



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

August 11, 2000

3402.05-00

CC:TEGE:EOEG:ET1:STackney
COR-101643-00

Number: **INFO 2000-0223**

Release Date: 9/30/2000



Dear [REDACTED]:

This is in response to your letter dated April 20, 2000 which was forwarded to this office for response. You indicated that you had three questions in addition to those that you had posed in your November 29, 1999 correspondence to which you received a response dated April 13, 2000.

Question 1: Statement of Citizenship and Residence and Withholding Obligations

In your first question you ask whether a "Statement of Citizenship and Residence" is an adequate substitute for a withholding exemption certificate. You refer to both section 31.3402(f)(5)-1 of the Employment Tax Regulations and regulation section 1.1441-5 of the Income Tax Regulations. Regulation section 31.3402(f)(5)-1 was promulgated under section 3402 of the Internal Revenue Code (the "Code"), addressing the withholding of federal income tax on wages. Regulation section 1.1441-5 was promulgated under section 1441 of the Code, referring to the 30% withholding tax on non-resident aliens.

A nonresident alien subject to wage withholding under section 3402 of the Code must complete a Form W-4 which is the form prescribed for the withholding exemption certificate. Regulation section 31.3402(f)(5)-1 provides that, in lieu of the Form W-4, an employer may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if the employer also provides the employee with all the tables and instructions contained in the Form W-4 in effect at that time and only if the employer complies with other published requirements in effect at that time.

Prior to its recent amendment, regulation section 1.1441-5(a) addressed an individual's claim to be a U.S. citizen or resident for purposes of the 30% withholding tax on non-resident aliens. As you have noted, that regulation has been changed effective for

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payments made after December 31, 2000. A series of new forms have been created to address the application of the withholding tax to non-resident aliens under the new regulations. Transition rules allow certain of the old forms, including a statement under regulation section 1.1441-5(a), to continue in effect for limited periods depending on the circumstances. You may find it helpful to consult Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

The interplay of the federal income tax withholding rules of section 3402 and the withholding tax on non-resident aliens of section 1441 is complex. Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations and Publication 519, U.S. Tax Guide for Aliens may prove useful in determining which provisions are applicable to your particular situation and what methods may be used to comply with those provisions. We have enclosed copies of Publications 515 and 519 for your information.

Question 2: Agreements Under section 3121(I)

You have inquired whether your use of an Employer Identification Number (EIN) would be considered a request to enter into an agreement under Code section 3121(I). Section 3121(I) of the Code allows a domestic corporation to enter into an agreement with the Internal Revenue Service for the purpose of extending the insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States as employees of a foreign subsidiary of the domestic corporation.

A corporation can enter into such an agreement by submitting a Form 2032. The filing of the Form 2032 is considered a formal and irrevocable agreement, providing certain benefits and imposing various obligations upon the employer. The use by a business of an EIN does not constitute an agreement under Code section 3121(I).

Question 3: FMS Form 7311 and Exemptions from a Non-Qualified Local Wage Tax

Finally, you have inquired whether "FMS Form 7311" can be used to claim exemption from a "non-qualified local wage tax." Although we are eager to respond to this question, and any other questions you may have, there is no federal IRS form entitled FMS Form 7311 and the exact exemption to which you are referring is not entirely clear. Accordingly, we are unable to provide a response at this time. If you would like to clarify the question and resubmit it to us, we will attempt to provide you with a response.

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This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

We hope the information provided is of assistance to you. If you have any further questions, please contact Stephen Tackney (Badge #50-18084) at (202) 622-3979.

Sincerely,

Lynne Camillo
Acting Chief, Employment Tax Branch 1
Office of the Assistant Chief Counsel
(Tax Exempt and Government Entities)

Enclosures:
As Stated