

Top-of-Mind Tax Topics Inspired by Recent Client Conversations

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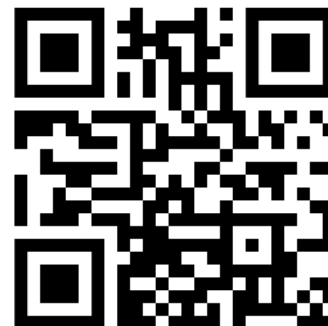
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Polling Question

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Q. What are the implications of an individual's spouse attending a business event?

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Spousal Travel

- **General Rule:** Included in taxable wages unless the spousal travel is in furtherance of a bona fide ministry purpose
 - More than incidental
 - Ordinary, necessary, and directly attributable to the conduct of a trade or business
 - Necessary to the conduct of the employee's business
 - Required or necessary for the business
 - Substantial services directly and primarily related to the carrying on of the employee's business.

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Spousal Travel (continued)

- **Document compliance**
 - Document the purpose of spousal attendance by having written requirements for the spouse
 - Include the spouse in organization events as well as social functions
 - Reflect the spouse's business role and mandatory presence in meeting minutes
 - Actively and consistently put these requirements into practice

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Spousal Travel (continued)

- **Important Resource**

- [IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses*](#)
 - *See Page 6*

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Q. What are a higher education institution's responsibilities for payments to nonresident alien (NRA) student workers?

Non-Resident Alien Tax Reporting — In General

- **General Rule:** Filing is required for NRA students who have:
 - A taxable scholarship or fellowship grant;
 - Income partially or totally exempt from tax under the terms of a tax treaty; and/or
 - Any other income that is taxable under the Internal Revenue Code
- **Required reporting** includes:
 - Form W-2 (if no tax treaty applies);
 - Form 1042-S (if a tax treaty applies to all wages); or
 - Both Form 1042-S and W-2 (if a tax treaty applies to some, but not all, wages)

**Income reported on Form 1042-S would not be duplicated on Form W-2
- Individual would not receive Form 1099

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Non-Resident Alien Tax Reporting — In General (continued)

- **General Rule:** Liable for Social Security and Medicare taxes on wages paid to them for services performed by them in the United States, with certain exceptions based on their non-immigrant status
- **Exempt employment** includes:
 - On-campus student employment up to 20 hours a week (40 hours during summer vacation)
 - Off-campus student employment allowed by USCIS
 - Practical training student employment on or off campus

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Non-Resident Alien Tax Reporting — In General (continued)

- **Limitations on exemption:**

- The exemption does not apply to spouses and children in F-2, J-2, or M-2 status
- The exemption does not apply to employment not allowed by USCIS or to employment not closely connected to the purpose for which the visa was issued
- The exemption does not apply to F-1, J-1, or M-1 students who change to another immigration status that is not exempt or to a special protected status
- The exemption does not apply to F-1, J-1, or M-1 students who become resident aliens

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Non-Resident Alien Tax Reporting — In General (continued)

- **General Rule:** A payment of U.S. source income to a non-resident alien is subject to withholding at a 30% rate (Sec. 1441(a))
 - A scholarship or fellowship grant paid by a U.S. person to a NRA is U.S. source income (Treas. Reg. § 1.863-1(d)(2)(i))
 - This general rule can be modified by treaty

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Effect of Income Tax Treaties on Withholding

- The U.S. has entered into treaties with a number of foreign countries
 - Modification of the scholarship withholding rate is frequently a provision of these treaties
 - Not every treaty exempts excess scholarship dollars from withholding
 - Some treaties only exempt payments from the foreign country paid into the U.S. for a student's education from U.S. income tax
 - e.g., [Article 20 of the treaty with the United Kingdom](#)

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Effect of Income Tax Treaties on Withholding (continued)

- Three specific sources of information on treaties
 - [IRS Publication 4011, VITA/TCE Foreign Student and Scholar Volunteer Resource Guide](#) (updated annually)
 - [IRS Publication 901, U.S. Tax Treaties](#)

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Effect of Income Tax Treaties on Withholding (continued)

- Three specific sources of information on treaties (continued)
 - IRS website: [United States income tax treaties - A to Z](#)
 - Make sure you are looking at the most recent version
 - An original income tax treaty will be called a “Treaty” or “Convention”
 - An amendment to an income tax treaty is called a “Protocol”
 - In addition, “Technical Explanations” or other interpretive guidance may be provided

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How to Know If and When a Treaty Applies

- [IRS Form W-8BEN](#) ([instructions](#)) is used to obtain information about a foreign student’s country of residency/citizenship
- You should obtain this form as part of the student enrollment process
 - Note that this form will need to be routed to the appropriate department in the institution

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Obtaining an ITIN

- To claim tax treaty benefits, a student must have an ITIN
- Use [IRS Form W-7, Application for IRS Individual Taxpayer Identification Number](#) ([instructions](#)) to obtain an ITIN
 - The student must complete [IRS Form W-8BEN](#)
 - Note that Exception 2(b) applies to students receiving scholarships or fellowship grants and exempts them from having to present a completed income tax return

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Obtaining an ITIN (continued)

- ITINs can be applied for in person at a [Taxpayer Assistance Center](#) or by using a [Certifying Acceptance Agent](#)
- Expect it to take seven weeks or longer to obtain an ITIN

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Student Visas

- This presentation assumes the student is in the U.S. on a valid student visa
- Relevant visa types include:
 - F visa – Issued to academic students
 - J visa – Issued to visiting scholars and professors (among others)
 - M visa – Issued to vocational students
 - Q visa – Issued to participants in cultural exchange programs
- Relevant resource: [Nonresident alien students and the tax home concept](#)

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IRS Form 1042-S

- [IRS Form 1042-S \(instructions\)](#) is used to report payments to a non-resident alien
 - Report the amount even if no tax withholding is required
- Complete a separate Form 1042-S for:
 - Each recipient of income;
 - Each income type paid to the same recipient; and
 - Each amount to which a separate tax rate was applied (if you withheld at more than one tax rate for a specific type of income that you paid to the same recipient)

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IRS Form 1042-S (continued)

- **Deadline** – By March 15:
 - File the form with the IRS, whether paper or electronically filed
 - Provide the student with Form 1042-S
 - A student may consent to receive Form 1042-S electronically
 - Consent must be in advance using a method that shows he or she can access the form in the format in which it will be provided

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IRS Form 1042-S (continued)

- This form must be filed electronically with the IRS if you file more than 10 **information returns** of any type with the IRS (Treas. Reg. § 301.6011-2(c)(1), (4)(i))
 - Information returns include Forms W-2, 1099-NEC, 1099-MISC, and 1042-S
 - A waiver from the electronic filing requirement is available if an institution can show “undue hardship”
 - [IRS Form 8508, Application for a Waiver from Electronic Filing of Information Returns](#) is used to request a hardship waiver

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IRS Form 1042-S

Sample completed Form 1042-S, no withholding

Form 1042-S Instructions, Appendix B Chapter 3 Exemption code "Exempt under tax treaty"

Payments to student workers are subject to tax withholding under Chapter 3

Form 1042-S Instructions, Appendix B Chapter 4 Exemption Code "Payee not subject to chapter 4 withholding"

Form 1042-S Instructions, Appendix B Chapter 3 Status Code "Individual"

Form 1042-S Instructions, Appendix A "Compensation during studying and training"

Must enter zero if no Federal tax withheld

Form 1042-S Instructions, Appendix B Chapter 3 Status Code "Tax Exempt Organization (Section 501(c) entities)"

Form 1042-S Instructions, Appendix B LOB Code "Tax exempt/charitable organization"

Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding **2024**

Go to www.irs.gov/Form1042-S for instructions and the latest information.

OMB No. 1545-0096
Copy A for Internal Revenue Service

1 Income code 20	2 Gross income 4500	3 Chapter indicator. Enter "3" or "4" 04	4a Exemption code 15	4b Tax rate 0.00	13a Recipient's U.S. TIN, if any 957-10-9999	13f Ch. 3 status code 16	13g Ch. 4 status code
5 Withholding allowance	6 Net income	7a Federal tax withheld 0	7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions)	7c Check if withholding occurred in subsequent year with respect to a partnership interest	13h Recipient's GIN	13i Recipient's foreign tax identification number, if any	13j LOB code 04
8 Tax withheld by other agents	9 Overwithheld tax paid to recipient pursuant to adjustment procedures (see instructions)	10 Total withholding credit (combine boxes 7a, 8, and 9)	11 Tax paid by withholding agent (amounts not withheld) (see instructions)	12a Withholding agent's EIN 99-9999999	12b Ch. 3 status code 20	12c Ch. 4 status code	13k Recipient's account number
12d Withholding agent's name ABC University	12e Withholding agent's Global Intermediary Identification Number (GIN)	12f Country code	12g Foreign tax identification number, if any	12h Address (number and street) 123 Campus Way	12i City or town, state or province, country, ZIP or foreign postal code Anytown, Indiana 46204	12j Recipient's name Rosa Flores	12k Recipient's country code RP
12l Address (number and street) 1402 Barangay Cansaga	12m City or town, state or province, country, ZIP or foreign postal code Manila, Metro Manila, Philippines	12n Recipient's date of birth (YYYYMMDD) 2005031	12o Primary Withholding Agent's Name (if applicable)	12p Primary Withholding Agent's EIN	12q Check if pro-rata basis reporting	12r Intermediary or flow-through entity's EIN, if any	12s Ch. 3 status code
12t Intermediary or flow-through entity's name	12u Intermediary or flow-through entity's GIN	12v Country code	12w Foreign tax identification number, if any	12x Address (number and street)	12y City or town, state or province, country, ZIP or foreign postal code	12z Payer's name	12aa Payer's TIN
12ab Payer's GIN	12ac Ch. 3 status code	12ad Ch. 4 status code	12ae State income tax withheld	12af Payer's state tax no.	12ag Name of state		

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form 1042-S (2024)

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Tax Reporting by International Students

- An NRA student is required to file [IRS Form 1040-NR \(instructions\)](#) unless their only sources of income are:
 - Foreign sources
 - Interest income from a U.S. bank, U.S. savings & loan institution, U.S. credit union, or U.S. insurance company
 - An investment that generates portfolio interest
 - A scholarship or fellowship grant that is entirely a tax-free scholarship or fellowship grant
 - Any other income that is nontaxable under the Internal Revenue Code
 - This does not include income that would be taxable but for the application of a treaty benefit

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Tax Reporting by International Students (continued)

- Important resource: [IRS Publication 519, U.S. Tax Guide for Aliens](#)

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Polling Question

NEW process for CPE:

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Q. What tax issues and reporting requirements do higher education institutions need to be aware of when investing in alternative investments?

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Unrelated Business Income – Tax classification for federal income tax purposes matters!

Corporation (“blocker corp”)

- Tax at corporate level; no unrelated business income (UBI) flow-through

S Corporation (pass-through entity)

- Always UBI – both net income from yearly activity and gain on sale of S Corp interest
- Schedule K-1 (Form 1120-S) provided annually

Partnership (pass-through entity)

- Character of income passes through to partner
- For-profit business operations unrelated to institution’s exempt purpose generates UBI
- Debt-financed income also treated as UBI
- Interest, dividends, capital gains, and rental income are statutorily excluded from UBI (unless debt-financed)
- Schedule K-1 (Form 1065) provided annually

Unrelated Business Income – Potential Filings

Federal

- Form 990-T, *Exempt Organization Business Income Tax Return*

State

- Form 990-T equivalent
- Some states do not tax UBI

Other considerations

- Debt-financed income at institution level generates UBI
- Other state-level considerations for partnership investments:
 - Nexus
 - Withholding and pass-through entity tax
 - Composite returns

Foreign Reporting

General considerations

- Generated from investments in foreign corporations and foreign partnerships either directly or indirectly through pass-through investments
- Pay close attention to transfers of more than \$100,000 in a 12-month period or 10% ownership
- Hefty penalties for noncompliance

Potential filings

- Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*
- Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*
- Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*
- Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*
- Form 8886, *Reportable Transaction Disclosure Statement*
- FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*

Due Diligence

General considerations

- BEFORE you invest
- Review offering memorandum/prospectus
- Cost of compliance vs. investment return

Good questions

- What is the classification of the investment entity for federal income tax purposes?
- Does the prospectus indicate the investment will generate unrelated business income?
- Does the prospectus give any indication of states of operation?
- Is any part of the investment debt-financed, either at the institution level or at the investment level?
- If you are investing in a foreign organization, does the prospectus mention potential foreign filings?
- Should the institution consider a blocker corporation structure?

Q. What are the post-issuance compliance issues for higher education institutions with outstanding tax-exempt bonds?

Post-issuance Compliance

- Maintaining tax-exempt status of the bonds!
- **Responsibility of both issuer and borrower.**
- **Written tax compliance procedures** included in bond closing documents should break out responsibilities between issuer and borrower. Should specify who will review the following and at what intervals:
 - Issuance data review (issue price)
 - Expenditure of proceeds
 - Ownership and use of financed property
 - Investments
 - Rebate compliance
 - Remedial actions

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Post-issuance Compliance – General Responsibilities of Conduit Borrower

- Make payments to issuer in such amounts and at such times to fund debt service on the bond
- Maintain “qualified” 501(c)(3) status **throughout entire term of bonds**
 - Ownership requirement
 - 95% use requirement (both as it relates to proceeds and use of property)
 - Arbitrage
 - File Schedule K of Form 990
 - **Maintain tax-exempt status of the organization!**

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Q. When a gift of stock is initiated before December 31, but the stock isn't received by the institution until after December 31, in what year can the donor deduct their gift?

A. The year in which delivery of their gift is effected.

Treas. Reg. § 1.170A-1(b)

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Year Stock Gift Completed: Stock In Certificate Form

- When stock is in certificate form, the gift is complete:
 - Upon delivery where a properly endorsed stock certificate is unconditionally delivered or mailed to a charitable donee or the donee's agent (Treas. Reg. § 1.170A-1(b))
 - The mailbox rule applies when determining the date of delivery
 - If the donor delivers instructions to the **donor's agent** to transfer to the stock, or to the **corporation** to change ownership on its records, delivery is complete when the transfer is made on the corporation's books

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Year Stock Gift Completed: Stock In "Street Name"

- When stock is held in "street name" at a broker, the gift is complete when:
 - The stock is actually transferred
 - The basic inquiry is, "When could the donor's broker no longer pull the gift back?"
 - This is generally understood to mean when the gifted stock appears in the donee organization's brokerage account
 - See *Morrison v. Comm'r*, T.C. Memo 1987-112 (1987)
 - For gifts made at year-end, this can lead to an unhappy donor
 - For reference: [Fidelity Charitable 2024 year-end contribution guidelines](#)

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Year Stock Gift Completed: Bottom Line

- Your obligation in either case is to report when the gift is received
 - However, for mailed stock certificates, you can follow the general practice of dating your receipt with the postmark date

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Q. Under what circumstances can housing be provided to higher education institution employees on a tax-free basis?

A. Two available exclusions:

- Lodging provided to an employee for the convenience of the employer (I.R.C. section 119(a))
- Minister's housing allowance (I.R.C. section 107)

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Convenience of the Employer: Basic Rule

- The value of lodging provided to an employee, his spouse, or any of his dependents is excludible if:
 - It is provided for the convenience of the employer
 - It is furnished on the business premises of the employer
 - The employee is required to accept the provided lodging as a condition of his employment

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“Condition of Employment”

- Takeaways:
 - Do not rely on the terms of a contract — the assigned duties matter
 - Employees with similar duties should be treated the same
 - If employees have similar duties, allowing some employees to live in off-campus housing while others occupy campus housing is not consistent with the expectation that the lodging is provided to enable the employee to perform his or her duties

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Special Case: Qualified Campus Lodging

- IRC section 119(d)(1) excludes “qualified campus lodging” from taxable income
- There is a catch — IRC section 119(d)(2) requires an employee to include in income:
 - The lesser of:
 - 5% of the appraised value of the qualified campus lodging; or
 - The average rent paid during the calendar year by individuals other than employees or students for housing that is comparable to the qualified campus lodging
 - Over:
 - The actual rent paid by the employee for the qualified campus lodging

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Special Case: Qualified Campus Lodging (continued)

- Example:
 - The residence the employee occupies has a fair market value of \$180,000
 - Similar properties owned by the university rent for \$18,000/year (\$1,500/month)
 - An employee pays actual rent of \$6,000 for the year
- Analysis:
 - 5% of \$180,000 is \$9,000
 - The lesser of \$9,000 and \$18,000 is \$9,000
 - The excess of \$9,000 over \$6,000 is \$3,000
 - Therefore, \$3,000 must be included in the employee’s taxable wages

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FICA Tax and Lodging Provided for the Convenience of the Employer

- Under IRC section 3121(a)(19), the value of lodging furnished for the convenience of the employer that is excludible from income tax under IRC section 119 is not subject to FICA tax

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Convenience of the Employer: Discussion

- President's home
 - What university-related duties and functions take place in the home?
 - How is the president's occupancy of the home "integrally related" to his or her duties?
 - Ohio University's provision of housing to its president found to be taxable compensation during a 2014 audit. (*The Columbus Dispatch*, July 14, 2014; *The Athens News*, July 16, 2014)
- Residence hall staff
- Maintenance staff
- Health clinic staff

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Other Resources

- TAM 9404005 – Lodging provided by a boarding school to certain employees not excludable from gross income
- *Bob Jones Univ. v. United States*, 49 A.F.T.R. 2d 82-593, 82-597 (Ct. Cl. 1982)

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Minister's Housing Allowance: Basic Rule

- To exclude housing under the minister's housing allowance, the individual must be properly classifiable as a minister under the Tax Code
- Step 1:
 - The individual must be ordained, commissioned, or licensed by a church (the Status Test)
 - Good practice to have a copy of this credential in the individual's personnel file

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Minister's Housing Allowance: Basic Rule (continued)

- Step 2:
 - In the course of the individual's employment for the institution, they must perform sufficient services or duties (the Duties Test) in furtherance of their ministry as a minister of the Gospel

OR

- The individual must be serving the institution "pursuant to an *assignment or designation* by a religious body constituting his church"

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Minister's Housing Allowance: Basic Rule (continued)

- Step 3:
 - If the individual qualifies as a minister, designate a portion of their salary in advance as a housing allowance via some “official action”

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What is an “integral agency”?

- The IRS considers the following factors:
 1. Whether the religious organization incorporated the institution;
 2. Whether the corporate name of the institution indicates a church relationship;
 3. Whether the religious organization continuously controls, manages, and maintains the institution;
 4. Whether the trustees or directors of the institution are approved by or must be approved by the religious organization or church;
 5. Whether trustees or directors may be removed by the religious organization or church;

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What is an “integral agency”? (continued)

- The IRS considers the following factors (continued):
 6. Whether annual reports of finances and general operations are required to be made to the religious organization or church;
 7. Whether the religious organization or church contributes to the support of the institution; and
 8. Whether, in the event of dissolution of the institution, its assets would be turned over to the religious organization or church
- Generally, only institutions with a tight affiliation with a denomination will qualify as an integral agency
 - In some cases, institutions aligned with a local church may qualify

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Assignment

- An alternative to the Duties Test is an “assignment” by a body constituting a minister’s church
 - The regulations refer to an assignment being conferred by a minister’s “ecclesiastical superiors”
 - An assignment is typically to a job or position outside a church, including outside of a religious organization
 - This would include an assignment to a college or university
 - An assignment should be in writing and come from the assigning authority
 - An assignment should be made before the work commences (*Boyer v. Comm’r*, 69 T.C. 521 (1977))

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Q. What are the tax rules governing payments made to a member of the faculty or administration to pay for sabbatical expenses?

A. The short answer is that such a payment is generally taxable income to the recipient.

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Sabbatical Payments

- There are no carve-outs in the Internal Revenue Code related to sabbaticals
- A sabbatical stipend is a form of cash allowance reportable under the rules applicable to a nonaccountable expense plan
- If paid as a lump sum, the payment should be treated as a bonus for payroll withholding purposes

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Sabbatical Payments (continued)

- If the faculty member or administrator will use some of the funds for what would otherwise be an excludible expense reimbursement under an accountable plan, then thought should be given to bifurcating the stipend into a cash stipend and a “use-it-or-lose-it” accountable expense reimbursement portion

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Q. In the coming year, our institution plans to install a geothermal HVAC system in one of our dorms (or solar panels or a wind turbine). Will this system qualify for the clean energy credits described in the Inflation Reduction Act of 2022?

A. The short answer is, “Yes.” The amount of the credit and your documentation requirements are the open questions.

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Clean Energy Credits: The Basics

- The Inflation Reduction Act did two things:
 - Enhanced the investment tax credit allowed for certain clean energy projects
 - Created a “direct pay” (a/k/a “elective pay”) opportunity for nonprofit organizations to receive the credits
- Nonprofits obtain the credit by filing a timely (including extensions) IRS Form 990-T
 - An eligible project is described using [IRS Form 3468](#)

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Clean Energy Credits: The Basics (continued)

- The standard credit is 6% of the amount expended on the project
- This credit is multiplied by 5 (i.e., increases to 30%) under the following conditions:
 - The project generates less than 1 MW of electricity or its thermal energy equivalent; or
 - For larger projects, the project is constructed paying prevailing wages and using qualified apprenticeship labor

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Clean Energy Credits: The Basics (continued)

- There two enhancements to the credit that some projects may qualify for:
 - The **domestic content** enhancement adds 10% to the credit if the project meets certain percentage requirements for domestic content
 - The **energy community** enhancement adds 10% to the credit if the project is located in a qualifying census tract
 - The Department of Energy provides a [mapping tool](#) that can be used to determine if your project is located in a qualifying energy community

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Clean Energy Credits: The Basics (continued)

- Before preparing the Form 990-T, you must pre-register your project with the IRS
- This is done by going to the [IRA/CHIPS Pre-filing Registration Tool](#) at www.irs.gov
 - You will be required to create an ID.me account, if you do not already have one

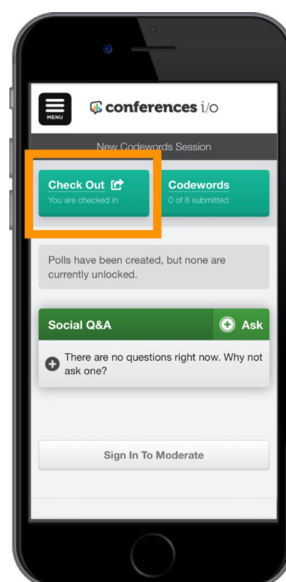
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Questions?



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Don't forget to check out of Conferences i/o before you leave the session!



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Thank you!

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