

Part III – Administrative, Procedural, and Miscellaneous

Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States

Notice 2011-12

I. PURPOSE

This notice provides that Notice 2009-91, 2009-48 I.R.B. 717, will not apply to wages paid on or after January 1, 2011. Notice 2009-91 concerned procedures for determining the amount of income tax employers must withhold under section 3402 of the Internal Revenue Code (Code) from wages paid for services performed by nonresident alien employees within the United States.

II. BACKGROUND

Notice 2009-91 was published to provide procedures to take account of changes made in the withholding tables to reflect the Making Work Pay Credit (section 36A of the Code). The Making Work Pay Credit does not apply to taxable years beginning after December 31, 2010. Therefore, the withholding tables for wages paid on or after January 1, 2011, will not reflect the Making Work Pay Credit, and Notice 2009-91 will not apply in determining the withholding on nonresident aliens.

Notice 1036, Early Release Copies of the 2011 Percentage Method Tables for Income Tax Withholding, explains that employers should implement the 2011 withholding tables as soon as possible, but not later than January 31, 2011.

III. WITHHOLDING RULES THAT WILL BE IN EFFECT FOR WAGES PAID TO NONRESIDENT ALIEN EMPLOYEES ON OR AFTER JANUARY 1, 2011

For wages paid on or after January 1, 2011, employers must determine the amount of income tax to withhold from wages paid to nonresident alien employees for services performed within the United States, using the procedure explained in Notice 2005-76, 2005-2 C.B. 947, together with the tables in the revisions of Publication 15 (Circular E), Employer's Tax Guide, and Notice 1036 that are in effect when the wages are paid. This procedure is explained in Publication 15 and Notice 1036.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2009-91 has no effect for wages paid on or after January 1, 2011. Therefore, the modification to Notice 2005-76 made by Notice 2009-91 does not apply for wages paid on or after January 1, 2011. Notice 2005-76 continues in effect for wages paid on or after January 1, 2011.

V. DRAFTING INFORMATION

The principal author of this notice is A. G. Kelley of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact A. G. Kelley at (202) 622-6040 (not a toll-free call).