



## ALBERT EINSTEIN COLLEGE OF MEDICINE, INC.

### Memorandum

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Date: November 1, 2015

From: Jack D. Zencheck, C.P.M., Associate Vice President  
John Scarfone, Director of Tax

Subject: Accounts Payable Tax Compliance Procedures

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To ensure Einstein's compliance with IRS tax reporting and withholding requirements, appropriate tax related documentation must be gathered for **all non-employee** payments or reimbursements before payment is related by Einstein's Accounts Payable department. Compliance with these IRS rules has taken on greater importance since the IRS has identified vendor payments, especially payments to non-U.S. persons, as an area of high risk for noncompliance and potential audit. In addition, failure to comply with the data gathering requirements may also impact our relationships with our vendors, because, if the proper documentation is not received prior to payment, Einstein may be required to withhold a percentage of the amount otherwise due to a vendor. For a detailed explanation of these tax compliance requirements or to schedule a departmental training, please contact John Scarfone, Director of Taxation at (718) 430-2546 or by email: [john.scarfone@einstein.yu.edu](mailto:john.scarfone@einstein.yu.edu).

#### **I. Payments to U.S. Persons or Companies other than Einstein Employees**

Einstein is required for tax purposes to have a Form W-9 on file to certify that the recipient is a U.S. person with a valid social security or taxpayer identification number, and the recipient's tax classification. If a Form W-9 is not on file prior to payment, Einstein may be required to withhold 28% of the payment as "backup withholding" and remit the withheld amount to the IRS. For payments to individuals acting as independent contractors, Einstein must also confirm that the vendor does not meet the definition of an employee for tax purposes.

A. Individual Vendors Receiving Payment for Services – Einstein is required to collect a Form W-9 from the vendor and the Department must fill out the AECOM, Inc. Independent Contractor Pre-Hire Worksheet to confirm that the individual qualifies for independent contractor status. The Independent Contractor Worksheet must be reviewed and approved by the AECOM, Inc. Director of Tax.

B. Entity Vendors Receiving Payments for Services – Einstein is required to collect a Form W-9 from the vendor. If the services will be performed by a current or former AECOM, Inc. or Affiliate employee or if the services are the same or similar to those previously performed by a AECOM, Inc. or Affiliate employee, the AECOM, Inc. Independent Contractor Pre-Hire Worksheet must be completed by the Department and reviewed and approved by the AECOM, Inc. Director of Tax.

C. Individuals or Entity Vendors Receiving a Reimbursement Payment – Einstein is required to collect a Form W-9 from the vendor.

D. Payments to Students – Einstein is required to collect a Form W-9S or Form W-9 from the student. If a Department is unable to or it is impractical to acquire the W-9s from the students, it is acceptable to receive a confirmation from the Einstein Student Finance Department as to the student's social security number and citizenship/residency.

For “stipend” or fellowship payments, the AECOM, Inc. Stipend Payment Characterization Checklist must be completed by the Department to confirm that the payment is not for services, which would require the student to be treated as employee (similar to work-study payments). If multiple students are being paid as part of one program, only one checklist is required for the program. For aggregate stipend or fellowship payments in excess of \$2,000, the Stipend Payment Characterization Checklist must be reviewed and approved by the AECOM, Inc. Director of Tax.

## **II. Non-Employee Payments to Foreign Individuals or Entities**

Special tax reporting and withholding rules apply to payments to foreign individual or entity vendors. Einstein is generally required to withhold 30% from payments made to foreign vendors for services provided in the United States unless exempted under a U.S. income tax treaty with the foreign person's country of residence. Einstein must collect the required documentation supporting any such exemption prior to any payment to the foreign person or entity. Einstein is not required to withhold or do any reporting to the IRS for payments to foreign vendors performing services outside of the U.S. or for the purchase of goods. However, a Form W-8BEN is still required to certify the foreign status of the vendor and documentation AECOM, Inc. Foreign Source Income Certification Form is required to support that the service or activity took place outside of the U.S. Generally, the vendor will be required to provide Einstein with a Form W-8BEN. However, in certain circumstances, a Form W-8EXP (when the vendor is a no-for-profit entity) or a W-8ECI (when the vendor is a foreign entity that has an operating business in the U.S. and files U.S. tax returns) will be appropriate.

A. Foreign Vendors Performing Services Outside of the U.S. – Einstein is required to collect a Form W-8BEN certifying the foreign status of the vendor along with proof of the foreign

location of the services; the AECOM, Inc. Foreign Source Income Certification Form. If it is not practical to complete the Certification Form, a written notation by the vendor on the Form W-8BEN or in a separate written communication (e.g., email) is acceptable.

B. Foreign Entity Vendors Performing Services in the U.S. – Einstein is required to collect a Form W-8BEN to document the vendor's foreign status and possible exemption from or reduced U.S. income tax withholding. Part II of the W-8BEN, including a U.S. EIN or International Taxpayer Identification Number (ITIN), must be completed to claim the exemption. A foreign person may apply for an ITIN using a Form W-7. Since it may take a long period of time for the IRS to process a Form W-7, the Department may accept the Form W-7 application from the foreign vendor as sufficient documentation. If a Form W-8BEN is not submitted or the vendor is from a country that does not have a tax treaty with the U.S., Einstein will be required to withhold and remit to the IRS 30% of the service payment.

C. Foreign Individual Vendors Performing Services in the U.S. – Einstein is required to collect Forms W-8BEN and 8233 and require the vendor to complete the AECOM, Inc. Foreign National Information Form prior to payment. The W-8BEN documents the vendor's foreign status. The 8233 is required to document the vendor's qualification for exemption from or reduced U.S. income tax withholding. If a completed Form 8233 is not provided, Einstein is required to withhold 30% from the payment made to the foreign vendor and remit that amount to the IRS. The Form 8233 requires a valid U.S. Social Security Number (SSN) or International Taxpayer Identification Number (ITIN). Since it may take a long period of time for the IRS to process a Form W-7, the Department may accept the Form W-7 application from the foreign vendor as sufficient documentation.

Einstein's AP/Tax Department is required to submit the Form 8233 to the IRS for approval at least 10 days prior to the services being performed and the ITIN application process may take significant time. Therefore, the Department should submit the completed Form 8233 at least 30 days prior to the service being performed, if not longer. In addition, other than for honorariums or short-term speaker fees, the AECOM, Inc. Independent Contractor Pre-Hire Worksheet must be filled out to confirm whether the individual qualifies for independent contractor status.

D. Foreign Individual or Entity Vendors Receiving a Reimbursement Payment – Einstein is required to collect a Form W-8BEN from the foreign vendor.

E. Payments to Foreign Students – Einstein is required to collect a Form W-8BEN from the foreign student and the student must complete the AECOM, Inc. Foreign National Information Form. For non-tuition, non-reimbursement payments, the Form W-8BEN must include a SSN or ITIN in order to qualify for an exemption from or reduced tax withholding.

Submission of a Form W-9 is only required once, when the vendor is initially set up in the Einstein vendor system. A Form W-8BEN is generally valid for 3 years from the time it is received from the vendor. Forms W-BEN and W-9 should be collected by the requesting department and submitted to Accounts Payable.

### **III. Visa Restrictions on Payments to Certain Foreign Persons**

United States immigration regulations govern the types of payments that can be made to individuals who are neither citizens nor permanent residents of the United States. The Internal Revenue Service and the Treasury Department rules govern the Federal Income and Social Security tax withholding and reporting rules related to payments made in accordance with United States Citizenship and Immigration Services (USCIS) rules.

USCIS regulations restrict the type of payments that can be made to persons who are neither citizens nor permanent residents of the United States. Whether such payments are permissible is based on the current immigration status of each individual payee as stated on the individual's Form I-94, (i.e. generally a white or green card attached to the passport that lists the visa status of a non-immigrant visitor at the U.S. port of entry. Some aliens may not possess this card.) Depending on their current immigration status, an individual may be permitted to receive one of the following types of payments or a combination thereof:

- Wages
- Non-employee compensation (for example, consulting payments)
- Honoraria
- Substantiated expense reimbursements
- Scholarship/fellowships
- Prizes or awards

The table below provides an overview of the common categories of immigration status and the USCIS payment restrictions regarding payments to individuals in each of these categories. These charts should be used as a reference guide in order to assist in the determination of the type of payment, if any, that may be made to an individual holding a specific immigration status. An individual who does not have an appropriate immigration status is not allowed to receive any payment from the University, including service payments or reimbursements. If you have

questions regarding visa status and allowable payments, please contact Elain Thompson (Manhattan Campus), Director of International Student Advisement at 212-960-5480 or Alexia Pakiela (Einstein Campus), Director of the International Students and Scholars Office at 718-430-2850.