

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, & 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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