

April 29, 2014

2014 Training Curriculum

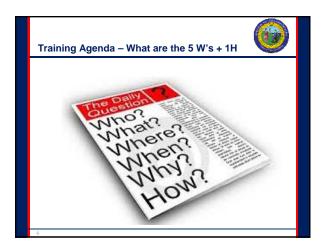


This training is an Office of State Controller initiative and is part of the Foreign Nationals Tax Compliance curriculum for the 2014 calendar year. We are committed to the success of the Foreign Nationals Tax Compliance Program and will provide technical assistance to all State Agencies, Universities, Community Colleges, LEAs and Charter Schools.

Disclaimer: The information within this presentation does not constitute tax/legal advice and each participant should seek his/her own counsel in addressing specific situations.

NC Office of State Controller

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OSC's Foreign Nationals Tax Compliance Program





You Know WHY We Are Here.... Does Your Departments Know WHY??? Per Internal Revenue Code 1441 to 1443 – Governs withholding on payments of U.S. source income to foreign persons and provides for the 30% tax TAX Liability: Per IRC Section 1461 - The withholding agent will be liable for a tax amount resulting from failing to withhold or deposit amounts subject to NRA withholding. Both the withholding agent and the foreign recipient may be held liable for such tax, applicable interest and any penalties resulting from a withholding failure. Per IRS Publication 515: "This publication is for withholding agents who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations." Specifically, it describes the: Persons responsible for withholding (withholding agents) the types of income subject to withholding adjations of withholding agents

You Know WHY We Are Here.... Does Your Departments Know WHY??? (cont.)

- Withholding Agent
 - A U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding
 - Liable for taxes owed
- · Foreign National
 - An individual that owes allegiance to or who is under the protection of a country other than the United States
 - Non-Resident Alien
 - > Resident Alien

WHY Do I Need to Process Foreign Nationals Differently???



- Foreign nationals have a special set of work restrictions and tax guidelines they must follow.
- · Ensure appropriate documents are received
- Provide necessary communication to foreign nationals
- COMPLIANCE ISSUES:
 - Each entity is at risk of very large penalties and fines
 - Potentially jeopardizes the foreign national's visa status.

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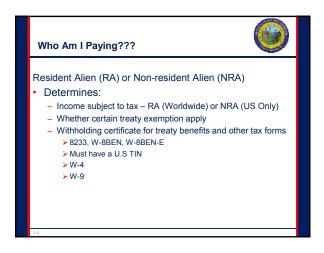
WHO????

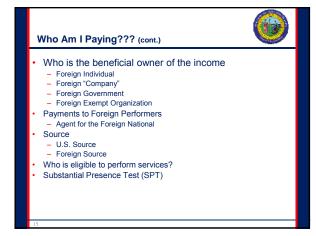


WHO is an Non-Resident Alien? (cont.) • Temporary (nonimmigrant) status - Limited by: • Time – duration of authorized period of stay • Scope – allowable activities • Location – employer as well as physical presence - Must have nonimmigrant intent - Generally denoted by alphabetical notation • Permanent (immigrant) status - Allows holder to remain in U.S. indefinitely - Permanent Resident can live and work wherever, and for whomever s/he chooses – no limitations based on time, scope or location - "Green card" is another way to indicate someone has permanent resident status - Treated just like a US citizen for taxation purposes

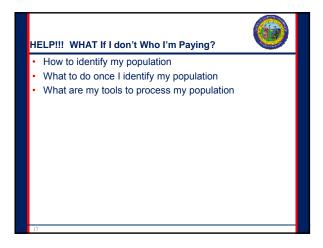
WHO is an Non-Resident Alien? (cont.) Non-resident Alien for Tax Purposes Individuals who are not U.S. citizens, permanent residents, or resident aliens for tax purposes are considered to be non-resident aliens for tax purposes. To determine if a foreign national is in resident alien tax status or non-resident alien tax status we must calculate the IRS's Substantial Presence Test (SPT) Non-resident aliens have a tax system different from U.S. residents. Their income is subject to different withholding rules and reporting. Non-resident Aliens must first be eligible for employment as determined by U.S. Citizenship and Immigration Services (USCIS). Resident Alien for Tax Purposes Means something different to IRS than USCIS Passes the Substantial Presence Test (SPT)













Tips for identifying a Foreign National (cont.)



Publication 515 – Presumption Rules, "if you cannot reliably associate a payment with valid documentation you must apply certain presumption rules or you may be liable for tax, interest, and penalties."

It is better to tax and have those taxes refunded by the IRS to the individual, than to not tax at all and face penalties and fines.

Tips for identifying a Foreign National (cont.)



- A newly-arrived payee already has an SSN but has represented that they have no prior presence in the
- Country of Visa issuance or foreign residence is different than county of tax residency claimed by payee.
- Situations where a business entity is payee, but the true beneficial owner of the income is an individual.
- A payee asking you to make payment to a charity or foundation instead of them.
- U.S. Port of entry stamps or visas in an individual's passport that are not mentioned in the individual provides to you.

WHAT Type of Payments



- The type of payment made to an vendor, employee, student falls into four primary categories:
 - Dependent personal services: Wages, Service related scholarship/fellowship/assistantship payments, travel
 - Independent personal services: Consulting fees, guest speaker, honoraria
 - Scholarship/Fellowships: Qualified/Nonqualified
 - Other Income Types: Prizes and awards, royalties, etc.
- Gift Cards = Cash
- Stipends = One of the above

WHAT is being purchased????



- Goods from a foreign entity
- No withholding or reporting required
- Services performed outside the U.S.
 - No withholding or reporting required, in most cases
- Services performed in the U.S.
 - Taxable at federal 30%, unless treaty exist
 - Potentially taxable at NC state 4%, unless treaty exist
 - Independent Personal Services
- Royalties used in the U.S. (Copyrights and Software)
 - Taxable at federal 30%, unless treaty exist

Potential exceptions may exist.

WHAT is the Source of the Income



A determination is made as to the source of income in the following manner:

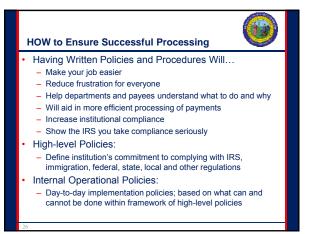
- Compensation paid to employees and independent contractors
 - sourced = country where services are performed.
- Non-compensation Payments
 - scholarships/fellowships
 - grants, prizes and awards
 - source = residence of the payor regardless of who actually disburses the funds

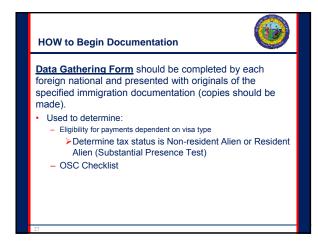
WHAT Payment Subject to Income Tax Withholding?

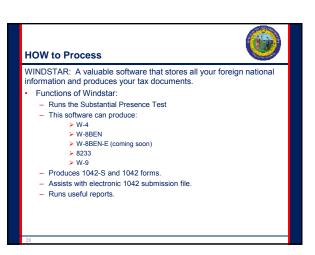


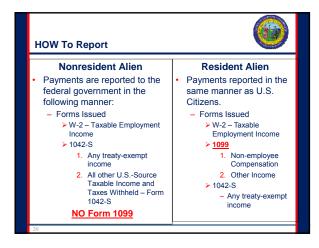
- Resident Alien same rates as U.S. Citizens
- Non-resident Alien all U.S. sourced income is taxable with a few exceptions.
 - Federal Tax Rate 14%-30%
 - NC Tax Rate 4% Contractors with ITINs (\$1,500 threshold)
 - Tax Treaties













WHEN Taxes on Paychecks May Be Avoided



- Compensation paid to NRA employees is subject to a grossed up withholding
- Restrictions on W-4
- Students:
 - International <u>students</u> on F-1, J-1, M-1 or Q-1 visas are exempt from paying Social Security and Medicare taxes – (5 calendar years; see IRS Publication 515)
 - After 5 calendar years they will continue to be <u>exempt</u> as long as they are enrolled in classes at least ½-time AND work less than 30 hours per week – ("The Student Rule")
- Some of a foreign nationals wages may be exempt from Federal and State income taxes because of a tax treaty between their country and the United States.

WHEN Taxes on Paychecks May Be Avoided (conf



Considerations When Granting Treaty Benefits

- U.S. tax status: NRA or RA
- Provide Social Security Number or ITIN
- · Country of tax residency
- · Primary purpose of visit as evidenced by
- DS-2019 for J Exchange Visitors
 - I-797 approval notices for H-1B, O-1, Q
 - I-20 for F and M visitors
- Status of the organization (educational, research, medical, etc.)
- Type of Income Paid
- Conducting research, teaching, training, other paid activities (honorarium activity)



Most Common Questions 222

Most Frequent Questions



Accountable Plan or NOT

- "Accountable Plan" Rules ONLY apply when there is a compensatory relationship
- "Accountable Plan" Rules DO NOT apply if there isn't compensatory relationship

Most Frequent Questions (cont.)



Honorarium vs. Contracted Services

- 9/5/6 Rule:
 - Visitor is limited to 9 days presence at an institutions to be eligible for honoraria payment
 - Visitor cannot have visited more than 5 institutions in the past 6 months
- Visa Type:
 - Visitor needs to enter the U.S. on a B visa (preferably B-1, not B-2), or as VW national (Visa Waiver program)
 - If the visitor is on any other type of visa, you must determine if permitted to pay an honoraria
- Services Required = Compensation ≠ Honorariums

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Most Frequent Questions (cont.) Honorarium Documentation (potential): To pay honorarium, you must have copies of: Passport identification page with picture, expiration date Nonimmigrant visa (B-1/B-2) or I-94 card (VW) I-94 card issued by CIS/CBP (small white card/electronic) Social Security card, ITIN card, or Unknown Social Security affidavit Section 431 compliance statement W-8BEN Permanent Residence Address (outside of U.S.) Dates of visit to agency (9-5-6 Rule) Potential Treaty Benefits Is your entity permitted to pay honorariums?

