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## **TAX CONSIDERATIONS WORKING WITH FOREIGN ARTISTS AND PERFORMERS**

Tax withholding for foreign performers is a complex and sensitive issue. Departments who wish to contract with foreign performers should address the tax issues when entering into any contract for services with foreign performers.

### **INTERNAL REVENUE SERVICE**

Taxation of foreign performers is a high profile issue for the Internal Revenue Service. The tax laws are not new; however, they have recently been escalated to the highest level of review by the Internal Revenue Service.

The general rule is that any performer working and earning compensation in the U.S. is required to pay U.S. income tax on those earnings. The IRS requires anyone making a payment to a foreign artist (a “withholding agent”) to withhold 30% on those payments.

It is important to note that if the performer fails to file a tax return and the university does not withhold tax, the IRS will hold the university liable for the amount that should have been withheld (including penalties and interest).

The IRS offers foreign performers assistance to reduce withholding through the Central Withholding Agreement (CWA) process.

As a general rule, the university will withhold 30% tax on payments to foreign performers (paid directly or through a third party agent) unless a copy of an approved CWA for each performer is presented prior to payment. The Boise State performance venue and date must be included in the schedule of performances authorized under the CWA.

### **AMOUNT SUBJECT TO WITHHOLDING**

The 30% tax withholding applies to the gross income earned by the performer. Gross income includes all fees, merchandise sales, agent commissions, per diem payments and expense reimbursements (unless the expense reimbursements meet Boise State travel policy requirements).

### **PAYMENTS TO AGENTS**

If the university makes a payment to a manager or agent representing a foreign performer, the 30% tax withholding applies to those payments as well. The IRS has determined that the performers are the beneficial owners of the income, regardless of who receives payment. Agent commissions are included in the tax withholding calculation, even if paid separately.

The university must obtain the appropriate documentation from the performers (form 8233 or appropriate W-8 form) even when the payment is made to a third party.

### **TAX WITHHOLDING EXEMPTIONS**

The IRS rarely allows tax treaty exemptions from withholding on payments to foreign performers. Tax treaty exemptions will not be accepted from performers who do not have a US taxpayer ID (SSN or ITIN). Boise State will not be able to accept tax treaty exemptions if the specific tax treaty article contains an income cap for payments to artists and entertainers. Any other potential exemption from tax withholding will require review of the specific situation. Most treaty exemptions must be approved in advance by the IRS. Exemption documents require 30 days processing time.

## **TAX REPORTING**

The University is required to report compensation to foreign performers to the IRS annually on form 1042-S. The performers will also receive copies of the form for use in completing their personal tax return.

## **IMPORTANT NOTE**

*The appropriate tax treatment for any particular foreign performer is extremely fact-specific. Each performer's tax residency status, country of residence, and status as an individual or business must be reviewed to determine the correct tax withholding and reporting requirements.*

## **RESOURCES**

Central Withholding Agreements - <http://www.irs.gov/Individuals/International-Taxpayers/Central-Withholding-Agreements>

Artists from Abroad - <http://www.artistsfromabroad.org/tax-requirements/foreign-artist-taxation/>

Publication 515 Withholding of Tax on Nonresident Aliens and Foreign Entities - <http://www.irs.gov/publications/p515/index.html>