



Supplemental Form W-4 Instructions for Nonresident Aliens

Nonresident aliens must follow special instructions when completing Form W-4, Employee's Withholding Allowance Certificate, available at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>, for compensation paid to such individuals as employees performing dependent personal services in the United States. Compensation for dependent personal services includes amounts paid as wages, salaries, fees, bonuses, commissions, compensatory scholarships, fellowship income, and similar designations for amounts paid to an employee.

Are you a nonresident alien? If so, these special instructions apply to you. Resident aliens should follow the instructions on Form W-4.

If you are an alien individual (that is, an individual who is not a U.S. citizen), specific rules apply to determine if you are a resident alien or a nonresident alien for federal income tax purposes. Generally, you are a resident alien if you meet either the "green card test," discussed at <http://www.irs.gov/businesses/small/international/article/0,,id=96314,00.html>, or the "substantial presence test," discussed at <http://www.irs.gov/businesses/small/international/article/0,,id=96352,00.html>, for the calendar year. Any alien individual not meeting either test is generally a nonresident alien. Additionally, a dual-resident alien who applies the so-called "tie-breaker" rules contained within the Resident (or Residence or Fiscal Residence) article of an applicable U.S. income tax treaty in favor of the other Contracting State is treated as a nonresident alien. See Publication 519, U.S. Tax Guide for Aliens, available at <http://www.irs.gov/pub/irs-pdf/p519.pdf>, for more information on the green card test and the substantial presence test.

What compensation is subject to withholding and requires a Form W-4?

Compensation paid to a nonresident alien for performing personal services as an employee in the United States is subject to graduated withholding. Compensation for personal services also includes amounts paid as a scholarship or fellowship grant to the extent it represents payment for past, present, or future services performed as an employee in the United States. Nonresident aliens must complete Form W-4 using the modified instructions provided later, so that employers can withhold the correct amount of U.S. federal income tax from compensation paid for personal services performed in the United States. This Notice modifies the instructions on Form W-4 to take into account the restrictions on a nonresident alien's filing status, the limited number of personal exemptions allowed, and because a nonresident alien cannot claim the standard deduction.

Are there any exceptions to this withholding?

Yes. Nonresident aliens may be exempt from wage withholding on the following amounts.

- Compensation paid to employees of foreign employers if such pay is not more than \$3,000 and the employee is temporarily present in the United States for not more than a total of 90 days during the tax year.
- Compensation paid to regular crew members of a foreign vessel.
- Compensation paid to residents of Canada or Mexico engaged in transportation-related employment.

- Certain compensation paid to residents of American Samoa, Puerto Rico, or the U.S. Virgin Islands.

See Publication 519 to see if you qualify for one of these exemptions.

Nonresident aliens may be exempt from wage withholding on part or all of their compensation for dependent personal services under an income tax treaty. If you are claiming a tax treaty withholding exemption, do not complete Form W-4. Instead, complete Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, available at <http://www.irs.gov/pub/irs-pdf/i8233.pdf>, and give it to each withholding agent from whom amounts will be received. Even if you submit Form 8233, the withholding agent may have to withhold tax from your income because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. In this case, you must file Form 1040NR, U.S. Nonresident Alien Income Tax Return, available at <http://www.irs.gov/pub/irs-pdf/f1040nr.pdf>, (or Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents, available at <http://www.irs.gov/pub/irs-pdf/f1040nre.pdf>, if you qualify) to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty exemption. See Form 8233 and Instructions for Form 8233, available at <http://www.irs.gov/pub/irs-pdf/i8233.pdf>; Publication 901, U.S. Tax Treaties, available at <http://www.irs.gov/pub/irs-pdf/p901.pdf>; and Publication 519 for further information on treaty benefits.

Am I required to file a U.S. tax return even if I am a nonresident alien?

Yes. Nonresident aliens who perform personal services in the United States are considered to be engaged in a trade or business in the United States and generally are required to file Form 1040NR (or Form 1040NR-EZ). However, if your only U.S. trade or business was the performance of personal services and the amount of compensation is less than \$3,650 in 2010 (the personal exemption amount), then you may not need to file Form 1040NR (or Form 1040NR-EZ). Also, you do need to file Form 1040NR (or Form 1040NR-EZ) to claim a refund of any overwithheld taxes. See the Instructions for Form 1040NR, available at <http://www.irs.gov/pub/irs-pdf/f1040nr.pdf>, or the Instructions for Form 1040NR-EZ, available at <http://www.irs.gov/pub/irs-pdf/f1040nre.pdf>, for more information.

Nonresident aliens who are bona fide residents of U.S. possessions should consult Publication 570, Tax Guide for Individuals with Income from U.S. Possessions, available at <http://www.irs.gov/pub/irs-pdf/p570.pdf>, for information on whether compensation is subject to wage withholding in the United States.

Will my withholding amounts be different from withholding for my U.S. co-workers?

Yes. Nonresident aliens cannot claim the standard deduction. In addition, nonresident aliens do not qualify for the Making Work Pay credit. The benefits of the standard deduction and the Making Work Pay credit are included in the existing wage withholding tables published in Publication 15 (Circular E), Employer's Tax Guide, available at <http://www.irs.gov/pub/irs-pdf/p15.pdf>.

Because nonresident aliens do not qualify for these benefits, employers are instructed to withhold an additional amount from a nonresident alien's wages. For more information, see Notice 2009-91, 2009-48 I.R.B. 717, available at http://www.irs.gov/irb/2009-48_IRB/ar10.html. For the specific amounts to be added to wages before application of the wage tables, see Publication 15.

Note. A special rule applies to students and business apprentices from India who are eligible for the benefits of Article 21(2) of the U.S.-India income tax treaty, because such individuals may be entitled to claim an additional withholding allowance for the standard deduction. See Publication 519 for more information.

What are the special Form W-4 instructions?

Nonresident aliens should pay particular attention to the following lines when completing Form W-4.

Line 2. You are required to enter a social security number (SSN) on line 2 of Form W-4. If you do not have an SSN, you must apply for one on Form SS-5, Application for a Social Security Card, available at <http://www.socialsecurity.gov/online/ss-5.pdf>.

You also may get Form SS-5 from any Social Security Administration (SSA) office.

Note. You cannot enter an individual taxpayer identification number (ITIN) on line 2 of Form W-4.

Line 3. Check the single box regardless of your actual marital status.

Line 5. Generally, you should claim one withholding allowance. However, if you are a resident of Canada, Mexico, or South Korea, a student or business apprentice from India, or a U.S. national, you may be able to claim additional withholding allowances for your spouse and children. See Publication 519 for more information.

If you are completing Form W-4 for more than one withholding agent (for example, you have more than one employer), figure the total number of allowances you are entitled to claim and claim no more than that amount on all Forms W-4 combined. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest-paying job and zero allowances are claimed on the others.

Line 6. Write "nonresident alien" or "NRA" on the dotted line. If you would like to have an additional amount withheld, enter the amount on line 6.

Line 7. Do not claim that you are exempt from withholding on line 7 of Form W-4 (even if you meet both of the conditions listed on that line).