. sources or abroad. This is called the individual’s “worldwide
income”. Worldwide income is reported on Form 1040, 1040-A or 1040-EZ. The form used is based on the complexity of the resident’s tax information. The University reports earnings to resident aliens on Form W-2 (employee wages) or Form 1099-MISC (independent contractor personal services). Multiple copies of these forms allow certain ones to be attached to the various tax returns before filing.

An individual could qualify as both a resident and a nonresident at the same time. This occurs when a foreigner is a U.S. resident under the substantial presence test, or holds a “green card”, but also qualifies as a nonresident with tax treaty benefits under his country’s treaty. This could give the individual “dual status” residency. Virtually all tax treaties provide for status determination by the application of various “tie-breaker” rules. The individual’s permanent home, personal and economic relations can provide a “closer connection” with his home country than with the United States. This would allow a foreigner to remain a nonresident and take advantage of continued tax treaty benefits. The U.S. Regulations state that any resident alien, who also qualifies for tax treaty benefits, will be treated as a nonresident alien for purposes of computing the U.S. tax liability and withholding requirements. The dual status individual will be required to file a Form 1040 with a Form 1040NR attached. Chinese dual status aliens can claim both resident tax rates and a treaty benefit by filing Form 1040 with a Form 8833 attached.

3.5 Certificate of Compliance – “Sailing Permit” (IRS Form 1040C or Form 2063)

A Certificate of Compliance, or “Sailing Permit”, is a form that a nonresident must request from the IRS to demonstrate compliance with the tax law and verify that all required taxes have been paid before leaving the U.S. Holders of F-1, F-2, J-1, J-2, H-3 and H-4 visas are not required to obtain a Certificate of Compliance if they had no U.S. source income other than (a) allowances or payments to cover study expenses (including travel, room, board and tuition), or (b) wages from authorized work, including practical training, or (c) interest on bank deposits. Permanent residents (green card holders) and all nonresidents with a visa status other than those noted above must obtain a Certificate of Compliance from the IRS before leaving the U.S. The following information will be useful to foreign nationals who must obtain a Certificate of Compliance:

IRS Form 2063 is required if the foreign national owes no U.S. tax at the time of departure. IRS Form 1040-C is required if the foreign national owes taxes at the time of departure. The appropriate form should be filed at least 14 days, but no more than 30 days, before departure from the U.S.
The appropriate form can be obtained from the local IRS office or downloaded from the IRS website at [www.irs.gov](http://www.irs.gov). An IRS agent in the local office will be able to assist the visitor in completing the form.

### 3.6 Penalties and Sanctions

Failure of a nonresident to comply with the U.S. tax law can lead to the imposition of fines and penalties to be assessed by the IRS against the foreign national.

Failure to file the appropriate tax returns or making intentionally false statements on tax returns can lead to criminal penalties. The regulations provide that a nonresident alien’s tax return deductions will be allowed “only if a true and accurate return for the taxable year is filed by the nonresident alien on a timely basis.” This means that unless a timely and accurate tax return is filed, tax is assessed against the nonresident alien’s gross income without regard for any deductions or credits that might otherwise be allowable. Tax compliance will be evaluated at the time the foreigner seeks to leave the country.

### Section 4: Residency Determination for Tax Purposes

#### 4.1 Resident for Tax Purposes

A resident for tax purposes is a person who is not a U.S. citizen and who meets either the “substantial presence” test or the “green card” test described in IRS Publication 519, “U.S. Tax Guide for Aliens”. (See Appendix 2) With regard to residency determination for tax purposes:

- **F and J** student visa holders are generally considered residents after their first five (5) calendar years (or partial years) in the United States.

- **J** non-student visa holders (researchers, scholars, teachers, etc.) are generally considered residents after their first two (2) calendar years (or partial years) in the United States.

- **H** visa holders are considered residents as soon as they meet the “substantial presence” test described in Section 4.4 of this guide.
4.2 Nonresident for Tax Purposes

A nonresident for tax purposes is a person who is not a U.S. citizen and who does not meet either the “green card” test or the “substantial presence” test described in Publication 519, “U.S. Tax Guide for Aliens” (See Appendix 2). With regard to residency determination for tax purposes:

- **F** and **J** student visa holders are generally considered **nonresidents** during their first **five** (5) calendar years (or partial years) in the United States.

- **J** non-student visa holders (researchers, scholars, teachers, etc.) are generally considered **nonresidents** during their first **two** (2) calendar years (or partial years) in the United States.

- **H** visa holders are considered **nonresidents** until they meet the “substantial presence” test described in Section 4.4 of this guide.

4.3 Green Card Test

A person is a resident for tax purposes if s/he is a lawful permanent resident of the U.S. A person has this status if s/he has been issued an alien registration card, also known as a “green card”, by USCIS. A person need not be in possession of the “green card” itself. The right to lawful permanent residence is granted at the time of the final interview with USCIS officials and is evidenced by the USCIS stamp in the applicant’s passport. The applicant’s official “green card” may not arrive for several months after the interview. (Once issued, the Resident Alien should be in possession of the green card at all times.)

4.4 Substantial Presence Test

4.4.1 Counting Days

A person is a resident for the tax year if s/he meets the “substantial presence” test for the calendar year. To meet this test, the person must be physically present in the U.S. on at least:

(a) 31 days during the current year, and

(b) 183 days during the three year period that includes the current year and the two preceding calendar years, counting:
All of the days the person was present in the current year, and 1/3 of the days the person was present in the first preceding year, and 1/6 of the days the person was present in the second preceding year.

For example, if an individual were present in the U.S. for 84 days in 2007, 168 days in 2006, and 261 days in 2005, then the test would show residency, with 183.5 days of presence. This is calculated as follows: (2005) 261 * 1/6 = 43.5; (2006) 168 * 1/3 = 56; plus (2007) 84, which equals 43.5 + 56 + 84 = 183.5 days. (Note: we can also tell that the person in this example was a resident during 2006 because 168 + (261 * 1/3) = 255 days; and during 2005 because 261 days > 183 days)

4.4.2 Days Not Counted

A J non-student visa holder (professor, researcher, etc.), who is substantially complying with the requirements of the visa, does not count days present in the first two calendar years.

An F or J student visa holder, who substantially complies with the requirements of the visa, does not include days present in the first five calendar years of U.S. presence, and so can remain in school in the U.S. for 5 years without becoming a resident.

It is important to note that the counting rules are based on calendar years, not twelve-month periods. For example, a J-1, non-student, foreign national enters the U.S. on December 15, 2006. For purposes of the substantial presence test, 2006 is the “first calendar year”, even though the foreigner was only present for 16 days during 2006. 2007 is the “second calendar year”. This individual would begin counting days present in the U.S. on 1/1/08. This person would become a resident on July 2nd, 2008. The full 183 days in the current calendar year are required for residency because there are no “countable” days in the prior two years. When an individual is exempt from counting days in a year, those days are never used for future SPT periods. An F-1 or J-1 student can be exempt from counting days only once, but the five year period can be split between visits. J-1 non-students can use their two exempt years repeatedly, being allowed two years in seven. A J-1 researcher, who first came to the U.S. in 2000 and 2001, was exempt both years, returned as a J-1 teacher in August 2006, and had to count days under the SPT to determine residency and pay FICA taxes in 2006, because he had two exempt years within the prior six. However, in 2007, he is again exempt from counting days (and FICA), because he has only one exempt year in the previous six. In 2008, he would also be exempt, and if he left in 2008 he would be a nonresident for all three years (August – Dec 2006 does not equal 183 days).
4.4.3 Circumstances that Disqualify Foreigners from the Substantial Presence Test

A person will not meet the “substantial presence” test if (1) they are present in the U.S. on fewer than 183 days during the current year, and (2) if they establish that they have a tax home in a foreign country in the current year, and (3) that they have a “closer connection” to that foreign country than to the U.S. The “closer connection” exception is discussed in detail in IRS Publication 519, “U.S. Tax Guide for Aliens”. (See Appendix 2)

To retain non-resident status after five years, F-1 student visa holders must establish that they have a closer connection with the foreign country than to the U.S. These requirements are set forth in Appendix 9.

Section 5: Short Term Visitors

5.1 Immigration Law Restrictions

In past years, immigration and tax law restrictions were rather loosely interpreted by many colleges and universities; however, the IRS and the USCIS have recently undertaken stricter enforcement measures. This may impact those who are hosting foreign faculty, scholars, researchers, performers, artists or athletes. These restrictions should not discourage anyone from inviting foreign nationals to UNC Charlotte for short term stays. In most cases, it is possible to reimburse these individuals for expenses (e.g. accommodations, travel) and/or pay them for services performed for the University, provided that the foreign national enters the United States with the proper type of visa, typically a J-1 visa. UNC Charlotte faculty members who travel abroad, and who extend an invitation to a foreign colleague, should be aware that in some countries it may take several months to obtain the proper visa.

In order to ensure that (a) foreign nationals can receive the appropriate payments, (b) they are not denied entry into the U.S., (c) they do not have more U.S. tax withheld than necessary, and (d) hosting departments are not assessed fines by the IRS or USCIS, faculty members who plan to host foreign individuals should contact the Tax Office or the International Programs Office prior to making any contractual agreement to pay or reimburse a foreign national.
5.2 B-1 and B-2 Visas

5.2.1 B-1 Visitor for Business

B-1 visas are generally granted for six months, time allowed will be noted on the I-94 by the Bureau of Customs and Border Protection. The department extending the invitation must provide a letter of invitation to the visitor that includes the beginning and ending dates of the visitor’s stay, a brief description of what the visitor will be doing, and the amount and type of payment. The visitor then obtains the B-1 visa stamp in their passport before traveling to the U.S.

Foreign nationals present in the U.S. on a B-1 visa may be paid an honorarium; however, such individuals cannot provide services at the University for more than 9 days and must not accept payment or expenses from more than 6 institutions in the 6-month period of the visa’s duration. Other types of payments that a B-1 visa holder may receive while in the U.S. are as follows:

- Reimbursement for expenses including accommodations, meals and travel expenses. Payments may be made directly to the provider of the service or to the nonresident visitor (all expenses must have original receipts and are subject to UNC Charlotte Travel Policy restrictions). *NOTE: The 9-day/six month institution rule does not apply to those who are only reimbursed for receipted expenses and not receiving honoraria.*

- Scholarship or fellowship grants where the visitor is enrolled in a course of study and renders no services for the University (subject to restrictions imposed by the Student Financial Aid Office).

5.2.2 B-2 Visitor for Tourism

Prior to 2006, foreign nationals in the U.S. on a B-2 visa were prohibited from receiving payments of any kind for any reason. Payments made on behalf of B-2 visa holders for such things as lodging or transportation was also prohibited. An easing of these rules came when an IRS general information letter from the Office of the Asst. Chief counsel was published, allowing B-2s already in the U.S. to accept an honorarium for a speaking engagement. In addition, some payments made on behalf of B-2 visa holders are also allowed (lodging, car rental, etc.).
5.3 Visa Waiver for Business (VWB) and Tourism (VWT)

The Visa Waiver Program allows citizens from 27 participating countries to travel to the United States for the purpose of business or tourism for a specified period without the need of obtaining a United States visa. A complete listing of the participating countries is located in Appendix 5. The immigration law status of visa waivers for business (VWB) and tourism (VWT) are identical to their B visa counterparts. In other words, VWB holders, or B-1 waiver, can receive honoraria, expense reimbursements, scholarships or fellowships; they must meet the same requirements as outlined in Section 5.2.1. VWT holders, or B-2 waiver, cannot receive payments of any kind, unless they are already present in the U.S. and agree to perform services while here; then they can be given an honorarium. If the foreign national is invited, or the lecture, speech or other activity is planned prior to the B-2 entering the country, then the B-2 cannot be paid.

5.4 J-1 Visas for Short Term Visitors

5.4.1 Allowable Payments

J-1 non-student visas (professors and researchers) allow for employment of a foreign national on-campus exclusively. Permission to work off-campus is extremely difficult to obtain from the USCIS. Foreign nationals on J-1 visas can receive wages, salaries or travel reimbursements from the host employer. A J-1 foreign national in the U.S. sponsored by another school may be eligible for an honorarium with a letter of permission from the host school’s DSO. The J-1’s honoraria activity must be related to the sponsored J-1 program.

5.4.2 Tax Implications

Federal income tax, Social Security tax, Medicare tax, and state taxes may apply to the type of payments being made to the foreign national. Please see Sections 2.4 – 2.6 of this guide to determine whether some or all of these taxes apply.

5.5 Income Tax Withholding

In general, all income paid by the University to a foreign national is taxable, unless the income is exempt from tax under the Internal Revenue Code or the provisions of a Tax Treaty between the U.S. and the foreigner’s country of residence. The University is required by law to withhold taxes from these payments at the following rates, unless exempt by treaty or the Code.

- **Employee wages:** Income tax at graduated rates
- **Fellowships and scholarships:** 14% income tax for F & J visas (30% most others)
Independent contractor payments: 30% income tax (4% State, if over $1,500)

5.6 Payment Processing

5.6.1 Honoraria

Departments who are planning to invite a foreign national to UNC Charlotte, who will enter the country on a B-1 visa or VWB waiver must ensure that Foreign Visitor Information Form is completed, and copies of passport, visa and I-94 are obtained, in order to comply with the IRS rules. Exemptions from withholding under a tax treaty for honoraria or independent contractor payments cannot be honored unless the visitor has, or has applied for, a SSN or ITIN. A foreign national may apply for an ITIN through the University Tax Office if no SSN is permitted.

Forms and documents required are as follows:

- **Direct Pay Request (DPR).** In addition to the standard information on this Form, a copy of the invitation letter (for an honorarium), scholarship award letter, or royalty agreement should be attached. Mark the DPR for nonresident alien in order to receive the correct processing and avoid delays. Requests to gross up payments to eliminated Federal and State tax effects are done on this form. Bear in mind that grossing up the payment in order to cover taxes must come from discretionary funds, and that the foreign national can receive a refund of the taxes you pay by filing an annual tax return (1040NR).

- **Foreign Visitor Information Form.** The information on this Form will determine whether the payment can be made and whether tax must be withheld. The Form is available on the Financial Services website at http://finance.uncc.edu/forms/formshome. Copies of additional documents must be attached (Form I-94 and Visa Passport picture page, W-8BEN).

- **Form I-94.** Issued to the visitor upon arrival in the U.S. by the Bureau of Customs and Border Protection (BCBP) and is attached to the passport or visa document.

- **SSN or ITIN.** In order to process a payment to a nonresident, a SSN or ITIN must be obtained. If the visitor has only a copy of the application for a SSN or ITIN, but has not received the number, this must be copied and the visitor must inform the University of the SSN or ITIN as soon as it is received. ITINs can be obtained through the Tax Office, and are only available to nonresidents who are ineligible for SSNs. If the foreign national
does not have an ITIN or SSN, 30% federal withholding applies.

- **Passport Pages.** Copies must be attached to the DPR as follows: A copy of the passport page with the visitor’s picture. A copy of the pages with the visa and I-94, to ensure that the payment is allowed. A copy of the page showing the passport expiration date. A copy of the page showing country of origin (if not on one of the earlier copied pages).

- **IRS Form W-8BEN.** Form must be filed with the Tax Office by the foreign national in order for any payment to be made. This is analogous to a W-9 for a U.S. Citizen or Resident. The form has space for dual addresses (foreign and local), ITIN or SSN and checkboxes for requesting exemptions or reduced withholding under a tax treaty. Form W-8BEN can be found on the Financial Services forms page at http://finance.uncc.edu/forms/formshome.

### 5.6.2 Employment

Foreign nationals who will be employed by UNC Charlotte (anyone who will be working more than 9 days) follow the same steps as any other UNC Charlotte employee with three additions.

- Foreign nationals often must apply for a SSN. An employment letter from the department and a letter from the DSO (located in ISSO) indicating campus employment.

- Foreign nationals should bring their Immigration documents (passport, I-20 or DS-2019) to the Tax Manager immediately after completing their I-9 in Human Resources. Most foreign nationals are exempt from FICA taxes, which must be changed in Banner from the automatic set up configuration for a new employee.

- Foreign nationals may be eligible for a tax treaty, which is determined by the Tax or Payroll Office in the Reese Building. Treaties are not available until the foreign national has applied for a SSN, so requesting a tax exemption under a treaty should be the last step in the employment process.
5.6.3 Scholarships

Scholarships to Nonresident Aliens (NRAs) should be processed on a Direct Pay Request through Accounts Payable. There is a tab for “scholarship” on the DPR web spreadsheet which should be filled out and attached to the DPR. Because Nonresident scholarships are often taxable, the recipient must sign the award form to indicate that he/she is aware of the withholding possibility. Scholarships can be tax exempt by treaty agreement, but a recipient must have an SSN or ITIN in order to use a Treaty.

Section 6: Students on F-1 and J-1 Visas

6.1 General Provisions

F-1 and J-1 student visa holders are generally considered nonresidents aliens for their first five years in the U.S.

F-1 and J-1 category students who have been in the U.S. for more than five (5) consecutive years are generally considered to be tax residents. The “resident” designation is for tax reporting purposes only. Please note that this does not change an individual’s immigration status, just the tax return to be filed. Students with F-1 or J-1 visas begin to count days under the Substantial Presence Test after five calendar years as Nonresident Aliens (NRAs). For example, a student with a J-1 visa who arrived in the U.S. in September, 2002 files as a nonresident alien (using IRS Form 1040NR) for tax years 2002 through 2006. It does not matter that the student was not present in the U.S. for all of each of these years, as long as he/she was present in the U.S. for some part of each consecutive year. In 2007, the student begins to count his days on January 1st and passes the Substantial Presence Test (described in Section 4.4 of this guide) on July 2nd (183 days later). The student is considered a Resident Alien for purposes of filing 2007 tax returns (see Section 3.3).

All students who have been in the U.S. for more than five (5) years will be treated as Residents for tax purposes. Individuals who wish to be treated as nonresidents for tax purposes must establish, to the satisfaction of the IRS, that they are complying with the terms of the student visa and do not intend to live permanently in the United States. The IRS must substantiate the connection between the foreigner and his home country and provide the student with a letter substantiating continued nonresident alien status. A copy of this IRS letter must be presented to the University Payroll Office in order to have the student’s withholding payments continue on a nonresident student basis. (See Appendix 9 for the “closer connection” requirements.)
All J-1 students who are paid as University employees or independent contractors must be prepared to provide verification that they have work authorization on an annual basis.

6.2 Employment

F-1 Student and J-1 Exchange Visitor visas allow for employment of a foreign national on-campus. IMPORTANT NOTE: Under USCIS regulations, F-1 and J-1 students may work only 20 hours per week during the academic year when school is in session; they are allowed to work up to 40 hours per week during University break periods.

Off-campus employment is allowed only under certain circumstances and the student must get prior permission from International Programs (Marian Beane’s office). Off-campus work that is curriculum related practical training is allowed. Post-graduate practical training is possible up to 12 months for F-1 students and up to 18 months for J-1 students.

6.3 Tax Implications

Student employees with F-1 or J-1 student visas are subject to Federal and North Carolina taxes on their earnings. Specific treaty benefits between the U.S. and their country of origin may reduce the taxable amount for Federal and North Carolina purposes. Students, whether Nonresident or Resident, are not subject to FICA taxes: §3121(b)(10). Refer to Sections 2.4 – 2.6 of this guide for further information.

Section 7: Exchange Visitors (J-1)

7.1 Exchange Visitor Categories

J-1 visa holders are referred to as Exchange Visitors. J-1 visa holders can enter the U.S. as exchange visitors in any one of five categories when UNC Charlotte is the Sponsor. They are:

- **Student** – International visitors coming to the U. S. to engage full-time in a prescribed course of study (must be funded from sources other than personal or family funds). *No Maximum duration.*
- **Professor** – International visitors coming to the U. S. primarily to teach or lecture. *Maximum duration: 3 years.*
**Research Scholar** – International visitors coming to the U. S. primarily to conduct research, observe research, or consult in conjunction with a research project. *Maximum duration: 3 years.*

**Short-Term Scholar** - International visitors coming to the U. S. primarily to observe research or consult in conjunction with a research project for the purpose of lecturing, observing, consulting, training, or demonstrating special skills. *Maximum duration: 6 months.*

**Specialist** – An international visitor who is an expert in a field of specialized knowledge or skill coming to the U. S. to observe, consult, or demonstrate special skills. *Maximum duration: 1 year.*

### 7.2 General Provisions

J-1 *non-student* visa holders (professors, researchers, scholars and specialists) are generally considered to be nonresident aliens for the first *two calendar years* they are in the U.S. If the individual comes to the U.S. in December, that is still the first calendar year, even if he was only present for a few days.

J-1 *non-student* visa holders taking the Substantial Presence Test do not count days present in their first two calendar years (See Section 4.4). For example, a teacher who arrives in the U.S. December 4, 2006, begins teaching January 5, 2007, is a nonresident alien for 2006 and 2007, two calendar years, and begins to count days in 2008. Days not counted are 2006 and 2007 days, so by July of 2008, the Substantial Presence Test is met (183 days) and the teacher becomes a resident alien. Please note that this does not have anything to do with the teaching schedule or the earning schedule. So even though 2007 and 2008 are the foreigner’s first two years of teaching and the foreigner’s first two years of wage earning, they are *not* the first two years of U.S. presence.

### 7.3 Employment

J-1 *non-student* visas allow for employment of a foreign national *on-campus* exclusively. Permission to work off-campus, even for another University, must be approved, in writing, by the DSO. If the visitor is planning a lecture series on a circuit of different colleges and universities, he/she should not enter the country on a J-1 visa. Although the ability to transfer J-1 Visas from one school to the next is possible, it can be time-consuming and difficult.
7.4 Tax Implications

Payments made to a J-1 Foreign Exchange Visitor are subject to Federal and North Carolina income tax. The U.S. has tax treaties with various counties that may reduce the Federal and State taxable income, but treaty benefits must be applied for in the Payroll or Tax Office every year, they are not automatic. Refer to Sections 2.4 – 2.6 of this guide for more information.

Section 8: Specialty Visas (H-1B, O, P, and TN)

8.1 General Provisions

The H-1B visa classification is available to a foreign nationals who will occupy a “specialty occupation” (e.g., architecture, mathematics, physical sciences, etc.) in the United States for which they are qualified. H-1B individuals are eligible only for employment; they cannot be contractors either for their Employer/Sponsor or any other U.S. Institution.

H-1B visa holders are generally considered nonresident unless they meet the “Substantial Presence Test” (SPT), which was discussed earlier in Section 4.4. For these visa holders, days of presence in the U.S. are counted from the first day they arrive, unlike J and F visa holders.

O and P visas are issued to artists, performers and aliens of extraordinary ability. Holders are subject to the Substantial Presence Test upon entering the U.S. and are treated as Tax Residents when they have passed the SPT (been here for 183 days), just like H-1B visa holders. O and P visa holders can be treated as Independent Contractors if they are visiting the University on a tour and/or meet the other qualifications for contractor status.

The TN visa status represents a nonimmigrant visa category for citizens of Canada and Mexico who are engaged in “business activities at a professional level.” Created by the North American Free Trade Agreement (NAFTA), the visa status is granted for up to one year at a time, with unlimited renewals. It can be for full-time or part-time employment.

IMPORTANT NOTES: The TN visa status is available only in certain specialty occupations. Contact the Office of International Programs for a list of recognized occupations or visit http://travel.state.gov/visa/temp/types. In addition, since this is a temporary visa status, it should not be used for an individual who is being hired by the University in a tenure-track position, nor is it an appropriate visa for coaching staff.
8.2 Employment

H-1B, O, P and TN visas allow for employment of a foreigner exclusively on the campus of the sponsoring institution. Off-campus or any other non-sponsor employment is possible only with the approval of an additional H petition from the USCIS. Dependents on H-4 visas are not permitted to be employed.

8.3 Tax Implications

H-1B visa holders are subject to the Social Security and Medicare taxes, which are withheld from each payroll payment. It is important to note that any change to or from the H-1B visa status must be communicated to the Payroll Office immediately. For other tax information or other visas, refer to Sections 2.4 – 2.6 of this guide to determine whether federal income tax, Social Security tax, Medicare tax, and state taxes apply to the type of payments being made to the foreign national.

Section 9: Tax Treaties

9.1 Treaty Limitations

Residents of certain foreign countries are entitled to reduced tax rates, or exemption from tax for all or part of their earnings, depending on the applicable tax treaty between their country and the United States. All foreign nationals must come to the Payroll or Tax Office with Passport, I-94 and U.S. ID number (either SSN or ITIN) to determine whether treaty benefits apply and claim them if they do. The hosting department should notify the Tax Manager that the visitor is coming before the final arrangements are made. The determination of whether the University can pay an individual is dependent on visa status and country of residence. The Tax Manager can inform the Department what tax effects a payment will have and whether the foreigner’s country has an income tax treaty with the United States.

9.2 Forms 8233 and W-8BEN

Notification that the visitor qualifies for a reduced rate of income tax withholding, or an exemption from income tax withholding must be received and verified before the exemption can be granted. The visitor will also need to submit certain IRS forms that authorize the University to grant treaty benefits. Form W-8BEN or Form 8233 (depending on the type of payment the visitor receives) allows the University to grant treaty benefits to an individual. It is important to note that simply because a treaty between the U.S. and the visitor’s country exists does not mean
that the types of payments made by the University to the visitor are tax exempt. Benefits of tax treaties vary widely, depending on the particular country involved.

The Tax Manager must be contacted to determine the specific treaty provisions available for each foreign national.
### 9.3 Current Tax Treaties

<table>
<thead>
<tr>
<th>Tax Treaty Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
</tr>
<tr>
<td>Australia</td>
</tr>
<tr>
<td>Austria</td>
</tr>
<tr>
<td>Azerbaijan</td>
</tr>
<tr>
<td>Bangladesh</td>
</tr>
<tr>
<td>Barbados</td>
</tr>
<tr>
<td>Belarus</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Canada</td>
</tr>
<tr>
<td>China</td>
</tr>
<tr>
<td>Cyprus</td>
</tr>
<tr>
<td>Czech Republic</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
<tr>
<td>Egypt (Arab Republic)</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Finland</td>
</tr>
<tr>
<td>France</td>
</tr>
</tbody>
</table>

IRS Publication 515 summarizes the benefits available to these nonresident aliens by virtue of their tax treaties. Copies of Publication 515 are available in the Tax Office or at the IRS website: [http://www.irs.ustreas.gov/formspubs/index.html](http://www.irs.ustreas.gov/formspubs/index.html).
Appendix 1: Offices Providing Additional Assistance

University Offices

<table>
<thead>
<tr>
<th>Immigration and Visa Status</th>
<th>Employee Wages – Payment Processing and Withholdings</th>
<th>Tax Laws, Treaties, Scholarships and Independent Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Student/Scholar Office</td>
<td>Payroll Office Reese Bldg. 3rd Floor UNC Charlotte 9201 University City Blvd. Charlotte, NC 28223-0001 USA</td>
<td>Tax Office Reese Bldg. 2nd Floor UNC Charlotte 9201 University City Blvd. Charlotte, NC 28223-0001 USA</td>
</tr>
<tr>
<td>College of Health and Human Sciences Room 202 9201 University City Blvd. Charlotte, NC 28223-0001 USA</td>
<td>704-687-7781</td>
<td>704-687-5794</td>
</tr>
<tr>
<td></td>
<td></td>
<td>704-687-5819 or 704-687-5742</td>
</tr>
</tbody>
</table>

Government Offices – Charlotte, NC

<table>
<thead>
<tr>
<th>US Citizenship and Immigration Service</th>
<th>Internal Revenue Service</th>
<th>Social Security Administration</th>
<th>NC Department of Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>6130 Tyvola Centre Dr Charlotte, NC 28217</td>
<td>6635 Executive Circle Charlotte, NC 28212</td>
<td>5800 Executive Center Dr. Suite 300 Charlotte, NC 28212</td>
<td>5111 Nations Crossing Rd. Charlotte, NC 28217</td>
</tr>
<tr>
<td></td>
<td>800-829-1040</td>
<td>800-772-1213</td>
<td>887-252-3052</td>
</tr>
</tbody>
</table>
## Appendix 2: IRS Forms and Publications

Copies of the following IRS Forms and Publications can be found in the University Offices listed in Appendix 1, or on the Internet at: [http://www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html).

From this site, forms and publications can be downloaded, viewed or printed. In some cases, forms can be filled in on-line and printed when complete.

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Form Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>W-8BEN</td>
<td>Certificate of Foreign Status of Beneficial Owner for United 8233 Exemption from Withholding on Compensation for Independent Personal Services of Nonresident Alien Individuals</td>
</tr>
<tr>
<td>8843</td>
<td>Statement for Exempt Individuals and Individuals with a Medical Condition (must be filed by ALL J-1 and F-1 visa holders who are Nonresidents and exempt from counting days under the SPT)</td>
</tr>
<tr>
<td>W-4</td>
<td>Employee’s Withholding Allowance Certificate</td>
</tr>
<tr>
<td>1040-NR</td>
<td>U.S. Nonresident Alien Income Tax Return</td>
</tr>
<tr>
<td>1040-NR-EZ</td>
<td>U.S. Nonresident Alien Income Tax Return – Easy Form, no dependents</td>
</tr>
<tr>
<td>1042-S</td>
<td>Foreign Person’s U.S. Source Income Subject to Withholding or Treaty</td>
</tr>
<tr>
<td>1040-C¹</td>
<td>U.S. Departing Alien Income Tax Return</td>
</tr>
<tr>
<td>2063¹</td>
<td>U.S. Departing Alien Income Tax Statement - Certificate of Compliance</td>
</tr>
</tbody>
</table>

### Publications¹

<table>
<thead>
<tr>
<th>Publication</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>513</td>
<td>Tax Information for Visitors to the U.S.</td>
</tr>
<tr>
<td>515</td>
<td>Withholding of Tax on Nonresident Aliens</td>
</tr>
<tr>
<td>519</td>
<td>U.S. Tax Guide for Aliens</td>
</tr>
<tr>
<td>901</td>
<td>U.S. Tax Treaties</td>
</tr>
<tr>
<td>970</td>
<td>Tax Benefits for Education</td>
</tr>
</tbody>
</table>

All IRS Forms and Publications are available on-line at the IRS website ([www.irs.gov](http://www.irs.gov)) or they may be ordered from the IRS Forms Distribution Center at the following address and telephone number:

**Internal Revenue Service**
**Forms Distribution Center**
PO Box 85074
Richmond, VA 23261-5074
Phone: 1-800-TAX-FORM (1-800-829-3676)

¹ These items are not normally available from University Offices.
## Appendix 3: Nonresident Forms Processing Matrix

<table>
<thead>
<tr>
<th>TYPE OF PAYMENT</th>
<th>TAX FORM REQUIRED BEFORE PYMT</th>
<th>PAYMENT FORM USED</th>
<th>UNC CHARLOTTE APPROVAL PROCESS</th>
<th>TAX FORM ISSUED TO INDIVIDUAL</th>
<th>TAX STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fellowship &amp; Scholarship (Students)</td>
<td>W-8BEN with foreign home address</td>
<td>DPR, Scholarship Letter, FSIF (nonemployees only)</td>
<td>Accts Payable, Tax Manager verifies visa status, tax status and tuition charges</td>
<td>1042-S</td>
<td>Withholding 30% (14% for F or J students) if award is not exempt under tax treaty or is not entirely used for tuition and fees. No FICA</td>
</tr>
<tr>
<td>Employee Wages</td>
<td>I-9, W-4 if wages not exempt under tax treaty, Form 8233 if wages exempt under treaty</td>
<td>AA29, PD 17, PD 7, Etc. (I-94 required)</td>
<td>Human Resources: appointment status Tax Office: visa status, tax status</td>
<td>1042-S if all or some exempt under tax treaty; W-2 if taxable or partially taxable (often both forms required)</td>
<td>Graduated Federal withholding rates if wages are taxable. State tax withholding. Visa status dictates FICA taxation.</td>
</tr>
<tr>
<td>Independent Contractor Payments (Honoria)</td>
<td>8233 if exempt under tax treaty; copy of I-94 and SSN or ITIN or Tax Manager can prepare ITIN application</td>
<td>Direct Pay Request Foreign Visitor Info Form</td>
<td>Tax office: verifies visa status, form 8233 approval</td>
<td>1042-S</td>
<td>30% if taxable under tax treaty or no treaty. State tax withholding required if &gt; $1,500 No FICA.</td>
</tr>
<tr>
<td>Royalty Payments</td>
<td>Form W-8BEN and SSN or ITIN or proof of application</td>
<td>Direct Pay Request FVIF</td>
<td>Tax Office: tax status</td>
<td>1042-S</td>
<td>Various rates per IRS royalty tax table; 30% if not listed; State tax required, no w/h. No FICA</td>
</tr>
<tr>
<td>Travel Expenses</td>
<td>Foreign Visitor Info Form if non-employee</td>
<td>Travel Reimbursement Form</td>
<td>Tax office verifies visa status, tax status and travel status</td>
<td>None if original receipts provided and payment &lt;= receipted amount. 1042-S</td>
<td>Not taxable if the UNC Charlotte reimbursement policy guidelines are followed.</td>
</tr>
</tbody>
</table>

In all cases, the determination of taxability requires copies of Passport, Visa, and I-94

**LEGEND:**
- DPR: Direct Pay Request
- FSIF: Foreign Student Information Form (these are now prepared at employment orientation)
- FVIF: Foreign Visitor Information Form
## Appendix 4: Visa Type – Tax Status Matrix

<table>
<thead>
<tr>
<th>Visa Type</th>
<th>Immigration Status</th>
<th>Permissible Income from UNC Charlotte</th>
<th>Federal and State Tax Status</th>
<th>Fed/State Withholding (no treaty)</th>
<th>FICA Tax Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-1</td>
<td>Visitor for Business</td>
<td>Honoraria, Travel Expense Reimbursement</td>
<td>Honorarium is taxable or Treaty exempt</td>
<td>30% federal 4% state if $1,500 or more</td>
<td>Exempt</td>
</tr>
<tr>
<td>B-1/B-2</td>
<td>Visitor for Business</td>
<td>Honoraria, Travel Exp. (if B-1 option is available)</td>
<td>Honorarium is taxable or Treaty exempt</td>
<td>30% federal 4% state if $1,500 or more</td>
<td>Exempt</td>
</tr>
<tr>
<td>B-2</td>
<td>Visitor for Pleasure</td>
<td>Honorarium, if already visiting in the U.S. (no travel) (1)</td>
<td>Taxable</td>
<td>30% federal 4% state if $1,500 or more</td>
<td>Exempt</td>
</tr>
<tr>
<td>F-1</td>
<td>Student</td>
<td>Hourly student wages; Grad asst.; Teaching asst.; Salaried student; Travel, Stipend Scholar/Fellowship</td>
<td>Taxable or Treaty exempt</td>
<td>Wages/Stipend: tax tables. Scholarship/ Travel/Fellow: 14%</td>
<td>Exempt first five calendar years</td>
</tr>
<tr>
<td>F-2</td>
<td>F-1 Spouse</td>
<td>NONE</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>H-1B</td>
<td>Aliens in Specialty Occupations</td>
<td>Employee wages; Travel</td>
<td>Taxable or Treaty Exempt</td>
<td>Tax Rate Table</td>
<td>Taxable</td>
</tr>
<tr>
<td>H-4</td>
<td>H-1 Spouse or Dependent</td>
<td>NONE</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>J-1</td>
<td>Student</td>
<td>Hourly Student; Grad Asst.; Research Asst.; Teaching Asst.; Travel Reimbursement; Scholar/Fellowship</td>
<td>Taxable or Treaty exempt</td>
<td>Wages/Stipend: tax tables. Scholarship/ Travel/Fellow: 14%</td>
<td>Exempt first five calendar years</td>
</tr>
<tr>
<td>J-1</td>
<td>Teacher, Researcher, Short-term Scholar</td>
<td>Teaching; Research; Honoraria (with letter from visa sponsor); Travel</td>
<td>Taxable or Treaty exempt</td>
<td>Tax Tables (graduated withholding rates)</td>
<td>Exempt first two calendar years</td>
</tr>
<tr>
<td>J-2</td>
<td>J-1 Spouse</td>
<td>Employment with EAD card</td>
<td>Taxable</td>
<td>Tax Tables</td>
<td>Exempt first two calendar years</td>
</tr>
<tr>
<td>TN</td>
<td>Certain Mexican and Canadian Professionals</td>
<td>Temp employment; Travel</td>
<td>Taxable</td>
<td>Tax Tables</td>
<td>Taxable</td>
</tr>
<tr>
<td>WB</td>
<td>Business Visa Waiver</td>
<td>See B-1, above</td>
<td>Honorarium is taxable or Treaty exempt</td>
<td>30% Federal 4% State</td>
<td>Exempt</td>
</tr>
<tr>
<td>WT</td>
<td>Tourist Visa Waiver</td>
<td>Honorarium, if already visiting in the U.S. (no travel) (1)</td>
<td>Taxable</td>
<td>30% federal 4% state if $1,500 or more</td>
<td>Exempt</td>
</tr>
</tbody>
</table>

(1) Department can direct pay local hotel cost, all other travel should be included in the Honorarium.
## Appendix 5: Countries Participating in the Visa Waiver Program

<table>
<thead>
<tr>
<th>Visa Waiver Program Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andorra</td>
</tr>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>New Zealand</td>
</tr>
<tr>
<td>Australia</td>
</tr>
<tr>
<td>Iceland</td>
</tr>
<tr>
<td>Norway</td>
</tr>
<tr>
<td>Austria</td>
</tr>
<tr>
<td>Ireland</td>
</tr>
<tr>
<td>Portugal</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>San Marino</td>
</tr>
<tr>
<td>Brunei</td>
</tr>
<tr>
<td>Japan</td>
</tr>
<tr>
<td>Singapore</td>
</tr>
<tr>
<td>Czech Republic</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Slovakia</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
<tr>
<td>Liechtenstein</td>
</tr>
<tr>
<td>Slovenia</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Lithuania</td>
</tr>
<tr>
<td>South Korea</td>
</tr>
<tr>
<td>Finland</td>
</tr>
<tr>
<td>Luxembourg</td>
</tr>
<tr>
<td>Spain</td>
</tr>
<tr>
<td>France</td>
</tr>
<tr>
<td>Malta</td>
</tr>
<tr>
<td>Sweden</td>
</tr>
<tr>
<td>Germany</td>
</tr>
<tr>
<td>Monaco</td>
</tr>
<tr>
<td>Switzerland</td>
</tr>
<tr>
<td>Greece</td>
</tr>
<tr>
<td>The Netherlands</td>
</tr>
<tr>
<td>United Kingdom</td>
</tr>
</tbody>
</table>

Citizens of these countries must have a machine-readable passport in order to remain qualified under the Visa Waiver program. For more information about visa waivers, follow the link to Visa Waiver Program.
Appendix 6: Frequently Asked Questions about NRA Payments

Visitors from Canada or Mexico can visit the United States without a visa. Can they be paid without a visa?

Rarely can this occur. While it is true that Canadian or Mexican visitors can travel in the U.S. without a passport or visa, they cannot usually be compensated unless they have a valid, eligible visa. The same rules apply to compensation payments to Canadians and Mexicans as apply to foreigners from other countries. Under some circumstances, a B-2 tourist will be asked to give a lecture, speech, performance or presentation while visiting. If the person is already on location, and provides the service, an honorarium can be provided.

An individual from Leningrad University will be visiting the United States this summer on a B-2 visa and has agreed to visit UNC Charlotte if we pay the airline ticket. Is this allowed?

No. A Visitor on a B-2 visa is prohibited from receiving travel reimbursements. An alternative plan would be to pay the visitor an honorarium to cover the cost of the flight. Keep in mind an honorarium would be subject to a 30% federal tax withholding, as well as 4% State tax (if the payment exceeds $1500).

The department has a foreign national who says she has a J-1 visa. Can the Department take her word for it?

No. Information on a foreign national’s non-immigration status must be validated by inspecting and photocopying the DS-2019 and USCIS Form I-94 which show the current visa type, the expiration date of the permission to stay and the University which sponsored the foreigner’s visit. A number of visitors enter the U.S. on one type of visa and later change their status. When a change of status is granted by the USCIS, the new Form I-94 is provided to the individual.

What if the current visa, which appears in the visitor’s passport, has expired? Can they still be paid?

Yes. The visa expiration date located on the visa stamp in the passport is the date by which the visitor must enter, not exit, the country. The true date by which a visitor must exit appears on the DS-2019 or I-20 and Form I-94 card (USCIS Arrival/Departure Record).
A student with an F-1 visa wants to work 30 hours a week during the academic year. Is this permissible?

No. The F-1 visa specifically limits the numbers of hours a student may work. During the academic year, F-1 students may work only 20 hours per week while school is in session; students can work up to 40 hours per week during break periods. Exceptions, made due to home country economic distress, are issued only by the USCIS and/or the IRS.

May an F-2 visa holder (dependent of F-1 visa holder) work?

No. The primary reason for the individual’s stay in the U.S. is as a dependent, to be with spouse or parent; they cannot work. If they need to seek employment, they must first change their visa status to one that authorizes them to work. Eligibility of dependents varies from visa to visa; please check with the International Programs Office for specific information in this area.

If a student on F-1 visa did not work on campus for a year, is that student exempted from filing tax returns for that year?

No. Tax Nonresidents still have to file Form 8843 but are not required to file the income tax forms.

If a student has a treaty for wages can they get a treaty for scholarships?

No. Some countries have scholarship treaties, some have wage treaties and some countries have both. A proper analysis of treaty eligibility must be done in the Tax Office or the Payroll Office in order to determine which treaties may apply.

Our student worker signed up for his treaty last year, why is he now being taxed?

Treaties are only good for one calendar year. Each year the student would like to use a treaty benefit, a new Form 8233 must be prepared and filed with the IRS.

I switched my visa to F-1 to go to school, why can’t I get a treaty benefit?

Treaty benefits only apply when a resident of a treaty country enters the U.S. intending to be a student with the appropriate visa. A person must have been in the “home” country at least one
year immediately prior to entering the U.S. in order to be a “resident” of that country for treaty purposes.

**IF UNC CHARLOTTE WITHHOLDS TAXES, WHY DO I STILL HAVE TO FILE A TAX RETURN AND SOMETIMES PAY MORE?**

The U.S. tax withholding system is not exact. The Income Tax Returns (1040NR or 1040NR-EZ for Federal and D-400 for State) are used to summarize income from all U.S. sources: stipends, scholarships, wages, awards, refunds, etc. You use the tax forms to calculate the actual tax you owe on all your income and compare it to the tax you had withheld. If the withholding is lower, you have to pay more; if it’s higher, you get a refund.

**MY COUNTRY HAS A TREATY WITH THE U.S. HOW SOON CAN I SIGN UP?**

You can come to the Reese Building and sign the Treaty Forms as soon as you have received your blue employment I-9 from ISSO (Marian Beane’s Office). If you wait until your job has been entered into Banner, then your treaty visit will be shorter, because we will already have some of your information. A Treaty cannot be used until you have applied for a SSN, but the paperwork is often done earlier.
## Appendix 7: Scholarship Treaties

### Income Tax Treaties Relating to Scholarships

Time Limit 5 Years (unless noted)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Yes</td>
<td>No Limit</td>
<td>Luxembourg</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>China (1)</td>
<td>Yes</td>
<td>No Limit</td>
<td>Morocco</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Commonwealth of Ind. States (2)</td>
<td>No</td>
<td>$9,999</td>
<td>Netherlands (3)</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Yes</td>
<td>No Limit</td>
<td>Norway</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Yes</td>
<td>No Limit</td>
<td>Philippines</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Egypt</td>
<td>Yes</td>
<td>No Limit</td>
<td>Poland</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Estonia</td>
<td>Yes</td>
<td>No Limit</td>
<td>Portugal</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>France</td>
<td>Yes</td>
<td>No Limit</td>
<td>Romania</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Germany (4)</td>
<td>Yes</td>
<td>No Limit</td>
<td>Russia</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Iceland</td>
<td>Yes</td>
<td>No Limit</td>
<td>Slovak Republic</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Yes</td>
<td>No Limit</td>
<td>Slovenia</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Israel</td>
<td>Yes</td>
<td>No Limit</td>
<td>Spain</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Japan (old treaty)</td>
<td>Yes</td>
<td>No Limit</td>
<td>Thailand</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Yes</td>
<td>No Limit</td>
<td>Trinidad and Tobago</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Korea, South</td>
<td>Yes</td>
<td>No Limit</td>
<td>Tunisia</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Latvia</td>
<td>Yes</td>
<td>No Limit</td>
<td>Ukraine</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Yes</td>
<td>No Limit</td>
<td>Venezuela</td>
<td>Yes</td>
<td>No Limit</td>
</tr>
</tbody>
</table>

(1) No maximum time limit.
(2) Commonwealth of Independent States, Former USSR-US Tax Treaty still covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan
(3) Maximum time limit is 3 years.
(4) Maximum time limit is 4 years.
## Appendix 8: Payroll Tax Treaties

### Income Tax Treaties Relating to Payroll

<table>
<thead>
<tr>
<th></th>
<th>Student</th>
<th>Teacher/Researcher</th>
<th>Student</th>
<th>Teacher/Researcher</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>X</td>
<td>X</td>
<td>Latvia</td>
<td>X</td>
</tr>
<tr>
<td>Canada (1)</td>
<td>X</td>
<td>X</td>
<td>Lithuania</td>
<td>X</td>
</tr>
<tr>
<td>China</td>
<td>X</td>
<td>X</td>
<td>Luxembourg (4)</td>
<td>X</td>
</tr>
<tr>
<td>Commonwealth of Ind States (2)</td>
<td>X</td>
<td>Morocco</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>X</td>
<td></td>
<td>Netherlands (4)</td>
<td>X</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>X</td>
<td>X</td>
<td>Norway</td>
<td>X</td>
</tr>
<tr>
<td>Egypt</td>
<td>X</td>
<td>X</td>
<td>Pakistan</td>
<td>X</td>
</tr>
<tr>
<td>Estonia</td>
<td>X</td>
<td></td>
<td>Philippines</td>
<td>X</td>
</tr>
<tr>
<td>France</td>
<td>X</td>
<td>X</td>
<td>Poland</td>
<td>X</td>
</tr>
<tr>
<td>Germany (4)</td>
<td>X</td>
<td>X</td>
<td>Portugal</td>
<td>X</td>
</tr>
<tr>
<td>Greece (3)</td>
<td></td>
<td>X</td>
<td>Romania</td>
<td>X</td>
</tr>
<tr>
<td>Hungary</td>
<td>X</td>
<td></td>
<td>Slovak Republic</td>
<td>X</td>
</tr>
<tr>
<td>Iceland</td>
<td>X</td>
<td>X</td>
<td>Slovenia</td>
<td>X</td>
</tr>
<tr>
<td>India (4)</td>
<td>X</td>
<td></td>
<td>Spain</td>
<td>X</td>
</tr>
<tr>
<td>Indonesia (4)</td>
<td>X</td>
<td>X</td>
<td>Thailand (4)</td>
<td>X</td>
</tr>
<tr>
<td>Israel</td>
<td>X</td>
<td>X</td>
<td>Trinidad and Tobago</td>
<td>X</td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td>X</td>
<td>Tunisia</td>
<td>X</td>
</tr>
<tr>
<td>Jamaica</td>
<td>X</td>
<td></td>
<td>United Kingdom (4)</td>
<td>X</td>
</tr>
<tr>
<td>Japan</td>
<td>X</td>
<td></td>
<td>Venezuela</td>
<td>X</td>
</tr>
<tr>
<td>Korea</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Canadians must earn less than $10,000 for the year in order to receive benefit.
3. Treaty excludes researchers.
4. Benefits lost if person overstays exemption period.
THE CLOSER CONNECTION EXCEPTION TO THE SUBSTANTIAL PRESENCE TEST FOR FOREIGN STUDENTS

Even though a foreign student may pass the substantial presence test, an exception exists in U.S. law which would allow the foreign student to continue to be treated as a nonresident alien.

The Internal Revenue Code contains two exceptions to the substantial presence test which can be used by aliens to maintain nonresident status. First, there is the general exception to the substantial presence test available to all aliens under I.R.C. § 7701(b)(3)(B) and (C) and Treas. Reg. § 301.7701(b)-2 (known as the closer connection exception). Most foreign students cannot use this exception, however, because of the requirement that the alien cannot have been physically present in the United States during the current year for more than 183 days, and the requirement that the alien’s tax home be located outside the United States. Most foreign students fail both of these tests.

The second exception to the substantial presence test for aliens is set forth in I.R.C. § 7701(b)(5)(D) and (E) and in Treas. Reg. § 01.7701(b)-3(b)(7)(iii). The exception is available only to alien students (not teachers/researchers, etc.), and contains four requirements for its application. The student—

- does not intend to reside permanently in the United States;
- has substantially complied with the immigration laws and requirements relating to his student nonimmigrant status;
- has not taken any steps to change his nonimmigrant status in the United States toward becoming a permanent resident of the United States; and
- has a closer connection to a foreign country than to the United States as evidenced by the factors listed in Treasury Regulation 301.7701-2(d)(1).

The burden of proof is on the student to prove these four factors. To claim the exception for students on an income tax return, a student should attach Form 8843 to his Form 1040NR or 1040NR-EZ.
## Appendix 10: Acronym Definitions

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCBP</td>
<td>Bureau of Customs and Border Protection</td>
</tr>
<tr>
<td>DSO</td>
<td>Designated School Official</td>
</tr>
<tr>
<td>INS</td>
<td>Immigration and Naturalization Service</td>
</tr>
<tr>
<td>IRS</td>
<td>Internal Revenue Service</td>
</tr>
<tr>
<td>ISSO</td>
<td>International Students and Scholars Office</td>
</tr>
<tr>
<td>ITIN</td>
<td>Individual Taxpayer Identification Number</td>
</tr>
<tr>
<td>SSN</td>
<td>Social Security Number</td>
</tr>
<tr>
<td>UNC</td>
<td>University of North Carolina at Charlotte</td>
</tr>
<tr>
<td>USCIS</td>
<td>United States Citizenship and Immigration Service</td>
</tr>
<tr>
<td>VITA</td>
<td>Volunteer Income Tax Assistance</td>
</tr>
</tbody>
</table>