



RUTGERS POLICY

Section: 40.2.5

Section Title: Fiscal Management

Policy Name: Policies and Procedures for Payment for Intellectual Property, Honoraria or other Miscellaneous Services, and Payments to Nonresident Aliens

Formerly Book: 6.1.4

Approval Authority: Senior Vice President for Finance and Treasurer

Responsible Executive: Senior Vice President for Finance and Treasurer

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Errors or changes? Contact: hkerr@uco.rutgers.edu

1. **Policy Statement**
Policy and procedures governing payments to inventors who are: United States citizens, resident aliens and nonresident aliens for intellectual property, honoraria or other miscellaneous services.
2. **Reason for Policy**
To ensure compliance with University's Patent Policy.
3. **Who Should Read This Policy**
All University personnel including, but not limited to, members of the faculty and staff holding appointments at or employed by the University, persons holding any form of research appointment, visiting professors and visiting scientists with or without salary, all students of the University (including postdoctoral appointees), all 100% coterminous faculty, and all volunteer (unpaid) faculty, volunteer non-faculty staff and interns.
4. **Related Documents**
None
5. **Contacts**
University Controller
Associate Controller - Division of University Accounting
Assistant Controller - Division of Grant and Contract Accounting

6. The Policy

40.2.5 POLICIES AND PROCEDURES FOR PAYMENT FOR INTELLECTUAL PROPERTY, HONORARIA OR OTHER MISCELLANEOUS SERVICES, AND PAYMENTS TO NONRESIDENT ALIENS

A. PAYMENT FOR INTELLECTUAL PROPERTY, HONORARIA AND OTHER MISCELLANEOUS ACTIVITIES

1. Patent Assignments.

The University from time to time makes payments to inventors for patent rights assigned to the University under the University's Patent Policy (Section 40.2.5). Payments made to individuals under this policy should be processed through RIAS using the Category **Check Request** for United States citizens and resident aliens and the Category **Check Request: Nonresident Alien** for payment to nonresident aliens. Payment requests for United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 A.5 Payment Procedures below using natural account 5110 - Patent Assignments. Payment requests for nonresident aliens should be prepared in accordance with Section 40.2.5 B below.

2. Copyright Royalties.

The University from time to time makes royalty payments to artists and authors for the right to publish their creative works. Royalty payments should be processed through RIAS selecting Category **Check Request** for United States citizens and resident aliens, and Category **Check Request: Nonresident Alien** for nonresident aliens. Payment requests for United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 A.5 Payment Procedures below using natural account 31300 - Royalties. Payment requests for nonresident aliens should be prepared in accordance with Section 40.2.5 B below.

3. Honoraria.

- a. An honorarium is defined as a payment for personal service on which custom or propriety forbids a price to be set. Typically, honoraria are paid to guest lecturers or experts for brief appearances at the University. Service arrangements providing for more extensive involvement on the part of an expert, such as a program review requiring the preparation of a written evaluation, are to be treated as professional service providers.

Honorarium payments made to University employees, if and when appropriate, must be processed through the University's payroll system. Payment requests for honoraria paid to United States citizens and resident aliens should be prepared in accordance with section B Payment Procedures below using natural account 31200 - Honoraria. Payment requests for honoraria paid to nonresident aliens should be prepared in accordance with Section 40.2.5 B below.

- b. If an honorarium payment is being made to a guest lecturer or expert for a brief visit, the individual's honorarium fee may be treated separately from his/her expense reimbursement; it is not necessary to combine both of these components into the honorarium fee. If the honorarium is separate from the travel reimbursement, the honorarium payment must be made in accordance with the preceding paragraph, and the travel reimbursement must be in accordance with the University's travel policy (Section 40.4.1).

- c. If the recipient of the honorarium prefers not to separately account for and report (on a Travel and Business Expense Report) traveling expenses, this amount, or an estimate thereof, may be included in a single honorarium payment.

4. Miscellaneous Activities.

Other miscellaneous activities include: human subject fees, participant support costs, prizes and awards, and performance fees paid to non-employees. Payments for miscellaneous activities should be processed in accordance with Payment Procedures below. Payment requests for miscellaneous activities paid to nonresident aliens should be prepared in accordance with Section 40.2.5 B below. Payment requests for miscellaneous activities paid to United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 A.5 Payment Procedures below using the following natural accounts:

- a. 31400 - Human Subjects. Fees paid to persons participating in surveys, experiments and the like. So as not to impede confidential scientific research, social security numbers will not be required on the payment of individual human subject fees under \$600.
- b. 33400 - Prizes and Awards. Payments for prizes or awards paid to students and non-employees. Prizes and awards paid to employees are generally considered taxable wages and must be paid through the University's payroll system.
- c. 36XX - Participant Support Costs. Payments for items such as stipends or subsistence allowances, travel and registration fees paid to participants or trainees (but not employees) in connection with meetings, conferences, symposia or training projects.

36100 – Participant Support – Travel
36200 – Participant Support – Books
36300 – Participant Support – Stipend
36400 – Participant Support – Tuition & Fees
36500 – Participant Support – Housing
36600 – Participant Support –
36700 – Product Support - Other
- d. 31900 - Performance Fees. Fees paid to artists, entertainers and athletes for performances sponsored by the University. Performance fees paid to University employees, if and when appropriate, must be processed through the University's payroll system.

5. Payment Procedures

- a. As provided for in Sections 40.2.5 A above, payment is processed through RIAS by creating a Requisition. You must select the appropriate category from the following four options.
 - If you are paying a U.S. citizens or resident alien for one of the following types of payment Patent Assignment, copyright royalty, honoraria, miscellaneous activity, the correct category is **Check Request**.

- If you are paying a nonresident alien for Patent Assignment, copyright royalty, honoraria, miscellaneous activity, the correct category is ***Check Request: Nonresident Alien***.

In order to properly document the nature of the payment and capture the information required by the IRS on Form 1099-MISC or 1042-S, a completed W-9 or W-8BEN form must accompany the “New Supplier Request” form. Once the supplier is entered into RIAS, a Requisition can be created. Information to be included in the Requisition:

1. a complete description of the nature of the payment and the period covered by the payment. If and when appropriate, attach supporting documentation (i.e., contracts, vendor invoices, etc.) to the payment request;
 2. the account number and proper natural account to be charged
- b. Upon completion, submit the Requisition to your approver. Once approved, the check request is automatically directed to Disbursement Control for processing.

B. PROCEDURES SPECIFIC TO PAYMENTS TO NONRESIDENT ALIENS

Introduction: Nonresident aliens must pay United States income tax on the income they receive for patent assignments, royalties and other independent personal services made, earned or performed in the United States. Unless a withholding exemption is claimed as outlined below, this income is subject to a 30% tax which the University is required to withhold upon payment. In addition, the University is required to report this income and the amount of income tax withheld to the IRS at the end of each calendar year on Form 1042-S. Accordingly, in order to capture the information necessary to satisfy these requirements the correct RIAS category must be selected and the appropriate natural account charged for making payments to nonresident aliens for patent assignments, royalties and or other independent personal services made, earned or performed in the United States.

In certain cases, payments may have to be made to a nonresident alien for services performed outside the United States. In these instances, the payments are not subject to United States income tax and do not have to be reported to the IRS. These payments should be processed using the correct RIAS category using natural account 37800 – NR Payments Outside United States. A social security number is not required, but the check request or service request form must clearly indicate in what country the work was performed.

1. Payment Procedures

To process payments made to nonresident aliens for a patent assignments, non-service scholarship/fellowship grant, royalties and other independent personal services made, earned or performed in the United States, select one of the two categories listed below in RIAS.

- The “***Check Request: Nonresident Alien***” category must be selected when processing a request in RIAS for a payment to a Nonresident Alien. The dates, purpose and location of the event must be stated in the description of the Check Request.

- The “**Service: Nonresident Alien**” category must be selected when processing a contract for service for a Nonresident Alien (example of payment – professional service provider).

The form Foreign Visitor Information Sheet should be completed for each foreign visitor in the U.S. receiving income (compensation, participant support, award/prize, (not necessary for patent assignments & royalty payment).

A statutory 30% tax withholding rule for payments made to nonresident aliens will not apply if payment is exempt under an income tax treaty entered into between the United States and the recipient’s country of tax residence and the appropriate tax treaty exemption forms are properly completed.

The social security number or the individual taxpayer identification number (ITIN) of the foreign person receiving the payment will be required if the nonresident alien wishes to claim a withholding exemption.

To avoid tax withholding on compensation paid to a nonresident independent contractor payment based on a nonresident alien’s eligibility for a tax treaty exemption, complete IRS Form 8233 – Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual.

To avoid tax withholding from a non-service scholarship/fellowship grant or passive income (e.g. royalty) payment based on a nonresident alien’s eligibility for a tax treaty exemption, complete IRS Form W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.

Once the **Check Request** is submitted and approved, it will automatically be forwarded to the University Tax Department for calculation of any withholding before it is processed by Disbursement Control.

If you are processing a **Service Request** (i.e.: service provided/performed in the U.S. for which a PO is generated), a copy of the PO should be forward to the Tax Department for review and calculation of withholding.

2. Natural Accounts for Nonresident Aliens

In order to facilitate reporting to the IRS on Form 1042S, the natural accounts used for classifying payments for patent assignments, royalties and consulting or other independent personal services to nonresident aliens are distinct from those used for United States citizens. The natural accounts for nonresident aliens are as follows:

- a) 37200 – Professional Services (NRA). Commissions and fees for services provided by independent personal service providers.
- b) 37300 – Honoraria (NRA). Payments to outside experts such as professors, authors, etc. for guest lectures, appearances or other brief educational services provided by the University.
- c) 37400 – Patent Assignments & Royalties (NRA). Payment to persons who are entitled to distributions of income earned on intellectual property owned or assigned to the University under patents, copyrights and trademarks.
- d) 37600 – Participant Support Costs (NRA). Payments for items such as stipends or subsistence allowances, travel and registration fees paid to participants or trainees (but not employees) in connection with meetings, conferences, symposia or training projects.

- e) 37700 – Performance Fees (NRA). Fees paid to external artists, entertainers and athletes for performances sponsored by the University.
- f) 37800 – NR Payments outside U.S. Payments to a foreign person or entity for service performed outside the United States
- g) 37900 – Prizes and Awards (NRA). Payments for prizes and awards paid to student and non-employees.

3. Withholding Exemptions

Nonresident aliens may be able to claim an exemption from the income tax withholding if the individual is a resident of a country that has a tax treaty with the United States, and that treaty provides for an exemption of income tax on the type of income being paid.

- For compensation paid by Rutgers for service rendered in the United States by a nonresident alien, **Form 8233 – Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual** can be completed. A social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) is required for this exemption.
- For non-service scholarship/fellowship grant or passive income (e.g. Patent Assignments & royalty payments), complete **Form W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding**. A social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) is required for this exemption.
- The ITIN is intended for short term, nonresident alien visitors who do not have social security numbers. The ITIN can be obtained by filing Form W-7 “Application for IRS individual Taxpayer Identification Number” with the IRS, along with an original birth certificate, driver’s license, passport or immigration document. The exemption forms and the W-7 form can be obtained from an IRS office or from the University Tax Department located in ASB, Room 309, Busch Campus. If provided with an exemption form by the individual, it is the responsibility of the department to attach the form to the payment request and to forward originals to the Tax Department. In the absence of such form, tax will be withheld at the 30% rate. Individuals with questions regarding their tax status should seek professional tax advice.

In summary, the University’s policy regarding the withholding of income taxes on payments made to nonresident aliens for royalties earned, non-service scholarship/fellowship grants, and independent personal services performed in the United States are as follows:

- a. Payment request with no attachments: Tax of 30% will be withheld from the income after giving effect to one exemption (current IRS rate in effect) per day. A social security number or individual taxpayer identification number is required, unless one has not been assigned to the individual.
- b. Payment request with IRS Form W-8BEN: No tax will be withheld where the individual qualifies for exemption under an existing tax treaty. A social security number or individual taxpayer identification number is required for this exemption.

- c. Payment request with IRS Form 8233: No tax will be withheld where the individual qualifies for exemption under an existing tax treaty. A social security number or individual taxpayer identification number is required for this exemption.