

Controller's Office

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**TO: All Faculty and Staff**

**FROM: Rick Klee, Tax Director**

**DATE: April 2001**

**RE: Taxability of Immigration Fees**

## **Policy**

Immigration fees have characteristics that allow them to be considered either personal expenses or ordinary and necessary business expenses, depending on the situation. Many colleges and universities tax the individual employee on all payments of this type. However, recent INS guidance outlines the appropriate criteria for determining the taxability of these fees.

If the visa fees are paid either for applications related to the non-immigrant employment-based classifications or for the employment-based permanent process, these applications can be paid by the employer and not be considered taxable. The INS notes that these applications "serve US employers' needs, rather than the needs of aliens to get jobs" and are distinguished by the fact that the employer is the petitioner.

Conversely, if the alien is filing what the INS would consider an 'adjustment' to their visa status, and their employer is not part of this petitioning process, then these expenses would be considered personal, and any reimbursement by the University would be taxable to the employee.

Whether payment of these expenses from a restricted account would be allowable depends on the terms of the discretionary account. Finally, any reimbursement of a non-Notre Dame employee's expenses (e.g. faculty/staff spouse) would be completely taxable.