



Celtic MKE Position Statement: Disincentives for foreign artists performing in the United States

Date: December, 2016

Milwaukee Irish Fest will present its 37th annual festival in August 2017. As a major purchaser of foreign talent, we are seriously concerned that complying with existing non-immigrant Visa, tax rules and associated costs is becoming an increasing challenge. Most importantly, it is a major disincentive for foreign artists who would like to perform in the US.

Founded in 1981, Milwaukee Irish Fest has grown to become the largest such festival in North America. The festival averages over 100,000 visitors each year. A 2013 economic impact study conducted by The Fiscal and Economic Research Center, University of Wisconsin Whitewater, found that our festival contributed over \$20,706,372 annually to the local economy. We've also spent \$7,910,605 in artist fees alone over the past 36 years. With an annual budget of over \$2,500,000, Milwaukee Irish Fest is acknowledged as one of the most successful international music and cross-cultural diversity festivals in the world. It is often referred to as the "mother of all Irish Festivals."

From the very beginning, Milwaukee Irish Fest has welcomed artists from Northern Ireland, building bridges between those in Northern Ireland and the people from the Republic of Ireland. Representatives from both governments are regular visitors to our event. In 2005, we were honored to have President of Ireland, Mary McAleese and her husband Martin, attend our Festival. We have welcomed artists from all over Western Europe as well as Australia and Canada to perform at one of our seventeen stages. Dozens of collaborations and partnerships have resulted as artists from around the world meet local, regional and national artists from the U.S. The seeds of future bands and cultural exchanges are born on stages, in green rooms, and at sessions in Milwaukee.

There are now other successful Irish and Celtic festivals in America, many of them offering foreign artists performance opportunities especially in the summer months. Yet costs for these foreign artists to get U.S. Citizenship & Immigration Services (USCIS) work permits and visas under existing tax laws in the U.S. are causing many of these foreign artists to reconsider their plans to tour in the United States.

Some legendary touring artists have already decided to forego performing in the U.S. due to these restrictive policies ("[U.S. not worth trip anymore: Andy Irvine](#)"). They choose to focus their careers on the British Isles and Europe rather than putting up with all the "red tape" associated with playing the U.S. market. The artists are also fully aware that performers from the U.S. face none of these restrictions and obstacles when performing overseas.

Presently, fair compensation for a solo artist at a festival would likely range from \$3,000 to \$5,000. Current airfare (from Ireland) to the U.S. is currently around \$1000.

In order to get into the U.S., a typical solo artist would pay:

Filing Fee: I-129 for a P3 and O1 visa	\$460
- This fee will increase to \$460 on December 23, 2016	
Advisory letter from American Federation of Musicians:	\$250
Appointment at U.S. Consulate: (per person)	\$190
Lawyer/agent for preparation and submission of I-129 filing documents:	\$1000
- A conservative cost estimate	
Total for Obtaining your MRV Visa (Machine Readable Visa)	\$1900

In addition, there is a cost for an artist to travel to an embassy for an interview once an appointment is made. As an example, an artist in Scotland would need to go to London or Belfast. An artist in the Republic of Ireland would go to Dublin.

Because work permit application times have been consistently backlogged, the USCIS instituted a Premium Processing Fee of \$1,225 to guarantee that an I-129 application will be done in a shorter period of time. A P3 visa can be up to a year with multiple entries in and out of the U.S. Once the work permit request is approved, the artist now must apply for a visa at a U.S. consulate office. Solo artists or each person in a larger band would pay the \$190 fee for the appointment at the U.S. consulate.

On the issue of taxes on foreign income, the [Artists from Abroad](#) website notes that: "The United States has entered into income tax treaties with approximately 66 foreign countries. Under these treaties, foreign artists may be exempt from U.S. income taxes on the compensation they earn for services performed in the U.S. If a treaty exemption applies to a particular foreign artist, *and the proper documentation is presented to the presenter or other payer*, the 30% withholding requirement will not apply to that artist."

These treaties per country can be found here:

<https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>

The treaty with Canada and the U.K. allows individual artists to earn \$15,000 per year before taxation. The treaty with the Ireland allows individual artists to earn \$20,000 per year before taxation. However, even with the treaties, the artists are asked to take one of two very complicated routes. For a festival or venue to pay them in full the artist must get a

Central Withholding Agreement (CWA). If they don't get a CWA then a festival or venue must deduct 30% of their wages, and the artist is forced to file U.S. tax forms to get their 30% back. The IRS estimates the time frame to get the 30% back at 18-24 months. Artists must enter the CWA or have 30% deducted from their earnings even if their payment is below their country's treaty amount, because that artist might earn over the treaty maximum from other performances during that tax year.

If musicians go the route of a CWA, the cost for an agent to do this is around \$1,000. Then venues and festivals can pay the artist in full and the agent files a form after the tour netting out the expenses and revenue.

If the artists chooses not to have a CWA, then 30% of their fee is deducted, which would be \$1500 in our example. To file taxes they would need to hire a CPA or tax attorney at a minimum cost of \$500.

In our example of the solo artist, the \$5,000 contract fee with a CWA would be:

Air Fare	-\$1100
All Visa Costs	-\$1,900
CWA	-\$1,000
Artist	\$1000

Note: CWAs can last a whole year if there is no break of 30 days or more. If an artist does two tours with a 31 day break in between they would need to get two CWAs.

The \$5,000 fee to the artist without a CWA and 30% withholding would be:

Air Fare	-\$1100
All Visa Costs	-\$1,900
Tax Filing	-\$500 (tax lawyer or accountant)
30% Withholding	-\$1500
Artist	\$0 (After filing taxes the artist would get their \$1,500 back 18-24 months later.)

In some instances, artists are simply letting the venue or festival deduct the 30% and won't make any effort to retrieve it.

Obviously there are many issues not illustrated here. The artist may add other performances to generate more income and help defray travel costs. CD and merchandise sales may generate additional income but are also subject to taxation. Expenses could be higher if the Premium Processing fee is paid and one has to factor in touring costs as well. Add to this that each state imposes a tax on earnings above a certain threshold. . Wisconsin's entertainers' tax is 6% over a threshold of \$7,000 payment. So if a festival or venue in Wisconsin increases the artist fee to \$7000 to help offset fees and costs, then the performer also faces another deduction of \$420.

The current system of piling on all the burdensome immigration, visa, tax paperwork and associated costs is creating a major disincentive for smaller foreign artists to tour in the United States. Artists or their agents need to have their immigration paperwork in at least five months before the first tour date or switch to the much more expensive premium processing option. The visa filing fee, the fee for the musician union's advisory letter, consulate fees and miscellaneous processing costs generally run \$1500 - \$2000 for a band. Costs can go much higher. Despite the International Tax Treaty, foreign artists need to apply for a Central Withholding Agreement (CWA) a process that will cost at least \$1000 and must be started about four months before the start of a tour. Otherwise 30% of their fee will be withheld for each show they do and their money can be reclaimed the following year.

The folk musicians that we deal with year in and year out are not equipped to deal with these complex rules and expenses. Even with the help of managers and U.S. agents it is difficult for bands to make a reasonable living when touring costs are added to visa costs and taxes. Agents are spending more time on paperwork which increases their costs and may influence the number of artists on their roster. Promoters are absorbing the increased costs in higher contract fees with limited space for increasing ticket prices.

A simple more effective system that fosters creativity and encourages offerings from outside the United States is badly needed. These foreign artists make significant economic contributions to hundreds of local economies throughout the country. Since artists performing services in the U.S. are taxed at the same graduated rates that apply to U.S. citizens, the amount of 30% withholding is almost always going to be more than the artist's tax liability. This rate should be reviewed and possibly lowered.

The CWA requirements put an unreasonable financial burden on foreign artists earning smaller fees or more modest compensation. The scheduling, booking and confirmation of artists many months in advance to comply with tax withholding rules, is another reason that may prevent foreign artists from accepting a U.S. engagement.

It is our opinion that U.S. laws and regulations should have the effect of improving opportunities for cultural exchange. But the enforcement of our current non-immigrant and tax laws is having the opposite effect. They discourage foreign artists from performing in the U.S.

In a nation built by immigrants, we hope you will consider changes to our current laws that encourage cultural exchanges between people from different cultures who wish to perform in the United States.