

HONORARIUMS/EXPENSE REIMBURSEMENT PAYMENTS TO NON-RESIDENT ALIENS (NRA)

Non-Resident Alien vs Resident Alien defined: A non-resident alien is a citizen of another country who has not been granted permanent residency in the U.S., but rather is temporarily in the U.S. for a specific purpose. Resident aliens are non U.S. citizens who have been authorized to live and work in the U.S. indefinitely. Resident aliens are treated the same as U.S. citizens for tax purposes and complete / receive the same tax forms required of U.S. citizens such as W9, 1040, 1099.

We have recently received numerous questions regarding paying visiting speakers, worship leaders, or teachers who are not legal residents of the United States. Organizations have legal responsibilities to ensure any such payments are allowable and in compliance with current IRS and immigration laws. In an attempt to provide some guidelines, we have prepared the following key points to consider before paying any non-resident alien individuals.

Key Point #1) Because of the numerous complexities detailed below, rather than paying the individual we recommend making a donation to the affiliated church or ministry. In this case, however, not all responsibility is abandoned as the organization should take steps to ensure the foreign organization isn't linked to any suspected terrorist activities. This can be documented by verifying the charity is recognized as a tax-exempt charity on the IRS website at: <http://www.irs.gov/Charities-&Non-Profits/Exempt-Organizations-Select-Check>

Key Point #2) Most visitors to the United States enter the country as tourists. It is illegal to make any payments, whether honorariums or expense reimbursements, to a foreigner for work performed in the U.S. unless the person has a proper work visa. The Organization should retain a copy of the work visa and IRS form W-8ECI completed by the foreigner.

If the NRA has a proper work visa and they meet the “personal presence test” and “income test” below, then no U.S. tax rules/reporting are implicated, unless there is a tax treaty with the specific country that stipulates otherwise. The tax treaty takes precedence over these two general tests.

- Personal Presence Test- the NRA is in the U.S. for less than 30 days within the calendar year.
- Income Test- the NRA receives less than the person exemption amount (\$4,050 in 2017) for the entire calendar year from all U.S. sources.

If no tax treaty exists changing the withholdings required and the above tests are met, then no tax withholding or reporting applies. If the tests are not met, then the Organization must withhold 30% of any payment and issue form 1042-S/1042-T to the NRA and to the IRS (along with the withholding).

Key Point #3) If exemption from the mandatory withholding is claimed (per a tax treaty), the NRA must provide the Organization with form 8233. The Organization is required to send this form to the IRS at least 10 days before any payments are made. If form 8233 is not filed timely, then the mandatory 30% withholding applies.

For your convenience, following are the tax treaty rules for our two border countries:

Canadian Tax Treaty Rules

Stipulates that workers are taxed in the country that the money is earned in no matter how many days the person is in the U.S. or how much is earned. There is a caveat for entertainers and athletes that are in the U.S. on a work visa; they can make up to \$15,000 without actually owing U.S. taxes. Our attorney tells us that speakers, musicians, and pastors would likely qualify as entertainers under this tax treaty. Another caveat to the Canadian tax treaty is mandatory U.S. tax withholding on all payments even if the person won't end up owing U.S. tax. The mandatory withholding is 10% on the first \$5,000 of earnings or expense reimbursements, and 30% on anything over \$5,000. Forms 1042-S/1042-T must be completed by the Organization and submitted to the IRS annually along with the tax withholdings. The individual would have to file a tax return at the end of the year to receive the withholding back.

Mexico Tax Treaty Rules

Stipulates that there are no tax implications as long as the NRA is in the U.S. for less than 183 days and does not operate from a "fixed base" of operations within the U.S. As explained above, to claim this exemption from the mandatory 30% withholding, the NRA would need to provide the Organization with IRS form 8233 claiming "resident of tax treaty county, Article 14 - Mexico tax treaty". The organization would have to send form 8233 to the IRS at least 10 days prior to making any payment.

There are hundreds of tax treaties between the United States and foreign nations. Before any payment is made to a NRA the tax treaty for the specific country should be understood. If you need help researching tax treaty requirements for other countries, we recommend working with a qualified attorney which we would be happy to recommend, or you may contact us to research it for you (hourly consulting fees will apply). More information may be found on the IRS website.

As a reminder, the information contained in this communication is not legal advice. We are simply attempting to shed some light on what has been published to date, as we understand the regulations.

