

(1) Application to individuals

In the case of an individual, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax equal to 3.8 percent of the lesser of—

- (A) net investment income for such taxable year, or
- (B) the excess (if any) of—
 - (i) the modified adjusted gross income for such taxable year, over
 - (ii) the threshold amount.

(2) Application to estates and trusts

In the case of an estate or trust, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax of 3.8 percent of the lesser of—

- (A) the undistributed net investment income for such taxable year, or
- (B) the excess (if any) of—
 - (i) the adjusted gross income (as defined in section 67(e)) for such taxable year, over
 - (ii) the dollar amount at which the highest tax bracket in section 1(e) begins for such taxable year.

(b) Threshold amount

For purposes of this chapter, the term “threshold amount” means—

- (1) in the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), \$250,000,
- (2) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under paragraph (1), and
- (3) in any other case, \$200,000.

(c) Net investment income

For purposes of this chapter—

(1) In general

The term “net investment income” means the excess (if any) of—

- (A) the sum of—
 - (i) gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in paragraph (2),
 - (ii) other gross income derived from a trade or business described in paragraph (2), and
 - (iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business not described in paragraph (2), over

(B) the deductions allowed by this subtitle which are properly allocable to such gross income or net gain.

(2) Trades and businesses to which tax applies

A trade or business is described in this paragraph if such trade or business is—

- (A) a passive activity (within the meaning of section 469) with respect to the taxpayer, or
- (B) a trade or business of trading in financial instruments or commodities (as defined in section 475(e)(2)).

(3) Income on investment of working capital subject to tax

A rule similar to the rule of section 469(e)(1)(B) shall apply for purposes of this subsection.

(4) Exception for certain active interests in partnerships and S corporations

In the case of a disposition of an interest in a partnership or S corporation—

(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

(5) Exception for distributions from qualified plans

The term “net investment income” shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

(6) Special rule

Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

(d) Modified adjusted gross income

For purposes of this chapter, the term “modified adjusted gross income” means adjusted gross income increased by the excess of—

- (1) the amount excluded from gross income under section 911(a)(1), over
- (2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

(e) Nonapplication of section

This section shall not apply to—

- (1) a nonresident alien, or
- (2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

(Added Pub. L. 111-152, title I, §1402(a)(1), Mar. 30, 2010, 124 Stat. 1061.)

EFFECTIVE DATE

Pub. L. 111-152, title I, §1402(a)(4), Mar. 30, 2010, 124 Stat. 1063, provided that: “The amendments made by this subsection [enacting this chapter and amending section 6654 of this title] shall apply to taxable years beginning after December 31, 2012.”

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter	Sec. ¹
A. Nonresident aliens and foreign corporations	1441
B. Application of withholding provisions ..	1461

¹ Section numbers editorially supplied.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out “AND TAX-FREE COVENANT BONDS” after “FOREIGN CORPORATIONS” in heading of chapter 3, and struck out item for subchapter B “Tax-free covenant bonds” and redesignated the item for subchapter C as B.

Subchapter A—Nonresident Aliens and Foreign Corporations

Sec.	
1441.	Withholding of tax on nonresident aliens.
1442.	Withholding of tax on foreign corporations.
1443.	Foreign tax-exempt organizations.
1444.	Withholding on Virgin Islands source income.
1445.	Withholding of tax on dispositions of United States real property interests.
1446.	Withholding of tax on foreign partners' share of effectively connected income. ¹

AMENDMENTS

1988—Pub. L. 100-647, title I, § 1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted “Withholding of tax on foreign partners' share of effectively connected income” for “Withholding tax on amounts paid by partnerships to foreign partners” in item 1446.

1986—Pub. L. 99-514, title XII, § 1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98-369, div. A, title I, § 129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97-455, § 1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

§ 1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United

States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

¹ So in original. Does not conform to section catchline.