



U.S. INCOME TAX REPORTING ON RENTAL INCOME FOR NONRESIDENTS



By:

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About the Author:

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

When a nonresident individual owns rental real estate in the U.S., there are two alternatives for reporting and paying U.S. income taxes.

The individual may choose to not file an income tax return in the U.S. to report the rental income. In this case, 30% of the gross rental income must be remitted to the Internal Revenue Service. If the rental is handled by a rental agent, the agent must withhold and remit the 30% as rent is collected. If no rental agent is involved, then the nonresident owner is obligated to pay the 30% to the Internal Revenue Service.

Most nonresidents do not choose the first option. Instead, they report the rental income on a U.S. income tax return, Form 1040NR. They must report the rental income received, but, unlike the first option, all expenses associated with the property are deductible against the rental income. These expenses include property taxes, mortgage interest, repairs, etc. In addition, a calculated amount for depreciation is also deducted. A personal exemption of \$3,650 in 2010 (\$3,700 in 2011) is also allowed. The majority of owners do not have any taxable income after taking into account all of the deductions that are available. If there is no taxable income, then there is no tax to pay. In addition, any excess expenses accumulate and carry forward indefinitely and are available to offset profit on sale.

In order to avoid the 30% withholding on the gross rental income, the nonresident owner must provide a Form W-8ECI to the rental agent. The Form W-8ECI informs the rental agent that the owner is electing to treat the rental activity as a U.S. trade or business and obligates the owner to file a U.S. income tax return to report the rental activity. The nonresident owner must also apply for and obtain a U.S. taxpayer identification number (ITIN), if they have not previously obtained one or if they do not possess a U.S. social security number. This identification number can be obtained by filing a Form W-7 with the Internal Revenue Service.

The tax year is based on the calendar year and the tax returns are due no later than June 15 of the year following the tax year. If not completed by June 15, an extension request can be filed which will extend the filing date until December 15.

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