TAX ISSUES IN HIGHER EDUCATION

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#FIN 2238
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Why Tax Information?

• Tax Risk
  – Minimize liability (Institution, Employees, Students, Contractors, Donors)
  – Maintain exempt status

• Audit (Compliance) Risk
• Public Relations Risk
• Financial Risk
Topics for Discussion

- Tax Exempt Organization
- Intermediate Sanctions
- Form 990 (Governance, Policy, Transparency)
- Unrelated Business Income (UBI)
- Tax Cuts & Jobs Act 12/22/17
- Tax Exempt Bonds
- Charitable Contributions
- Lobbying & Political Activity
Topics for Discussion

- Employees vs. Independent Contractors
- Nonresident Aliens (NRAs)
- Payroll tax issues
- Fringe benefits
- Accountable Plan
- Reporting *(W-2, 1099 series, 1098-T)*
Section 212 of the PATH Act: signed 12/21/15

- Beginning in 2018, there will no longer be an option to report “amounts billed” on the 1098-T.
- Box 1 - the amounts paid for tuition and qualified fees during the calendar year.
  - Most schools do not track payments, they use the credit card posting method
  - Student/Parent credits and taxable scholarships require the calendar year.
1098-T Issues

Why change the form?

– TIGTA found $5.6 billion erroneous credits claimed by 3.6 million taxpayers for 2012
– For most students, payments will equal charges
– There will no longer be a difference between the 1098-T and what students must report on their 1040 tax returns. (Fewer calls, less confusion)
FinCEN 114 FBAR

Foreign Bank Account Report - Treasury

- Aggregate amounts > $10,000
- Owners and Signers
  - Bank Accounts for foreign programs
  - Partnerships, Investments, Joint Ventures
- Faculty signers must file personally to show their authority over University accounts
- Due in Treasury by April 15th automatic extension available until October
§501(c)(3) status

- §101(6) - 1939 Internal Revenue Code

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

1976 - sports; propaganda; influence legislation (except lobbying)
1987 - candidate
Exempt Purpose

• Organized exclusively for…true of all colleges and universities, by-laws and initial documents.

• Operated exclusively for…
  – §1.501(c)(3)-1(c)(1) Primary activities. An organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (<15%)
Non-educational Purposes

- Investing
- Renting
- Fundraising
- UBTI (unrelated business taxable income)
  - Advertising
  - Summer Camps
  - Sales of non-excluded items (what’s this?)
  - Hotels & Conference Centers
  - Research testing
Unrelated Business Income Tax

Operated Exclusively for…

Prior to 1950 tax exempt organizations could make money to fund programs in any fashion. Then along came NYU School of Law with it’s subsidiary the Mueller Macaroni Company. Mueller Co. v. Commissioner, 14 TC 922; 190 F.2d 120 (1951).

• Income is from a trade or business activity
• The activity is regularly carried on
• The activity is not substantially related to the institution’s tax-exempt purpose or “mission” (i.e. education & research)
Unrelated Business Income Tax

• Exceptions
  – Convenience of students, staff §513(a)(2)
  – Merchandise sales of contributed property
  – Corporate Sponsorships (no substantial return benefit) §513(i)
  – §512(b) Modifications - passive income
    (interest(1), dividends, royalties(2), rents(3), gains(5))
    (§512(b)(4) except debt-financed assets) – but see §514(c)(9)
  – Research (for the public interest)
Unrelated Business Income Tax

- Unrelated Debt Financed Income
  property held to produce income upon which there is acquisition indebtedness

- Doesn’t apply to real estate rental if the organization is a §170(b)(1)(A)(ii) school - §514(c)(9)
Unrelated Business Income Tax

• Advertising – taxable
  • Incentive to buy, endorsement, inducement
  • Qualitative language, comparisons
  • Price information or other “value” indications

• Sponsorships – exempt (§513(i))
  – Substantial Return Benefit (tickets, goods, ads, facilities, services, rights to intangible assets)
  – Acknowledgement (value neutral descriptions)
  – PBS underwriters have special rules

• Alumni events (look at marketing school products)
Unrelated Business Income Tax

• Travel Tours – (*unless structured as an educational activity - Rev Rul 70-534*)

• Rental of Facilities (*providing services makes it taxable, on-site landlord, set-up*)

• Fitness Facilities (*open to the public & charging competitive rates*)

• Dual use activities (*conference centers, ice rinks*)

• Personal Property rental (*broadcasting towers, audio/visual equipment, unless incidental ≤ 10% w/ realty*)
Unrelated Business Income Tax

- Is it related?
- Does it further your exempt purpose?
- Is it “regularly carried on”?
- Is there a profit motive?

- Hobby losses
- Exploitation
Unrelated Business Income Tax

- 990-T reporting
  - Partnerships
  - Foreign transactions
  - Loss carryforwards (20 years) **TCJA
  - Charitable contributions (§172(b)(2) conversion)

- IRS Publication 598 UBIT
  - All regular corporate rules apply
Unrelated Business Income Tax

• Allocation of expenses
  – Directly related
  – Reasonable overhead
  – Consistently applied
  – Fair allocation by reasonable method
    • Hours of use
    • Revenue generated (gross up internal discounts)
    • Type of activity
    • Number of pages
Tax Cuts & Jobs Act: signed 12/22/17

• UBTI activities calculated & taxed separately
• NOL carryovers limited to activity
  – and limited to 80% of income
  – Carryforward is indefinite
  – No carryback provisions
• Parking pre-tax plans create UBTI
• Excise tax on compensation over $1 million.
• Excise tax on excessive endowments
Tax Cuts & Jobs Act: signed 12/22/17

• No allowable itemized deductions for employees
  – §132(d) reimbursements still okay
• Moving expenses disallowed (taxable if reimbursed)
• Other
  – Elimination of misc itemized deductions, effect on employees
  – Change in Corporate tax rates (21% vs. 35%)
  – Elimination of Corporate Alternative Minimum Tax
  – Elimination of Personal Exemptions
  – Increase in the Standard Deduction (student impact)
Worker Classification

• Employee vs. Independent Contractor

  Originally IRS relied on the twenty common law factors (Rev. Rul. 87-41)

  – Behavioral Control
    • Instructions (provide agenda, syllabus)
    • Training (conference/seminar)
    • Defined days/hours of work

  – Financial Control
    • Significant Investment (tools, office, equipment)
    • Expenses (advertising, web site, travel)
    • Opportunity for Profit or Loss (bid the job)
    • Lots of clients, contract is <20% of business
Worker Classification

– Relationship of the Parties
  • Employee Benefits (reimbursements, insurance)
  • Written Contracts
  • Services that are a key aspect of Univ. business (Teaching, Research, Coaching)
  • Permanency of the position

• DOL Admin Interpretation 2015-1 (7/15/15)
  Document refers to a 1918 court case that expanded the definition of “employer” and looked at whether the work was an “integral part” of the business. The IRS embraced the DOL interpretation.
Independent Contractors

IRS 20 questions Rev Rul 87-41 – subjective
(SS-8 decision when there’s disagreement)

What can you do?

• Make a Checklist
• Contractor Agreement
• Check 1099 file against W-2 file
• No students!
Employees vs. Contractors

• So what’s the issue?
  – Tax Gap – from unreported income.
    Audit alert: The IRS is once again investing resources in this area. The tax gap has been a driving force. $458 billion/year (2008-10 average). The total number of 1099s filed and W-2s filed are listed on the Form 990.
  – Unemployment
  – Worker’s Compensation
  – Required Tax ID numbers
    • Change in W-9 requirement. Backup withholding starts at $25 if no SSN/EIN
Participants & Research Subjects
Creative accounting by virtue of Sections 102 and 274(b).

- Business Gifts are deductible up to $25 per year (§162). A gift means that it is something that is excluded from the gross income of the recipient (§102). A business gift is a payment which helps your business, operations or trade activity, given to someone who facilitates that activity, like a vendor, client, colleague, customer or supplier. We can use the business gift allowance to pay research participants for helping with our scholastic and academic endeavors, with little tracking and no tax effect. Since the gift is excluded from income by the Code, you don’t need names, SSNs or NRA status of the recipients, except to ensure that someone other than the researcher gets the money. We get a signature in a receipt book. There is a limit, and an individual can only receive one $25 gift per year from your organization. (Rev Proc 63-4 has additional info)
Medical Research Subjects

• The IRS has determined that medical research subjects are not employees or contractors. Private Letter Ruling (PLR) 9106004

• 1099-MISC, Box 3 – Other Income (that means W-9, name, address)

   See IMRS 0700000417 (Issue Management Resolution System) Not USTB

• Accumulating payments to determine if the $600 threshold is met

• Confidential studies require agreements to limit information
Nonresident Aliens and Tax Treaty Benefits

ANYONE CAN BE PAID
What is a Nonresident?
What’s a Visa? What’s Visa Status?

• Green Card Test
• Substantial Presence Test

• Residency
  – Immigration
  – Federal Tax
  – State Tax
  – In-State tuition
Employees

Treaty - IRS Form 8233 (Annual renewal; services)

- Nonresident Alien employees from Tax Treaty Countries can claim treaty benefits on Form 8233 The completed form is also signed by the school.

- An employee must have a Social Security Number to claim a Treaty Benefit.

- Employer must forward the completed Form 8233 to the IRS within 10 days of signing; IRS can veto.
Software Analysis

Information should be entered into a Foreign National software (Windstar or Glacier)

- A six year history of U.S. presence and any prior Visa status
- Use a Foreign National Information Form to gather the data you need.
# Income Tax Treaties Relating to Payroll

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<tr>
<th></th>
<th>Student</th>
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<th></th>
<th>Student</th>
<th>Teaching/Research</th>
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<td>X</td>
<td></td>
<td>Venezuela</td>
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<td>X</td>
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</tbody>
</table>

(1) Canadians must earn less than $10,000 for the entire year in order to receive any benefit.
(2) Commonwealth of Independent States, Former USSR-US Tax Treaty still covers some countries. (Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan)
(3) Treaty excludes researchers, but has full benefit with no $ limits for teachers.
(4) Benefits lost if person overstays exemption period.
(5) 2 year stay limit or benefits lost retroactively.
Contractors

- Also perform services; also file Form 8233. Can use ITIN or SSN

- Every person from every country is going to be different.

- Look at Residency not Citizenship
## Income Tax Treaties Relating to Honoraria/Contractor Fees

<table>
<thead>
<tr>
<th>Country</th>
<th>Maximum Presence</th>
<th>Maximum $ Amount</th>
<th>Artist/Athlete $ Amount</th>
<th>Maximum Presence</th>
<th>Maximum $ Amount</th>
<th>Artist/Athlete $ Amount</th>
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<td>Lithuania</td>
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<td>Luxembourg (6)</td>
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<td>Malta</td>
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<td>Barbados (1)</td>
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<td>$4,000</td>
<td>Mexico</td>
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<td>Morocco (2)</td>
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<td>$15,000</td>
<td>New Zealand (1/1/11 new)</td>
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<td>$400/day</td>
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<td>$3,000</td>
</tr>
<tr>
<td>Sweden</td>
<td>No Limit</td>
<td>No Limit</td>
<td>$6,000</td>
<td>Ukraine</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
<tr>
<td>Switzerland</td>
<td>No Limit</td>
<td>No Limit</td>
<td>$10,000</td>
<td>United Kingdom</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
<tr>
<td>Thailand (2)</td>
<td>89 days</td>
<td>$10,000</td>
<td>$3,000</td>
<td>Trinidad and Tobago(1)</td>
<td>183 days</td>
<td>$100/day</td>
</tr>
<tr>
<td>Trinidad and Tobago(1)</td>
<td>183 days</td>
<td>$3,000</td>
<td>$100/day</td>
<td>Tunisia (2)</td>
<td>183 days</td>
<td>$7,500</td>
</tr>
<tr>
<td>Turkey</td>
<td>183 days</td>
<td>No Limit</td>
<td>$3,000</td>
<td>Ukraine</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
<tr>
<td>Ukraine</td>
<td>No Limit</td>
<td>No Limit</td>
<td>No Limit</td>
<td>United Kingdom</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>No Limit</td>
<td>No Limit</td>
<td>No Limit</td>
<td>Trinidad and Tobago(1)</td>
<td>183 days</td>
<td>$100/day</td>
</tr>
<tr>
<td>Venezuela</td>
<td>No Limit</td>
<td>No Limit</td>
<td>$6,000</td>
<td>Trinidad and Tobago(1)</td>
<td>183 days</td>
<td>$100/day</td>
</tr>
</tbody>
</table>
Contractor Honoraria Caveats

(1) The exemption is not available at all if the dollar limit is exceeded.

(2) Maximum Presence limit and dollar limit computations operate separately. Total compensation can be exempt even if the presence limit is exceeded.

(3) Treaty applies only if the services are performed for a resident of Pakistan.

(4) Treaty with the Commonwealth of Independent States (former USSR) covers Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

(5) Many countries have $ per day limitations as well as annual limitations.

(6) Lux. Treaty for artists limits gross receipts - so includes reimbursements.

Note: Even though some treaties have “no limit” for the maximum presence, a lecturer or researcher or other Honorarium recipient (other than J-1) will become a Resident Alien after being in the U.S. more than 183 days, thus no longer eligible to use a treaty. Resident Aliens may not use a treaty for independent personal services.
Travel Payments

Honorarium recipients are Independent Contractors

- Accountable Plan Rules: IRC §62, §162 and §274
- Foreign nationals must provide receipts, business purpose.
- Can have travel expenses paid directly.
- Travel away from home status (per diem applies)
- Are they contractors if you don’t pay them? §1.132-5(r) – get a volunteer agreement
### Taxation of Scholarships and Fellowship Grants Paid to a Nonresident Alien

#### Tax Withholding and Reporting

<table>
<thead>
<tr>
<th>Analysis</th>
<th>Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deductions allowable:</td>
<td>• IRC 871(c)</td>
</tr>
<tr>
<td>An NRA may deduct business expenses under certain conditions. Rev. Rul. 70-614 held that an NRA, who is in the United States and receives a scholarship or fellowship grant, is by virtue of IRC § 871(c) treated as being engaged in a USTB. An NRA holder of an F, J, M or Q visa in the United States may deduct business expenses, including travel expenses, while away from his or her tax home in the United States.</td>
<td>• Rev. Rul. 70-614</td>
</tr>
<tr>
<td>The NRA must claim the deductions on Schedule A of the Form 1040NR and file Form 2106 or Form 2106-EZ.</td>
<td>• 2014 Instructions for Form 1040NR</td>
</tr>
<tr>
<td>! CAUTION: Such an NRA may deduct only those business expenses attributable to the taxable portion of the scholarship or fellowship Grant.</td>
<td>• 2014 Instructions for Form 2106</td>
</tr>
</tbody>
</table>
Scholarships, Fellowships, Awards

- Tuition scholarships are usually excluded under IRC §117(a) or (d). This covers undergraduate tuition and fees and graduate tuition and fees for Teaching and Research Assistants.

- Other scholarships have a 14% withholding rate for F, J, M & Q visa holders (others 30%)

- Treaty benefits on Form W-8BEN (*multi year*)

- What’s a scholarship? ANY payment made to enhance, continue or support the educational process that does not require services rendered. “Cost of Attendance” (Rent, utilities, insurance, tuition, meals, money, travel, etc.)

- New IRS Practice Unit on NRA scholarships – 6/14/2016
### Income Tax Treaties Relating to Scholarships

#### Time Limit 5 years (unless noted)

<table>
<thead>
<tr>
<th>Treaty Article</th>
<th>Resident Aliens too?</th>
<th>Exemption Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh (1)</td>
<td>21(2)</td>
<td>Yes</td>
</tr>
<tr>
<td>China (1)</td>
<td>20(b)</td>
<td>Yes</td>
</tr>
<tr>
<td>Commonwealth of Ind. States (2)</td>
<td>VI(1)</td>
<td>No</td>
</tr>
<tr>
<td>Cyprus</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Egypt</td>
<td>23(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Estonia</td>
<td>20(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>France</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany (1)</td>
<td>20(3)</td>
<td>Yes</td>
</tr>
<tr>
<td>Iceland (old and new)</td>
<td>19(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Indonesia</td>
<td>19(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Israel</td>
<td>24(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Japan (new treaty) <em>None</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>19</td>
<td>Yes</td>
</tr>
<tr>
<td>Korea, South</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Latvia</td>
<td>20(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Lithuania</td>
<td>20(1)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Treaty Article</th>
<th>Resident Aliens too?</th>
<th>Exemption Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morocco</td>
<td>18</td>
<td>No</td>
</tr>
<tr>
<td>Netherlands (3)</td>
<td>22(2)</td>
<td>No</td>
</tr>
<tr>
<td>Norway</td>
<td>16(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Philippines</td>
<td>22(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Poland</td>
<td>18(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Portugal</td>
<td>23(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Romania</td>
<td>20(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Russia</td>
<td>18</td>
<td>Yes</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Slovenia</td>
<td>20(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Spain</td>
<td>22(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Thailand</td>
<td>22(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>19(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Tunisia</td>
<td>20</td>
<td>Yes</td>
</tr>
<tr>
<td>Ukraine</td>
<td>20</td>
<td>Yes</td>
</tr>
<tr>
<td>Venezuela</td>
<td>21(1)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

(1) No Maximum time limit.

(2) Commonwealth of Independent States (Former USSR) Tax Treaty covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan

(3) Maximum time limit is 3 years in the U.S., so F-1s rarely satisfy the requirements.
Awards and Prizes

All Awards and prizes are subject to 30% tax withholding (unless a treaty applies). This is true of Cash and Noncash awards.

There is disagreement as to whether an Award can be considered a Scholarship when provided to a student entering a scholastic contest. --- I believe the position is defensible based on the definition of a scholarship- i.e. the funds are used for school. This would decrease the NRA withholding to 14% for F & J visa holders.
Accountable Plans

Income is governed under §61 of the Internal Revenue Code

“Except as provided in this subtitle, gross income means all income, from whatever source derived…”

…cash or noncash benefit

– …fringes, “found money”, gambling, babysitting, raffles, lotteries, barters, scholarships, grants, housing, salary, eBay sales, garage sale proceeds, embezzlement, bank robbery,…
§62 through §291 contain the ‘exceptions’ “provided in this subtitle”

§62(a) General rule.

For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions…
(2) Trade and business deductions of Employees.
   (A) Reimbursed expenses of employees. The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. [..]
An Accountable Plan is a reimbursement or other expense allowance arrangement
Reg. § 1.62-2

→ Requires business purpose

→ Requires that the employee substantiate each business expense

→ Requires the employee to give back unsubstantiated advances

→ Must be completed in a “reasonable” time frame (Safe: 30days/60days)

→ §62 limits payments to employees only
§274 and Regulations
Accountable Plan – Reimbursed Expenses

Business Purpose
Ordinary and Necessary to the conduct of the business. Where the primary beneficiary of the expense is the Institution.

Substantiation §274(d)
travel expenses

expenses required for employee’s job, including uniforms, books, training, desk, computer, printer, chair, files, cabinets, office, etc.

entertainment, amusement or recreation expenses

the cost of business gifts

expenses relating to any listed property (cars, computers, TVs)

Estimates for expenditures are not allowed.
Accountable Plan

• Must be a Written Plan

• Every payment (check or pCard) must have a business purpose (§162)

• Every provision of benefit (travel, housing) must have a business purpose (§162)

• Every payee must have an appropriate business relationship to the institution (§1.132-1(b)(2) & §1.132-5(r))

• Cannot be another business that could pay it (Pub 15-B)

• Anything not qualified is compensation (Regs. §1.62-2)
Accountable Plans
Student Travel

- Business Purpose – required by employer
  - Accountable Plan substantiation.
  - Match travel fund to wages fund
  - Did the student get PAID to travel? (20 hr/week max)

- Athletic or Academic Team Travel allowed
  - Represents the school, wears school insignia

- Travel without a business purpose
  - Field trip rules will cover all group expenses
  - Scholarship rules for individual payments (NRA withholding)
Payroll and Employment Tax Issues

• Employment Tax Responsibilities
  Reference: IRS Pub 15 Circular E
  – an employer-employee relationship (i.e. not independent contractors)
  – the payment of wages (settlements, N.Dakota case)

• The payment must be made with respect to employment (student stipends, §3121, §117(c))
Payroll and Employment Tax Issues

• Payment and Reporting Obligations
  – Report wages and tax paid on Form 941- (Employers Quarterly Federal Tax Return – does not include wages of non resident aliens which are treaty exempt.)
  – Use 941X for adjustments and corrections

• Electronically remit payments withheld
  – Payments required next day
Payroll and Employment Tax Issues

• FICA Exclusions

  – Services performed by ministers of churches in the exercise of their ministry §3121(b)(8)

  – Student FICA exception §3121(b)(10)
    *While regularly attending classes (short breaks)*

  – Certain nonresident aliens §3121(b)(19)
    *Individuals in the US on F, J, M, or Q visas*
IRS Compensation Issues

• Additional Compensation
  – Spousal or Family Travel
  – Club memberships
  – High salaries (now excise tax on > $1 million)
  – Personal use of vehicles
  – Provided housing
  – Graduate tuition waivers
Fringe Benefits

§132 Enacted in 1984 (DEFRA ’84)
“Deficit Reduction Act” included the term “fringe benefit”

Any property or service that an employee receives from an employer, in lieu of or in addition to regular taxable wages, is a fringe benefit that *may* be subject to taxation.

A statutory exclusion must exist in order for the benefit to be tax free... Remember §61
Fringe Benefits
Employers Tax Guide to Fringe Benefits – Pub 15B

• 3 choices
  – Wages (everything taxable)
  – Reimbursement
  – Tax free fringe benefit

• Reimbursement recordkeeping requirements
  ➢ Accountable Plan for reimbursement
    ➢ no records = taxable income (affidavit)
Tax Free Fringe Benefits

• Examples of benefits that may be entirely or partially excluded from the taxable income of an employee:
  – §79 group-term or other life insurance ($50,000 limit)
  – §104-106 certain health insurance & payments
  – §117 qualified tuition reduction (undergrad)
  – §119 employer provided meals & lodging
  – §125 cafeteria plans
  – §127 education assistance ($5,250 max)
  – §129 dependent care assistance
Fringe Benefits

• More examples of potentially tax free benefits:
  – §132(b) no additional cost service
  – §132(c) qualified employee discount
  – §132(d) working condition fringe benefit
  – §132(e) de minimis fringe (administratively impractical)
  – §132(f) qualified transportation (parking, bikes)
  – §132(g) qualified moving expense reimbursement
  – §139A Disaster relief payments
  – §139C COBRA premium assistance
Fringe Benefits

- Different people qualify as “employees” for different benefits
  - Retirees, surviving spouses (§132(b) & (c) §105)
  - Family, dependents (§132(b) & (c) §117)
  - Parents for certain air travel (§132(b) & (c))
  - Some strictly employees (§132(d),(f) & (g) §127)
  - Anybody (only one §) §132(e) (de minimis)

Who can get what is defined in Regs. §1.132-1
Form 990

• Purpose
  – Transparency *(can follow the money)*
  – Compliance *(questions create awareness)*
  – Internal Consistency *(like items shown together)*

• Core Form: 990, 990-EZ, 990-N
• 16 Schedules
• Lots of Questions
Inurement to Private Benefit

- 2001 Intermediate Sanctions §4958
  - enacted to provide a less drastic deterrent to the misuses of a charity than revocation of its exempt status. Enacted to provide a means of punishing tax exempts without revoking status
Intermediate Sanctions

- Fines & Penalties - punishment for inurement
- An excess benefit transaction
  - is any transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of any “disqualified person”
    - Substantial influence (O,D,T,K,HC)
    - Family members
    - Entities more than 35% owned by ODTKH
    - Facts and circumstances test
Governance

• Mission & Activities
• Governing Body
  – Voting and nonvoting members
  – Independent members
  – Review of 990 before filing (*everything*)
  – Compensation committee
  – Policies
## Governance policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Section/Line</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict of Interest Policy</td>
<td>Part VI, Lines 12a &amp; b</td>
<td>Checkbox and procedure description</td>
</tr>
<tr>
<td>Whistleblower Policy</td>
<td>Part VI, Line 13</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Document Retention &amp; Destruction Policy</td>
<td>Part VI, Line 14</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Joint Venture Policy</td>
<td>Part VI, Line 16a &amp; b;</td>
<td>Checkbox and procedure description</td>
</tr>
<tr>
<td>Public Disclosure of Documents</td>
<td>Part VI, Section C, Lines 17, 18 &amp; 19</td>
<td>Checkboxes and procedure descriptions</td>
</tr>
<tr>
<td>Specific Fringe Benefits in written policy</td>
<td>Schedule J, Line 1b</td>
<td>Checkboxes, describe if any “no” answers</td>
</tr>
<tr>
<td>Gift Acceptance Policy</td>
<td>Schedule M, Line 31</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Charity Care Policy (H)</td>
<td>Schedule H, Line 1a,b</td>
<td>Complete disclosure</td>
</tr>
<tr>
<td>Debt Collection Policy (H)</td>
<td>Schedule H, Pt III Ln9a</td>
<td>Checkbox</td>
</tr>
</tbody>
</table>
Questions/Schedules

- Foreign grants and expenditures
- Contribution information
- Professional Fundraising (State Solicitation)
- Hospital information
- Scholarships and Grants
- Compensation and Benefits
- Tax Exempt Bonds
Schedule J - Compensation

• Officers, Directors, Trustees, Key Employees and Highly Compensated Employees (ODTKH)
  – Fringe Benefits checkboxes
    • First class travel, charter flights, companion travel
    • Club dues, initiation fees, tax gross-up
    • Business use of personal residence (home office)
    • Discretionary spending account, personal services
  – Written Policy for these benefits?
  – Substantiation required for reimbursements?
  – Severance pay, non-qualified deferred comp.
Foreign Transactions

- Payments to a foreign corporation (926)
- Payments to a foreign partnership (8865)
- Reporting a disregarded entity in a foreign country (8858)
- Reporting a controlled entity in a foreign country (5471)
- QEF elections (8621)
Tax Exempt Bonds

• **Arbitrage** – the act of making money w/ money. Borrow at a low rate at the taxpayer’s expense. With a few exceptions money must be rebated to the government.

• **Private Use Issues**
  – 501(c)(3) threshold - §145, 5% of net proceeds for unrelated use including issuance costs
  – Governmental entity threshold – 10% unrelated use
  – Issuance costs – capped at 2% counts as private use
    • Refunded bonds issuance costs become good use!
Tax Exempt Bonds

• Private Use Issues (cont.)
  – Research & Management agreements
  – Rental income
  – Naming rights

• Record retention requirements — *for as the long as the bonds are outstanding + three yrs after the final redemption*

• Audit alert: TEB division of the IRS has increased staff by 20%. The Director states this will increase significantly the number of audits. The twenty page TEB work plan can be found on the IRS website (www.irs.gov)
Charitable Contributions
(getting gifts)

• Elements of a Charitable Donation
  – Charitable intent: detached, disinterested generosity (Comm vs. Duberstein 363 US 278 (1960))
  – No substantial benefit to the donor, complete, voluntary and unconditional
  – Complete delivery of the gift (full control)
  – Acceptance by the donee
  – Quid pro quo gifts - part gift and part payment for goods or services
Charitable Contributions

• Types of Contributions
  – Cash – check, credit card, promissory note
  – Non-cash – on 990, Schedule M
  – Services – not deductible by donor, not included in 990.

  Eliminated if they are in the Financial Statements

  » NACUBO FAR Manual (¶403.62)
Charitable Contributions

- Receipts
  - Contemporaneous written acknowledgement
  - Form 8283 for > $5,000 (including aggregated “like items”)
  - Student groups can use Univ. process, but not separate entities like fraternities or sororities.
Lobbying and Political Activity

• Restrictions on Lobbying Activities

• Lobbying Disclosure Act- 1995
  Schedule C reporting, form 990

• Prohibition against “political activity”
Political Activity

• Permissible Political Activities
  – Candidate debates and forums
    – *must be equal opportunity venue*
  – Student newspaper - no endorsements
    – *may publish editorials Rev. Rul. 72-513*
  – Use of institutional facilities
    – *no endorsement and no fundraising*
  – Voter education, voter registration
Questions
Comments
Discussion
Resources

• NACUBO’s Taxlist
  – The Taxlist is the most popular question and answer venue on University Taxation. Just reading the postings is an education.

www.nacubo.org, click on My NACUBO, then ‘eGroups’ under the Membership box. NACUBO has lists for International issues, Human Resources and Eduaccountants for tax, audit and accounting issues.

• ALIEN’s listserv (since April 1994)
Write to LISTSERV@LISTSERV.UTK.EDU and, in the text of your message (not the subject line), write: SUBSCRIBE ALIENS-L
http://listserv.utk.edu/archives/aliens-l.html
Resources (cont.)

• NRA assistance, analysis & tax preparation
  – Glacier (Arctic International)
    http://www.arcticintl.com/
  – Thompson Reuters Tax Navigator (nee Windstar)

• IRS Tax e-mail lists (e-News for Exempt Organizations, TE Bonds, Payroll, Withholding Agent News, etc.)
  https://www.irs.gov/newsroom/e-news-subscriptions
Resources (cont.)

Taxpayer Advocate Service
Internal Revenue Service
Telephone information by State & City
https://www.irs.gov/taxpayer-advocate

IRS regular line 800-829-1040
IRS business line 800-829-4933
IRS Exempt Org Office 877-829-5500
IRS Payroll Office 800-829-0115
Resources (cont.)

- Guide to Federal Tax Issues for Colleges and Universities
  - [http://www.nacubo.org/Business_and_Policy_Areas/Tax.html](http://www.nacubo.org/Business_and_Policy_Areas/Tax.html)

- The Tax Law of Colleges and Universities, Bertrand M. Harding, Jr.
  - [http://collegeuniversitytaxlaw.com/](http://collegeuniversitytaxlaw.com/)

- A Federal Income tax Guide for College and University Presidents
  - American Council on Education ([http://www.acenet.edu/](http://www.acenet.edu/))

- Volume One - *Nonresident Alien Tax Compliance:*
  - [https://www.arcticintl.com/booksintro.asp](https://www.arcticintl.com/booksintro.asp)
Resources (cont.)

– Income Tax Treaties (A-Z)
  Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
  Pub 901, U.S. Tax Treaties

– Internal Revenue Code
– Regulations
– Revenue Rulings, Procedures, PLR
Resources (cont.)

Tax Workshops and Presentations

- NACUBO Tax Forum, Sheraton Atlanta, Atlanta, GA - Oct 27-29, 2019

- Higher Ed Tax Institute, University of Texas, Austin, TX - June 2020
  https://utcle.org/conferences

Nonresident Alien Tax Compliance

- Arctic International, Las Vegas - Sept 23-26, 2019
  (https://www.arcticintl.com/arctraining_overview.asp)

- NC State Univ. Foreign Nat’l Tax & Immigration Conf.
  (expected again next year)
Resources (cont.)

Tax Workshops and Presentations, IRS

• IRS Tax Forums

• IRS Tax Practitioner Webinars

• IRS Webinars for Tax Exempt & Government Entities
Resources (cont.)

Tax Exempt Bond Compliance

• Treasury Institute for Higher Ed
  Hilton Orlando Lake Buena Vista, Florida
  December 9-11, 2019

• BLX Post-Issuance Compliance Workshop
  – Nov 14-15, 2019 The LINE Hotel, Austin, TX
  https://www.blxgroup.com/event/blx-orrick-7th-annual-post-issuance-compliance-workshop/
Why Tax Information?

- Tax Risk
  - Minimize liability (Institution, Employees, Students, Contractors, Donors)
  - Maintain exempt status
- Audit (Compliance) Risk
- Public Relations Risk
- Financial Risk

Topics for Discussion

- Tax Exempt Organization
- Intermediate Sanctions
- Form 990 (Governance, Policy, Transparency)
- Unrelated Business Income (UBI)
- Tax Cuts & Jobs Act 12/22/17
- Tax Exempt Bonds
- Charitable Contributions
- Lobbying & Political Activity
Topics for Discussion

- Employees vs. Independent Contractors
- Nonresident Aliens (NRAs)
- Payroll tax issues
- Fringe benefits
- Accountable Plan
- Reporting (W-2, 1099 series, 1098-T)

Section 212 of the PATH Act: signed 12/21/15

- Beginning in 2018, there will no longer be an option to report "amounts billed" on the 1098-T.
- Box 1 - the amounts paid for tuition and qualified fees during the calendar year.
  - Most schools do not track payments, they use the credit card posting method
  - Student/Parent credits and taxable scholarships require the calendar year.

1098-T Issues

Why change the form?
- TIGTA found $5.6 billion erroneous credits claimed by 3.6 million taxpayers for 2012
- For most students, payments will equal charges
- There will no longer be a difference between the 1098-T and what students must report on their 1040 tax returns. (Fewer calls, less confusion)
FinCEN 114 FBAR

Foreign Bank Account Report - Treasury
- Aggregate amounts > $10,000
- Owners and Signers
  - Bank Accounts for foreign programs
  - Partnerships, Investments, Joint Ventures
- Faculty signers must file personally to show their authority over University accounts
- Due in Treasury by April 15th automatic extension available until October

§501(c)(3) status

- §101(6) - 1939 Internal Revenue Code
Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
1976 - sports; propaganda; influence legislation (except lobbying)
1987 - candidate

Exempt Purpose

- Organized exclusively for...true of all colleges and universities, by-laws and initial documents.
- Operated exclusively for...
  - §1.501(c)(3)-1(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (<15%)
Non-educational Purposes

- Investing
- Renting
- Fundraising
- UBTI (unrelated business taxable income)
  - Advertising
  - Summer Camps
  - Sales of non-excluded items (what’s this?)
  - Hotels & Conference Centers
  - Research testing

Unrelated Business Income Tax

Operated Exclusively for...

Prior to 1950 tax exempt organizations could make money to fund programs in any fashion. Then along came NYU School of Law with its subsidiary the Mueller Macaroni Company. Mueller Co. v. Commissioner, 14 TC 922; 190 F.2d 120 (1951).

- Income is from a trade or business activity
- The activity is regularly carried on
- The activity is not substantially related to the institution’s tax-exempt purpose or “mission” (i.e. education & research)

Unrelated Business Income Tax

- Exceptions
  - Convenience of students, staff §513(a)(2)
  - Merchandise sales of contributed property
  - Corporate Sponsorships (no substantial return benefit) §513(i)
  - §512(b) Modifications - passive income (interest(1), dividends, royalties(2), rents(3), gains(5))
    (§512(b)(4) except debt-financed assets) – but see §514(c)(9)
  - Research (for the public interest)
Unrelated Business Income Tax

- **Unrelated Debt Financed Income**
  - property held to produce income upon which there is acquisition indebtedness

- Doesn't apply to real estate rental if the organization is a §170(b)(1)(A)(ii) school - §514(c)(9)

---

Unrelated Business Income Tax

- **Advertising** – taxable
  - Incentive to buy, endorsement, inducement
  - Qualitative language, comparisons
  - Price information or other "value" indications

- **Sponsorships** – exempt (§513(i))
  - Substantial Return Benefit (tickets, goods, ads, facilities, services, rights to intangible assets)
  - Acknowledgement (value neutral descriptions)
  - PBS underwriters have special rules

- **Alumni events** (look at marketing school products)

---

Unrelated Business Income Tax

- **Travel Tours** — (unless structured as an educational activity - Rev Rul 70-534)
- **Rental of Facilities** (providing services makes it taxable, on-site landlord, set-up)
- **Fitness Facilities** (open to the public & charging competitive rates)
- **Dual use activities** (conference centers, ice rinks)
- **Personal Property rental** (broadcasting towers, audio/visual equipment, unless incidental ≤ 10% w/ realty)
Unrelated Business Income Tax

- Is it related?
- Does it further your exempt purpose?
- Is it “regularly carried on”?
- Is there a profit motive?

- Hobby losses
- Exploitation

---

Unrelated Business Income Tax

- 990-T reporting
  - Partnerships
  - Foreign transactions
  - Loss carryforwards (20 years) **TCJA
  - Charitable contributions (§172(b)(2) conversion)

- IRS Publication 598 UBIT
  - All regular corporate rules apply

---

Unrelated Business Income Tax

- Allocation of expenses
  - Directly related
  - Reasonable overhead
  - Consistently applied
  - Fair allocation by reasonable method
    - Hours of use
    - Revenue generated (gross up internal discounts)
    - Type of activity
    - Number of pages
Tax Cuts & Jobs Act: signed 12/22/17

- UBTI activities calculated & taxed separately
- NOL carryovers limited to activity
  - and limited to 80% of income
  - Carryforward is indefinite
  - No carryback provisions
- Parking pre-tax plans create UBTI
- Excise tax on compensation over $1 million.
- Excise tax on excessive endowments

Tax Cuts & Jobs Act: signed 12/22/17

- No allowable itemized deductions for employees
  - §132(d) reimbursements still okay
- Moving expenses disallowed (taxable if reimbursed)
- Other
  - Elimination of misc itemized deductions, effect on employees
  - Change in Corporate tax rates (21% vs. 35%)
  - Elimination of Corporate Alternative Minimum Tax
  - Elimination of Personal Exemptions
  - Increase in the Standard Deduction (student impact)

Worker Classification

- Employee vs. Independent Contractor
  
  Originally IRS relied on the twenty common law factors (Rev. Rul. 87-41)
  
  Behavioral Control
  - Instructions (provide agenda, syllabus)
  - Training (conference/seminar)
  - Defined days/hours of work
  
  Financial Control
  - Significant Investment (tools, office, equipment)
  - Expenses (advertising, web site, travel)
  - Opportunity for Profit or Loss (bid the job)
  - Lots of clients, contract is <20% of business
Worker Classification

– Relationship of the Parties
  • Employee Benefits (reimbursements, insurance)
  • Written Contracts
  • Services that are a key aspect of Univ. business
    (Teaching, Research, Coaching)
  • Permanency of the position

• DOL Admin Interpretation 2015-1 (7/15/15)
  Document refers to a 1918 court case that expanded the
  definition of "employer" and looked at whether the work was an
  "integral part" of the business. The IRS embraced the DOL
  interpretation.

Independent Contractors

IRS 20 questions Rev Rul 87-41 – subjective
(SS-8 decision when there's disagreement)

What can you do?
  • Make a Checklist
  • Contractor Agreement
  • Check 1099 file against W-2 file
  • No students!

Employees vs. Contractors

• So what's the issue?
  – Tax Gap – from unreported income.
  Audit alert: The IRS is once again investing resources in this area. The
tax gap has been a driving force. $458 billion/year (2008-10 average).
The total number of 1099s filed and W-2s filed are listed on the Form 990.
  – Unemployment
  – Worker's Compensation
  – Required Tax ID numbers
    • Change in W-9 requirement. Backup withholding
      starts at $25 if no SSN/EIN
Participants & Research Subjects
Creative accounting by virtue of Sections 102 and 274(b).

• Business Gifts are deductible up to $25 per year (§162). A gift means that it is something that is excluded from the gross income of the recipient (§102). A business gift is a payment which helps your business, operations or trade activity, given to someone who facilitates that activity, like a vendor, client, colleague, customer or supplier. We can use the business gift allowance to pay research participants for helping with our scholastic and academic endeavors, with little tracking and no tax effect. Since the gift is excluded from income by the Code, you don't need names, SSNs or NRA status of the recipients, except to ensure that someone other than the researcher gets the money. We get a signature in a receipt book. There is a limit, and an individual can only receive one $25 gift per year from your organization. (Rev Proc 63-4 has additional info)

Medical Research Subjects
• The IRS has determined that medical research subjects are not employees or contractors. Private Letter Ruling (PLR) 9106004
• 1099-MISC, Box 3 – Other Income (that means W-9, name, address) See IMRS 070000417 (Issue Management Resolution System) Not USTB
• Accumulating payments to determine if the $600 threshold is met
• Confidential studies require agreements to limit information

Nonresident Aliens and Tax Treaty Benefits
ANYONE CAN BE PAID
What is a Nonresident?  What’s a Visa?  What’s Visa Status?

- Green Card Test
- Substantial Presence Test

- Residency
  – Immigration
  – Federal Tax
  – State Tax
  – In-State tuition

Employees

Treaty - IRS Form 8233 (Annual renewal; services)

- Nonresident Alien employees from Tax Treaty Countries can claim treaty benefits on Form 8233.
  The completed form is also signed by the school.
- An employee must have a Social Security Number to claim a Treaty Benefit.
- Employer must forward the completed Form 8233 to the IRS within 10 days of signing; IRS can veto.

Software Analysis

Information should be entered into a Foreign National software (Windstar or Glacier)

- A six year history of U.S. presence and any prior Visa status.
- Use a Foreign National Information Form to gather the data you need.
**Income Tax Treaties Relating to Payroll**

<table>
<thead>
<tr>
<th>Country</th>
<th>Maximum Presence Limit</th>
<th>Maximum $ Amount</th>
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<th>Research Student Teaching</th>
<th>Research</th>
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</tbody>
</table>

**Notes:**
1. Canadians must earn more than $10,000 for the entire year to receive any benefit.
3. Treaty excludes researchers, but has full benefit with no $ limits for teachers.
4. Benefits lost if person overstays exemption period.
5. 2 year stay limit or benefits lost retroactively.

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**Contractors**

- Also perform services; also file Form 8233. Can use ITIN or SSN.
- Every person from every country is going to be different.
- Look at Residency not Citizenship.

---

**Income Tax Treaties Relating to Honoraria/Contractor Fees**

<table>
<thead>
<tr>
<th>Country</th>
<th>Maximum Presence Limit</th>
<th>Maximum $ Amount</th>
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<th>Artist/Athlete</th>
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<td>Bangladesh</td>
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<td>Barbados</td>
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<td>Tunisia</td>
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<td>$7,500</td>
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<td>183 days</td>
<td>No Limit</td>
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<td>United Kingdom</td>
<td>No Limit</td>
<td>No Limit</td>
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</tr>
<tr>
<td>United States</td>
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<td>No Limit</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
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<td>Venezuela</td>
<td>No Limit</td>
<td>No Limit</td>
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</tr>
<tr>
<td>Vietnam</td>
<td>No Limit</td>
<td>No Limit</td>
<td>No Limit</td>
<td>No Limit</td>
</tr>
</tbody>
</table>

---

**CBMI**

- Look at Residency not Citizenship.
- Every person from every country is going to be different.
- Look at Residency not Citizenship.
Contractor Honoraria Caveats

1. The exemption is not available at all if the dollar limit is exceeded.
2. Maximum Presence limit and dollar limit computations operate separately. Total compensation can be exempt even if the presence limit is exceeded.
3. Treaty applies only if the services are performed for a resident of Pakistan.
4. Treaty with the Commonwealth of Independent States (former USSR) covers Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
5. Many countries have $ per day limitations as well as annual limitations.

Note: Even though some treaties have "no limit" for the maximum presence, a lecturer or researcher otherwise honorarium recipient (other than J-1) will become a Resident Alien after being in the U.S. more than 183 days, thus no longer eligible to use a treaty. Resident Aliens may not use a treaty for independent personal services.

Travel Payments

Honorarium recipients are Independent Contractors

- Accountable Plan Rules: IRC §62, §162 and §274
- Foreign nationals must provide receipts, business purpose.
- Can have travel expenses paid directly.
- Travel away from home status (per diem applies)
- Are they contractors if you don’t pay them? §1.132-5(r) – get a volunteer agreement

IRS NRA Practice Unit Audit Guide

Detailed Explanation of the Concept (cont’d)

Taxation of Scholarships and Fellowships Given Paid to a Nonresident Alien

Analysis

Resources

- IRC §61(c)
- See Rev. Rul. 70-484
- 2014 Instructions for Form 1040/1040-NR
- 2015 Instructions for Form 1040/1040-NR

CAUTION: A nonresident alien may deduct only those business expenses attributable to the income from the scholarship or Fellowship.

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Scholarships, Fellowships, Awards

- Tuition scholarships are usually excluded under IRC §117(a) or (d). This covers undergraduate tuition and fees and graduate tuition and fees for Teaching and Research Assistants.
- Other scholarships have a 14% withholding rate for F, J, M & Q visa holders (others 30%)
- Treaty benefits on Form W-8BEN (multi year)
- What's a scholarship? ANY payment made to enhance, continue or support the educational process that does not require services rendered. “Cost of Attendance” (Rent, utilities, insurance, tuition, meals, money, travel, etc.)

Income Tax Treaties Relating to Scholarships

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Resident</th>
<th>Aliens too?</th>
<th>Exemption</th>
<th>Limit</th>
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<tr>
<td>Bangladesh (1)</td>
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<td>No</td>
<td>Limit</td>
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<td>China (1)</td>
<td>20(b)</td>
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<td>No</td>
<td>Limit</td>
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<td>$ 9,999</td>
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<td>covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan</td>
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<td></td>
<td></td>
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<tr>
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<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Egypt</td>
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<td>Yes</td>
<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Greece</td>
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<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>India</td>
<td>21(1)</td>
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<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Indonesia</td>
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<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Israel</td>
<td>24(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
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<tr>
<td>Japan (new treaty)</td>
<td><em>None</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Korea, South</td>
<td>21(1)</td>
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<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Latvia</td>
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</tr>
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<td>No</td>
<td>Limit</td>
</tr>
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<td>Limit</td>
</tr>
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<td>Netherlands (3)</td>
<td>22(2)</td>
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<td>No</td>
<td>Limit</td>
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<td>New Zealand</td>
<td>18</td>
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<td>Limit</td>
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<td>Norway</td>
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<td>No</td>
<td>Limit</td>
</tr>
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<td>Pakistan</td>
<td>18(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
</tr>
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<td>Poland</td>
<td>18(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
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<tr>
<td>Portugal</td>
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<td>Limit</td>
</tr>
<tr>
<td>Romania</td>
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<td>Limit</td>
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<tr>
<td>Russia</td>
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<td>Slovakia</td>
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<td>19</td>
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<td>No</td>
<td>Limit</td>
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<tr>
<td>Spain</td>
<td>22(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
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<tr>
<td>Sweden</td>
<td>18</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
</tr>
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<td>Switzerland</td>
<td>19</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
</tr>
<tr>
<td>Thailand</td>
<td>22(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
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<tr>
<td>Trinidad and Tobago</td>
<td>19(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
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<td>Turkey</td>
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<td>No</td>
<td>Limit</td>
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<td>Venezuela</td>
<td>21(1)</td>
<td>Yes</td>
<td>No</td>
<td>Limit</td>
</tr>
</tbody>
</table>

Awards and Prizes

All Awards and prizes are subject to 30% tax withholding (unless a treaty applies). This is true of Cash and Noncash awards.

There is disagreement as to whether an Award can be considered a Scholarship when provided to a student entering a scholastic contest. --- I believe the position is defensible based on the definition of a scholarship- i.e. the funds are used for school. This would decrease the NRA withholding to 14% for F & J visa holders.
### Accountable Plans

**Income is governed under §61 of the Internal Revenue Code**

*Except as provided in this subtitle, gross income means all income, from whatever source derived...*  
...cash or noncash benefit  
– ...fringes, “found money”, gambling, babysitting, raffles, lotteries, barter, scholarships, grants, housing, salary, eBay sales, garage sale proceeds, embezzlement, bank robbery,...

---

### §62 through §291 contain the ‘exceptions’ “provided in this subtitle”

**§62(a) General rule.**

For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

1. Trade and business deductions...  
2. Trade and business deductions of Employees.  
   (A) **Reimbursed expenses of employees.** The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. [...]  

---

### An Accountable Plan is a reimbursement or other expense allowance arrangement

**Reg. § 1.62-2**

- Requires business purpose  
- Requires that the employee substantiate each business expense  
- Requires the employee to give back unsubstantiated advances  
- Must be completed in a “reasonable” time frame (Safe: 30days/60days)  
- §62 limits payments to employees only
§274 and Regulations
Accountable Plan – Reimbursed Expenses

Business Purpose
Ordinary and Necessary to the conduct of the business. Where the primary beneficiary of the expense is the Institution.

Substantiation §274(d)
- travel expenses
- expenses required for employee’s job, including uniforms, books, training, desk, computer, printer, chair, files, cabinets, office, etc.
- entertainment, amusement or recreation expenses
- the cost of business gifts
- expenses relating to any listed property (cars, computers, TVs)
- Estimates for expenditures are not allowed.

Accountable Plan

- Must be a Written Plan
- Every payment (check or pCard) must have a business purpose (§162)
- Every provision of benefit (travel, housing) must have a business purpose (§162)
- Every payee must have an appropriate business relationship to the institution (§1.132-1(b)(2) & §1.132-5(r))
- Cannot be another business that could pay it (Pub 15-B)
- Anything not qualified is compensation (Regs. §1.62-2)

Accountable Plans
Student Travel

- Business Purpose – required by employer
- Accountable Plan substantiation.
- Match travel fund to wages fund
- Did the student get PAID to travel? (20 hr/week max)
- Athletic or Academic Team Travel allowed
  - Represents the school, wears school insignia
- Travel without a business purpose
  - Field trip rules will cover all group expenses
  - Scholarship rules for individual payments (NRA withholding)
Payroll and Employment Tax Issues

• Employment Tax Responsibilities
  Reference: IRS Pub 15 Circular E
  – an employer-employee relationship (i.e. not independent contractors)
  – the payment of wages (settlements, N.Dakota case)
• The payment must be made with respect to employment (student stipends, §3121, §117(c))

Payroll and Employment Tax Issues

• Payment and Reporting Obligations
  – Report wages and tax paid on Form 941- (Employers Quarterly Federal Tax Return – does not include wages of non resident aliens which are treaty exempt.)
  – Use 941X for adjustments and corrections
• Electronically remit payments withheld
  – Payments required next day

Payroll and Employment Tax Issues

• FICA Exclusions
  – Services performed by ministers of churches in the exercise of their ministry §3121(b)(8)
  – Student FICA exception §3121(b)(10)
    While regularly attending classes (short breaks)
  – Certain nonresident aliens §3121(b)(19)
    Individuals in the US on F, J, M, or Q visas
IRS Compensation Issues

• Additional Compensation
  – Spousal or Family Travel
  – Club memberships
  – High salaries (now excise tax on > $1 million)
  – Personal use of vehicles
  – Provided housing
  – Graduate tuition waivers

Fringe Benefits

§132 Enacted in 1984 (DEFRA '84)
“The Deficit Reduction Act” included the term “fringe benefit”

Any property or service that an employee receives from an employer, in lieu of or in addition to regular taxable wages, is a fringe benefit that may be subject to taxation.

A statutory exclusion must exist in order for the benefit to be tax free... Remember §61

Fringe Benefits

Employers Tax Guide to Fringe Benefits – Pub 15B

• 3 choices
  – Wages (everything taxable)
  – Reimbursement
  – Tax free fringe benefit

• Reimbursement recordkeeping requirements
  ➢ Accountable Plan for reimbursement
    ➢ no records = taxable income (affidavit)
Tax Free Fringe Benefits

- Examples of benefits that may be entirely or partially excluded from the taxable income of an employee:
  - §79 group-term or other life insurance ($50,000 limit)
  - §104-106 certain health insurance & payments
  - §117 qualified tuition reduction (undergrad)
  - §119 employer provided meals & lodging
  - §125 cafeteria plans
  - §127 education assistance ($5,250 max)
  - §129 dependent care assistance

Fringe Benefits

- More examples of potentially tax free benefits:
  - §132(b) no additional cost service
  - §132(c) qualified employee discount
  - §132(d) working condition fringe benefit
  - §132(e) de minimis fringe (administratively impractical)
  - §132(f) qualified transportation (parking, bikes)
  - §132(g) qualified moving expense reimbursement
  - §139A Disaster relief payments
  - §139C COBRA premium assistance

Fringe Benefits

- Different people qualify as "employees" for different benefits:
  - Retirees, surviving spouses (§132(b) & (c) §105)
  - Family, dependents (§132(b) & (c) §117)
  - Parents for certain air travel (§132(b) & (c))
  - Some strictly employees (§132(d),(f) & (g) §127)
  - Anybody (only one §) §132(e) (de minimis)

Who can get what is defined in Regs. §1.132-1
Form 990

- Purpose
  - Transparency (can follow the money)
  - Compliance (questions create awareness)
  - Internal Consistency (like items shown together)

- Core Form: 990, 990-EZ, 990-N
- 16 Schedules
- Lots of Questions

Inurement to Private Benefit

- 2001 Intermediate Sanctions §4958
  - enacted to provide a less drastic deterrent to the misuses of a charity than revocation of its exempt status. Enacted to provide a means of punishing tax exempts without revoking status

Intermediate Sanctions

- Fines & Penalties -punishment for inurement
- An excess benefit transaction
  - is any transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of any "disqualified person"
    - Substantial influence (O,D,T,K,HC)
    - Family members
    - Entities more than 35% owned by ODTKH
    - Facts and circumstances test
Governance

- Mission & Activities
- Governing Body
  - Voting and nonvoting members
  - Independent members
  - Review of 990 before filing (everything)
  - Compensation committee
  - Policies

Governance policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Schedule/Line/Part</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict of Interest Policy</td>
<td>Part VI, Lines 12a &amp; b</td>
<td>Checkbox and procedure description</td>
</tr>
<tr>
<td>Whistleblower Policy</td>
<td>Part VI, Line 13</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Document Retention &amp; Destruction Policy</td>
<td>Part VI, Line 14</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Joint Venture Policy</td>
<td>Part VI, Line 16a &amp; b</td>
<td>Checkbox and procedure description</td>
</tr>
<tr>
<td>Public Disclosure of Documents</td>
<td>Part VI, Section C, Lines 17, 18 &amp; 19</td>
<td>Checkboxes and procedure descriptions</td>
</tr>
<tr>
<td>Specific Fringe Benefits in written policy</td>
<td>Schedule J, Line 1b</td>
<td>Checkboxes, describe if any &quot;no&quot; answers</td>
</tr>
<tr>
<td>Gift Acceptance Policy</td>
<td>Schedule M, Line 31</td>
<td>Checkbox</td>
</tr>
<tr>
<td>Charity Care Policy (H)</td>
<td>Schedule H, Line 1a, b</td>
<td>Complete disclosure</td>
</tr>
<tr>
<td>Debt Collection Policy (H)</td>
<td>Schedule H, Pt III Ln8a</td>
<td>Checkbox</td>
</tr>
</tbody>
</table>

Questions/Schedules

- Foreign grants and expenditures
- Contribution information
- Professional Fundraising (State Solicitation)
- Hospital information
- Scholarships and Grants
- Compensation and Benefits
- Tax Exempt Bonds
Schedule J - Compensation

- Officers, Directors, Trustees, Key Employees and Highly Compensated Employees (ODTKH)
  - Fringe Benefits checkboxes
    - First class travel, charter flights, companion travel
    - Club dues, initiation fees, tax gross-up
    - Business use of personal residence (home office)
    - Discretionary spending account, personal services
  - Written Policy for these benefits?
  - Substantiation required for reimbursements?
  - Severance pay, non-qualified deferred comp.

Foreign Transactions

- Payments to a foreign corporation (926)
- Payments to a foreign partnership (8865)
- Reporting a disregarded entity in a foreign country (8858)
- Reporting a controlled entity in a foreign country (5471)
- QEF elections (8621)

Tax Exempt Bonds

- Arbitrage — the act of making money w/ money. Borrow at a low rate at the taxpayer’s expense. With a few exceptions money must be rebated to the government.

- Private Use Issues
  - 501(c)(3) threshold - §145. 5% of net proceeds for unrelated use including issuance costs
  - Governmental entity threshold - 10% unrelated use
  - Issuance costs - capped at 2% counts as private use
    - Refunded bonds issuance costs become good use!
Tax Exempt Bonds

- Private Use Issues (cont.)
  - Research & Management agreements
  - Rental income
  - Naming rights
- Record retention requirements — for as long as the bonds are outstanding + three yrs after the final redemption
- Audit alert: TEB division of the IRS has increased staff by 20%. The Director states this will increase significantly the number of audits. The twenty page TEB work plan can be found on the IRS website (www.irs.gov)

Charitable Contributions

(getting gifts)

- Elements of a Charitable Donation
  - Charitable intent: detached, disinterested generosity (Comm vs. Duberstein 363 US 278 (1960))
  - No substantial benefit to the donor, complete, voluntary and unconditional
  - Complete delivery of the gift (full control)
  - Acceptance by the donee
  - Quid pro quo gifts - part gift and part payment for goods or services

Charitable Contributions

- Types of Contributions
  - Cash – check, credit card, promissory note
  - Non-cash – on 990, Schedule M
  - Services – not deductible by donor, not included in 990. Eliminated if they are in the Financial Statements
    => NACUBO FAR Manual (¶403.62)
Charitable Contributions

- Receipts
  - Contemporaneous written acknowledgement
  - Form 8283 for > $5,000 (including aggregated "like items")
  - Student groups can use Univ. process, but not separate entities like fraternities or sororities.

Lobbying and Political Activity

- Restrictions on Lobbying Activities
- Lobbying Disclosure Act- 1995
  Schedule C reporting, form 990
- Prohibition against "political activity"

Political Activity

- Permissible Political Activities
  - Candidate debates and forums
    - must be equal opportunity venue
  - Student newspaper - no endorsements
    - may publish editorials Rev. Rul. 72-513
  - Use of institutional facilities
    - no endorsement and no fundraising
  - Voter education, voter registration
Questions
Comments
Discussion

Resources

• NACUBO’s Taxlist
  - The Taxlist is the most popular question and answer venue on University Taxation. Just reading the postings is an education.
  - www.nacubo.org, click on My NACUBO, then ‘eGroups’ under the Membership box. NACUBO has lists for International issues, Human Resources and Eduaccountants for tax, audit and accounting issues.

• ALIEN’s listserv (since April 1994)
  - Write to LISTSERV@LISTSERV.UTK.EDU and, in the text of your message (not the subject line), write: SUBSCRIBE ALIENS-L
  - http://listserv.utk.edu/archives/aliens-l.html

Resources (cont.)

• NRA assistance, analysis & tax preparation
  - Glacier (Arctic International)
    - http://www.arcticintl.com/
  - Thompson Reuters Tax Navigator (nee Windstar)

• IRS Tax e-mail lists (e-News for Exempt Organizations, TE Bonds, Payroll, Withholding Agent News, etc.)
Resources (cont.)

Taxpayer Advocate Service
Internal Revenue Service
Telephone information by State & City
https://www.irs.gov/taxpayer-advocate

IRS regular line 800-829-1040
IRS business line 800-829-4933
IRS Exempt Org Office 877-829-5500
IRS Payroll Office 800-829-0115

Resources (cont.)

- Guide to Federal Tax Issues for Colleges and Universities
  - http://www.nacubo.org/Business_and_Policy_Areas/Tax.html
- The Tax Law of Colleges and Universities, Bertrand M. Harding, Jr.
  - http://collegeuniversitytaxlaw.com/
- A Federal Income tax Guide for College and University Presidents
  - American Council on Education (http://www.acenet.edu)
- Volume One - Nonresident Alien Tax Compliance:
  - https://www.arcticintl.com/booksintro.asp

Resources (cont.)

- Income Tax Treaties (A-Z)
- Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
- Pub 519, U.S. Tax Guide for Aliens
- Pub 901, U.S. Tax Treaties

  - Internal Revenue Code
  - Regulations
  - Revenue Rulings, Procedures, PLR
Resources (cont.)

Tax Workshops and Presentations

• NACUBO Tax Forum, Sheraton Atlanta, Atlanta, GA - Oct 27-29, 2019

• Higher Ed Tax Institute, University of Texas, Austin, TX - June 2020
  https://utcle.org/conferences

Nonresident Alien Tax Compliance

• Arctic International, Las Vegas - Sept 23-26, 2019
  (https://www.arcticintl.com/arctraining_overview.asp)

• NC State Univ. Foreign Nat'l Tax & Immigration Conf.
  (expected again next year)

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Resources (cont.)

Tax Workshops and Presentations, IRS

• IRS Tax Forums
  – http://www.irstaxforumsonline.com/

• IRS Tax Practitioner Webinars

• IRS Webinars for Tax Exempt & Government Entities

---

Resources (cont.)

Tax Exempt Bond Compliance

• Treasury Institute for Higher Ed
  Hilton Orlando Lake Buena Vista, Florida
  December 9-11, 2019

• BLX Post-Issuance Compliance Workshop
  – Nov 14-15, 2019 The LINE Hotel, Austin, TX
  https://www.blxgroup.com/events/blx-anniversary-7th-annual-post-issuance-compliance-workshop/