

FOREIGN TEACHERS: IRS ALIEN LIABILITY FOR PAYROLL TAXES



IRS ALIEN LIABILITY FOR SOCIAL SECURITY AND MEDICARE TAXES OF FOREIGN TEACHERS

I. Nonresident Aliens (not passed green card test):

- a. Nonresident Alien scholars, professors, teachers, trainees, researchers, physicians, au pairs, summer camp workers and other non-student aliens temporarily present in the US in J-1 or Q-1/Q-2 nonimmigrant status are exempt from U.S. Social Security and Medicare taxes on wages paid to them for services performed within the US as long as such services are allowed by US Citizenship and Immigration Services for these nonimmigrants statuses and such services are performed to carry out the purposes for which such visas were issued to them.
- b. Exempt Employments includes:
 - i. Employment as a professor, teacher or researcher
 - ii. Employment as a physician, au pair, summer camp worker or any other non-student category of exchange visitor

II. Nonimmigrants (permanent residence outside the US, here on temporary basis):

The IRS Code grants an exemption from Social Security and Medicare taxes to nonimmigrant scholars, teachers, researchers, etc. temporarily present in the US in J-1, Q-1 or Q-2 status. Both the IRS and the Social Security Act exempt the above-name nonimmigrants from Social Security/Medicare taxes for as long as these nonimmigrants are "NONRESIDENT ALIENS" in J-1, Q-1 or Q2 status.

- a. Exception:
 - i. Foreign scholars, teachers, researchers, etc. in J-1, Q-1 or Q-2 nonimmigrant status who have been in the US more than two calendar years are RESIDENT ALIENS and are liable for Social Security/Medicare taxes. It is the calendar year of entry which is counted toward the two calendar years (i.e. a foreign teacher who enters the US on December 31, 2017 counts 2017 as the first of his two years as an "exempt individual").
 - ii. Alien scholars, teachers, trainees, or researchers in J-1, Q-1 or Q-2 status who change to a nonimmigrant status other than J-1, Q-1 or Q-2 will become liable for Social Security/Medicare taxes in most cases on the very day of the change of status.

III. Totalization Agreements:

The US has entered into treaty agreements with several nations. These agreements must be taken into account when determining whether any alien is subject to the Federal income taxes imposed by the Internal Revenue Code.

STEPS FOR TAX TREATY EXEMPTIONS

I. Income Tax Treaties:

Income tax treaties provide some exemptions from U.S. federal income taxes. When the tax treaty provides an income tax exemption, the employee must file Form 8233 with the withholding agent to claim a tax treaty exemption on income.

II. Auditing Tips:

- ✓ Each Form 8233 must report the U.S. TIN of the treaty claimant, or the treaty claim is invalid (Treas. Reg 1.1441-1(e)(4)(vii))
- ✓ Verify the tax treaty exemption, because an IRS examiner will
- ✓ Form 8233 is good for the tax year and the income listed

III. Employer Reporting Requirements:

The employer must report exempt wages under a tax treaty to a non-resident alien on Forms 1042 and 1042-S by March 15th.

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Nonresident alien employee's Form W-4.

When completing Forms W-4, nonresident aliens are required to:

- Not claim exemption from income tax withholding,
- Request withholding as if they're single, regardless of their actual marital status,
- Claim only one allowance (if the nonresident alien is a resident of Canada, Mexico, or South Korea, or a student or business apprentice from India, he or she may claim more than one allowance), and
- Write "Nonresident Alien" or "NRA" above the dotted line on line 6 of Form W-4.

If you maintain an electronic Form W-4 system, you should provide a field for nonresident aliens to enter nonresident alien status instead of writing "Nonresident Alien" or "NRA" above the dotted line on line 6.



A nonresident alien employee may request additional withholding at his or her option for other purposes, although such additions shouldn't be necessary for withholding to cover federal income tax liability related to employment.

Form 8233.

If a nonresident alien employee claims a tax treaty exemption from withholding, the employee must submit Form 8233 with respect to the income exempt under the treaty, instead of Form W-4. For more information, see *Pay for Personal Services Performed* in the *Withholding on Specific Income* section of Pub. 515 and the Instructions for Form 8233.