



Office Memorandum

Date: January 5, 2010
To: Agency Payroll and Human Resources Staff
From: Mary Muellner, Director
Statewide Payroll Services
Subject: Nonresident Alien Employees – Tax Withholding Update for 2010

This memo is intended to **remind** agency staff of topics related to nonresident alien employees including: rules for tax withholding, tests to determine resident/nonresident alien status, instructions for completing Form W-4 and steps for completing the tax data pages in SEMA4. It also includes an update for 2010 which requires no action by the agency; it is for informational purposes only.

Tax Withholding

For 2010, the IRS has modified the rules for determining the amount of tax employers must withhold from wages paid for services performed by nonresident alien employees within the United States. (Internal Revenue Notice 2009-91). The rules are effective with respect to wages paid on or after January 1, 2010.

The income tax withholding tables reflect two tax benefits for which nonresident alien employees are **not** eligible: (1) the standard deduction; and (2) the Making Work Pay Tax Credit. If adjustments from the generally applicable procedures for using the income tax withholding tables are not made in determining income tax withholding for nonresident alien employees, the withholding on the wages for such employees will generally be less than their tax liability.

If you are interested in further information refer to IRS Publication 15 at <http://www.irs.gov/pub/irs-pdf/p15.pdf>.

Resident and Nonresident Aliens

If an agency hires an individual who is not a U.S. citizen, the individual is considered to be a nonresident alien for the calendar year unless he or she meets one of two tests.

1. The individual has lawful permanent resident status in the United States (Green Card; Resident Alien Card)
Or
2. The individual meets the substantial presence test, which follows:
Foreign nationals must be treated as residents if they satisfy the substantial presence test, even if they have entered the United States under a non-immigrant visa. Under this test the foreign national is a resident if he or she is present in the United States at least 31 days in the current year and 183 days during the current year and the two preceding years as determined under a weighted formula. Count 1/3 the number of days of presence in the first preceding year and 1/6 the number of days in the second preceding year. Generally (not always), the days the

nonresident alien is in the United States as a teacher, student or trainee on an “F”, “J”, “M”, or “Q” visa are not counted.

If an income tax treaty exists between the United States and the individual’s country, the tax treaty may allow the employee a partial or full exemption from withholding taxes.

For assistance in determining the number of days for the substantial presence test or assistance in determining tax treaty exemptions:

- MNSCU agencies should contact:
 - Ann Page at 651-632-5007 or ann.page@so.mnscu.edu
 - Steve Gednalske at 651-632-5016 or steve.gednalske@so.mnscu.edu in Tax Services
- Other agencies should contact Tom Brackey in Statewide Payroll Services at 651-201-8064 or tom.brackey@state.mn.us.

Instructions for Completing Form W-4

For nonresident alien employees not covered by a tax treaty

Internal Revenue Bulletin 2005-46, Notice 2005-76, requires nonresident alien employees to complete Form W-4 using the instructions below. *The Employee Self Service W-4 pages cannot be used to enter W-4 information for nonresident aliens.* These employees must complete a paper [Form W-4](#) and the payroll or human resources office must enter the transactions in SEMA4.

When completing Form W-4, nonresident alien employees:

- May not claim exemption from withholding.
- Must request Single marital status, regardless of actual marital status.
- May claim no more than one allowance. Residents of Canada, Mexico, South Korea, Northern Mariana Islands or American Samoa may claim the allowances they are entitled to claim.
- Must write “NRA” above the dotted line on line 6 of Form W-4.
- Are not required to request additional withholding.

For nonresident alien employees covered by a tax treaty

MNSCU agencies should contact:

- MNSCU agencies should contact:
 - Ann Page at 651-632-5007 or ann.page@so.mnscu.edu
 - Steve Gednalske at 651-632-5016 or steve.gednalske@so.mnscu.edu in Tax Services
- Other agencies should contact Tom Brackey in Statewide Payroll Services at 651-201-8064 or tom.brackey@state.mn.us.

Steps for Completing the Federal and State Tax Data Pages in SEMA4

If an individual is a **resident alien** for tax purposes, complete the Federal and State Tax Data pages as you would for a U.S. citizen.

If an individual is a **nonresident alien** for tax purposes, complete the federal tax data page as follows:

1. Access the Federal Tax Data and State Tax Data pages (Payroll > Tax Data > Update Employee Tax Data). Enter the employee’s ID in the EmplID field and click Search.
2. Click  to add a row.
3. On the Federal Tax Data page:

- a. In the Effective Date field, enter the date the tax data is effective.
 - b. In the Special Tax Withholding Status box, select Non-Resident Alien; Tax Treaty/NR Data. The Tax Treaty/NR Data box opens at the bottom of the page.
 - c. In the Source Documents field, select a value corresponding to the document(s) submitted by the employee.
 - d. In the Tax Marital Status field, select Single. Married status is not allowed.
 - e. In the Withholding Allowances field, enter the employee's allowances. The employee may claim no more than one allowance. Residents of Canada, Mexico, South Korea, Northern Mariana Islands or American Samoa may claim the allowances they are entitled to claim.
 - f. Leave the FWT Additional Amount fields blank.
 - g. In the Tax Treaty/NR Data box:
 - o In the Date of Entry field, enter the date the employee entered the United States.
 - o In the Country field, select the country the employee is from, based on passport documentation.
 - o In the Treaty ID field, select the corresponding treaty ID.
 - o Note: If you receive the message "Treaty Expiry Date was reset," click OK.
 - o In the Taxpayer ID Number field, enter the employee's Social Security number.
 - o Leave all other fields blank or accept the default unless instructed by MnSCU or Statewide Payroll Services to complete them.
4. On the State Tax Data page:
- a. The Resident checkbox must be blank.
 - b. In the Special Tax Status box, select Non-Resident Alien; Fed Rules.
 - c. In the SWT Marital/Tax Status field, select Single. Married status is not allowed.
 - d. In the Withholding Allowances field, enter the employee's allowances. The employee may claim no more than one allowance. Residents of Canada, Mexico, South Korea, Northern Mariana Islands or American Samoa may claim the allowances they are entitled to claim.
 - e. Leave the Additional Amount/Percentage fields blank.
5. Save the record.
- Note: If you receive a warning message, review the message, click OK, and take appropriate action.

More Information

MNSCU agencies should contact:

- MNSCU agencies should contact:
 - o Ann Page at 651-632-5007 or ann.page@so.mnscu.edu
 - o Steve Gednalske at 651-632-5016 or steve.gednalske@so.mnscu.edu in Tax Services
- Other agencies should contact Tom Brackey in Statewide Payroll Services at 651-201-8064 or tom.brackey@state.mn.us.