

# **Alaska School Business Officials Conference**

**Internal Revenue Service**

**Tax Exempt and Government Entities**

**Federal, State and Local Governments  
(FSLG)**

**December 13, 2013**

# Who We Are & Agenda

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- Affordable Care Act (slides 23 to 25)
- International Issues (slides 26 to 101)
- Fringe benefits (slides 102 to 123)

# Who We Are & Agenda

**Gary Petersen, FSLG Specialist (retiring)**

- Gaming Activities (slide 125)
- Third-Party Payors (slide 126)
- Employee versus Independent Contractor (slides 127 to 138)

# Who We Are & Agenda

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- What We Do, How We Do it & FSLG Letters (slides 5 to 7)
- Resources (slides 8 to 10)
- Form changes (slide 11)
- Accountable plan provisions (slides 12 to 16)
- Listed property (cell phones, computers) (slides 17 to 21)

# FSLG - What We Do & How

**Audit:** examine books & records to make a determination on proper payroll tax & information return reporting

- Letter Contact – initial contact by letter requesting a call back to inform the GE of the audit
- Telephone Contact – initial contact by telephone to inform the GE of the audit
- Confirmation Letter – when initial contact was by telephone
- May be conducted in person, through telephone & correspondence or with limited field visits and correspondence

# FSLG - What We Do & How

**Compliance Check:** review compliance with provisions, no books & records inspected, no tax determination, provide education to enhance understanding of tax law provisions

- Letter Contact – initial contact by letter requesting a call back
- Telephone Contact – initial contact by telephone to inform the GE of the compliance check
- Confirmation Letter – when initial contact was by telephone
- Almost always conducted by telephone and correspondence

# FSLG - What We Do & How

**Assistance & Outreach:** Technical questions, account problems & education

- Respond to inquiries from GE's on tax law provisions and application
- Assist GE's in resolving account problems such as responding to Campus communication, researching and explaining penalties, etc.
- Participate in and Conduct Outreach events (such as this) to assist GE's in understanding tax law provisions

# Important Telephone Numbers

- Toll-free telephone number for governmental entities: (877) 829-5500
- Toll-free telephone number for Information Return Questions: (866) 455-7438
- Toll-free telephone number for individuals: (800) 829-1040
- Toll-free telephone number for Publications: (800) 829-3676

# IRS Internet Services

- IRS Internet: [www.irs.gov](http://www.irs.gov)
- FSLG Web Site – Includes current news: <http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments>
- IRS e-Services – Online Tools for Tax Professionals: <http://www.irs.gov/Tax-Professionals/e-services---Online-Tools-for-Tax-Professionals>
- Email Questions: [tege.ask.fslg@irs.gov](mailto:tege.ask.fslg@irs.gov)

# Resource Handout

See the Handout (6 pages), '**Quick Links for Government Entities**,' for important telephone numbers and a wealth of resources available to assist GE's in understanding various tax law provisions

This document is useful in either electronic (best) or hard copy (URLs are listed) format

# Form Changes

## Form changes:

- Form W-2
- Form W-3
- Form 1099 (MISC, INT, G)
- Form 941

# Accountable Plans

- **Accountable Plan:** Business expense substantiation system that results in advances or reimbursements of business expenses incurred by Employees resulting in no taxable effect to those Employees
- **Non-Accountable Plan:** Advances and reimbursements for business expenses incurred by Employees under a non-accountable plan results in taxable effect to those Employees

# Accountable Plan Provisions

- Payments paid pursuant to an accountable plan are excludable from wages. *Treas. Reg. § 1.62-2(c)(4)*.
- Payments paid under a non-accountable plan are includable in wages. *Treas. Reg. § 1.62-2(c)(5)*.
- Advances or reimbursements made under an accountable plan (for travel or other business expenses) are not subject to FICA taxes. *Treas. Reg. § 31.3121(a)-3(a)*.
- Payments made under a nonaccountable plan are subject to FICA taxes when paid. *Treas. Reg. § 31.3121(a)-3(b)(1) and (2)*.

# Accountable Plan Provisions

## Accountable Plan But Must:

1. Require workers to substantiate incurred business expenses,
2. Provide advances or reimbursements only for reasonably expected business expenses, and
3. Require that any amounts received that exceed substantiated expenses must be returned within a reasonable period.

# Accountable Plan Provisions

## References:

- Publication 463, Chapter 6
- Business connection. *Treas. Reg. § 1.62-2(d)*
- Substantiation. *Treas. Reg. § 1.62-2(e)*
- Return of excess. *Treas. Reg. § 1.62-2(f)*

# Accountable Plan Provisions

Questions?

# Listed Property – IRC §280F

- Any passenger automobile,
- Any other property used as a means of transportation,
- Any property of a type generally used for purposes of entertainment, recreation, or amusement,
- Any computer or peripheral equipment
- Any other property of a type specified by the Secretary by regulations

# Listed Property – IRC §280F

- More stringent record-keeping requirements for ‘Listed Property’
- Controlled by the following requirements:
  - Business use is excludable from the wages of the employee as a working condition fringe benefit;
  - Personal use is included in the wages of the employee;
  - If substantiation requirements are not met, all use is included in the wages of the employee.

# Cell Phones

- De-listed through Small Business Jobs Act of 2010
- Notice 2011-72
  - Provides Employer may provide cell phone for non compensatory business reasons without taxable effect to Employee
  - Recordkeeping of business use not required to receive tax-free treatment
- Reimbursements & Allowances may be taxable – Accountable Plan prevails

# Cell Phones

## Handouts:

- IR 2011-93
- Notice 2011-72
- SBSE-04-0911-083 memo to IRS Employees

# Listed Property & Cell Phones

Questions?

# Tom Mansell

- Affordable Care Act (ACA)
- Payments to Foreign Persons
- Fringe benefits

# Affordable Care Act

Handout (19 pages)

IRS Affordable Care Act  
web pages

We will not be able to respond to ACA questions. Please review the materials on the web site.

# Affordable Care Act Resources

- <http://www.irs.gov/uac/Affordable-Care-Act-of-2010:-News-Releases,-Multimedia-and-Legal-Guidance>
- <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>
- <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Other-Organizations>

# Affordable Care Act Resources

## Large Employers

- <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Large-Employers>

## Small Employers

- <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Small-Employers>

## SBA – U.S. Small Business Administration Website related to Healthcare

- <http://www.sba.gov/healthcare>

# **Payments Made to Foreign Persons**

## **A Basic Overview**

# NOTICE

This overview is intended to provide basic rules governing the tax treatment of income for foreign persons. It reflects the interpretation by the IRS of tax laws, regulations, and court decisions. The explanations in the overview are intended for general guidance only, and are not intended to provide a specific legal determination with respect to a particular set of circumstances. Additional research may be required before a determination may be made on a particular issue. You may contact the IRS for additional information. You may also want to consult a tax advisor to address your situation.



## THE IMPORTANCE OF U.S. IMMIGRATION LAW

Although the immigration laws of the U.S. uses categories of immigrants, nonimmigrants and illegal aliens, the tax laws refer only to foreign persons, resident aliens (RA) and nonresident aliens (NRA).

# THE IMPORTANCE OF U.S. IMMIGRATION LAW

Without some basic knowledge of U.S. immigration law:

- The U.S. tax residency of aliens cannot be determined correctly.
- The U.S. FICA tax liability of aliens cannot be determined correctly.
- Interpretation of some tax treaty articles cannot be done correctly.



# IMMIGRANT

An alien who has been granted the right by the USCIS to reside **permanently** in the U.S. to work without restrictions in the U.S. Also known as a Lawful Permanent Resident (LPR). All immigrants are eventually issued a “green card” (USCIS Form I-551), which is the evidence of the alien’s LPR status. LPR’s who are awaiting the issuance of their green cards may bear an I-551 stamp in their foreign passports.

# NONIMMIGRANT

An alien who has been granted the right by the USCIS to reside **temporarily** in the U.S. Each nonimmigrant is admitted into the U.S. in the nonimmigrant status which corresponds to the class of visa with which, or purpose for which, he or she entered the U.S.

# ILLEGAL ALIEN

Also known as an “Undocumented Alien”. An alien who has entered the U.S. illegally and is deportable if apprehended, or an alien who entered the U.S. legally but who has fallen “out of status” and is deportable.

# VISA

A visa allows a nonimmigrant to enter the U.S. in one of several different categories, which correspond to the purpose for which the nonimmigrant is being admitted to the U.S. For example, a foreign student will usually enter the U.S. on an F-1 or J-1 visa.

Most students in F-1 and J-1 status have no specific time limits imposed on their stay in the U.S. while aliens in most other nonimmigrant statuses have various time limits imposed on their stay in the U.S.

Aliens in some nonimmigrant statuses are allowed to be employed in the U.S., while nonimmigrants in other statuses are not. Nonimmigrants who are allowed to be employed in the U.S. can usually get a U.S. social security number.

# NOTE

An employer who hires illegal aliens or aliens who are working in violation of their nonimmigrant status is expected to report and withhold taxes on the payments to the aliens just as it would with respect to payments to legal aliens and U.S. citizens.

# FOREIGN PERSONS

A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, and any other person that is not a U.S. person.

# RESIDENT AND NONRESIDENT STATUS

An alien is treated as a *resident* of the U.S. in a calendar year if he or she:

- Is a lawful permanent resident of the U.S., a “green card” holder, at any time during the calendar year,
- Meets the substantial presence test or
- Makes an election to be treated as a resident of the U.S.
- A *nonresident* alien is an individual who is not a U.S. citizen or a resident alien.

# SUBSTANTIAL PRESENCE TEST

This test contains two parts. Both parts must be passed for an individual to be considered a resident alien. See Publication 519 for an example.

**Part 1** – Days present in the current year must be at least 31, **and**

**Part 2** - The total of the following must be at least 183 days:

- Current year days in U.S. x 1, **plus**
- First preceding year days in U.S. x 1/3, **plus**
- Second preceding year days in U.S x 1/6



# TAXATION OF RESIDENT AND NONRESIDENT ALIENS

- Resident aliens and nonresident aliens can receive income as individuals, employees and as independent contractors.
- *Resident Aliens* are taxed on their worldwide income.
- *Nonresident Aliens* are taxed on their income from sources within the U.S. and on income that is effectively connected to a trade or business in the U.S.

# U.S. SOURCED INCOME

- Generally, income is from U.S. sources if it is paid by domestic corporations, U.S. citizens, resident aliens or entities formed under the laws of the U.S. or a state.
- Income is also from U.S. sources if the property that produces the income is located in the U.S. or the services for which the income is paid were performed in the U.S.

# U.S. SOURCED INCOME

Examples of U.S. sourced income include:

- Compensation for personal services
- Interest
- Pensions and annuities
- Rental income
- Royalties
- Taxable scholarships and fellowship grants
- Other taxable grants, prizes and awards

# U.S. SOURCED INCOME

- After allowable deductions, U.S. sourced income that is not effectively connected to a U.S. trade or business is taxed at a 30% rate, unless:
  - it is a specific income type covered by a statutory rate, as discussed in IRS Publication 515 or
  - a reduced rate or exemption applies under a tax treaty.

# EFFECTIVELY CONNECTED INCOME (ECI)

- Generally, when a foreign person engages in a trade or business in the U.S., all income from sources in the U.S. connected with the conduct of that trade or business is considered effectively connected with a U.S. business.
- ECI, after allowable deductions, is taxed at graduated income tax rates applicable to U.S. citizens and resident aliens, rather than at the 30% rate.

# EFFECTIVELY CONNECTED INCOME (ECI)

Factors to consider in establishing whether income is effectively connected with a U.S. trade or business include:

- Whether the income is from assets used in, or held for use in, the conduct of that trade or business, or
- Whether the activities of that trade or business were a material factor in the realization of the income.

# EMPLOYEE PAYMENTS

# WITHHOLDING ON ALIENS EMPLOYED IN THE U.S.

- Identify all aliens (non-U.S. Citizens) on the payroll who were paid for dependent personal services (wages).
- Divide the aliens into two groups: “Resident Aliens” and “Nonresident Aliens”. Refer to IRS Publication 519 for more information on the residency status of aliens.
- Treat *resident aliens* the same as U.S. citizens. They are generally subject to social security, Medicare and federal income tax withholding, with some exceptions. A Form W-4 should be secured.

# WITHHOLDING ON ALIENS EMPLOYED IN THE U.S.

- *Nonresident aliens* are also generally subject to social security and Medicare taxes, with some exceptions. Federal income tax, unless addressed by a treaty, is withheld per a new procedure in 2010 that requires the use of a new chart and new tables *in addition to* the withholding tables used to figure income tax withholding on other employees.
- Form 8233 is secured with respect to income exempt under a tax treaty.
- Form W-4 is secured with respect to income not exempt under a tax treaty, subject to special instructions, for the applicable number of withholding allowances claimed.

# FORM W-4

- **Nonresident aliens** who *fail to file* Form W-4, or file an invalid Form W-4, shall have federal income taxes withheld at the rates pertaining to single status, zero withholding allowances, with no other special rules.
- The 2010 Form W-4 advises nonresident aliens to review IRS Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing Form W-4 for special instructions that are required.

# ADDITIONAL INSTRUCTIONS FOR NRA FORMS W-4

For income tax withholding purposes, *nonresident aliens (NRA)* are subject to special withholding rules.

An NRA:

- Cannot write “Exempt” on line 7 of Form W-4.
- May claim only “Single” filing status on line 3 of Form W-4, *regardless of actual marital status*.
- With certain exceptions, cannot claim more than one withholding allowance on Form W-4.
- Is required to write “Nonresident Alien” or “NRA” above the dotted line on line 6.



# WITHHOLDING ADJUSTMENT FOR NRAs

- For 2010, a new procedure applies for figuring the amount of income tax to withhold from the wages of nonresident alien employees performing services within the U.S.
- There are four steps required to calculate how much income tax to withhold from the wages. Publication 15 provides an example explaining these four steps.

# WITHHOLDING ADJUSTMENT FOR NRAs

**Step 1:** Add to the wages paid to the NRA employee for the 2010 payroll period the amount shown in the chart below.

<u>Payroll Period</u>	<u>Add Additional</u>
Weekly	\$ 39.42
Biweekly	\$ 78.85
Semimonthly	\$ 85.42
Monthly	\$ 170.83
Quarterly	\$ 512.50
Semiannually	\$ 1,025.00
Annually	\$ 2,050.00
Daily or Miscellaneous*	\$ 7.88

\*(each day of the payroll period)

# WITHHOLDING ADJUSTMENT FOR NRAs

- Step 2:** Use the amount from *Step 1* and the number of withholding allowances claimed on Form W-4, (generally limited to one allowance) to figure income tax withholding using the tables for figuring income tax withholding for all other employees.
- If you use the **percentage method tables**, reduce the amount figured in *Step 1* by the value of the withholding allowances and use that reduced amount to figure income tax withholding from the percentage method table.
  - If you use the **wage bracket tables**, use the amount figured in *Step 1* to figure income tax withholding using the wage bracket tables.

# WITHHOLDING ADJUSTMENT FOR NRAs

**Step 3:** Use the amount you figured in *Step 1*, after subtracting the value of withholding allowances claimed on Form W-4, to figure an amount from the Tables for Withholding Adjustment for Nonresident Aliens for Wages Paid in 2010 on page 70 in Publication 15 (January 2010).

**Step 4:** Add the amounts calculated in *Steps 2 and 3*. The total is the amount of income tax to withhold from the nonresident alien employee's wages for the payroll period.

# WITHHOLDING ADJUSTMENT FOR NRAs

- Under Article 21 of the US-India Income Tax Treaty, *nonresident alien* students *from India* and business apprentices *from India* are *not subject to* the chart-based additions procedure.
- The amounts added under the chart are added to wages solely for calculating income tax withholding on the wages of the nonresident alien employee.
  - The chart amounts should *not be included* in any box on the employee's Form W-2 and *do not increase the income tax liability* of the employee.
  - Also, the chart amounts *do not increase the social security or Medicare tax liability* of the employer or the employee.

# EXEMPTIONS FROM WITHHOLDING FEDERAL INCOME TAX ON ALIENS EMPLOYED IN THE U.S.

Some *nonresident aliens* are eligible for exemptions from federal income tax withholding on some or all of their wages because of tax treaties. To claim the exemption, they must file Form 8233 with their employer.



# EXCEPTIONS FROM WITHHOLDING U.S. SOCIAL SECURITY AND MEDICARE TAX ON ALIENS EMPLOYED IN THE U.S.

- Totalization Agreements

The U.S. has social security agreements (also known as totalization agreements) with many countries, to eliminate dual taxation and coverage.

Compensation may be exempt from social security and Medicare taxes under one of these agreements.

More information and a list of agreement countries can be found at [www.socialsecurity.gov/international](http://www.socialsecurity.gov/international) or see section 7 of IRS Publication 15-A.

# EXCEPTIONS FROM WITHHOLDING U.S. SOCIAL SECURITY AND MEDICARE TAX ON ALIENS EMPLOYED IN THE U.S

- A nonresident alien temporarily in the U.S. on an F-1, J-1, M-1, or Q-1/Q-2 visa is not subject to U.S. social security and Medicare taxes on pay for services performed within the U.S. if such services are allowed by USCIS and performed to carry out the purpose for which the alien was admitted to the U.S.

# REPORTING WAGES PAID TO ALIENS EMPLOYED IN THE U.S.

- *Resident Aliens* – Reported on Forms 941 or Form 944 and W-2 in the normal manner.
- *Nonresident Aliens* – Report wages that are exempt under a tax treaty on Forms 1042 and 1042-S. Any additional wages paid over and above the exempt amount are reported on Forms 941 or Form 944 and Form W-2 in the normal manner.

# REPORTING WAGES PAID TO ALIENS EMPLOYED IN THE U.S.

- Even in situations in which all of a nonresident alien's wages are exempt from federal income tax under a tax treaty, and in which all federal wages would be reported on Form 1042-S, the filing of a Form W-2 is usually still required to report state and local wages and income taxes withheld.

# COMMON VISA TYPES

# F-1 VISA

- Issued to an academic student
- May be employed “on-campus” at school where enrolled. “On-campus” means work performed on school premises including commercial firms located on campus, i.e. bookstore, cafeteria, etc.
- Limited to 20 hours a week while school is in session
- Up to 40 hours a week during summer vacations

# J-1 VISA

- Issued to exchange visitors – students, teachers, researchers, au pairs, physicians, trainees, flight trainees.

# M-1 VISA

- Issued to nonacademic students (practical training) – vocational students and teachers
- Employment may be on or off campus.

## Q-1 VISA

- Issued to cultural exchange visitor – students or faculty.



# F-1, J-1, M-1, Q-1/Q-2 VISAS FOR FOREIGN STUDENTS

- Wages are exempt from social security and Medicare as long as the non-immigrant is a “non-resident alien”.
  - \* Foreign students who have been in the U.S. for more than *5 calendar* years become “resident aliens”. Social security and Medicare tax exemption ceases when the payee becomes a “resident alien”, unless
    - \* - the student FICA exception applies, allowing them to be exempt from social security and Medicare. See Revenue Procedure 2005-11.

# J-1, Q-1 or Q-2 VISAS FOR NON-STUDENTS

- Wages are exempt from Social Security and Medicare as long as the non-immigrant is a “nonresident alien”.
  - \* Foreign scholars, teachers, researchers, trainees, physicians, and other non-students who have been in the U.S. for more than *2 calendar* years become “resident aliens”. Social security and Medicare tax exemption ceases when the payee becomes a “resident alien”.

# F-1, J-1, M-1, Q-1/Q-2 VISAS

## Federal Income Tax Withholding

- *Resident aliens* – graduated income tax rates applicable to U.S. citizens.
- *Nonresident aliens* – Withholding adjustment for NRAs for wages paid in 2010 discussed earlier applies. Form W-4 subject to special instructions discussed earlier also applies.



# F, J, M, and Q VISAS

## SCHOLARSHIPS AND FELLOWSHIP GRANTS

- There is no withholding on a qualified scholarship received by a candidate for a degree, regardless of whether the individual is a resident or nonresident alien.
- For nonresident alien students with an “F”, “J”, “M”, or “Q” visa, who receive a U.S. source grant or scholarship that is not fully exempt, withhold tax at 14% (or lower treaty rate) on the taxable part of the scholarship or grant that is not a payment for services.



# F, J, M, and Q VISAS

## SCHOLARSHIPS AND FELLOWSHIP GRANTS

- However, if the student is not a candidate for a degree and the grant does not meet certain requirements, tax will be withheld at the 30% (or lower treaty) rate.
- Any part of a scholarship or fellowship grant that is a payment for services is subject to graduated withholding rates applicable to U.S. citizens and resident aliens.
- See IRS Publications 515 and 519 for more information regarding scholarships and fellowship grants.



# H-1b VISA

- Issued to workers in specialty occupations, such as teachers, trainees and researchers.
- Income is subject to social security/Medicare taxes from the very first day of U.S. employment, regardless of whether the worker is a resident or nonresident alien, and regardless of whether their wages may or may not be exempt from federal income taxes under a treaty.
- ***Exception*** – the provisions of a totalization agreement may relieve such aliens from liability for U.S. social security/Medicare taxes.

# H-1a AND H-1c VISAS

- Issued to foreign nurses.
- Income is subject to social security/Medicare taxes from the very first day of U.S. employment, regardless of whether the worker is a resident or nonresident alien, and regardless of whether their wages are exempt from federal income taxes under a treaty.
- **Exception** – the provisions of a totalization agreement may relieve such aliens from liability for U.S. social security/Medicare taxes.

# O-1 VISA

- Issued to foreign scholars, teachers, researchers, or trainees.
- Income is subject to U.S. social security and Medicare taxes if the worker is on the payroll of the university or other employer, regardless of whether or not they are a resident or nonresident alien.
- **Exception:** the provisions of a totalization agreement may relieve them from liability for U.S. social security and Medicare taxes.

# TN VISA

- These are foreign scholars, teachers, researchers, or trainees who arrive in the U.S. from Canada or Mexico under the NAFTA treaty.
- Fully liable for U.S. social security and Medicare taxes if they are employed on the payroll of the university or other employer, regardless of whether they are resident or nonresident aliens.
- **Exception:** the provisions of a totalization agreement may relieve them from liability for U.S. social security and Medicare taxes

# H-1b, H-1a, H-1c, O-1, TN VISAS

## Federal Income Tax Withholding

- *Resident aliens* – Graduated income tax rates applicable to U.S. citizens. Form W-4 subject to special instructions discussed earlier also applies.
- *Nonresident aliens* – Withholding adjustment for NRAs for wages paid in 2010 discussed earlier applies.

# INDEPENDENT CONTRACTOR PAYMENTS

# REPORTING AND WITHHOLDING REQUIREMENTS ON INDEPENDENT PERSONAL SERVICES (INDEPENDENT CONTRACTOR SERVICES) PAID TO FOREIGN PERSONS ON U.S. SOURCED INCOME

- *In general*, an entity must withhold 30% of any payment of an amount subject to withholding made to a payee that is a foreign person unless they can reliably associate the payment with documentation that establishes:
  - the payee is a U.S. person or
  - the payee is a foreign person who is the beneficial owner of the income and is entitled to a reduced rate of withholding.

A beneficial owner is a person who has the right to the economic enjoyment of the income.

# DOCUMENTATION REQUIRED

- *Resident Aliens* who are recipients of U.S. sourced income from independent personal services are treated as U.S. persons and Form W-9 should be secured.
- For individuals, the TIN on Form W-9 is generally an SSN. However, in some cases, an ITIN may be used. See the Instructions for the Requester of Form W-9.

# DOCUMENTATION REQUIRED

*Foreign persons* who are recipients of U.S. sourced income need to submit one of several forms to document their identity and status for tax purposes.

Those discussed here are:

- Form W-8BEN
- Form W-8ECI
- Form 8233

Payers are responsible for requesting a Form W-8 from any persons they presume, or otherwise believe to be, a foreign person.

# FORM W-8BEN

Foreign persons use this form to:

- Establish payee is not a U.S. person.
- Claim the payee is the beneficial owner of the income for which the W-8BEN is being provided.
- If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the U.S. has an income tax treaty on income that is not personal services income (such as rental income). A U.S. TIN is required in most instances. A TIN may be an SSN, EIN, or ITIN.

# FORM W-8BEN

This form *should not be used* by a nonresident alien individual who claims exemption from withholding on compensation *for independent or dependent personal services* performed in the U.S. Form 8233 should be used in this situation.



# FORM W-8ECI

- Used by a foreign person to claim exemption from 30% withholding in cases in which the payee has Effectively Connected Income (ECI) (such as personal services income that is being treated as business profits under a treaty).
- Cannot be used by an NRA individual with personal service income.
- Must report payee's U.S. TIN, or it is invalid.

# ITIN

- An ITIN is an IRS individual taxpayer identification number.
- It is a nine-digit number beginning with the number “9”, has a “7” or “8” for the fourth digit, formatted like an SSN (9XX-7X-XXXX).
- It is issued to individuals who are required for U.S. tax purposes to have a U.S. TIN but who do not have, and are not eligible to obtain, a social security number.
- Form W-7 is used to apply for an ITIN.



# PERIOD OF VALIDITY

- Forms W-8BEN (without a U.S. TIN) and W-8ECI will remain in effect from the date the form is signed and ending on the last day of the 3<sup>rd</sup> succeeding year received, unless a change in circumstances makes any information on the form incorrect.
- Example: If form was received on Sept 30, 2006, it will remain in effect until Dec 31, 2009.
- Form W-8BEN (with a U.S. TIN) will remain in effect until a change in circumstances makes any information on the form incorrect, provided the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner who provides the W-8BEN form.

# FORM W-8 SERIES

Foreign persons who provide Form W-8 BEN or Form W-8 ECI (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting.

# PRESUMPTION RULES

- If a payment cannot be associated with valid documentation, the presumption rules must be applied to ensure the proper amount of tax is withheld.
- These rules must be followed if you know, or have a reason to know, that a Form W-8 or other evidence provided is incorrect or unreliable.
- If you complied with this rule, you are not liable for tax, interest, or penalties even if the rate of withholding that should have been applied based on the payee's actual status is different from that presumed and withheld.

# PRESUMPTION RULES

Related To	IRS Regulation Section
Payee Status	1.1441-1(b)(3) 1.6049-5(d)
ECI	1.1441-4(a)(2)
Partnership & Partners	1.1441-5(d) 1.1446-1(c)(3)
Estate or Trust & its beneficiaries or owner	1.1441-5(e)(6)
Foreign Tax-Exempt Organizations	1.1441-9(b)(3)



# FORM 8233

An NRA uses Form 8233 to claim tax treaty exemption for some or all income from:

- Independent personal services (independent contractor services)
- Dependent personal services (wages)
- Personal services income and noncompensatory scholarship or fellowship income *from the same withholding agent.*
- And/or to claim a personal exemption amount to reduce independent personal services income.
- Generally required to have an SSN, however, an ITIN may be used. See Form 8233 Instructions.



# PROCESSING FORM 8233

- NRA individual provides three copies to Payer.
- Payer reviews the form and signs the certification in Part IV.
- Payer mails three copies of Form 8233 to the IRS within 5 days of receipt.
- Once approved and returned, payer gives one copy to the NRA individual and one copy is kept by the entity.
- Form 8233 must be completed every year.

# SPECIAL RULES FOR INDEPENDENT PERSONAL SERVICES

- Personal Exemption
- Final Payment Exemption



# PERSONAL EXEMPTION

- Pay subject to the 30% (or lower treaty) rate may be reduced by a personal exemption amount (\$3,650 for 2010).
- NRA is generally allowed one personal exemption.
- Residents of Canada, Mexico, or South Korea; a student from India; or a U.S. national, are generally entitled to the same exemptions as U.S. citizens.
- Each allowable exemption must be prorated according to the number of days in the tax year during which the alien performs services in the U.S.

# FINAL PAYMENT EXEMPTION

- The final payment for compensation during the tax year for independent personal services may be entirely or partly exempt from withholding.
- The nonresident alien must file specific information with the IRS. See IRS Publication 519.
- The IRS will determine the amount of the nonresident alien's tentative income tax for the tax year.

# FINAL PAYMENT EXEMPTION

- A letter, directed to the payer, will be sent to the nonresident alien showing the amount of the final payment that is exempt from withholding and the final amount that can be paid to the alien.
- The nonresident alien must give two copies of the letter to the payer.
- This exemption is available only once during the tax year and applies to a maximum of \$5,000 of compensation.



# FORM 1042/1042-S

*Form 1042* is an annual withholding tax return used to report payments and withholding from Forms 1042-S. It is due to the IRS by March 15 of the year following the payment(s).

*Form 1042-S* – examples of amounts reported:

- Wages that are exempt under treaty provisions
- Compensation and withholding for personal services performed in the U.S.
- Scholarships, fellowships, grants or financial aid paid to nonresident aliens that are not excludable from gross income as a “qualified scholarship” under IRC 117.
- Rents



# FORM 1042-S

- Reportable for any amount in excess of 0 – there is no minimum amount that triggers a filing requirement.
- Withhold at 30% or lesser treaty rate.
- Reportable to individuals, partnerships, **corporations**, trusts and estates.
- A Form 1042-S is required even if the entire amount of compensation is exempt under treaty provisions.
- Failure to file and failure to furnish penalties under IRC 6721 and 6722 are applicable.

# FORM 1042-S

- Follow the deposit requirements in the instructions.
- Must be filed with IRS by March 15
- Must furnish to recipient of income by March 15
- All paper Forms 1042-S submitted to IRS must be accompanied with a Form 1042-T, Annual Summary and Transmittal of Forms 1042-S.

# ADDITIONAL SOURCES OF INFORMATION

- *Information For International Taxpayers*  
<http://www.irs.gov/businesses/small/international/index.html>
- *New Developments in International Taxation*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96628,00.html>
- *Alien Taxation – Certain Essential Concepts*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96414,00.html>

# ADDITIONAL SOURCES OF INFORMATION

- *Classification Of Taxpayers For U.S. Tax Purposes*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96395,00.html>
- *Determining Alien Tax Status*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96392,00.html>
- *Taxation of Resident Aliens*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96493,00.html>

# ADDITIONAL SOURCES OF INFORMATION

- *Taxation of Nonresident Aliens*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96477,00.html>
- *Taxation of Dual-Status Aliens*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96433,00.html>
- *Tax Withholding on Foreign Persons*  
<http://www.irs.gov/businesses/small/international/article/0,,id=106981,00.html>

# ADDITIONAL SOURCES OF INFORMATION

- *Tax Treaties*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96454,00.html>
- *Taxpayer Identification Numbers*  
<http://www.irs.gov/businesses/small/international/article/0,,id=96696,00.html>
- *Miscellaneous International Tax Issues*  
<http://www.irs.gov/businesses/small/international/article/0,,id=97295,00.html>

# ADDITIONAL SOURCES OF INFORMATION

- *Frequently Asked Questions*  
<http://www.irs.gov/faqs/faq13.html>
- *Help With Tax Questions – International Taxpayers*  
<http://www.irs.gov/help/page/0,,id=133197,00.html>
- *Amounts Subject to Reporting on Form 1042-S*  
<http://www.irs.gov/businesses/small/international/article/0,,id=102336,00.html>
- *Form 1042 Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*  
<http://www.irs.gov/businesses/small/international/article/0,,id=102325,00.html>

# ADDITIONAL SOURCES OF INFORMATION

- **Publication 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities
- **Publication 15**, Circular E Employer's Tax Guide
- **Publication 519**, U.S. Tax Guide for Aliens
- **Publication 901**, U.S. Tax Treaties
- *(INPUT FSLG Specialist's name and contact information).*

# Payments to Foreign Persons

Questions?

# Fringe Benefits

## What are Fringe Benefits?

- **Any Property, Service or Cash** (other than salaries and wages) provided by an employer
- **Taxable Unless Specifically Excluded**
  - Example – Health Care Premiums under IRC §106

# Fringe Benefit Requirements

- Identify specific benefit provided to employees;
- Determine whether benefit is excluded by law; and
- Determine whether benefit is fully or partially taxable.

# Non-Taxable Fringe Benefits

- No additional cost service
- Qualified employee discounts
- Working condition fringe
- De minimis fringe
- Qualified transportation expenses
- Qualified Moving Expense Reimbursements

# Taxable Fringe Benefits

- INCLUDE in Employees' wages and report on Form W-2 (never on Form 1099-MISC)
- Subject to Federal Withholding, Social Security and Medicare
- Even if benefit is received by/for spouse or child of employee

# Non-Travel Fringe Benefits

- Cash & Awards
- Clothing
- Equipment
- Professional Licenses

# Cash & Awards

- CASH PRIZES and AWARDS are always taxable
- PERFORMANCE AWARDS are always taxable
- NON-CASH:
  - Use Fair Market Value

# Awards Exceptions

- Certain Awards transferred to Charities
  - Pulitzer, Nobel Peace Prize
- Certain Employee Achievement Awards
  - Length of Service, Safety – Not Cash
- Nominal Holiday/Special Occasion Awards
  - Coffee mugs, plaques, etc.

# Travel-Related Fringe Benefits

## Per Diem Allowances:

- Lodging, meals and incidentals
- Business related travel
- While away from home

# Meal Allowances

## Meals while away from home:

- **Overnight**

- Accountable Plan – not taxable

- **Not Overnight**

- Generally taxable as wages (specific exceptions)

# Meal Allowances – No Travel

- Employer convenience
  - To permit work to continue
- Meals with business meetings
  - NOT taxable if:
    - clear business setting
    - directly related
- Employer buys lunch
  - Taxable as wages
  - As in day trips without significant rest required

# Vehicle Expenses

## Employee Substantiation to Employer:

- Date, Purpose, Place of each trip
- Mileage 'at or near the time' incurred
- Examples: Diary, log, trip sheet, expense statement or similar record
- Commuting is always taxable – It is non-business travel

# Employee Personal Vehicle

## Used for Employer Business:

- 2014 Federal Mileage Rate = \$0.56/mile
  - Reimbursement at or below this rate is not taxable to Employee
  - Excess over this rate is taxable to Employee
  - If Employee chooses not to be reimbursed, cannot claim on personal tax return.
  - Substantiation required (Accountable Plan)

# Employer-Provided Vehicle

## Used by Employee:

- Verified business use is not taxable to Employee
- Personal use is taxable to Employee
  - No records kept – value of ALL use is taxable
  - Records kept – only personal use is taxable
- Employee can reimburse Employer for personal use

# Personal Use Valuation

- Cents-Per-Mile Rule
- Lease Valuation Rule
- Commuting Rule

See Publication 15-B, Section 3

# Cents Per Mile Rule

- Multiply standard mileage rate by total personal miles driven by Employee
- Include in Employee's wages and on Form W-2

# Lease Valuation Rule

- Compute Personal Use
- Determine what employee would pay to lease auto (FMV)
- Multiply FMV by % of personal use

# Commuting Rule

- Value by multiplying each one-way commute by \$1.50
- Applicable to each employee who commutes in the vehicle
- Include in the Employees' wages and on Form W-2

# Commuting Rule Requirements

## Must meet all of the following:

- Vehicle use for bona fide non-compensatory reasons
- Written policy prohibiting personal use (de minimus use exception)
- Employee does not use vehicle for personal use (de minimus use exception)
- Employee is not a control employee

# Automobiles

## Special Accounting Rules

- Employer can elect to defer withholding
- Employer can withhold at 25%
- November and December benefits may be treated as paid in next year
- Employer can elect not to withhold FIT
  - Employer must tell employee
  - Employer includes in wages & on Form W-2

# Fringe Benefits - Handouts

- Teacher housing – 2 Handouts
  - Internal Revenue Code §119
  - Proposed Regulations
- Employer provided vehicle – 1 Handout
  - Explanations & Examples
- Current mileage rates – 2 Handouts
  - Notice 2013-80
  - IR 2013-95

# Fringe Benefits – Reminder

## If the Benefit is Taxable

Determine the value

Include in Wages and on Form W-2

## References

- Publication 15-B, Employer's Tax Guide to Fringe Benefits
- Publication 463, Travel, Entertainment, Gift and Car Expenses

# Fringe Benefits

Questions?

# Gary Petersen

- Gaming Activities
  - Excise Tax provisions
  - Letters to taxpayers
- Third-Party Payors
- Employee versus Independent Contractor
  - Coaches
  - Referees
  - Election Workers
  - Elected Officials

# Gaming Activities

Excise Tax provisions  
Letters to taxpayers

Handout – Wagering Excise Tax

**Questions?**

# Third-Party Payors

Handout - Payroll Tax and Third-Party Payors

**Questions?**

# Employee or Independent Contractor

## Determine Worker Status

- Fringe benefit rules apply
- Accountable Plan rules apply
- Report payments on information return:
  - FW-2 for Employee
  - F1099-MISC for Independent Contractor

# Employee or Independent Contractor

## Three Categories of Evidence:

1. Behavioral Control
2. Financial Control
3. Relationship of the Parties

# Behavioral Controls

**IF the firm provides instruction on**

- How to do the job,
- What hours to work, what days, etc.,
- The worker is most likely an ***employee***

# Financial Controls

**IF the firm provides an office and:**

- All office supplies, computer
- Other business equipment,
- Payment of business expenses
- The worker is an ***employee***

# Relationship of the Parties

**IF the firm provides benefits:**

- Health insurance, life insurance,
- Retirement benefits, 401(k) plan, 403(b),
- The worker is an ***employee***

# Independent Contractor

- Offers services to public
- Operates own business
- Bills for services
- Doesn't have to personally perform work

# Common Misconceptions

## Employees can be:

- Part-time workers
- Temporary workers
- Probationary
- Workers who say they are independent contractors

# Reporting Employees

**All compensation on Form W-2**

- Awards
- Back pay
- Bonuses
- Severance pay
- Taxable fringe benefits

# Reporting Independent Contractors

- **ALL** compensation for services on Form 1099-MISC
- Reimbursed expenses – if **Non-Accountable Plan** – include on F1099-MISC

# Employee or Independent Contractor

## Handouts:

- Elected versus Election Officials
- CCA 200147006 – School Superintendents
- CCA 1995 WL 1918516 – Athletic Officials
- PLR 8134185 – Athletic Officials
- Form SS-8 and Twenty Factors in Three Categories of Evidence
- Determination of Worker Classification Work Sheet

# Employee or Independent Contractor

## References:

- Publication 15 (Circular E), Employer's Tax Guide
- Publication 15-A, Employer's Supplemental Tax Guide
- Publication 963, Federal-State Reference Guide

# Employee or Independent Contractor

Questions?

We thank you for attending.

Gary, Tom & Kathleen

**Internal Revenue Service  
Tax Exempt and Government Entities  
Federal, State and Local Governments**