

## Nonresident Alien Tax Compliance

### Update of the Issues . . .



[www.arcticintl.com](http://www.arcticintl.com)

Higher Education Tax Institute 2019  
Donna E. Kepley

## The Legal Stuff . . .

**The information contained in this document is copyrighted by Arctic International LLC 2019 and may not be copied or used for any purpose without the written permission of Arctic International LLC.**

The information contained in these slides is general in nature and cannot be relied upon to address a specific situation.

Please consult your tax advisor.

In preparing these materials, we are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and judicial and administrative interpretations thereof. These authorities are subject to change or modification retroactively and/or prospectively and any such changes could affect the validity or correctness of our information. We will not update our materials for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof, unless you separately engage us to do so in writing after such subsequent modification or change.

© Arctic International LLC 2019. All Rights Reserved

## 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)*

© Arctic International LLC 2019. All Rights Reserved

## 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?

© Arctic International LLC 2019. All Rights Reserved

## 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> )

© Arctic International LLC 2019. All Rights Reserved

## 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

© Arctic International LLC 2019. All Rights Reserved

## 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

© Arctic International LLC 2019. All Rights Reserved

## 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

© Arctic International LLC 2019. All Rights Reserved

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Nonresident Alien Tax Compliance

Also available as part of the eCourse

[2019 Higher Education Taxation eConference](#)

First appeared as part of the conference materials for the  
7<sup>th</sup> Annual Higher Education Taxation Institute session  
"Nonresident Alien Tax Issues"