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**From:** Tombul Bridget E  
**Sent:** Wednesday, May 02, 2007 8:48 AM  
**To:** Martin Paula A  
**Cc:** Campbell Carol A; Minsky Joanne B  
**Subject:** FW: Form 1040NR Exemption Not Claimed

Hi Paula:

If it was clear on the face of the return that the taxpayer was entitled to a personal exemption, then the IRS can go ahead and make the change to allow the exemption.

There are some circumstances under which a taxpayer would not be entitled to a personal exemption. Under section 151(d)(2) of the Code, a taxpayer may not claim his own personal exemption if another taxpayer has the right to claim it. However, this issue does not usually arise with nonresident aliens because under section 152(b)(3) of the Code, a dependency exemption for an individual cannot be allowed if the dependent is not a U.S. citizen, a U.S. national, or a resident alien of the United States. The exceptions to this general rule are as follows:

- (1) spouses or dependents who are residents of Canada or Mexico;
- (2) spouses or dependents who are U.S. nationals (i.e., citizens of American Samoa or the Commonwealth of the Northern Mariana Islands);
- (3) spouses or dependents who are residents of South Korea (cf. article 4(7) of the USA-Korea income tax treaty);
- (4) spouses or dependents of students or trainees who are residents of India (cf. article 21(2) of the USA-India income tax treaty, as explained by Revenue Procedure 93-20). Although Rev. Proc. 93-20 allows a personal exemption for the spouse of the student or trainee from India if the spouse has no U.S. gross income and the spouse cannot be claimed as the dependent of another taxpayer, Rev. Proc. 93-20 does not allow a dependency exemption for any other individual unless the dependent is a U.S. citizen or a resident alien of the USA.

In addition, a nonresident alien would not be allowed to claim his own personal exemption if his only U.S. source income is FDAP ((Fixed, Determinable, Annual or Periodical) income which is reportable only on page 4 of Form 1040NR and which is not reportable on page 1 of Form 1040NR. The tax on FDAP income reported on page 4 of Form 1040NR is computed separately without allowing any deductions against gross income. This includes not allowing the deduction for the taxpayer's own personal exemption.

If you have any other questions, or if the information in this e-mail is unclear or not helpful, please contact me.

Regards,

Bridget E. Tombul  
Special Counsel to Division Counsel (W&I) CC:WI

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