NONRESIDENT ALIEN TAX COMPLIANCE

UPDATE OF THE ISSUES

Higher Education Tax Institute 2025
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LEGAL

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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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ISSUES TO CONSIDER

- Let's Review Sourcing . . . and the impact of the final Treasury Regulations regarding digital content and cloud transactions as related to the international provisions of IRC section 861.
- Form 1042 and 1042-S Reporting Requirements
- NIL and Impact to Foreign Students
- Wait for the IRS to contact my institution . . . or consider the Voluntary Disclosure Program?

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ALL INCOME PAID TO OR ON BEHALF OF A NONRESIDENT IS:

EXEMPT

- Foreign Source
- Internal Revenue Code
- Income Tax Treaty

or

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

TAXABLE

LET'S REVIEW SOURCING . . . *FOR NONRESIDENT ALIEN INDIVIDUALS*

COMPENSATION
(DEPENDENT OR INDEPENDENT)

Location of Activity

Location of Payor	U.S.	Outside U.S.
U.S.	U.S. Source Income	Foreign Source Income
Outside U.S.	U.S. Source Income	Foreign Source Income

ROYALTIES

at the location where the royalty is exercised. . .

NON-SERVICE SCHOLARSHIP/FELLOWSHIP

Location of Activity

Location of Payor	U.S.	Outside U.S.
U.S.	U.S. Source Income	Foreign Source Income
Outside U.S.	Foreign Source Income	Foreign Source Income

Title search: Nonresident Alien Tax Update

First appeared as part of the conference materials for the
13th Annual Higher Education Taxation Institute session
"Nonresident Alien Tax Update"