

MEMORANDUM

TO: HCS Department Liaisons

FROM: David Brown, Director
Director of Resource Center and Operations
Human Capital Services

HCS Contact: Candy Walsh (785) 532-1896 (candyw@ksu.edu)

DATE: November 12, 2019

RE: 2020 Tax Treaty Benefit Renewal for Nonresident Aliens
Annual Determination of Tax Status for Nonresidents

Tax Treaty Benefit Renewal

Attached is a listing of Nonresident Alien employees in your department who claimed tax treaty benefits in 2019. Even though an employee may not have claimed benefits in 2019, they may be eligible for tax treaty benefits in 2020. (*The Nonresident Alien employees have been contacted by Human Capital Services via email regarding the 2020 renewal process.*) Federal law requires that a new Form 8233 “Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual” and Appendix A or B be completed each year in order to receive tax treaty benefits. These forms must be returned to our office no later than Wednesday, **December 4, 2019** to apply treaty benefits to the first 2020 paycheck issued January 10, 2020.

The Nonresident Alien Employment Tax Guideline and Tax Treaty Summary document can be found on the Human Capital Services website at <http://www.k-state.edu/hcs/tools/hcs-liaisons/nra/treatyforms/index.html>. The guideline contains general information regarding what and how taxes are withheld for nonresident alien employees. The tax treaty summary is a tool to help identify countries with treaty benefits for professors/teachers and/or students.

To determine tax treaty eligibility, the country of residence and the primary purpose an individual entered the United States must be known. Knowing the primary purpose an individual entered the United States will help determine the correct Appendix A (i.e., Appendix A for students or Appendix B for professors/teachers). In addition, Appendix A and B and treaty summary are available on our website at <http://www.k-state.edu/hcs/tools/hcs-liaisons/nra/treatyforms/index.html>.

Annual Determination of Tax Status for Nonresidents

Under Chapter 3 of the Internal Revenue Code (sections 1441-1464) regulations require that a determination be made annually as to whether or not a nonresident individual will be a “U.S.

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resident” or a “nonresident” for tax purposes. Our office will perform the substantial presence test (SPT) for 2020 to make this determination and will notify individuals by letter if a required tax status change is necessary. To meet the SPT an individual must be physically present in the United States at least:

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

Any day an individual was present in the United States as an *exempt individual does not count*.

An exempt individual may be anyone in the following categories:

- A foreign government-related individual
- A teacher or trainee with a J or Q visa who substantially complies with the requirements of the visa – **(limited to two calendar years)**
- A student, with an F, J, M or Q visa who substantially complies with the requirements of the visa – **(limited to five calendar years)**; or
- A professional athlete temporarily present to compete in a charitable sports event.

Please ensure **nonresident new hires** complete the Foreign National Tax Information Form (PER-15). The information requested on this form is required in order to comply with applicable tax provisions of the Internal Revenue Code and is available at <http://www.k-state.edu/hcs/forms/per15.html>

Thank you for your attention to these instructions and details.