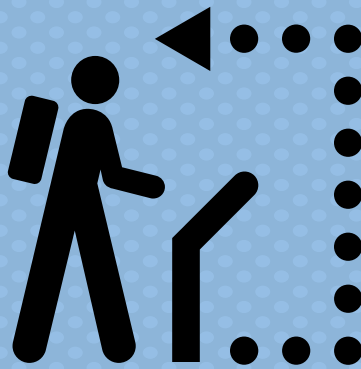


# BAM! Complete Guide to Taxation-USA

by Robert Baird



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A guide to taxation in the  
United States for foreign artists

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## Introduction

This guide is for foreign artists who perform in the United States as non-resident guest artists or “non-resident aliens” (NRA). You will be considered a U.S. resident if you have a “green card” or meet the Substantial Presence Test: i.e. you were physically present in the United States on 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

1. All the days you were present in the current year, and
2. 1/3 of the days you were present in the first year before the current year, and
3. 1/6 of the days you were present in the second year before the current year.

The tax and withholding requirements for artists who are considered “resident” in the United States by virtue of longer employment, artists earning royalties, teachers or students, etc. will be quite different from the discussion in this guide.

**Since it is impossible to address specific circumstances for a foreign individual or business earning income in the United States, you may need to consult with a tax specialist with knowledge of the performing arts industry.**

## Non-Resident Alien (NRA) Withholding

The Internal Revenue Service (IRS) requires that anyone paying a foreign artist for services in the United States must withhold 30% of the total gross compensation paid. This will include commissions paid to agents and any expenses paid on behalf of the artist. This withholding is basically a deposit on account of the actual tax liability that the artist may owe. When the artist files a U.S. tax return, there may be additional tax due, but, in all likelihood, the artist will receive a refund once the actual tax liability is determined. The IRS does provide an exception for some expenses, most commonly hotel, and travel and meal expenses, under its [Accountable Plan Rules](#). The payer of a foreign artist is designated by the IRS as a “withholding agent” and this could be a promoter, a venue or other presenter, a promoter, a manager or an agent, and the place of residence of the payer, where the contract was made or where the payment is made are irrelevant. The payer or “withholding agent” is liable for any amount that should have been withheld, if the artist fails to file an income tax return. (See [BAM! Complete Guide to Withholding – United States](#))

## Form 1042 and 1042-S

[Form 1042 – Annual Withholding Tax Return for U.S. Source Income of Foreign Persons](#) must be filed by any payer of a foreign artist. It is a form which summarizes the total income paid to foreign artists and the total withholding and must be filed along with copies of Form 1042-S and, if appropriate, Form 8233, no later than March 15 of the year following the calendar year in which the payments were made. Note that this summary must be filed even if no withholding was made. [Form 1042-S - Foreign Person's U.S. Source Income Subject to Withholding](#) should be issued by the payer to each foreign artist to whom or on whose behalf payment was made, no later than March 15 of the year following the calendar year in which payment was made. This form requires the foreign artist's SSN or ITIN to validate a request for a tax credit or tax exemption.

## Tax Identification Numbers

A foreign artist **must** have a tax identification number to claim withholding exemptions, tax treaty benefits, or to file a United States tax return. This number is required in order to file tax-related documents including W-8 forms or Form 8233. Individuals will need either a [Social Security Number \(SSN\)](#) or an [Individual Tax Identification Number \(ITIN\)](#) and businesses will need an [Employer Identification Number \(EIN\)](#)

In order to get an Individual Taxpayer Identification Number (ITIN) a foreign artist will have to first of all, apply at a Social Security Administration Office Location for a Social Security Number (SSN). If the foreign artist applies before ten days have elapsed following entry into the U.S., the SSN application will be denied. If the artist applies after the ten-day period, there will have to be at least 14 days remaining on the visa or again, the SSN application will be denied. Once the denial letter is received, the artist can attach it to the Form W-7 and apply for the ITIN. Note that the required identity documents required to be attached to the ITIN application must be certified by the government agency that issued the documents. Alternatively, if possible, you can present documents at a [Taxpayer Assistance Center \(TAC\)](#) or utilize the services of an [Acceptance Agent](#).

## State Filing Requirements

Foreign artists may be subject to state and local taxes for income earned in that state, including state sales tax on merchandise sold. State tax requirements may be found on a state's website and it may be necessary to file a state income tax return for each state in which the artist has worked, in addition to the federal return.

## Tax Filing Requirements

A foreign artist is required to report income in the United States by filing a United States tax return. If part of an artist's income is exempt from tax because of an applicable tax treaty, an income tax return is the only way to take advantage of allowable deductions or credits or claim a refund on overpaid withholding. In the case of a Central Withholding Agreement (CWA), a tax return is required as part of the CWA agreement. Deductions from taxable income can be made for allowable expenses related to earning income in the United States. Failure to file a timely return will negate any available deductions or exemptions and may place the payer or "withholding agent" in a difficult position regarding tax liability. It's always better to file.

## Filing a Return

An individual non-resident alien should file either a [Form 1040NR](#) or a [Form 1040-NR-EZ](#). The latter form cannot be used to claim tax credits or expense deductions and may not be appropriate for foreign artists. To claim expenses, attach a [Schedule C – Profit or Loss From Business](#) or [Schedule C-EZ Net Profit from Business](#) to the Form 1040-NR. All forms are due by June 15. Businesses have to file a [Form 1120-F U.S. Income Tax Return of a Foreign Corporation](#)

Send the returns to the following addresses:

1040-NR Forms:

Department of the Treasury  
Internal Revenue Service  
Austin, TX 73301-0215

1120-F Forms:

Internal Revenue Service Center  
P.O. Box 409101  
Ogden, UT 84409

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Robert Baird, President of Baird Artists Management, is now available for consultation and advice regarding Canadian and U.S. regulations and information for performers, agents/managers and performing arts venues. Mr. Baird has been in the performing arts for over fifty years and has had distinguished careers in education, publishing and musical theatre. He served on the Board of Directors (2008-2010) and was President (2011-2013) of the North American Performing Arts Managers and Agents (NAPAMA). He was Treasurer and Vice-President of Festivals and Events Ontario (FEO) and served on that Board on various committees (2010-2013). Mr. Baird received the Arts Northwest Coyote Award and the Performing Arts Exchange Mary Beth Treen Award in 2012. He is Chair of Team Agent Network (TAN) and APAP Showcase Coordinator.

Robert is a regular columnist in *International Musician: The Official Journal of the American Federation of Musicians of the United States and Canada* (Circulation 100,000+ Monthly) where he writes a monthly column entitled "Crossing Borders". The column focuses on what artists need to know to get into Canada or the United States. He also writes a monthly column entitled "Artist Manager's Toolkit" for *International Arts Manager*, based in London, England.

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