

INCOME TAX WITHHOLDING FOR NONRESIDENT INDIVIDUALS PERFORMING PERSONAL SERVICES IN NEBRASKA

OVERVIEW

Nonresident **employees** working in Nebraska, whose wages are subject to federal withholding, are also subject to Nebraska income tax withholding. Withholding is calculated on all wages earned in Nebraska at the same rates as Nebraska residents.

Nonresident **individuals or entities**, paid by a business entity or an individual to perform personal services in Nebraska, are also subject to Nebraska withholding when:

- ❖ Payment is made to a nonresident individual who is not subject to federal income tax withholding under the Internal Revenue Code (IRC) as an employee; **OR**
- ❖ Payments are made to a nonresident entity and at least 80% of the stock or other controlling interest of the entity is owned by the shareholders, partners, or members who are the individuals performing the personal services; **AND**
 - The payor maintains an office or transacts business in Nebraska and the payments exceed \$600; or
 - The payments exceed \$5,000.

Withholding is calculated using the [Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA](#). This form must be completed jointly by the payor and nonresident individual or entity receiving the payment for personal services performed (payee). The payee is allowed to deduct actual directly-related business expenses and certain payments to determine the amount used to calculate withholding. The expenses and payments are limited to not more than 50% of the total payment.

Any payor withholding Nebraska tax must have a Nebraska Income Tax Withholding Certificate. To obtain this certificate, submit a [Nebraska Tax Application, Form 20](#). There is no fee for this certificate. Withholding is reported on the [Nebraska Income Tax Withholding Return, Form 941N](#).

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.



This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the subscription service at revenue.nebraska.gov to get updates on your topics of interest.

TERMS

Capital. Capital is equipment used and materials incorporated into real property.

Directly-related expenses. Directly-related expenses are paid by the payee and are specific to providing the service. They may include the following: car rental; hotel/motel charges; supplies; and airline fare. Directly-related expenses may be deducted from the total payment before Nebraska withholding is calculated, but cannot be more than 50% of the gross payment.

Material Income-Producing Factor. Capital is considered a material income-producing factor when the value of the capital furnished, or the value of the use of the capital, is more than 50% of the amount of the payment.

Nonresident Employee. A nonresident employee is a person who is domiciled in a state other than Nebraska.

Nonresident Entity. Nonresident entities include corporations, partnerships, and limited liability companies (LLCs), not domiciled in Nebraska, and that do not maintain a permanent place of business in Nebraska.

Nonresident Independent Contractor. Nonresident independent contractors are persons providing personal services, who are not considered employees under the IRC.

Nonresident Individual. A nonresident individual is a person who is not a Nebraska resident at the time the personal service is performed.

Personal Services. Personal services include services provided by persons not considered employees under the IRC. This includes, but is not limited to: professional speakers; individual athletes; entertainers; performers; consultants; engineers; and architects.

Transacts Business. The term transacts business means to carry on business within Nebraska. This term includes all business activities including work performed by construction contractors, subcontractors, and anyone who arranges for completion of construction projects for a contractor or any other person.

PAYMENTS SUBJECT TO NEBRASKA WITHHOLDING

Payments to Nonresident Employees. A nonresident employee who is paid wages subject to federal income tax withholding is subject to Nebraska withholding on all wages earned while working in Nebraska. These wages are taxed at the same rates used for Nebraska residents. Please review the [Nebraska Circular EN](#) for tax rate schedules and tables.

Payments made to Nonresident Individuals. Payments made to nonresident individuals performing personal services in Nebraska are subject to Nebraska withholding when:

- ❖ The payor maintains an office or transacts business in Nebraska and the payments exceed \$600; or
- ❖ Payments exceed \$5,000.

Payments Made to Nonresident Entities. Payments made to a nonresident entity other than an individual are subject to the nonresident personal service withholding requirements when:

- ❖ The payor maintains an office or transacts business in Nebraska and the payments exceed \$600; or
- ❖ Payments exceed \$5,000.

AND WHEN

- ❖ Eighty percent or more of the voting stock of a corporation is owned by the shareholders who perform the personal services for the corporation; OR
- ❖ Eighty percent or more of the ownership or profits interest of a partnership or LLC is held by the partners or members who perform the personal services for the entity.

For these businesses, the number of shareholders, partners, or members who are physically present in Nebraska does not determine whether or not the withholding is required. As a result, withholding is required for services performed by any of the shareholders, partners, or members.

Example 1. A Nebraska business pays an out-of-state theater group for performances in this state. The theater group is organized as a personal service corporation, and the performers are the only shareholders of the corporation. The payment is made to the corporation. Since the payment is made to a corporation where 80% or more of the stock is owned by those performing the services, both inside and outside Nebraska, withholding applies to the payment made to the corporation.

Distribution of withholding to shareholders, partners, or members. Payments made to a nonresident entity are considered to be made directly to the individuals actually performing services in Nebraska. The withholding is divided among the shareholders, partners, or members working in Nebraska according to their interest in the corporation, partnership, or LLC.

[Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA](#) provides a section to report the withholding amounts for each shareholder, partner, or member when the payment is made to the corporation, partnership, or LLC.

Example 2. A nonresident engineering consulting firm is performing a contract for services in Nebraska. Partners A and B each own a 25% interest in the partnership and Partner C owns 50%. All three partners perform personal services for the partnership. The contract payment of \$5,000 is made in the partnership's name. The situations that follow relate to this example.

Situation 1 – Partners A and B perform the contract in Nebraska. Since A and B hold the same partnership interest, the withholding calculated on the \$5,000 payment is split equally between the two.

Situation 2 – Partners A and C perform the contract in Nebraska. The withholding calculated on the \$5,000 payment is divided between A and C based on their ownership interest, resulting in one-third of the withholding allocated to A and two-thirds to C.

Situation 3 – Only Partner A performs the contract in Nebraska. The entire withholding amount calculated on the \$5,000 payment is allocated to A.

OTHER EXAMPLES

Payments Made to a Booking Agent. When payment is made to a booking agent, the nonresident personal service withholding requirement is determined as follows:

- ❖ When payment is made to a booking agent who is a Nebraska resident, nonresident personal service withholding is not required. Instead, the withholding is applied when the Nebraska booking agent pays the nonresidents for performing the personal services.
- ❖ When payment is made to a booking agent who is located outside Nebraska, with no business activity in Nebraska, withholding may be required. One of the following situations will occur:
 - Situation 1** – The agent is acting as an “Independent Agent” — in this situation, withholding is not required. However, an income tax liability still exists for the persons performing the services.
 - Situation 2** – The agent is acting as a “Production Company” — in this situation, withholding is required because the payment to the agent is considered a payment directly to the persons performing the services.
- ❖ When the payment is made from a Nebraska payor to an initial booking agent operating outside Nebraska, who then pays a third-party booking agent also operating outside Nebraska, withholding is not required on any of the payments. However, an income tax liability still exists for the persons performing the services.

Payments Made to Nonresident Aliens. Nebraska tax must be withheld on payments to a nonresident alien for providing personal services when federal tax was withheld and reported on federal [Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding](#). Calculate the withholding on Nebraska Form W-4NA. Payments made to a nonresident alien whose country has a tax treaty with the U.S. may not be subject to Nebraska withholding. The payor must obtain a written statement from the nonresident alien certifying the existence of a treaty exempting U.S. income earned by the nonresident alien from federal or state income tax.

Payments Made to Certain Nonresident Construction Contractors or Nonresident Custom Harvesters.

Payments made to nonresident contractors completing a construction project in Nebraska or to nonresident custom harvesters in Nebraska, may or may not be subject to withholding. Personal services withholding does not apply when capital or material furnished by the nonresident construction contractor or nonresident custom harvester is a material income-producing factor (see definition of Material Income-Producing Factor above).

A Nebraska construction contractor hiring a nonresident subcontractor does not withhold on personal services when:

- ❖ The subcontractor is registered on the Nebraska Contractor Data Base; or
- ❖ The subcontractor is subjected to withholding for not being registered on the Nebraska Contractor Data Base.

For more information go to the Nebraska Department of Labor website at www.dol.nebraska.gov.

CALCULATING THE WITHHOLDING

Nebraska nonresident personal service withholding is not calculated using the same methods used to calculate withholding on wages. Instead, withholding on nonresident personal services is calculated using the Nebraska Form W-4NA and the following rates:

- ❖ If the net payments (payments minus expenses) are less than \$28,000, the withholding rate is 4% of the net payments.
- ❖ If the net payments are \$28,000 or more, the rate is 6% of the net payments.

Payments less than \$28,000. All payments made to the same nonresident for services that are part of a single contract, job, or project must be added together to determine the applicable withholding rate.

Example 3. A Nebraska business makes three payments to a nonresident individual performing consulting services at the business in Nebraska. The business has an agreement with the consultant specifying the number of visits and the fee for each visit. The first payment after expenses is \$300; the second payment after expenses is \$150; and the third payment is for a year-end review of business operations and amounts to \$200 after expenses. The total net payments equal \$650.

Situation 1 – Since the total net payments exceed \$600, and the payor is a Nebraska business, withholding on each of the payments is required. In this example, the payments are made as a result of an existing agreement. Even if there is no agreement, withholding should be applied if it is reasonable for the payor to assume that multiple visits will occur, and the payment total will reach the withholding threshold.

Payment 1	\$300	Withholding	\$12
Payment 2	\$150	Withholding	\$ 6
Payment 3	\$200	Withholding	\$ 8
Total	\$650	Withholding	\$ 26 (4%)

Situation 2 – If there was no withholding on the first two payments, the last payment of \$200 must reflect the withholding on the total amount of \$650, at the four percent rate.

Payment 1	\$300	Withholding	\$0
Payment 2	\$150	Withholding	\$0
Payment 3	\$200	Withholding	\$26
Total	\$650	Withholding	\$26 (4%)

Payments greater than \$28,000. When the total net payments are \$28,000 or more, and some of the withholding was calculated at the lower rate, withholding on future payments must be increased to make **total** withholding equal to six percent.

Example 4. A payment of \$15,000 is made to a nonresident individual for speaking engagements in Nebraska. The contract provides for a possibility of two additional engagements, contingent upon certain conditions. Because of popular demand, a second series of lectures is held later in the year. The payment to the speaker for the later series is also \$15,000. Assume that the speaker does not claim any expenses.

The original agreement calls for a payment of \$15,000 and the payor withholds at the four percent rate. Because the original agreement includes provisions for possible payments in excess of \$28,000, the second payment must include the six percent withholding rate for the entire \$30,000. The previous 4% withholding on the first payment is credited against the six percent withholding calculated on the total payments of \$30,000, resulting in withholding of \$1,200 on the second payment. The calculation is shown below:

Withholding on \$30,000 at 6%	\$1,800
Withholding on the first \$15,000 payment at 4%	- 600
Withholding required on the second payment	\$1,200

COMPLETING THE NEBRASKA WITHHOLDING CERTIFICATE FOR NONRESIDENT INDIVIDUALS, FORM W-4NA

The [Form W-4NA](#) is used by payors of nonresident individuals to calculate Nebraska withholding on payments for personal services in Nebraska.

Completing the Form W-4NA. The payor and payee complete the Form W-4NA together to determine the correct amount of Nebraska withholding. When the payment is made directly to the **nonresident individual** performing the personal services, the Form W-4NA is completed through line 10. The payee will give the payor the details required to complete the form. These include:

- ❖ Relevant Social Security numbers; and
- ❖ Amount and type of directly-related expenses.

NOTE: Directly-related expenses are deducted before withholding is calculated and are limited to no more than 50% of the gross payment.

When the payment is made to a **nonresident entity**, the Form W-4NA, line 11 allocation section, must also be completed. This section reports to the individual shareholders, partners, or members the distributive share of tax withheld. The completed Form W-4NA example that follows illustrates this situation.

Example 5. XYZ Business, a Nebraska payor, contracts with Advise Consultants, Inc., an out-of-state personal service corporation, for consulting in Nebraska. The payment is \$50,000. For a one-month period, two consultants from Advise spend time evaluating XYZ's manufacturing operation in Nebraska. The consultants present in Nebraska are shareholders of the corporation performing consulting services in this state. Consultant A's shareholder interest in Advise Consultants, Inc., is 10%. Consultant B's shareholder interest is 30%. (Note: Advise Consultants, Inc., has three other individual shareholders who also perform similar consulting services.) The agreed-upon payment of \$50,000 is made to the corporation, Advise Consultants, Inc. The completed Form W-4NA, on the next page, illustrates the proper reporting of withholding on nonresident personal services.

In this example, since the payment is made to the corporation, the line 11 allocation section is completed. The percentage of allocation is computed based on the consultants' ownership interests (A=10% and B=30%, for a total Advise ownership interest for shareholders performing services in Nebraska of 40%). Of the total ownership interest, A's allocation percentage equals 10/40, or 25%, and B's allocation equals 30/40, or 75%. Separate federal Forms 1099-MISC must be issued to each shareholder listed (Consultants A and B) to report his or her amount of allocated tax withheld.

Nebraska Department of REVENUE		Nebraska Withholding Certificate for Nonresident Individuals		FORM W-4NA	
PAYER'S NAME AND LOCATION ADDRESS Name of Nebraska Payer XYZ Business Address (Number and Street, or Rural Route and Box Number) Main Street City, Town, or Post Office Middleton State NE Zip Code 55555 Nebraska Identification Number 21-123456		PAYEE'S NAME AND LOCATION ADDRESS Payee's First Name and Initial Last Name Advise Consultants, Inc. Address (Number and Street, or Rural Route and Box Number) Broadway Drive City, Town, or Post Office State Zip Code Borderstate USA 55555 Social Security Number 555 00 5555			
*Lines 1 and 2, and 6 through 10 must be completed by the PAYER.					
1 Dates services performed in Nebraska				1	4/5/2009-5/5/2009
2 Total payments for personal services performed in Nebraska.....				2	50,000 00
*Lines 3 through 5 and line 11 may be completed by the PAYEE (attach additional schedule if necessary).					
3 List types and amounts of ordinary and necessary business expenses reasonably related to Nebraska income (see instructions):					
Type of Expense				Amount	
Supplies				2,000 00	
Car Rental				1,000 00	
Lodging				2,000 00	
Enter total line 3 amount here				3	\$ 5,000 00
4 List names, addresses, Social Security numbers, and amounts paid to others for performances or appearances and other fees reasonably related to Nebraska income (see instructions):					
Name		Address		Social Security No.	Amount Paid
Employee (Joe Smith)		Lincoln, NE		123-45-6789	\$ 6,000 00
Enter total line 4 amount here				4	\$ 6,000 00
5 Total business expenses and payments for which you are claiming an expense deduction (total of lines 3 and 4).....				5	\$ 11,000 00
6 50% limitation on expense deduction (line 2 amount multiplied by .50)				6	25,000 00
7 Enter the amount from line 5 or line 6, whichever is less				7	11,000 00
8 Payments subject to Nebraska withholding tax (line 2 minus line 7).....				8	39,000 00
9 If the amount on line 8 is less than \$28,000, multiply the amount by .04 and enter the result on line 9—the amount to be withheld.....				9	-0-
10 If the amount on line 8 is \$28,000 or greater, multiply the amount by .06 and enter the result on line 10—the amount to be withheld.....				10	2,340 00
*Allocation to Shareholders, Partners, or Members Subject to Nebraska Income Tax (attach additional schedule if necessary)					
11 Enter in the space provided the partner's, shareholder's, or member's name, Social Security number or federal ID number, percent of allocation, and the amount of Nebraska income tax withholding allocated to each partner, shareholder, or member.					
Names of Partners, Shareholders, or Members		Social Security Number or Federal ID Number		Percent of Allocation	Allocation Amount
Consultant A		145-00-1234		25%	585 00
Consultant B		456-00-1234		75%	1,755 00
TOTALS				100%	2,340 00
Under penalties of perjury, I declare that I have been authorized to make this statement and that the information disclosed in determining the amount of individual income tax to be withheld and allocated from the payment received for personal services performed in Nebraska is, to the best of my knowledge and belief, correct and complete.					
Sign here <i>Jane Doe</i> Signature of Payee or Authorized Agent 12-4-2009 (999) 555-3232 Date Telephone Number		Signature of Preparer Other than Payee City State Zip Code		Date	

REPORTING AND RECORD-KEEPING REQUIREMENTS

The withholding is reported to the person performing the personal services and to the Department in the same manner as wages or other payments subject to withholding by using federal Form 1099-MISC and Forms 941N and W-3N.

Payors must issue Forms 1099-MISC to nonresidents providing personal services by February 1 (effective January 1, 2011) following the close of the calendar year. Forms 1099-MISC may be issued within 30 days after the service has been provided (for example, when the business is closed or when the relationship is terminated).

The completed Form W-4NA is part of the payor's records and must be kept along with other withholding tax records. Federal Form 1099-MISC is issued by the payor based on the information on the completed Form W-4NA. The state copies of Forms 1099-MISC are included with the Form W-3N, Nebraska Reconciliation of Income Tax Withheld.

RESOURCE LIST:

- ❖ [Nebraska Withholding Tax Regulations](#)
- ❖ [Nebraska Circular EN](#)
- ❖ [Neb. Rev. Stat. § 77-2753](#)

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