

Taxability of Immigration Fees

POLICY STATEMENT

Immigration fees have characteristics that allow them to be considered either personal expenses of an employee (taxable) or ordinary and necessary business expenses of the University (non-taxable), depending on the situation. U.S. Citizenship and Immigration Services (“USCIS”) guidance outlines the appropriate criteria for determining the taxability of these fees.

If the immigration fees are paid either for applications related to the non-immigrant employment-based classifications or for employment-based permanent residency petitions, these fees can be paid by the employer and not be considered taxable income to the employee. The USCIS notes that these applications “serve U.S. 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 USCIS would consider an 'adjustment' to their immigration status, and their employer is not part of this petitioning process, then these expenses would be considered personal, and any payment of these expenses by the University would be taxable income to the employee.

Finally, any reimbursement of a non-Notre Dame employee's expenses (e.g., faculty/staff/ spouse and/or children) would be completely taxable to the employee.