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Tax Information for Visitors to the United States



Introduction

If you have income from the United States, you may have to file a U.S. income tax return even if you are only visiting this country. This publication summarizes for you the requirements of U.S. income tax law. See *If You Need Help* at the end of this publication for how to get more information.

Some of the tax laws that apply to nonresident aliens are different from those that apply to U.S. resident aliens. You are a nonresident alien if you are not a U.S. citizen and you don't meet either the substantial presence test or the green card (Alien Registration Card) test.

Under U.S. tax law, you may be a resident alien if you are in the United States for as little as 31 days during the calendar year, and your stay during the current year and the preceding 2 years is long enough to meet the substantial presence test. For details on this test, and the green card test, get Publication 519, *U.S. Tax Guide for Aliens*.

You should know that under U.S. immigration law most visitors who come to the United States are not allowed to work here. Please check with the Immigration and Naturalization Service before getting a job.

Who Must File an Income Tax Return

If you are visiting the United States for pleasure and receive no income from U.S. sources, you do not have to file a U.S. income tax return.

If you are a nonresident alien and you work or are **engaged in a trade or business** in the United States, you must file a U.S. income tax return regardless of the amount of your income or whether your income is exempt from U.S. tax.

If you perform personal services in the United States at any time during the tax year, you usually are considered engaged in a trade or business in the United States. The only exception to this rule follows.

Employees of foreign persons, organizations, or offices. If three conditions exist, your performance of personal services in the United States during the time you are a nonresident alien is not considered engaging in a trade or business in the United States. The income from those services is not considered to be from U.S. sources and is tax exempt. If you do not meet **any one** of the conditions, you are considered to be engaged in a trade or business in the United States and your income from personal services performed in the United States is considered to be from U.S. sources.

The three conditions are:

- 1) You perform personal services as an employee of or under a contract with a nonresident alien individual,

foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident, and

- 2) You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year, and
- 3) Your pay for these services is not more than \$3,000.

If you are not engaged in a trade or business in the United States, you must file a return if you have U.S. income from which not enough tax was withheld to cover the U.S. tax you owe.

You must file a return if you are claiming a refund of income taxes withheld or previously paid. Also, you must file a return if you want to claim the benefit of any allowable deductions or exemptions. For example, if you do not have a job or trade or business in the United States, but you do have rental or royalty income from an interest in U.S. real property, you may choose to treat that activity as a U.S. trade or business. To claim a deduction for any allowable expenses related to that business, you must file a return.

With certain exceptions, you must file a return when you take the position that a U.S. tax treaty overrules or modifies a U.S. tax law. You must provide special information with the return, including a statement of facts supporting your position. For details, see *Reporting Treaty Benefits Claimed* in Chapter 9 of Publication 519.

What Income Is Taxed

Nonresident aliens generally are taxed only on certain income from sources in the United States and on certain income connected with the conduct of a trade or business in the United States.

Taxable income from U.S. sources includes, but is not limited to:

- 1) Wages, salaries, commissions, fees, tips, etc., for services performed in the United States,
- 2) Interest (with certain exceptions) and dividends,
- 3) Rents and royalties,
- 4) Profits or losses from the sale of merchandise within the United States, and
- 5) Gains and losses from the sale of certain real property.

What Tax Forms You May Need

If you are a nonresident alien and you must file an income tax return, use Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, unless you qualify to use Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*.

If you have income from which no (or not enough) U.S. tax is withheld, you also may need to file Form 1040-ES(NR), *U.S. Estimated Tax for Nonresident Alien Individuals*.

Before leaving the United States, you may have to file Form 1040-C, *U.S. Departing Alien Income Tax Return*, or Form 2063, *U.S. Departing Alien Income Tax Statement*.

These forms are briefly discussed later. Be sure to get Publication 519, which is a complete tax guide for aliens.

Income Tax Withholding

If you work for an employer, that employer will usually take income tax out of your wages and pay it over to the U.S. government. This is called withholding. The rate of withholding depends on the amount of your income and the information you give your employer on Form W-4, *Employee's Withholding Allowance Certificate*. The amount withheld is credited against the tax owed when you file your U.S. tax return.

Household employees. If you work as household help, your employer does not have to withhold income tax. However, you may agree to voluntary income tax withholding by filing a Form W-4, *Employee's Withholding Allowance Certificate*, with your employer. The agreement goes into effect when your employer accepts the agreement by beginning the withholding. You or your employer may end the agreement by letting the other know in writing.

30% flat rate. If you do not work as an employee, any compensation you receive for your services is subject to withholding at a 30% flat rate. Income tax must be withheld at a flat rate of 30% on the following types of income from U.S. sources unless they are connected with the conduct of a U.S. trade or business, or the rate has been lowered by tax law or income tax treaty:

- Interest (other than interest on bank deposits, savings and loan, credit union, or similar accounts, amounts held by insurance companies under agreements to pay interest, or certain portfolio debt obligations)
- Dividends
- Rents

- Social security benefits (85% of the annual amount)
- Annuities (payments from pensions, trusts, etc.)
- Royalties.

When and Where to File

If you are an employee and you receive wages subject to U.S. income tax withholding, file by the 15th day of the 4th month after your tax year ends. If you file for the 1995 calendar year, your return is due April 15, 1996. (If you have not previously established a tax year other than the calendar year, you **must** use the calendar year as your tax year.)

If you did not receive wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 1995 calendar year, file your return by June 17, 1996 (June 15 falls on a Saturday).

Form 1040NR–EZ and Form 1040NR must be sent to the Internal Revenue Service Center, Philadelphia, PA 19255, U.S.A.

When to file for deductions and credits. To get the benefit of deductions or certain credits, you must timely file a true and accurate return. For information on what is considered timely for this purpose, see Chapter 7 in Publication 519.

Penalties. The law provides penalties for filing your tax return late and for late payment of any tax due. However, a penalty will not be charged if you can show that you had reasonable cause for filing your return or paying any tax after the due date.

Estimated Tax Payment: Form 1040–ES(NR)

You may have taxable income from which no U.S. income tax is withheld. Or the tax withheld may not be enough to cover the income tax that you estimate you will owe at the end of the year. If this is true, and if you have income effectively connected with a trade or business in the United States, you may have to pay estimated tax. An addition to the tax is charged if you underpay your estimated tax.

Income connected with a trade or business includes pay received as an employee that is subject to withholding. It does not, however, include pay subject to withholding at a flat 30% rate or lower treaty rate.

Generally, there will be no addition to the tax for the underpayment of estimated tax if the total income tax to be withheld from your 1996 income is at least:

- 1) 90% of the tax to be shown on your 1996 U.S. income tax return, or

- 2) 100% of the tax shown on your 1995 U.S. income tax return (if your 1995 return covered all 12 months of the year).

Note: If your adjusted gross income for 1995 (Form 1040NR, line 31) was more than \$150,000 (\$75,000 if you are married filing separately for 1996), substitute 110% for 100% in (2) above.

Also, there will be no addition to the tax if the tax due (after subtracting withheld tax) for 1996 is less than \$500.

When to pay. Generally, you must make your first payment of estimated tax by the due date for filing the previous year's Form 1040NR or Form 1040NR-EZ.

For more information, refer to the instructions for Form 1040-ES(NR), *U.S. Estimated Tax for Nonresident Alien Individuals*, and see *Estimated Tax Form 1040-ES(NR)* in Chapter 8 of Publication 519.

Note: If you expect to be a resident of Puerto Rico during the entire year, use Form 1040-ES or Form 1040-ES(Español) to make your payments.

Departing Aliens— Sailing or Departure Permit

Before leaving the United States, you must file Form 1040-C, *U.S. Departing Alien Income Tax Return*, or Form 2063, *U.S. Departing Alien Income Tax Statement*. These forms must be filed to get a certificate of compliance (known as a sailing or departure permit) from the Internal Revenue Service. However, see the discussion, later, under *Aliens who do not need a sailing or departure permit*.

A certificate of compliance certifies that you have satisfied the U.S. income tax laws. ***This is not your final tax return.***

If you are required to file a U.S. income tax return for the year, file Form 1040NR or Form 1040NR-EZ after the end of the year. You have to file this form whether or not you owe more tax or are entitled to a refund of tax paid. Treat the tax you paid with Form 1040-C as a credit against the tax on your income tax return.

Clearance. You should apply for your tax clearance at least 2 weeks before you leave the United States. The clearance, however, may not be issued more than 30 days before you leave. If both you and your spouse are aliens and are leaving together, both of you must go to the IRS office.

Please be prepared to give your planned date of departure and bring the following records with you if they apply:

- 1) A valid passport with your alien registration card or visa.
- 2) Copies of your U.S. income tax returns filed for the past 2 years. (If you were in the United States for less than 2 years, bring copies of the income tax returns you filed in that period.)
- 3) Receipts for income taxes paid on these returns.
- 4) Receipts, bank records, canceled checks, and other documents that prove your deductions, business expenses, and dependents claimed on the returns.
- 5) A statement from each employer you worked for this year, showing wages paid and tax withheld. If you are self-employed, you must bring a statement of income and expenses up to the date you plan to leave.
- 6) Proof of any payments of estimated tax for the past year, as well as the current year.
- 7) Documents showing any gain or loss from the sale of personal property, including capital assets and merchandise.
- 8) Documents concerning scholarships or fellowship grants, including verification of the grantor, source, and purpose of the grant.
- 9) Documents indicating qualification for special tax treaty benefits.

Aliens who do not need a sailing or departure permit.

If you are included in one of the following categories, you do not have to get a sailing or departure permit before leaving the United States.

- 1) **Representatives of foreign governments with diplomatic passports**, members of their households, and servants accompanying them.
- 2) **Employees of international organizations and foreign governments** (other than diplomatic representatives covered under category 1) who received no income from sources in the United States and whose pay for official services to the foreign government or international organization is excluded from income under U.S. tax law. This exception also applies to members of their households if they had no income from sources in the United States.
- 3) The following aliens, if they have received no taxable income from U.S. sources during the current tax year (up to and including the date they leave) or during the previous tax year—
 - a) **Alien visitors for pleasure** on a B–2 visa,
 - b) **Alien visitors for business** on a B–1 visa, or both a B–1 and a B–2 visa, who do not remain in the United States or a U.S. possession for more than 90 days during the tax year,

- c) **Aliens in transit** through the United States or any of its possessions on a C-1 visa, or under a contract, such as a bond agreement between a transportation line and the Attorney General according to section 238(c) of the Immigration and Nationality Act,
 - d) Aliens who enter the United States on a **border-crossing identification card**, or for whom a passport, visa, and border-crossing identification card is not required. These aliens must be visitors for pleasure, visitors for business who do not remain in the United States or a U.S. possession for more than 90 days during the tax year, or visitors in transit through the United States or any of its possessions, or
 - e) **Alien military trainees** who come to the United States for training under the sponsorship of the Department of Defense and who leave the United States on official military travel orders.
- 4) **Alien students, industrial trainees, or exchange visitors**, including their spouses and children, who come to the United States on F, H-3, H-4, or J visas only and who receive no income from sources within the United States while in the United States under those visas other than—
- a) Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition,
 - b) The value of any services or food and lodging connected with this study or training,
 - c) Income from employment authorized by the Immigration and Naturalization Service (INS), or
 - d) Certain interest income that is not effectively connected with a U.S. trade or business.
- 5) **Alien students**, including their spouses and children, who come to the United States on M visas only and who receive no income from U.S. sources while in the United States on those visas, other than—
- a) Income from employment authorized by the Immigration and Naturalization Service (INS), or
 - b) Interest on bank deposits and amounts held by an insurance company under an agreement to pay interest on them.
- 6) **Residents of Canada or Mexico** who frequently commute between their country and the United States to work, and whose wages are subject to the withholding of U.S. tax.

If you are in one of these categories and are exempt from getting a sailing or departure permit, you must be able to support your claim for exemption with evidence

(identification, etc.) showing that you are entitled to the exemption.

Exceptions. If you are an alien in category 1 or 2, above, and you filed the waiver under section 247(b) of the Immigration and Nationality Act to keep your immigrant status, you must get a sailing or departure permit.

If you are an alien in category 1 or 2, and your income is exempt from U.S. tax because of an income tax treaty, or certain consular or international agreements, you do not lose this tax exemption by signing the section 247(b) waiver. However, you must get a sailing or departure permit even though your income is exempt.

If You Need Help

If you need help in filing your income tax return and getting your sailing or departure permit, you should go to an office of the Internal Revenue Service in the area where you are located. If this is not possible, you may go to an IRS office in the area of your departure.

The IRS has other publications to help you with any problems you may have about U.S. tax laws. They are:

- 1) Publication 519, *U.S. Tax Guide for Aliens*.
- 2) Publication 597, *Information on the United States–Canada Income Tax Treaty*.
- 3) Publication 901, *U.S. Tax Treaties*.

You may get these and other publications and forms by writing to the Eastern Area Distribution Center, P.O. Box 85074, Richmond, VA 23261-5074, U.S.A., or by calling toll-free 1-800-TAX-FORM (829-3676) if you are in the United States.