

LB&I Process Unit Knowledge Base – International

Library Level	Number	Title
Shelf		Individual Inbound
Book	15	Withholding (Individual Inbound)
Chapter	15.1	Nonresident Alien Claims for Refunds of Withheld FDAP Amounts
Section		
Subsection		

Unit Name	Verifying Refund Requests of IRC 1441 Withholding on FDAP Income	
Primary UIL Code	9442.01	Nonresident alien claims for refunds of withheld FDAP amounts

Document Control Number (DCN)	WIT/P/15_01-03
Date of Last Update	04/11/17

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Introduction

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

A nonresident alien (NRA) is subject to U.S. income tax on income that is effectively connected with a trade or business in the United States (ECI) and on income that is fixed, determinable, annual, and periodical that is not effectively connected with a U.S. trade or business (FDAP). The payer (referred to as the “withholding agent”) making a payment of FDAP income to a NRA is generally required to withhold 30 percent of the gross amount of the payment under Internal Revenue Code (IRC) 1441. The 30 percent withholding tax rate may be reduced or eliminated by an income tax treaty or other exemption (such as portfolio interest).

Withholding agents are required to file with the Internal Revenue Service (IRS) Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, which provides the withholding agent’s total FDAP payments and federal taxes withheld for the year. They must also file Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*, which provides information about the payment of FDAP, including the gross amount paid, withholding tax rate, federal tax withheld and applicable exemptions. The withholding agent is also required to provide the NRA or payee a copy of the Form 1042-S for that NRA or payee. Withholding on NRAs falls under the Individual Inbound Withholding and the Business Inbound Repatriation/Withholding Practice Networks on the International Matrix.

A NRA may be entitled to a refund for taxes withheld under IRC 1441 if the withholding agent overwithheld on the NRA’s FDAP income. This Practice Unit describes how to determine whether a NRA should be entitled to such a refund request. Generally, a NRA requests a refund from the IRS for taxes withheld under IRC 1441 by reporting an overpayment on Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. This IPS unit focuses on the process of reviewing refund requests on originally filed Forms 1040NR for amounts overwithheld under IRC 1441. The verification process is important because federal taxes refunded to an NRA are generally difficult to collect if a subsequent examination reveals errors on the NRA’s return. This is due to the fact that NRAs may not have sufficient assets that the U.S. may utilize to satisfy an assessed tax liability.

Process Overview

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

In reviewing the NRA's request for refund of taxes overwithheld under IRC 1441, the first step is to determine whether the NRA's return was filed timely under the statute of limitations for requesting refunds. IRC 6511 specifies a claim can be made three years after original filing or two years after the tax was paid. Withholding at source is deemed to be paid on the due date of the payee's tax return, not the due date of the Chapter 3 tax from the withholding agent or the due date of the Form 1042 filed by the withholding agent. If the refund request is timely, you should then verify that the FDAP income and the amounts withheld reported on the Form 1040NR are consistent with the information return(s) filed by the withholding agent and other IRS data.

This Practice Unit provides a process for verifying that a refund request of amounts withheld under IRC 1441 is correct. The process involves confirming the amounts reported as withheld taxes by 1) reviewing documentation such as Form 1040NR and Form 1042-S provided by the NRA, 2) reviewing internal databases containing information on the NRA and on the related withholding agents, and, if needed, 3) requesting documentation from the related withholding agent(s).

It is important to note that a NRA is entitled to a refund of taxes withheld under IRC 1441 only if his/her total U.S. tax liability is less than amounts withheld or previously paid. Thus, an analysis of all of the NRA's income subject to U.S. taxation must be performed prior to issuing a refund for taxes withheld under IRC 1441.

Note: For any Practice Unit related to NRA legal status, sourcing of income, FDAP income, FDAP withholding, filing deadlines and refund procedures for withholding agents, see the Index of Related Practice Units on slide 31.

Detailed Explanation of the Process

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Analysis

The process to verify refund requests of amounts withheld under IRC 1441 after it is determined that the request is timely, includes the following steps:

- Verification that the NRA reported all FDAP income received - IRC 871(a) ,
- Verification that the FDAP income was reported at the correct tax rate - IRC 871(a) and 894,
- Verification that the NRA reported all taxable ECI income received - IRC 871(b) , 873 and 874,
- Verification that the NRA reported the correct tax liability,
- Verification of the amounts the NRA reported as withheld under IRC 1441 and
- Verification of the amounts the NRA reported as withheld under any other code section - IRC 1445, 1446, 3402, etc.

Process Applicability

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

A withholding agent is generally required to withhold 30 percent of the gross amount of a FDAP payment to a NRA under IRC 1441. The 30 percent withholding tax rate may be reduced or eliminated by an income tax treaty or other applicable exception (such as portfolio interest). A NRA may be entitled to a refund for taxes withheld under IRC 1441 if the withholding agent overwithheld on the FDAP payment(s). Generally, a NRA claims a refund for such taxes by reporting an overpayment on Form 1040NR.

Criteria	Resources
<p>The NRA files a request for refund (an original return) within two or three years from the time the tax was paid or deemed paid.</p> <p>The time the tax is deemed paid depends upon when the NRA is required to file Form 1040NR (without regard to extension):</p> <ul style="list-style-type: none">▪ If the NRA received wages as an employee subject to withholding tax (IRC 3402), The NRA's Form 1040NR is due April 15 of the following year.▪ If no wages were received, the NRA's Form 1040NR is due June 15 of the following year.▪ Form 1040NR is never due if all tax owed was properly withheld or overwithheld at source, but tax is still deemed paid when the return would have been due if tax was owed.	<ul style="list-style-type: none">▪ IRC 6511(a)▪ IRC 6513(b)(3)▪ IRC 6072(c)

Process Applicability (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income	
Criteria	Resources
<p>The NRA reported U.S. source FDAP income on the Form 1040NR, Schedule NEC, Tax on Income Not Effectively Connected With a U.S. Trade or Business.</p> <p>The NRA reported federal taxes withheld under IRC 1441 on U.S. source FDAP income on the Form 1040NR.</p> <p>The NRA requests a refund on Form 1040NR of all or a portion of the amounts withheld under IRC 1441. Review Form 1040NR to determine whether:</p> <ul style="list-style-type: none">▪ An overpayment of tax is reported;▪ Tax liability on FDAP income is less than federal income tax withheld on the FDAP income and▪ Total tax is less than total payments/withholding.	

Summary of Process Steps

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Process Steps

The process to verify whether a timely request for the refund of amounts withheld under IRC 1441 is allowable or not includes ensuring all FDAP income and all other taxable income is reported, verifying that all taxable income is taxed at the appropriate tax rate, verifying amounts reported as withheld is correct and calculating the allowable refund.

Step 1	Verify that the NRA has correctly reported all FDAP income on Schedule NEC of Form 1040NR.
Step 2	Verify that the NRA reported all FDAP income at the correct tax rate on Schedule NEC.
Step 3	Verify that the total withholding under IRC 1441 reported on the Form 1040NR is correct.
Step 4	Determine whether the refund request for amounts withheld under IRC 1441 is allowable.

Step 1: Verify All FDAP Income

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Step 1

Verify that the NRA has correctly reported all FDAP income on Schedule NEC of Form 1040NR.

Considerations	Resources
<p><u>Part A:</u></p> <p>Review Form(s) 1042-S (attached to return) and reconcile to Schedule NEC.</p> <ul style="list-style-type: none">▪ Reconcile the amount and type of the FDAP income reported on Form 1042-S attached to the return with the income reported on the NRA's Schedule NEC. Any discrepancies should be addressed by continuing to Part B of Process Step 1.▪ Review Form(s) 1042-S for unusual items including withholding agent information, amount and type of income, whether form was typed or handwritten and whether there are signs of the form being edited. NOTE: A handwritten Form 1042-S does not automatically mean that the form is incorrect as many withholding agents in certain industries still complete the form by hand. However, handwritten forms and forms that show signs of being altered should be scrutinized. Any discrepancies should be addressed by continuing to Part B of Process Step 1.	<ul style="list-style-type: none">▪ IRM Exhibit 3.21.3-2 - <i>Form 1042-S Income Codes</i>

Step 1: Verify All FDAP Income (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income


Step 1

Considerations	Resources
<p><u>Part B:</u></p> <p>Review Integrated Data Retrieval System (IDRS).</p> <ul style="list-style-type: none"> ▪ Request Information Returns Processing Transcripts Request – Payee Online (IRPTRO) using the NRA’s Taxpayer Identification Number (TIN). Note that a NRA’s TIN may be a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). IRPTRO will only display Form 1042-S (Document Code 02) that were filed with the NRA’s TIN. Note any corrected/multiple Form 1042-S from the same withholding agent as this may lead to the NRA reporting the incorrect FDAP income. ▪ Reconcile the amount(s) and type(s) of the FDAP income reported on Form 1042-S per IRPTRO with the FDAP income reported by the NRA on Schedule NEC. <ul style="list-style-type: none"> – If there are more Form 1042-S per IRPTRO than are attached to the NRA’s Form 1040NR and/or reported on Schedule NEC, proceed to Part C of Process Step 1. – If there are more Forms 1042-S attached to the return than per IRPTRO, this does not automatically mean there is an issue, as Forms 1042-S filed without a Taxpayer’s TIN or that are handwritten do not appear in IRPTRO. If this occurs, proceed to Part C of Process Step 1. 	<ul style="list-style-type: none"> ▪ IRM 2.3.35 – <i>IDRS Terminal Responses, Command Code IRPTRO</i> ▪ IRM Exhibit 2.3.35-13 - <i>Payee Online Transcript Document Display Screen: 1042-S (DOC CODE 02)</i>

Step 1: Verify All FDAP Income (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income


[Step 1](#)

Considerations	Resources
<p><u>Part C:</u></p> <ul style="list-style-type: none"> Verify that the NRA has reported all taxable income by completing the minimum income probe requirements as provided in the Internal Revenue Manual (IRM). If there any indications that not all FDAP income has been reported, determine if an Information Document Request (IDR) should be issued to NRA requesting records that substantiate all FDAP income. <p> DECISION POINT: Are there discrepancies between the FDAP income reported on the NRA's Form 1040NR and the following: (a) Forms 1042-S attached to the return, (b) IRPTRO, (c) income probe and (d) information provided by the taxpayer in response to an IDR?</p> <p>If YES, continue to Part D of Process Step 1.</p> <p>If NO, proceed to Process Step 2.</p>	<ul style="list-style-type: none"> IRM 4.10.4.3 - <i>Minimum Requirements For Examination of Income</i> LB&I Directive # 04-0214-004 - <i>Updated Guidance for Examiners on Information Document Requests Enforcement Process (2/28/14)</i> IRM 4.46.4.5 – <i>Information Document Request Process</i>

Step 1: Verify All FDAP Income (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 1](#)


Considerations	Resources
<p><u>Part D:</u></p> <p>Discrepancies could be due to the Form(s) 1042-S issued without the NRA's TIN. The following process will enable you to obtain the Form(s) 1042-S filed by the withholding agent without the NRA's TIN:</p> <ul style="list-style-type: none"> Obtain the withholding agent's Employer Identification Number (EIN) from the F1042-S attached to the NRA's Form 1040NR or from IRPTRO results. Complete Form 11377-E, <i>Taxpayer Data Access</i>, to access IDRS information for the withholding agent. <p> DECISION POINT: Are there still discrepancies or issues with the FDAP income reported on the Form(s) 1042-S attached to the return or on the Schedule NEC and the information on the Form(s) 1042-S found through (a) IRPTRO, (b) Information Returns Processing Transcripts Request – Selected Documents Payer Summary (IRPTRI), (c) income probe and (d) information provided by the taxpayer in response to an IDR?</p> <p>If YES, make third-party contact(s). Contact the payer or withholding agent directly and request (via phone call, letter, Letter 1995, or Summons Form 2039) the records to verify the amounts of FDAP paid to the NRA. Proceed to Process Step 2.</p> <p>If NO, proceed to Process Step 2.</p>	<ul style="list-style-type: none"> IRM 4.4.32.7.5.3 – <i>Form 11377 or Form 11377-E, Taxpayer Data Access</i> IRM 4.11.57 – <i>Examining Officers Guide (EOG), Third Party Contacts</i>

Step 2: Verify FDAP Income Taxed at Correct Rate

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Step 2



Verify that the NRA reported all FDAP income at the correct tax rate on Schedule NEC.

Considerations	Resources
<p><u>Part A:</u></p> <p>Determine whether the withholding tax rate reported on Schedule NEC of Form 1040NR was less than the rate reported by the withholding agent on Form 1042-S. If relevant, determine the appropriate withholding tax rate(s) for any income that was not reported on a Form 1042-S or incorrectly categorized by the NRA on Schedule NEC.</p> <p> DECISION POINT: If there are no discrepancies with the withholding tax rate(s), proceed to Process Step 3. If discrepancies exist, determine if they are due to the NRA claiming a treaty position (if yes, proceed to Part B of Process Step 2) or due to another issue (proceed to Part C of Process Step 2).</p>	

Step 2: Verify FDAP Income Taxed at Correct Rate (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 2](#)


Considerations	Resources
<p><u>Part B:</u></p> <p> TREATY IMPLICATION: Determine if the taxpayer has claimed an allowable treaty position. In general, U.S. tax treaties reduce the withholding tax rate on FDAP income from the 30 percent statutory rate required under domestic law. The applicable withholding tax rate(s) and eligibility to qualify for such reduced rates may vary depending on the applicable treaty jurisdiction. Accordingly, it is important to review the treaty articles at issue in order to determine whether the NRA qualifies for a lower treaty withholding rate.</p> <p> CONSULTATION: In cases where a NRA claims a treaty position on the Form 1040NR, consider working with the Treaties Practice Network and/or request advice of Counsel to determine if the treaty position claimed is allowable.</p> <p><u>Part C:</u> Identify the reason(s) for the discrepancies between the withholding tax rate(s) reported on the NRA's Form 1040NR and the Form(s) 1042-S issued by the withholding agent.</p> <p>Once resolved, proceed to Process Step 3.</p>	<ul style="list-style-type: none"> ▪ IRS.gov – <i>United States Income Tax Treaties A to Z</i> ▪ Pub. 901

Step 3: Verify Total IRC 1441 Withholding

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Step 3


Verify that the total withholding under IRC 1441 reported on the Form 1040NR is correct.

Considerations	Resources
<p><u>Part A:</u></p> <p>Determine whether the taxes reported as withheld on the NRA's Form 1040NR are substantiated by other available information performing the following steps:</p> <ul style="list-style-type: none"> Reconcile the total amount of tax withheld under IRC 1441 to the amounts reported on the Form 1042-S attached to the Form 1040NR. <p> CAUTION: Amounts reported on Form 1042-S, Box 10 – “Amount Repaid to Recipient” (2013 and prior) or Box 11 (2014 and after) were already refunded to the NRA by the withholding agent. Therefore, the withholding credit allowable against any tax owed is the difference between the total withholding credit reported as withheld in Box 9 (Box 10 for 2014 and forward) and any amount shown in Box 10 (Box 11 for 2014 and forward).</p>	<ul style="list-style-type: none"> Pub. 515 IRM 2.3.35.9 – <i>Payee and Payer Online Transcript (Definer ‘L’, ‘O’ and ‘W’)</i> IRM Exhibit 2.3.35-4 – <i>Document Code Availability by Tax Year</i>

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 3](#)

Considerations	Resources
<p><u>Part A (cont'd):</u></p> <ul style="list-style-type: none"> ▪ Review all Forms 1042-S that were filed with the NRA's TIN by reviewing IDRS command codes IRPTRO and Information Returns Processing Transcript Request – Payee On-line Transcript Payee Summary (IRPTRL) using the NRA's TIN. If any Forms 1042-S were filed without the NRA's TIN, they will not show up in IRPTRO or IRPTRL, see Process Step 3, Part B, Items 3 and 5 . ▪ Note discrepancies, corrected/amended Form 1042-S, or multiple Form(s) 1042-S filed by the same payer/withholding agent with the same income code. <p> DECISION POINT: Are there discrepancies between the withholding amounts reported on the Form(s) 1042-S attached to the Form 1040NR and the Form(s) 1042-S captured in IDRS records reported on IRPTRO?</p> <p>If YES, continue to Part B of Process Step 3.</p> <p>If NO, proceed to Process Step 4.</p>	<ul style="list-style-type: none"> ▪ IRM 2.3.35.9 ▪ IRM Exhibit 2.3.35-4

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 3](#)

Considerations	Resources
<p><u>Part B:</u></p> <p>Reconcile the discrepancies between the Form(s) 1042-S:</p> <ol style="list-style-type: none"> 1. Obtain the EIN of the withholding agent. The withholding agent's EIN can be found on the Form(s) 1042-S attached to the return or on IRPTRO. <ul style="list-style-type: none"> - If no Form(s) 1042-S is filed but withholding is claimed by the NRA, complete IDRS research (NAMEE) for the withholding agent's EIN. 2. Complete Form 11377-E, <i>Taxpayer Data Access</i>, to access IDRS information for the withholding agent. 3. Complete IDRS request for IRPTRI for withholding agent: <ul style="list-style-type: none"> - Determine the amounts reported as withheld on all Forms 1042-S issued to the NRA. As previously noted, the IRPTRI will list Forms 1042-S issued without a TIN alphabetically, then numerically for those issued with a TIN. 	<ul style="list-style-type: none"> ▪ IRM 2.3.35 ▪ IRM 2.3.60 - <i>IDRS Terminal Responses, Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE, and TPIIP</i> ▪ Form 11377-E, <i>Taxpayer Data Access</i> ▪ IRM 2.3.35.9 ▪ IRM 2.3.35.9.4.5 – <i>Selected Documents Payer Summary (Definer 'I')</i>

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income


[Step 3](#)

Considerations	Resources
<p><u>Part B (cont'd):</u></p> <ol style="list-style-type: none"> 4. Reconcile the withholding taxes reported on Form(s) 1042-S in IRPTRI with the amount reported on page 2 on the Form 1040NR. <ul style="list-style-type: none"> - For Form(s) 1042-S filed without the NRA's TIN, search IRPTRI by the NRAs' last name. 5. Make a request through Foreign Payments Practice (FPP) for E-Trak information to verify amounts reported on Form 1042-S. <ul style="list-style-type: none"> - Contact the FPP Team Manager whose territory covers the location of the withholding agent via an email and provide a completed E-Trak Research Request Form. 6. Make a third-party contact after completing procedures 1 through 5 above if there is still a question as to the total amount of withholding. <ul style="list-style-type: none"> - Contact the withholding agent and request the information to substantiate that the Form 1042-S submitted with the Form 1040NR is the most recent one included in the withholding agent's (possibly amended) Form 1042 and that the Form 1042-S was filed with the IRS. If the NRA's Form 1042-S is not the most recent one the withholding agent has filed for the NRA, then it is invalid and not refundable. - The withholding agent may be contacted via phone call, correspondence including Letter 1995 and/or summons Form 2039. 	<ul style="list-style-type: none"> ▪ E-Trak Research Request Form ▪ IRM 4.11.57

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 3](#)

Considerations	Resources
<p><u>Part B (cont'd):</u></p> <p> CAUTION: The Treasury Regulations and IRS guidelines prohibit withholding agents from receiving refunds of amounts withheld under IRC 1441 on payments of FDAP to a payee for a particular year when the amounts were paid to the IRS and reported on Form 1042-S filed with the IRS, and a copy provided to the payee, if such refund request is initiated after March 15 of the subsequent year. In order to ensure that amounts withheld are not refunded twice, follow the preliminary steps in Part C of Process Step 3 to determine if this could be the case and if additional investigation is warranted.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2012-36 – IRC 1441▪ Treas. Reg. 1.1441-1(b)(8)▪ Treas. Reg. 1.1464-1(a)

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income


[Step 3](#)

Considerations	Resources
<p><u>Part C:</u></p> <ol style="list-style-type: none">1. Order a Business Master File on Line Tax Module (BMFOLT) for the payor/withholding agent using MFT 12. If a claim was filed, the following Transaction Codes (TC) may appear in the following order:<ul style="list-style-type: none">- TC 971 (Misc. Transaction) with Action Code 013 (Amended Return)- TC 972 (Amended/Duplicate Return Indicator)- TC 976 (Posted Duplicate Return)- TC 420 (Examination Indicator)- TC 421 (Reverse Examination Indicator)- TC 424 (Examination Indicator)- TC 424R (Reverse Examination Indicator)- TC 425 (Reversed TC 424)- TC 291 (Abatement Prior Tax Assessment)- TC 301 (Abatement of tax by Examination...)	<ul style="list-style-type: none">▪ IRM 2.3.59▪ Document 6209, Section 12 - <i>Examination</i>

Step 3: Verify Total IRC 1441 Withholding (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 3](#)

Considerations	Resources
<p><u>Part C (cont'd):</u></p> <p>2. Order a Business Returns Transaction View (BRTVU) for the withholding agent using MFT12. To verify a request for reimbursement was filed:</p> <ul style="list-style-type: none">- Review line number two of BRTVU summary starting with ORIGINAL RETURN – XXX DUPLICATE/AMENDED RETURN. <p> DECISION POINT: If, after performing a review of the payer's/withholding agent's BMFOLT and BRTVU, there is no indication of a refund of withholding tax, proceed to Process Step 4. If there are still questions as to whether the withholding agent might have requested a refund, review the resources listed on this slide.</p>	<ul style="list-style-type: none">▪ IRM 2.3.57 – <i>IDRS Terminal Responses, Command Code BRTVU</i>▪ IRM Exhibit 2.3.57-7 – <i>Command Code BRTVU</i>▪ Foreign Payments Practice Training (Lesson 10) PPT – 2013 CPE PPT

Step 4: Determine if Refund is Allowable

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Step 4


Determine whether the refund request for amounts withheld under IRC 1441 is allowable.

Considerations	Resources
<ul style="list-style-type: none">▪ Determine the NRA's taxable income:<ul style="list-style-type: none">- FDAP income – verified in Process Step 1- ECI ▪ Determine the NRA's tax liability:<ul style="list-style-type: none">- Tax on ECI- Allowable credits- Tax on FDAP - verified in Process Step 2- Other taxes ▪ Determine the NRA's total withholding:<ul style="list-style-type: none">- Withholding on FDAP income – verified in Process Step 3- Other withholdings- Additional credits <p>See the Index of Related Practice Units slide for Practice Units regarding FDAP and ECI.</p>	

Step 4: Determine if Refund is Allowable (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

[Step 4](#)

Considerations	Resources
<p> DECISION POINT: After completing Process Steps 1 through 3 and determining the NRA's taxable income (ECI and FDAP), tax liability, and verification of any withholding taxes:</p> <ul style="list-style-type: none">▪ If the amount of taxes withheld exceed the NRA's tax liability, a refund claim should be allowed to the extent of the overpayment.▪ If the amount of taxes withheld are less than the NRA's tax liability, the refund claim should be denied.	

Examples of the Process

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Description

The following example illustrates a claim for refund of amounts withheld under IRC 1441:

- In 2014, a NRA earns \$1,000 of interest income on a registered bond issued by a U.S. corporation. The interest qualifies for the portfolio interest exemption and is thus exempt from withholding under IRC 1441. However, the withholding agent mistakenly withholds 30 percent of the gross amount of the \$1,000 interest payment. The NRA receives \$700 and the withholding agent deposits \$300 with the IRS. In March of 2015, the withholding agent files a Form 1042 with the IRS and attaches a Form 1042-S for the NRA (and provides a copy to the NRA) reporting the \$1,000 of gross interest income and the amount withheld of \$300.
- In March of 2015, the NRA files a Form 1040NR (with a copy of the above referenced Form 1042-S attached) reporting \$0 taxable income, \$0 tax liability due, withholding totaling \$300 and requesting a refund of the \$300 withheld.
- Assuming that the NRA did not earn any other FDAP income or ECI in 2014, the NRA's refund claim should be approved because the refund claim was filed timely and the amounts withheld under IRC 1441 (\$300) exceeded the NRA's total U.S. tax liability (\$0). Accordingly, the NRA should be entitled to a \$300 refund.

Other Considerations / Impact to Audit

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

Considerations	Resources
<ul style="list-style-type: none">▪ In certain instances, a NRA may fail to attach one or more Form(s) 1042-S to substantiate FDAP income and withholding taxes reported on Form 1040NR. In this situation, the following steps should be considered in verifying the withholding tax and FDAP income reported on Form 1040NR:<ul style="list-style-type: none">- Determine the identity of the withholding agent by contacting the NRA for the information.- Determine the TIN/EIN of the withholding agent by following procedures in Part D of Process Step 1.- Continue to follow Process Steps 2 through 4, if applicable, to verify the correct FDAP income and withholding.	

Index of Referenced Resources

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

IRC 6072(c)

IRC 6511(a)

IRC 6513(b)(3)

Treas. Reg. 1.1441-1(b)(8)

Treas. Reg. 1.1464-1(a)

Rev. Proc. 2012-36 – IRC 1441

LB&I Directive # 04-0214-004 - *Updated Guidance for Examiners on Information Document Requests Enforcement Process (2/28/14)*

IRM 2.3.35 – *IDRS Terminal Responses, Command Code IRPTR*

IRM 2.3.35.9 – *Payee and Payer Online Transcript (Definer 'L,' 'O' and 'W')*

IRM 2.3.35.9.5 – *Selected Documents Payer Summary (Definer 'I')*

IRM 2.3.57 – *IDRS Terminal Responses, Command Code BRTVU*

IRM 2.3.59 - *IDRS Terminal Responses, Command Codes BMFOL and BMFOR*

IRM 2.3.60 - *IDRS Terminal Responses, Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE, and TPIIP*

IRM 4.4.32.7.5.3 – *Form 11377 or Form 11377-E, Taxpayer Data Access*

IRM 4.10.4.3 – *Minimum Requirements For Examination of Income*

IRM 4.11.57 – *Examining Officers Guide (EOG), Third Party Contacts*

Index of Referenced Resources (cont'd)

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income

IRM 4.46.4.5 – *Information Document Request Process*

IRM Exhibit 2.3.35-4 – *Document Code Availability by Tax Year*

IRM Exhibit 2.3.35-13 – *Payee Online Transcript Document Display Screen: 1042-S (DOC CODE 02)*

IRM Exhibit 2.3.57-7 – *Command Code BRTVU*

IRM Exhibit 3.21.3-2 – *Form 1042-S Income Codes*

Pub. 515

Pub. 901

Document 6209, Section 12 - *Examination*

IRS.gov – *United States Income Tax Treaties A to Z*

E-Trak Research Request Form

Training and Additional Resources

Verifying Refund Requests of IRC 1441 Withholding on FDAP Income	
Type of Resource	Descriptions
Saba Meeting Sessions	<ul style="list-style-type: none">▪ <i>Withholding - 2012 (IIC) CPE Centra</i>▪ <i>Nonresident Alien Withholding - 2012 (IBC) CPE Centra</i>▪ <i>IDRS for Revenue Agents - 2012 Centra</i>
Other Training Materials	<ul style="list-style-type: none">▪ <i>Nonresident Alien Withholding Form 1042 Audit Techniques PPT – 2012 -08</i>▪ <i>Foreign Payments Practice Training (Lesson 10) PPT – 2013 CPE</i>

Glossary of Terms and Acronyms

Term/Acronym	Definition
BMFOLT	Business Master File Online Transcript
BRTVU	Business Return Transaction View
ECI	Effectively Connected Income
EIN	Employer Identification Number
FDAP	Fixed Determinable Annual Periodical
FPP	Foreign Payments Practice
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRPTRI	Information Returns Processing Transcript Request – Selected Documents Payer Summary
IRPTRL	Information Returns Processing Transcript Request – Payee On-line Transcript Payee Summary
IRPTRO	Information Returns Processing Transcript Request – Payee Online Transcript
ITIN	Individual Taxpayer Identification Number
NRA	Nonresident Alien
TC	Transaction Code
TIN	Taxpayer Identification Number

Index of Related Practice Units

Associated UILs	Related Practice Unit	DCN
9424.01	FDAP Payments - FDAP Income	RPW/C/08_01-01 (formerly RPW/CU/P_08.1_02(2016))
9424.01	FDAP Payments – FDAP Withholding Under Chapter 3	RPW/C/08_01-03 (formerly RPW /CU/P_08.1_03(2016))
9424.01	FDAP Payments - Source of Income	RPW/C/08_01-02 (formerly RPW/CU/P_08.1_04(2016)a)
9424.01	Non-Services FDAP Income	RPW/T/08_01_01_04-01 (formerly RPW /9424.01_02(2013))
9441.02	Effectively Connected Income (ECI)	USB/C/14_02_01-01 (formerly USB/CU/P_14.2_01(2014))
9442.01	Overview of FDAP	WIT/C/15_01-01 (formerly WIT/CU/P_15.1_01(2014))