

## MEMORANDUM

TO: Personnel Specialist

FROM: Julie K. Henton  
Associate Director

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DATE: November 13, 2009

RE: 2010 Tax Treaty Benefit Renewal for Nonresident Aliens  
Annual Determination of Tax Status for Nonresidents

### Tax Treaty Benefit Renewal

Enclosed is a listing, if applicable, of Nonresident Alien employees in your department who claimed tax treaty benefits in 2009 and may be eligible for tax treaty benefits for 2010. Federal law requires that a new Form 8233 “Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual” and Appendix A or B be completed each year in order to receive tax treaty benefits. Please distribute the enclosed individual packets to these employees. These packets include a Form 8233 and an Appendix A or B for calendar year 2010. These forms must be returned to our office no later than **December 4, 2009** in order to have treaty benefits applied for the paycheck issued January 8, 2010.

The Nonresident Alien Employment Tax Guideline and Tax Treaty Summary document can be found on the HR website at <http://www.k-state.edu/hr/ped/nrtax.htm>. The guideline contains general information regarding what and how taxes are withheld on nonresident alien employees. The tax treaty summary is a tool to help you identify countries with treaty benefits that cover professors/teachers and/or students.

To determine tax treaty eligibility, the country of residence and the primary purpose an individual entered the United States must be known. Knowing the primary purpose an individual entered the United States will help you determine the correct Appendix A for students or Appendix B for professors/teachers to use. The Appendix A and B along with the treaty summary are also available on our website at <http://www.k-state.edu/hr/ped/treatysum.htm>.

### Annual Determination of Tax Status for Nonresidents

Under Chapter 3 of the Internal Revenue Code (sections 1441-1464) regulations require that a determination be made annually as to whether or not a nonresident individual will be a “U.S. resident” or a “nonresident” for tax purposes. Our office will perform the substantial presence test (SPT) for 2010 to make this determination and will notify individuals by letter if a tax status

change must be made. To meet the SPT an individual must be physically present in the United States at least:

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

You do not count any day an individual was present in the United States as an *exempt individual*. An exempt individual may be anyone in the following categories:

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

As a reminder, please have nonresident new hires complete the Foreign National Tax Information Form (PER-15). The information requested on this form is required in order to comply with applicable tax provisions of the Internal Revenue Code and is available at <http://www.ksu.edu/hr/forms>.

Enclosures