



**FOREIGN NATIONALS TAX COMPLIANCE TRAINING**

**Basic Foreign National Taxation  
for State Agencies, Universities and  
Community Colleges**

**June 3, 2013**

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**2013 Training Curriculum**

This training is an Office of State Controller initiative, in collaboration with NC State University. This training is part of the Foreign Nationals Tax Compliance curriculum that the Office of State Controller has planned for the 2013 calendar year. The Office of State Controller is committed to the success of the Foreign Nationals Program and will provide technical assistance to all State Agencies, Universities, and Community Colleges.

Disclaimer: The information within this presentation does not constitute tax/legal advice and each participant should seek his/her own counsel in addressing specific situations.

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**Panelist**

- **Michelle Anderson, University Program Manager**
  - NC State University – International Employment and Taxation
- **Jennifer Trivette, Risk Mitigation Analyst**
  - NC Office of the State Controller

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**How to ask questions**

**Asking Questions:**  
Attendees have the opportunity to ask their questions to the presenter/presenter during the presentation. Questions will be tabbed until the end of the presentation and can be asked throughout the event by using the Q&A box that is demonstrated in the below printscreen.

To ask questions select "Q&A" Then type in the box

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**Training Agenda**

- Introduction to Foreign National Taxation Terminology
- Understanding Immigration Status
- Procedures for Paying or Compensating Aliens – 6 Steps
- Treaty Benefits, Eligibility and Limitations
- Honorariums
- Common Errors and Friendly Reminders

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**Training Objectives**

You should:

- Become familiar with the most relevant nonimmigrant visa classifications used by your agency
- Become familiar with "non-resident alien" tax rules, and learn what a "non-resident alien" means for tax purposes
- Learn the difference between temporary and permanent status, and the proper visa types for teachers, researchers, students, trainees, camp counselors, temporary employees
- Become familiar with the various types of taxable compensations that can legally be paid to a foreign national.
- Begin to understand what the required documentation is to process payments for foreign nationals.

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**Why are we here discussion this subject?**

- **Per Internal Revenue Code 1441 to 1443** - Withholding On Payments of U.S. Source Income to Foreign Persons
- **Per IRS Publication 515:** "This publication is for **withholding agents** who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations."  
Specifically, it describes the:
  - persons responsible for withholding (withholding agents)
  - the types of income subject to withholding, and
  - the information return and tax return filing obligations of withholding agents

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**TRUE or FALSE?**

Failure to follow taxation regulations applicable to Foreign Nationals only affects the employee?

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**Foreign National Contact**

- Many of you have asked - WHY is it so important for a foreign national to meet with the tax specialist at your agency, university or college?
  - Foreign nationals have a special set of work restrictions and tax guidelines they must follow.
  - Ensure appropriate documents are received
  - Provide necessary communication to foreign nationals
  - COMPLIANCE ISSUES:
    - Each entity is at risk of very large penalties and fines
    - Potentially jeopardizes the foreign national's visa status.

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**Some Helpful Definitions**

- **Withholding Agent**
  - A U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding
  - Liable for taxes owed
- **Foreign National**
  - An individual that owes allegiance to or who is under the protection of a country other than the United States
    - Non-resident Alien
    - Resident Alien

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**Immigration vs. Taxation**

<u>Immigration</u>	<u>Taxation</u>
United States Citizens	> United States Citizens
Lawful Permanent Resident	> Lawful Permanent Resident
Foreign National	> Non-resident Alien for Tax Purposes <b>OR</b> > Resident Alien For Tax Purposes

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**Having Written Policies and Procedures Will...**

- Make your job easier
- Reduce frustration for everyone
- Help departments and payees understand what to do and why
- Will aid in more efficient processing of payments
- Increase institutional compliance
- Show the IRS you take compliance seriously

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**Two Types of Policies**

- High-level Policies:
  - Define institution's commitment to complying with IRS, immigration, federal, state, local and other regulations
- Internal Operational Policies:
  - Day-to-day implementation policies; based on what can and cannot be done within framework of high-level policies

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**Immigration Definitions**

- Temporary (nonimmigrant) status
  - Limited by:
    - Time – duration of authorized period of stay
    - Scope – allowable activities
    - Location – employer as well as physical presence
  - Must have nonimmigrant intent
  - Generally denoted by alphabetical notation
- Permanent (immigrant) status
  - Allows holder to remain in U.S. indefinitely
  - Permanent Resident can live and work wherever, and for whomever s/he chooses – no limitations based on time, scope or location
  - "Green card" is another way to indicate someone has permanent resident status
  - Treated just like a US citizen for taxation purposes

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**Tax Definitions**

- Non-resident Alien for Tax Purposes
  - Individuals who are not U.S. citizens, permanent residents, or resident aliens for tax purposes are considered to be non-resident aliens for tax purposes.
  - To determine if a foreign national is in resident alien tax status or non-resident alien tax status we must calculate the IRS's Substantial Presence Test (SPT)
  - Non-resident aliens have a tax system different from U.S. residents. Their income is subject to different withholding rules and reporting.
  - Non-resident Aliens must first be eligible for employment as determined by U.S. Citizenship and Immigration Services (USCIS).
- Resident Alien for Tax Purposes
  - Means something different to IRS than USCIS
  - Passes the Substantial Presence Test (SPT)

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**Employees vs. Students**

**Back to Immigration Requirements**

- A foreign national employee is one who comes to the U.S. on a temporary visa for the sole purpose of working in the U.S.
- A foreign national student is one who comes to the U.S. on a temporary visa for the primary purpose of studying in the U.S.
  - Any employment students engage in is "incidental to their status" and is restricted
  - In some instances they are not allowed to be employed at all (e.g. their DS-2019 or I-20 indicates they are foreign-funded and does not show any support from your agency)

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**Majority of Visa Types you will see:**

**Teachers, Researchers and Temporary Employees**  
 H-1B, TN, O-1, as well as all other visa categories  
 Foreign Nationals with a valid Employment Authorization Card (EAD) may receive wages  
 Employment is permitted only if the card has not expired  
 Sponsored by the departments and processed through IE

**Students and Researchers**  
 F-1, J-1, and M-1  
 F-1 Optional Practical Training (OPT): must have EAD  
 Sponsored by the Office of International Scholars (OIS)

**Trainees and Camp Counselors**  
 F-1 or J-1

**Honoraria**  
 B-1/B-2, VWB, VWT, ESTA

**Athlete, Artist, and Entertainers**  
 P-1, P-2, P-3

**Cultural Exchange Program**  
 Q-1, Q-2

Please refer to the Visa and Payment Chart for more detailed information.

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**Procedures**

**6 Steps for Paying or Compensating Aliens:**

**Step 1** – The Payee – Payment Eligibility and Tax Residency Status

**Step 2** – The Type of Payment

**Step 3** – The "Source" of the Income

**Step 4** – Payment Subject to Income Tax Withholding?

**Step 5** – Is the Payment Subject to FICA?

**Step 6** – Determine if Payment is Reportable and How?

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**Step 1 – The Payee-Payment Eligibility and Tax Residency Status (Tax Assessment)**



- **Data Gathering Form** should be completed by each foreign national and presented with copies of the specified immigration documentation.
  - Used to determine:
    - Eligibility for payments dependent on visa type
    - Determine tax status is Non-resident Alien or Resident Alien (Substantial Presence Test)

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**What Tax Status Determines**



- **The Starting Point: Tax Residency Status**
  - Resident Alien (RA) or Non-resident Alien (NRA)
    - Determines:
      - Income subject to tax – RA (Worldwide) or NRA (US Only)
      - Whether certain treaty exemption apply
      - Withholding certificate for treaty benefits and other tax forms
        - » 8233 or W-8Ben
        - » Must have a U.S TIN
        - » W-4

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**The Substantial Presence Test (SPT)**



- A 183-day formula based on:
  - Current status and date of entry
    - Also expected departure date
  - 3-calendar years history of U.S. visits
  - Longer history if any visits in most recent 3 years are/were in F, J, M, or Q Status
  - Windstar is the answer to this mathematical question.

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**HELP!!! Who NEEDS a Tax Assessment?** 

- How to identify my population
- What to do once I identify my population
- What are my tools to process my population

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**Tips for identifying a Foreign National** 

- If your agency shares information you can learn about someone's immigration status from:
  - I-9's
  - Social Security Cards (Is there a notation on the card?)
  - Human Resource databases
- For taxation purposes – you are allowed to ask for immigration information and documentation

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**Tips for identifying a Foreign National (cont.)** 

- Publication 515 – **Presumption Rules**, “if you cannot reliably associate a payment with valid documentation you must apply certain presumption rules or you may be liable for tax, interest, and penalties.”
- It is better to tax and have those taxes refunded by the IRS to the individual, than to not tax at all and face penalties and fines.

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**Tips for identifying a Foreign National (cont.)**

- A newly-arrived payee already has an SSN but has represent that they have no prior presence in the U.S.
- Country of Visa issuance or foreign residence is different than county of tax residency claimed by payee.
- Situations where a business entity is payee, but the true beneficial owner of the income is an individual.
- A payee asking you to make payment to a charity or foundation instead of them.
- U.S. Port of entry stamps or visas in an individual's passport that are not mentioned in the individual provides to you.

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**Our Toolbox  
(How can we identify this population?)**

- HR/AP System (example: PeopleSoft, Banner or NCAS)
  - Visa Panel
  - Tax Panel
  - Queries
  - I-9's
- Office of International Students and Scholars
  - Building relationships with the groups that sponsor your foreign nationals' visas.
  - Building relationships with your department representatives (HR or Payroll).
- Windstar
  - Where you store all this information and produce your tax documents.

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**Our Toolbox  
(How can we identify this population?) (cont.)**

**Visa Panel:**

- **Critical Questions:**
  - Who updates your visa panels?
  - Are you utilizing this panel properly?
  - Is the information in this panel accurate?
  - Are you tracking data/expiration?

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**Our Toolbox**  
(How can we identify this population?) (cont.)



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**Our Toolbox**  
(How can we identify this population?) (cont.)



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**Our Toolbox**  
(How can we identify this population?) (cont.)



**Tax Panel:**

- **Critical Questions:**
  - Who updates your tax panels?
  - Are you utilizing this panel properly?
  - Is the information in this panel accurate?
  - Who performs annual batch process & how do they communicate changes to tax panel administrator.

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**Queries for HR System**  
(example: PeopleSoft, Banner, or NCAS)



I-9's

- Partner with your I-9 unit to help you identify your foreign national population.
  - OSC Partners with BEACON Payroll to obtain a custom report to identify potential foreign nationals that may need tax assessments.
- Office of International Students and Scholars
  - Building relationships with the groups that sponsor your foreign nationals' visas.
  - Building relationships with your department representatives (HR or Payroll).

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**Windstar**



A valuable software that stores all your foreign national information and produces your tax documents.

Functions of Windstar:

- Runs the Substantial Presence Test
- This software can produce:
  - W-4
  - W-8BEN
  - 8233
  - W-9
- Produces 1042-S and 1042 forms.
- Assists with electronic 1042 submission file.
- Runs useful reports.

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**Important Updates**



- Are you aware that in April U.S. Customs and Border Protection started implementing big changes concerning their I-94 card protocols?  
Do you have a plan in action?
- Are you aware of the comprehensive immigration proposal introduced by the senate "Gang of 8"?  
How might this affect your employment practices?
- Are you aware of the proposed changes in the Foreign Account Tax Compliance Act (FATCA) and the new form W-8BEN-E?  
How is this going to impact your business practices?
- Are you aware that mandatory e-Filing of 1042-S forms begins for TY 2014?  
Do you need to file for a FIRE System Account?

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**Step 2 – The Type of Payment**

- The type of payment made to an alien falls into four primary categories:
  - Dependent personal services: Wages, Service related scholarship/fellowship/assistantship payments, travel reimbursements
  - Independent personal services: Consulting fees, guest speaker, honoraria
  - Scholarship/Fellowships: Qualified/Nonqualified
  - Other Income Types: Prizes and awards, royalties, etc.

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**Types of Taxable Income**

Wages  
Assistantships  
Scholarships  
Fellowships  
Stipends  
Travel Reimbursements  
Housing Allowances  
Honoraria

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**Step 3 – The Source of the Income**

- **Resident Alien**-Income is generally subject to tax in the same manner as a U.S. Citizen.
- **Non-resident Alien**-is usually subject to U.S. income tax only on U.S. source income.

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**Step 3 – The Source of the Income (cont.)**

- A determination is made as to the source of income in the following manner:
  - Compensation paid to employees and independent contractors, income is sourced to the country where services are performed.
  - For non-compensation payments such as scholarships/fellowships, grants, prizes and awards, the source of income is the residence of the payor regardless of who actually disburses the funds.

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**Step 4 – Is the Payment Subject to Income Tax Withholding?**

- **Resident Alien** – follows the same withholding tax rules as U.S. Citizens. The federal withholding rates for resident aliens are the same as rates for U.S. Citizens
- **Non-resident Alien** – all U.S. sourced income is taxable with a few exceptions.
  - Federal Tax Rate 14%-30%
  - NC Tax Rate 4% – Contractors with ITINs (\$1,500 threshold)
  - Tax Treaties

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**Step 5 – Payment Subject to FICA?**

**Non-resident Alien**

- The only aliens exempt from FICA are the following Non-resident Alien visa holders:
  - F-1
  - J-1
  - M-1
  - Q-1
- The above visa holders are subject to FICA taxes for the entire year (January 1) they become resident aliens.

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**Withholding Federal Income Tax**

- Form W-4 for NRA's
  - The following employees may claim any number of legitimate dependent exemptions
    - Residents of Canada, Mexico and South Korea
    - Business Apprentices and Students from India for spouses and for children who are U.S. citizens or resident aliens
    - Nationals of American Samoa and Northern Mariana Islands
  - Must write "NRA" or "Nonresident Alien" above dotted line - on line 6.

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**Taxes on Paychecks**

- International students on F-1, J-1, M-1 or Q-1 visas are exempt from paying Social Security and Medicare taxes – (5 calendar years; see IRS Publication 515)
- After 5 calendar years they will continue to be exempt as long as they are enrolled in classes at least ½-time AND work less than 30 hours per week – (“The Student Rule”)
- Some of a foreign national's wages may be exempt from Federal and State income taxes because of a tax treaty between their country and the United States.

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**Treaty Benefits**

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**Treaty Benefit Eligibility and Payments to NRAs** 

- The U.S. has treaties with over 60 countries around the world affecting payments to foreign nationals
- Offer tax exemptions within the U.S. for foreign nationals who were or are tax residents (not citizens) of a treaty country and meet specific criteria

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**Considerations When Granting Treaty Benefits** 

- U.S. tax status: NRA or RA
- Provide Social Security Number or ITIN
- Country of tax residency
- Primary purpose of visit as evidenced by
  - DS-2019 for J Exchange Visitors
  - I-797 approval notices for H-1B, O-1, Q
  - I-20 for F and M visitors
- Status of the organization (educational, research, medical, etc.)
- Type of Income Paid
- Conducting research, teaching, training, other paid activities (honorary activity)

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**Considerations When Granting Treaty Benefits (cont.)** 

- Benefit Limitations
  - Retroactive Loss of Benefits
  - Prospective Loss of Benefits
  - One-Time Use
- Requirement to Re-establish Residency
  - Back-to-back Rule
  - Combine Benefit Period
- Saving Clause and Exceptions

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# Honorary

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## Honorary Rules for Foreign Nationals

- Honorary vs. Contracted Services
- 9/5/6 Rule:
  - Visitor is limited to 9 days presence at an institutions to be eligible for honoraria payment
  - Visitor cannot have visited more than 5 institutions in the past 6 months
- Visa Type:
  - Visitor needs to enter the U.S. on a B visa (preferably B-1, not B-2), or as VW national (Visa Waiver program)
  - If the visitor is on any other type of visa, you must determine if permitted to pay an honoraria

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## Honorary Rules for Foreign Nationals (cont.)

- If Services are required in order for the recipient to obtain the payment then you must treat the payment as compensation
- Watch misclassification of employees! Wages go on W-2
- You will have to determine whether the recipient is, according to IRS rules, an employee or non-employee

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### Honorarium Rules for Foreign Nationals (cont.)

Documentation (potential):  
 To pay honorarium, you must have copies of:

- Passport identification page with picture, expiration date
- Nonimmigrant visa (B-1/B-2) or I-94 card (VW)
- I-94 card issued by CIS/CBP (small white card)
- Social Security card, ITIN card, or Unknown Social Security affidavit
- Section 431 compliance statement
- W-8BEN
- Permanent Residence Address (outside of U.S.)
- Dates of visit to agency

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### Honorarium Rules for Foreign Nationals (cont.)

Taxes:

- Honoraria payments to foreign nationals are subject to a 30% federal tax withholding rate. [Note: An additional 4% for North Carolina will be withheld if the payment is greater than \$1,500.]
- If the speaker has a Social Security number or an ITIN, s/he may be eligible for a tax treaty benefit, which we can file on his/her behalf

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### Step 6 – Determining if a Payment is Reportable and How

Nonresident Alien	Resident Alien
<ul style="list-style-type: none"> <li>• Payments are reported to the federal government in the following manner:                             <ul style="list-style-type: none"> <li>– Forms Issued                                     <ul style="list-style-type: none"> <li>• W-2 – Taxable Employment Income</li> <li>• 1042-S   <ol style="list-style-type: none"> <li>1. Any treaty-exempt income</li> <li>2. All other U.S.-Source Taxable Income and Taxes Withheld – Form 1042-S</li> </ol> </li> </ul> </li> </ul> </li> </ul> <p style="text-align: center; margin-top: 10px;">NO Form 1099</p>	<ul style="list-style-type: none"> <li>• Payments reported in the same manner as U.S. Citizens.                             <ul style="list-style-type: none"> <li>– Forms Issued                                     <ul style="list-style-type: none"> <li>• W-2 – Taxable Employment Income</li> <li>• 1099   <ol style="list-style-type: none"> <li>1. Non-employee Compensation</li> <li>2. Other Income</li> </ol> </li> <li>• 1042-S   <ul style="list-style-type: none"> <li>– Any treaty-exempt income</li> </ul> </li> </ul> </li> </ul> </li> </ul>

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**Deposit Requirements:**



U.S. SOURCE WITHHOLDING ON FOREIGN PERSONS	
Amount of Deposit (Withholding)	IRS Deposit Requirements
Less than \$200	Annually with 1042T filing (Due March 15)
Between \$200 and Less than \$2,000	Within 15 days after the end of the month
\$2,000 or greater	Within 3 banking days

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**Common Errors & Friendly Reminders**

- W-8 BEN Validity Periods (TBD – FATCA)
  - If TIN included, then forever unless facts change, or if no payments are made to NRA for 1 year.
  - If no TIN (but caution if TIN require to be valid claim), then valid the year receive plus 3 full calendar years.
  - Only valid for the treaty payment being made

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**Common Errors & Friendly Reminders**

- Form 8233 with Certifying Statement from NRA
  - TIN Required
    - Can attach copy of SSN application receipt
  - Must submit to IRS within 5 days of accepting
  - IRS has 10 days to reject treaty

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**Common Errors & Friendly Reminders** 

- Special Handling is required for payments to F-1 and J-1's from other universities/community.
- Required to ensure F-1 or J-1 is still in status.

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**Common Errors & Friendly Reminders** 

- Employment Income
  - Claiming incorrect personal exemptions
    - Resident Alien
      - Single
      - Married filing separately
      - Married filing jointly
      - Head of household
    - Non-Resident Alien
      - Single
      - Married (either alone, with spousal exemption, or filing separately)
      - Form W-4-Single 0 or 1 (unless an exception applies)
- Payment of Stipends
  - Taxable vs. Non-taxable
- Form 8233
  - Agency files vs. IRS files

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**Ensure You are Kept in the Loop!!!** 

- Market yourself and your services:
  - Provide regular training sessions for departments
  - Create and maintain a webpage
  - Make policies and procedures easily accessible
  - Communicate policy and law changes immediately
  - Stay visible – attend departmental functions, offer to attend orientations, etc.
  - Keep in touch with liaisons

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**Summary**

- Determine the foreign national's U.S. tax status – Substantial Presence Test
- Perform due diligence with NRA
- Apply applicable treaty benefits
- Complete and file all required IRS forms

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**Summary (cont.)**

**Non-resident Alien Tax Compliance**

- Withhold on and report income correctly to avoid unnecessary assessments, fines and penalties
- Provide tax benefits to students, professors, researchers, medical residents, trainees, interns, and independent contractors
- Treaty benefits should only be provided to foreign national's who have either an ITIN or Social Security number
- Be fair but when in doubt be conservative. Better to tax and let them request a refund than not to tax at all and be fined.
- Be prepared for an IRS audit – where is your audit trail????

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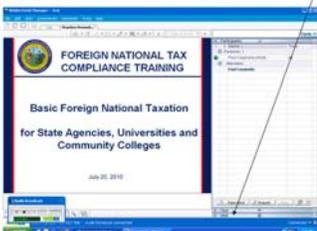
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**Questions?**

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To ask questions select "Q&A" Then type in the box

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Foreign National Taxation & Immigration Compliance Conference  
**Wednesday September 25<sup>th</sup>, 2013**

**SAVE  
- the -  
DATE**

Hosted by  
NC State University  
and  
The Office of the State Controller

register at: [go.ncsu.edu/fnticc](http://go.ncsu.edu/fnticc)

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**Contact Information**

- Any questions that are not handled within the presentation will be responded to via email.
- Follow-up questions can be submitted to Jennifer Trivette, with the NC Office of the State Controller, at [jennifer.trivette@osc.nc.gov](mailto:jennifer.trivette@osc.nc.gov) or 919-707-0764.
- For additional training opportunities please visit:
  - [http://www.osc.nc.gov/Foreign\\_Nationals/training.html](http://www.osc.nc.gov/Foreign_Nationals/training.html)

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**THANK YOU!**

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