

Revenue Ruling 76-19

Canadian Corp's Employees Working In the U.S. For 12 Months Were Subject to U.S. Income Tax and Withholding

Copyright © 2024 Andrew Mitchel LLC
International Tax Services
www.andrewmitchel.com

Two employees, citizens and residents of Canada, are employed by Corp S, a Canadian company. Corp S assigned the two employees to the Louisiana office of its U.S. parent corporation, Corp P, for purposes of training for a period of 12 months. All of the training will be conducted in the U.S. After the training, the employees will return to Canada and resume their duties there. During the period of their training, the employees will receive their usual salary and benefits from Corp S.

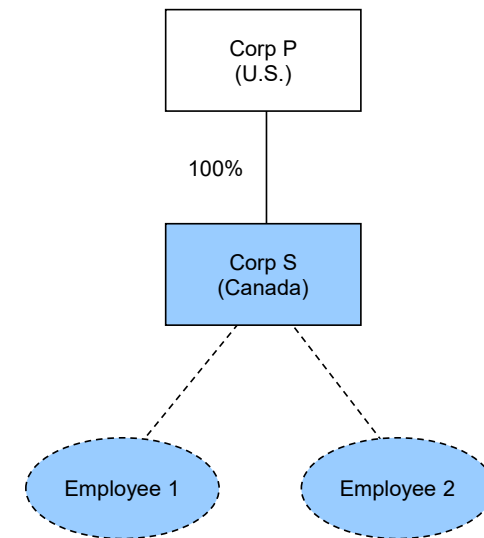
The income from employment article in the treaty did not apply because the employees were present in the U.S. for more than 183 days. The business apprentice article in the treaty did not apply because the employees were not beginners or inexperienced.

Under section 864(b)(1), employees rendering personal services for a foreign employer for over 90 days in the U.S. (or whose compensation is over \$3,000) will be considered to be engaged in a trade or business within the U.S. Section 871(b)(1) provides, in part, that a nonresident alien individual engaged in U.S. trade or business during the taxable year is taxable on income effectively connected with that trade or business ("ECI") as provided in section 1 (graduated tax rates applicable to citizens and residents of the U.S.).

Under Reg. 1.864(c)(6)(ii), the payments received by the two employees are considered ECI in that the activities of their trade or business (rendering personal services) are a material factor in the realization of their income. Accordingly, the two employees will be taxable under section 1.

Under Reg. 31.3401(a)(6)-1(a), all remuneration for services rendered in the U.S. by nonresident aliens is subject to withholding under section 3402, with certain exceptions not pertinent here. Therefore, Corp S, as employer, must deduct and withhold U.S. federal income tax from the wages it pays to its two employees while they are present in the U.S.

The two employees are also subject to the tax imposed by section 3101, relating to the Federal Insurance Contributions Act ("FICA"), on wages for services performed in the U.S. and received by them with respect to such employment. Section 3121(b) and Reg. 31.3121(b)-3 provide, in part, that the term "employment" means any service performed by an employee for the person employing such employee, irrespective of the citizenship or residence of either within the U.S. [This ruling was prior to Canada and the U.S. entering into a totalization agreement.]



These employees were sent to the U.S. for one year of training. Their salaries were subject to U.S. tax and withholding.