

# Nonresident Alien Tax Compliance

## Update of the Issues . . .



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Higher Education Tax Institute 2019  
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## The Legal Stuff . . .

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## General Rule

- ALL withholding agents *(for example, an employer)* **MUST** withhold federal income tax from ALL income payments made to or on behalf of a nonresident alien *(Section 1441 of the Internal Revenue Code)*;
- IF the withholding agent **DOES NOT** withhold the appropriate amount of tax at the time of payment, the withholding agent will be liable for the tax, plus any penalties and interest – regardless of whether the individual pays the tax on his or her tax return *(Section 1461)*

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## Working Through a Situation

- What are the Facts of the Situation?
- What is the Payee's U.S. Tax Residency Status?
- What Type of Income is Being Paid?
- What is the "Source" of the Income?
- Is the Payment Subject to Tax Withholding?
- At What Rate Should Taxes Be Withheld?
- Is an Income Tax Treaty Exemption Possible?
- Is the Payment Exempt From FICA Tax? State Tax?
- Is the Payment Reportable? If so, on What Form(s)?
- How Should the Information Be Maintained?

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## Tax Withholding Responsibilities

**All income paid to a nonresident alien or a third party on his or her behalf are either:**

EXEMPT	OR	TAXABLE
• Foreign Source		• 14% ( <i>Scholarships/ Fellowships to F, J, M, &amp; Q Immigration Status</i> )
• Internal Revenue Code		• 30% ( <i>Non-Employee Compensation and all Other Payments</i> )
• Income Tax Treaty		• Restricted Graduated Withholding ( <i>Employee Compensation</i> )

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## Tax Cuts and Jobs Act of 2017

- Personal Exemption suspended (2018 - 2025)
  - No Update of IRS Notice 1392
  - Form W-4 completion for Nonresident Alien
  - Additional Spouse/Dependent Personal Exemptions
    - American Samoa, Canada, India (Students), Korea, Mexico, NMI
- Standard Deduction – significant increase
- “Reduced Withholding Procedures” suspended
  - Prorated Personal Exemption for S/F or IPS
  - Rev. Proc. 88-24 (“Away-from-home” expenses) for S/F

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## Form W-4 for Nonresident Aliens\*

- **Single** (Regardless of Actual Marital Status)
- **One Withholding Allowance** (Regardless of Actual Number of Dependents)
- **Write “Nonresident Alien” on Line 6** (not applicable to Students from India) to “trigger” additional amount that must be added to the “taxable base” prior to calculating tax withholding

\* Draft Form W-4 released, but no update of IRS Notice 1392 for completion of Form W-4 for nonresident aliens

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## Income Tax Treaty Exemption

- **Exemption from Taxation** : Claimed by Payee on Federal Tax Return

versus

- **Exemption from Tax Withholding** : Requested by Payee and Facilitated by Withholding Agent at the Time of Payment

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