

Nonresident Alien Tax Compliance

Update of the Issues . . .



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Higher Education Tax Institute 2018
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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

- Foreign Source
- Internal Revenue Code
- Income Tax Treaty

OR

TAXABLE

- 14% (*Scholarships/ Fellowships to F, J, M, & Q Immigration Status*)
- 30% (*Non-Employee Compensation and all Other Payments*)
- Restricted Graduated Withholding (*Employee Compensation*)

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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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