

# East Tennessee State University



## **Nonresident Alien Tax Issues**

# Resident Alien or Nonresident Alien?

- **Green Card Test**
  - If the individual has been issued or will receive an alien registration card any time during the calendar year, the individual is a permanent resident alien
- **Substantial Presence Test**
  - If the individual passes the substantial presence test, they are a resident alien for tax purposes

# Substantial Presence Test

- An alien will satisfy the substantial presence test if he is physically present in the U.S. for at least:
  - 31 days during the current calendar year, and
  - 183 days during the three-year period that includes the current year and the two years preceding the current year

# 183-Day Computation

- All days present in U.S. during the current calendar year (must be  $> 31$  days)
- +  $1/3$  of days present in U.S. during the 1st preceding calendar year
- +  $1/6$  of days present in U.S. during 2nd preceding calendar year
- = Total number of days for tax purposes

# “Exempt Individuals”

- This term is used for purposes of counting days that an individual is physically present in the U.S. for purposes of the substantial presence test; those days the individual qualifies as an “exempt individual” DOES NOT pertain to the individual’s requirement to have federal or FICA tax withheld or to file a U.S. income tax return

## “Exempt Individuals” (Continued)

- A J or Q non-student visa holder will not qualify for “exempt individual” status if he was exempt as a teacher, trainee, non-student or student for any two of the last six calendar years
- A F, J, M or Q student visa holder will not be treated as an “exempt individual” if he has enjoyed that status for any part of more than five calendar years

# Resident Aliens/Permanent Residents

- Taxed as a U.S. citizen
- Taxed on worldwide income
- Subject to graduated withholding rates
- Subject to FICA taxes
- Must file Form 1040

# General Rule/Nonresident Aliens

- Section 1441 of the Internal Revenue Code states that a withholding agent is required to withhold federal income tax from all payments made to or on the behalf of a nonresident alien, and Treasury Regulation 1.1461-2 requires all such payments be reported to the IRS.



## General Rule - Continued

- Section 1441 also states that a 30% tax must be withheld on fixed and determinable payments of U.S. source income to nonresident aliens
- Only taxed on income from U.S. sources
- Usually exempt from FICA taxes (TN/H1-B visa types pay FICA from date of arrival in the U.S.)
- Must file Form 1040-NR (through CINTAX)

# Exceptions to the General Rule

- Foreign Source Income
- “Qualified Scholarship” Exclusion
- Reduced Withholding for  
Scholarship/Fellowship Payments
- Compensation Payments made to Employees
- Income Tax Treaty Exclusions

# Foreign Source Income

- Compensation is sourced at the location where the activity is performed
- Scholarships/Fellowships are sourced by the “control” of the payer

# “Qualified Scholarship”

- Tuition and Required Fees are not Taxable if the Individual is:
  - Candidate for a Degree
  - Attending an Educational Organization

# Reduced Withholding for Scholarship/Fellowship Payments

- Reduced Tax Rate of 14% (non-required fees)
- If Present on an F, J, M, or Q Visa
  - Example:  
Athletes on a full scholarship  
Room and Board are taxed at 14%

# Compensation Payments made to Employees

- Taxed at Graduated Withholding Rates using
  - “Single” Marital Status
  - One Withholding Allowance
  - Cannot Claim “Exempt” on Line 7

# Income Tax Treaty Exclusions

- U.S. has Income Tax Treaties in Force with Approximately 46 Countries
- Each Treaty has Unique Exclusions
- Follow the Five-Step Process to Determine if an Individual will Qualify for a Tax Treaty Exemption as Outlined in the 2007 Edition of the Nonresident Alien Tax Compliance Guide by Donna Kepley

# Five-step Process

- Is there a tax treaty between the U.S. and the individual's country of tax residence?
- Does the individual's U.S. tax residency status qualify under the applicable tax treaty?
- Does the income tax treaty contain an article that relates to the individual's primary purpose of presence in the U.S.?



## Five-Step Process (Continued)

- Is the type of income paid to the individual covered in the applicable article of the income tax treaty?
- Does the individual meet the specific qualifications set forth in the tax treaty article?
- Table 2 in IRS Publication 515 can be used as a general guideline

# Income Tax Treaty Exclusion

- To Exclude an Individual's Income Under a Treaty, the Following Forms Must be Completed:
  - Form 8233 for Dependent or Independent Compensation and the Required Statement
  - Form W-8BEN for Scholarships
  - Form W-9 for Resident Aliens

# ITIN

- Individual Taxpayer Identification Number
- Issued by the IRS, when the individual is not eligible to obtain a social security number
- Under NO circumstances will an individual receive payment for services, (including honorariums), without a valid SSN or ITIN
- SSN/ITIN is not required to be reimbursed for travel expenses only

# Independent Contractors

## B-1 / B-2 Visas

- Eligible to receive honorarium payments
- Eligible to receive reimbursement for travel expenses under the accountable plan rules
- Must complete the Compliance Statement for Payments to Visitors in Business or Tourist Status (through GLACIER)

# Summary

## Students and Employees

- Complete GLACIER paperwork
- Remember Specific Instructions for Completion of the W-4 Card by a Nonresident Alien
- Be Aware of the Fact that a Tax Treaty may Exempt a Nonresident Alien from Taxes

# Summary

## Independent Contractors (Guest Speakers)

- Begin the Paperwork Process Early
- As of January 1, 1997 all Nonresident Aliens Guest Speakers must have a Social Security Number or an ITIN
- Complete GLACIER paperwork

# Summary

## Independent Contractors

- Complete W-8BEN, Certificate of Foreign Status
- Be Aware of the Fact that a Tax Treaty may Exempt a Nonresident Alien from Taxes
- Complete the Compliance Statement for Payments to Visitors in Business or Tourist Status for B-1 or B-2 Visa Holders

# Summary

- Contact me directly at 439-6887
- Schedule an appointment to obtain help with GLACIER or CINTAX
- Questions

