

IRS updates instructions for nonresident aliens completing Form W-4

The IRS recently updated Notice 1392, “Supplemental Form W-4 Instructions for Nonresident Aliens.” Here are some details on the changes.

A form, redesigned

As you’re likely aware, Form W-4, “Employee’s Withholding Certificate,” is used by employers to calculate an employee’s correct income tax withholding. For 2020, the IRS redesigned Form W-4 to account for the changes to the personal exemption and standard deduction made by the Tax Cuts and Jobs Act. (The law suspended personal exemptions and substantially increased the standard deduction.) There’s now a five-step process for completing Form W-4.

Specific rules determine whether an alien (that is, someone who’s not a U.S. citizen) is a resident alien or a nonresident alien (NRA) for federal income tax purposes. Generally, if an alien doesn’t meet either the “green card test” or the “substantial presence test” for the calendar year, he or she is considered an NRA.

Generally, withholding calculations are different for NRA employees because they can use only single filing status and aren’t entitled to the standard deduction that’s built into the withholding tables. Thus, to offset the standard deduction, employers need to add an amount to wages (an “add back”) before determining withholding amounts.

The add back amount varies by pay period (such as weekly, biweekly or monthly). The specific add back amounts can be found in IRS Publication 15-T, “Federal Income Tax Withholding Methods.”

Guidance for NRAs

Notice 1392 modifies the instructions to Form W-4 to account for the fact that NRAs can use only single filing status and can’t claim the standard deduction. Thus, NRAs must complete Form W-4 using the modified instructions so employers can withhold the correct amount of federal income tax from compensation paid for personal services performed in the United States.

The IRS is advising NRAs working in the United States to particularly pay attention to the following lines when completing Form W-4:

“Step 1: Enter Personal Information, (b).” NRAs must enter a Social Security Number. If an NRA doesn’t have one, he or she should contact the Social Security Administration to determine whether he or she is eligible for one. A taxpayer identification number can’t be used on Form W-4.

“Step 1: Enter Personal Information, (c).” NRAs should check the “Single or Married Filing Separately” box regardless of their actual marital status.

“Step 2: Multiple Jobs or Spouse Works.” NRAs shouldn’t complete this section unless they have more than one job at the same time. A spouse’s job shouldn’t be accounted for, because NRAs can’t file jointly. There are other steps to follow if an NRA has more than one job.

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“Step 3: Claim Dependents.” Only NRAs from Canada, Mexico, South Korea or India should use Step 3 because they’re the only NRAs that may be able to claim the child tax credit or the credit for other dependents. Generally, NRAs aren’t entitled to education credits.

“Step 4 (optional): Other Adjustments, (a).” This step should be completed only if the NRA wants tax withheld for other income that wasn’t subject to withholding but is taxable in the United States. The NRA should exclude any income from jobs or self-employment.

“Step 4 (optional): Other Adjustments, (b).” The IRS notes that NRA itemized deductions and adjustments to income may be limited, so NRAs should be careful completing this section.

“Step 4 (optional): Other Adjustments, (c).” The NRA should write “nonresident alien” or “NRA” in the space below Step 4(c) if he or she would like to have an additional amount withheld.

The NRA shouldn’t claim that he or she is exempt from withholding in the space below Step 4(c) of Form W-4 — even if the NRA meets the criteria for claiming an exemption from withholding listed in the instructions to Form W-4.

Potential exemption

NRAs may be exempt from wage withholding under an income tax treaty on all or part of their compensation for dependent personal services. NRAs claiming a tax treaty withholding exemption shouldn’t complete Form W-4. Instead, they should complete Form 8233, “Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,” and give it to each withholding agent from whom amounts will be received.

In addition, compensation paid to employees of foreign employers isn’t subject to withholding if such pay is not more than \$3,000 for the tax year and the employee is temporarily present in the United States for not more than a total of 90 days during the tax year.

Distinctive challenges

NRAs face distinctive challenges when filing their U.S. income tax returns, as required by law. If you’re subject to the rules or know of someone who is, a qualified CPA can help explain the details and complete the necessary tax forms. •