



Federal Income Tax Reporting and Withholding on Wages Paid to Aliens



Any employer who hires aliens should comply with the following general procedures with respect to the reporting and withholding of federal income taxes:

- Identify all aliens (non-U.S. Citizens) on the company's payroll.
- Divide the aliens into two groups: "[RESIDENT ALIENS](#)" and "[NONRESIDENT ALIENS](#)" as defined by Internal Revenue Code section 7701(b) or by a tax treaty. (Refer to [Publication 519, U.S. Tax Guide for Aliens](#))
- For withholding tax purposes, treat RESIDENT ALIENS the same as U.S. Citizens.
- For withholding tax purposes, treat NONRESIDENT ALIENS according to the following special withholding rules that apply to nonresidents as described in IRS [Publication 15 \(Circular E\)](#) and [Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities](#):
 - A NONRESIDENT ALIEN cannot write "EXEMPT" on line 7 of Form W-4.
 - A NONRESIDENT ALIEN may claim only "SINGLE" filing status on line 3 of Form W-4, even if he is married.
 - With certain exceptions, a NONRESIDENT ALIEN cannot claim more than one personal exemption on Form W-4. Refer to [Aliens - How Many Exemptions Can Be Claimed?](#)
 - For wages paid on or after January 1, 2006, you are required to apply a special procedure in calculating the amount of federal income tax withholding on the wages of nonresident alien employees. (Refer to Chapter 9 of IRS Publication 15 Circular E.)
 - Some NONRESIDENT ALIENS are eligible for exemptions from federal income tax withholding on wages because of tax treaties. These individuals should file Form 8233 with the payroll office to claim such tax treaty exemptions.
 - NONRESIDENT ALIENS who refuse to file a proper Form W-4 as required by IRS regulations shall have federal income taxes withheld at the rates pertaining to single status, zero exemptions (Cf. Treasury Regulations section 31.3402(f)(2)-1(e)).
 - Payroll offices must report wages paid to a NONRESIDENT ALIEN which are exempt under a tax treaty on Forms 1042 and 1042-S. Any additional wages paid to a NONRESIDENT ALIEN over and above the exempt amount are reported on Form W-2 in the normal manner. Even in situations in which all of a nonresident alien's wages are exempt from federal income tax under an income tax treaty, and in which all his federal wages would be reported on Form 1042-S, the filing of a Form W-2 for such alien is usually also required in order to report state and local wage amounts and state and local income taxes withheld on such alien's wages.

Exceptions to Mandatory Withholding of Federal Income Tax on Nonresident Aliens:

- IRC sections 861(a)(3) and IRC 864(b)(1) - Wages or Nonemployee Compensation exempt from withholding of federal income tax if all 3 of the following conditions met:
- The nonresident alien performing services is present in the U.S. for a total not exceeding 90 days in a taxable year;
- The compensation for such services does not exceed \$3,000; and
- The nonresident alien performs the services as an employee of, or under contract with, a nonresident alien individual, a foreign corporation, or a foreign partnership not engaged in a trade or business in the U.S. or the foreign office of a U.S. citizen or resident alien individual, a U.S. corporation, or a U.S. partnership (including from within a U.S. possession).
- IRC section 872(b)(3) - Wages or Nonemployee Compensation exempt from withholding of federal income tax if both the following 2 conditions are met:
 - The nonresident alien is present in the U.S. in F, J, M, or Q nonimmigrant status; and
 - The compensation for services is paid by a nonresident alien individual, a foreign corporation, or a foreign partnership or the foreign office of a U.S. citizen or resident alien individual, a U.S. corporation, or a U.S. partnership (including from within a U.S. possession).