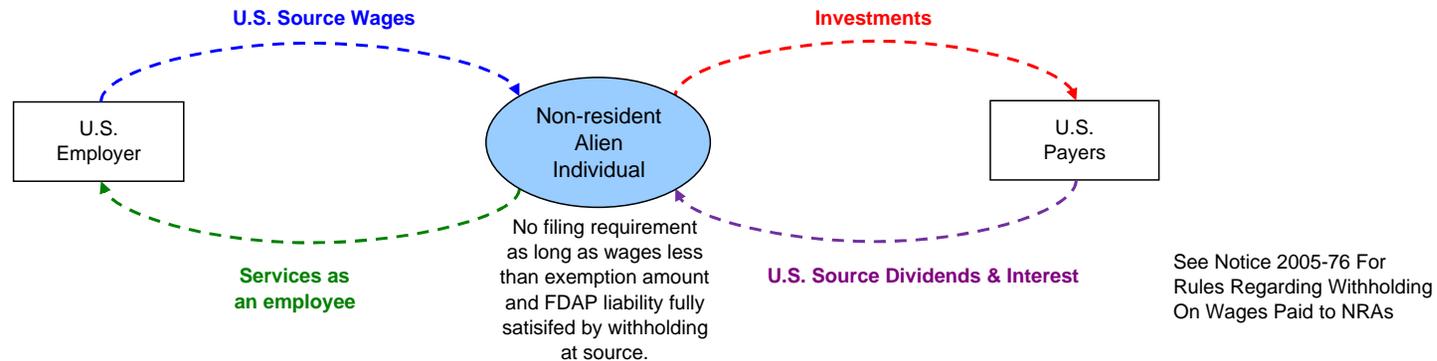


Nonresident Alien Individual Filing Requirements for U.S. Source Wages



In general, section 6012(a)(1)(A) requires every individual having gross income in the taxable year that equals or exceeds the exemption amount to make a return with respect to income taxes under subtitle A of the Code. Flush language at the end of section 6012(a) provides that under regulations nonresident alien individuals ("NRAs") subject to the tax imposed by section 871 may be exempted from the requirement of making returns under section 6012. Under §1.6012-1(b), every NRA who is engaged in a trade or business ("TOB") in the U.S. at any time during the taxable year must make a return on Form 1040NR, U.S. Nonresident Alien Income Tax Return. For this purpose, it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, an NRA who is engaged in a TOB in the U.S. at any time during the taxable year is required to file a return on Form 1040NR, even though (a) he has no income that is effectively connected with the conduct of a TOB in the U.S., (b) he has no income from sources within the U.S., or (c) his income is exempt by reason of an income tax convention or any section of the Code.

Section 864(b) defines the term "trade or business within the United States" to include the performance of personal services within the U.S. at any time during the taxable year. Section 864(b)(1) provides an exception to this definition for the performance of personal services (A) for an NRA, foreign partnership or foreign corporation not engaged in a TOB within the U.S.; or (B) for an office or place of business maintained in a foreign country or in a possession of the U.S. by an individual who is a citizen or resident of the U.S. or by a domestic partnership or corporation, by an NRA temporarily present in the U.S. for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed \$3,000 in the aggregate.

Assuming the NRA engages in a U.S. TOB under section 864(b) because he performs personal services in the U.S. during the tax year, Treas. Reg. §1.864-4(c)(6)(ii) provides that wages, salaries, compensations, or other remunerations received by the NRA for performing those personal services in the U.S. constitute income that is effectively connected for the taxable year with the conduct of a TOB in the U.S. by that individual. Section 871(b) provides that an NRA engaged in a TOB within the U.S. during the taxable year is taxable as provided in sections 1 or 55, on his taxable income that is effectively connected with the conduct of a TOB within the U.S. Section 873(b)(3) allows an NRA a deduction under section 151 for only one personal exemption, unless the individual is a resident of a contiguous country or a national of the U.S. The personal exemption amount under section 151 for tax year 2006 is \$3,300.

Treasury and the Service will amend the regulations under Treas. Reg. §1.6012-1(b)(2) to eliminate the Form 1040NR filing requirement for an NRA who earns less than the amount of one personal exemption as United States source wages that are effectively connected with a U.S. TOB (effectively connected wages) and who is required to file a United States income tax return because of those wages. All NRAs who earn effectively connected wages are entitled to at least one personal exemption under section 151. Therefore, by amending the regulations, the new exception would treat NRAs who earn effectively connected wages in an amount that is less than the amount of one personal exemption more similarly to U.S. citizens and residents who earn wages of less than the exemption amount. The exception would apply even if the nonresident alien individual also has U.S. source fixed or determinable annual or periodical gains, profits, or income (FDAP), provided that his U.S. tax liability for such income is fully satisfied by the withholding of tax at source. The amendment to the regulations, however, will not affect the filing requirements of an NRA who seeks a refund of an overpayment of U.S. tax, has a U.S. income tax liability with respect to FDAP that is not fully satisfied by withholding at source, or who has income exempt or partially exempt by reason of an income tax convention or any section of the Code.