

Policy number #0802-07

Payments to Foreign Entities

Date Issued: 02/01/2022

Date Revised: 06/02/2023

Authority: Minnesota Management and Budget,
Supplier Payments Unit

OVERVIEW

Purpose Statement

Objective: To provide state agencies with procedures to comply with tax laws as they apply to nonresident alien supplier payments.

Scope: This policy applies to all payments made by the State of Minnesota to suppliers who are nonresident aliens for tax purposes. Minnesota State Colleges and Universities is excluded from the policy.

Background: In general, the IRS requires 30% federal income tax withholding on compensation paid to a foreign national* for independent personal services and on royalty payments (ex: purchases of software licenses or other copyrights) made to a foreign entity, unless the amounts are either exempt under the terms of a tax treaty, subject to a lower or reduced tax rate under the treaty or exempt from tax under the Internal Revenue Code. Generally, if the payment is to a foreign entity and is [1099-MISC](#) reportable, it will be subject to nonresident alien taxation and reporting.

*Note: A foreign national includes nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate and any other person who is not a U.S. citizen.

GENERAL STANDARDS AND EXPECTATIONS

Policy for Withholding of Tax on Payments to Nonresident Alien Suppliers

Independent personal services are services performed as an independent contractor in the U.S. by a self-employed nonresident alien rather than an employee. Compensation including honoraria, for professional or contractor services includes (but is not limited to) the following:

- Payments for contract labor
- Payments for professional services, including fees paid to attorneys, physicians, and accountants
- Consulting fees
- Honoraria paid to visiting professors, teachers, researchers, scientists, and speakers
- Payments for performances by public entertainers or artists
- Business expense reimbursements

The agency issuing these types of compensation payments must follow this policy and related procedure to properly report under Internal Revenue Code Section 1461. Noncompliance can result in the agency being responsible for the payment of required federal tax withholding and penalties. Additionally, noncompliance can result in negative consequences to the foreign national.

In addition to independent personal services, foreign students, individuals and entities may be subject to nonresident alien tax reporting and withholding for purchases of software and other royalties, for legal settlements, for prizes & awards and for scholarship awards.

When setting up a contract and creating encumbrances with a foreign supplier, agencies must request provision of the appropriate IRS W-8 series form:

- [W-8BEN](#) - Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)
- [W-8BEN-E](#) - Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
- [W-8ECI](#) - Certificate of Foreign Person's Claim That Income Is Effectively Connected with the Conduct of a Trade or Business in the United States
- [W-8EXP](#) - Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting

Agencies must complete a [Foreign Supplier Payment Intake form](#) and submit this, along with the W-8 form, to W9-1099.MMB@state.mn.us.

RELATED POLICIES, PROCEDURES, AND RESOURCES

- Form 0802-07.1f Foreign Supplier Payment Intake form (<https://mn.gov/mmb-stat/documents/accounting/forms/0802-07.1f-foreign-supplier-payment-intake-form.pdf>)
- 0802-07-01 Payments to Foreign Entities Procedure (<https://mn.gov/mmb-stat/documents/accounting/fin-policies/chapter-8/0802-07-01-payments-to-foreign-entities-procedure.pdf>)