

## Office of State Uniform Payroll

<b>Procedure Title:</b> Non-Resident Alien (Alien Authorized to Work)	<b>Revision Date:</b> 12/28/2020
	<b>Issue Date:</b> 1/20/2015
<b>Unit:</b> Wage and Tax Administration	<b>Page Number:</b> 1 of 4
<b>Contact:</b> <a href="mailto:_DOA-OSUP-WTA@la.gov">_DOA-OSUP-WTA@la.gov</a>	

For tax purposes, Non-Resident Aliens are defined by the Internal Revenue Service (IRS) as any person who is not a citizen of the United States and does not meet the requirements of the Green Card Test or the Substantial Presence Test. Non-Resident Alien taxability generally depends on visa type and the home country of the employee. Most Non-Resident Aliens who hold certain visas may be exempt from FICA and/or federal/state taxes per a tax treaty. Agencies should refer to IRS Publications: [54 "Tax Guide for U.S. Citizens and Resident Aliens Abroad"](#), [519 Chapter 9 "U.S. Tax Guide for Aliens"](#), and [901 "U.S. Tax Treaties"](#) for additional information concerning Non-Resident Aliens and tax treaty benefits. Although Publication 519 is a guide for the employee, the publication provides useful information for the agency regarding the substantial presence test. The U.S. Citizenship and Immigration Services' [Handbook for Employers \(M-274\)](#) contains information on work permit documents.

Some Non-Resident Alien employees may be eligible for retirement participation. Agencies should contact the appropriate retirement system regarding eligibility. Non-Resident Alien employees who are exempt from FICA taxes and are not eligible for retirement should have a tax model of U6 NoFICANoRet.

### **LaGov HCM Requirements for Non-Resident Aliens**

In LaGov HCM, IT0094 (Residence Status) is used to document I-9 Immigration and Naturalization Information (i.e. documenting a person's legal right to work in the United States). The drop down selections for IT0094 coincide with the residence status on Form I-9. **It is OSUP policy that IT0094 (Residence Status) must be completed and monitored for all employees.** Thus, agencies are responsible for determining and correctly coding the residence status of all employees on IT0094 using the following as a guide:

- Non-Resident Alien employees must be coded "Aliens Authorized to Work"
- Resident Alien employees who hold Green Cards must be coded "Lawful Permanent Resident"
- Employees born in American Samoa must be coded "Non-Citizen National"
- Natural born citizens and naturalized citizens must be coded "Citizen"

Using the Form I-9, Employment Eligibility Verification, agencies must enter the appropriate work permit information, including the work permit expiration date, for all non-US citizen employees. Note: A hard edit restricts the entry of the U.S. Social Security Card as a work permit for Citizens and Lawful Permanent Residents only. Once the work permit expiration date is entered and saved, the system will dynamically present an IT0019 (Monitoring of Tasks). Agencies must then

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use this information to monitor the employees work authorization status. OSUP will utilize this data when auditing non-resident alien records for compliance with federal and state laws.

In addition, agencies must correctly enter the nationality of all employees on IT0002 (Personal Data). Nationality should be the country where the employee was born or holds citizenship.

**Agencies are responsible for continuously monitoring the status of Non-Resident Alien employees and for changing the Residence Status field and updating the withholding record when the employee residence status changes.** The IRS has advised that penalties could be assessed for errors resulting in the incorrect reporting on Form W2. All penalties incurred by OSUP will be charged to the appropriate agency. Agencies are advised of the following:

- Agencies must mark the “Non-resident tax calculation” indicator on IT0210 (Withholding Info W4/W5) for all newly hired and re-hired non-resident alien employees in addition to selecting a residence status of “Alien Authorized to Work” on IT0094. **Agencies should not mark the “Non-resident tax calculation” indicator for Non-Resident Alien students from India.**
- Agencies must copy and create a new IT0210 record with a new effective date and then deselect the “Non-resident tax calculation” indicator, as needed, for current employees when their Non-Resident Alien residence status changes. New IT0094 records should also be created for these employees.
- Agencies must copy and create a new IT0210 record with a new effective date and then deselect the “Non-resident tax calculation” indicator, as needed, for current employees when the employee has met the substantial presence test. New IT0094 records **should not** be created for these employees, as their residence status has not changed.
- Employees that are identified as an “Alien Authorized to Work” on IT0094 or have “Non-resident tax calculation” indicator marked on IT0210 will be prevented from making tax withholding changes in LEO. These changes must be processed by the Employee Administration office.
- Agency personnel will be prevented from making filing status changes in LaGov HCM for those employees with the “Non-resident tax calculation” indicator marked on IT0210. Agencies may make changes to additional withholding amounts.

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### **Taxation for Non-Resident Aliens (Aliens Authorized to Work)**

Employees with the “Non-resident tax calculation” indicator on IT0210 will have withholding taxes calculated using an amount determined and published annually by the IRS in [Publication 15-T, Federal Income Tax Withholding Methods](#). All Non-Resident Alien employees are required to complete a new Form W-4 annually. Non-Resident Alien employees should refer to Internal Revenue Service [Notice 1392](#), Supplemental Form W-4 Instructions for Nonresident Aliens, before completing Form W-4.

If the Non-Resident Alien employee has submitted a Form W-4 for 2020 or later or was first paid wages in 2020 or later, the employee is required to:

- Not claim exempt from income tax withholding;
- Request withholding as if they are Single or Married filing separately, regardless of their actual filing status;
- Not claim the child tax credit or credit for other dependents in Step 3 of Form W-4 (Review [Notice 1392](#) for exceptions that may apply);
- Write “Nonresident Alien” or “NRA” in the space below Step 4(c) of Form W-4.

For a Non-Resident Alien employee paid wages before 2020 and **has not** submitted a Form W-4 for 2020 or later, the following applies:

- Request withholding as if they are single, regardless of the actual marital status;
- Claim only one allowance (If the Non-Resident Alien employee is a resident of Canada, Mexico, or South Korea, a student or business apprentice from India, or a U.S. National, the employee may claim more than one allowance.);
- Write “Non-Resident Alien” or “NRA” on the dotted line on line 6 of the Form W-4; and
- Not claim exemption from withholding.

Note: Once an employee meets the substantial presence test and has indicated such to the IRS, the employee may file a new Form W-4 with the agency to change his or her withholding. If the

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agency receives a Form W-4 from a Non-Resident Alien with information different than the requirements above, agencies should ask the employee if he or she meets the substantial presence test. This answer should be included with the Form W-4 in the employee's file. The IRS has indicated that this will be sufficient documentation in the event of an IRS audit.

### **Tax Exemption Under a Tax Treaty**

A Non-Resident Alien from a country with which the United States has an income tax treaty may qualify for certain benefits. Most treaties require that the Non-Resident Alien be a resident of the treaty country to qualify. However, some treaties require that the Non-Resident Alien be a national (an individual who, although not a citizen, owes his or her allegiance to a foreign country) or a citizen of the treaty country. The Internal Revenue Service, under [section 1441](#) of the Internal Revenue Code, permits an exemption from withholding to Non-Resident Aliens who fall within these categories.

If an employee is claiming this exemption, [Form 8233](#) (Exemption from Withholding on Compensation for Independent Personal Services of a Non-Resident Alien Individual) must be completed annually by **both** the employee and the agency and **must be** submitted to the Internal Revenue Service within five (5) days of completion. Agencies **must** contact a member of the Wage and Tax Administration Unit when notified that an employee qualifies for a tax treaty withholding exemption.