

REPORTING AND WITHHOLDING ON PAYMENTS TO FOREIGN PERSONS

IRS Nationwide Tax Forum 2007





- Withholding of 30% on gross income required
- Reduced rate, including exemption from tax, may apply



Foreign Persons

- Nonresident Alien Individual
- Foreign corporation, Foreign Partnership
- Foreign Trusts & Foreign Estates
- Any other person that is not a U.S. person



Income Subject to Withholding

U.S. Source income that is:

- Fixed or determinable annual or periodical (FDAP) income, or
- All U.S. source gross income includible in income under Sections
 61 and 871 of the IRC



Income Sourcing Rules

• Personal services

Dividends

Interest

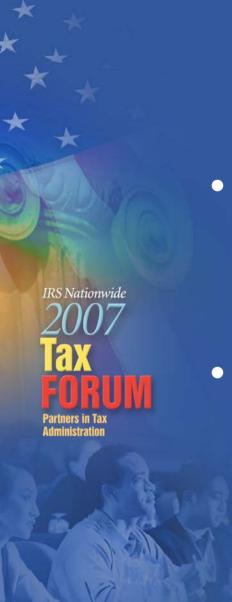
Rents

Where performed

U.S. / For. Corp.

Residence/payer

Location of prop.



Withholding Agent

- Withholding Agent control, receipt, custody, disposal, or payment of any item of income to a foreign person
- May be individual, corporation, partnership, trust, association, or any other entity (Sections 1.1441-7(a); 1.1465-1(a)(1).



Withholding Agents

- General Responsibilities of a U.S.Withholding Agent
 - Withholding
 - Determine appropriate withholding tax amount based on the documented status of the beneficial owner of the payment and eligibility for treaty provisions.
 - Withhold and remit to IRS per deposit requirements.

Withholding Agents

- General Responsibilities of a U.S. Withholding Agent (cont'd)
 - Reporting
 - Furnish a Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding to the payee and file a copy with the IRS.
 - Form 1042-S should indicate the amount of income earned, the amount of tax withheld and information identifying the withholding agent and the payee.
 - File Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons to report all income and withholding amounts reported on all Forms 1042-S and amounts deposited during the year.



Documentation



Part I: Claim of beneficial ownership of income as a non-resident of the U.S.

Part II: Establishes a claim of tax treaty benefits.

Form 8233

Part I: Establishes a claim of beneficial ownership of income as a NRA individual receiving compensation for personal services.

Part II: Establishes a claim of tax treaty withholding exemption and/or personal daily exemption.



Penalties



Failure to pay
 IRC Section 6651

Failure to deposit IRC Section 6656

Failure to furnish information returns

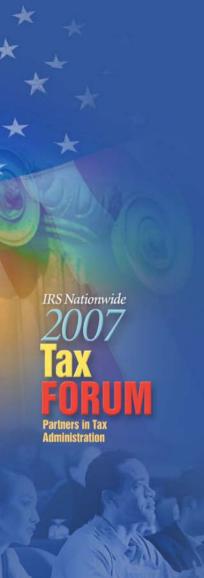
IRC Sections 6721 -6723

Negligence IRC Section 6662

Where To Get More Information



- Treasury Regulation 1.1441
- IRS Publications 515 & 519
- Instructions for Forms 1042/1042-S
- Instructions for Requester of Forms W-8
- Instructions for Form 8233
- All can be found at www.irs.gov



Points of Contact

Lowell Hancock – Program Analyst/RA,

Lowell.G.Hancock@irs.gov,

Tel. 330-253-7357 – College & Universities, Sec. 1441

Tom Logan – Senior Program Analyst/RA, Thomas.L.Logan@irs.gov,

Tel. 202-435-5113 FIRPTA, Partnership W/H, Sec. 1441