

Publications

Final Regulations on Pension Withholding – Payments Outside the United States

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The IRS recently issued [final regulations](#) under Code section 3405 regarding proper elections out of federal income tax withholding for certain qualified plan payments that are not eligible rollover distributions. (89 Fed. Reg. 84079 (Oct. 21, 2024)). Specifically, this guidance is focused on payments made outside the United States. As explained below, they represent the closing chapter in an area IRS has been working on for over 35 years.

Background

The Code provides that for amounts that are not “eligible rollover distributions” (which are subject to mandatory 20% withholding), periodic and nonperiodic payments are subject to withholding unless the participant elects out of withholding. However, an election out of withholding is generally not permissible under Code section 3405(e)(13)(A) if the payment is “to be delivered outside of the United States and any possession of the United States.”

The IRS issued proposed regulations covering a variety of issues in this area on May 31, 2019, largely following the rules set forth in Notice 87-7. The final rules adopt the proposed rules without any substantive changes (other than the effective date), as summarized below.

The Regulations

The regulations address these five scenarios, generally in the form of questions-and-answers.

1. *Military Address.* An Army Post Office (APO), a Fleet Post Office (FPO), or Diplomatic Post Office (DPO) address is treated as a U.S. residence address, and therefore a participant can elect out of withholding with such a foreign military address.

2. *U.S. Address.* If a payee provides a U.S. residence address, but sends the distribution to a financial institution or other person (1) located outside of the U.S., (2) located within the U.S. with further instructions (such as “for further credit to” instructions) directing the funds to be forwarded to a financial institution or other

person located outside the U.S., or (3) pursuant to payment instructions that reference an International Automated Clearing House Transaction (IAT), International Bank Account Number (IBAN), Society for Worldwide Interbank Financial Telecommunication (SWIFT) Business Identifier Code (BIC), or similar identifier linked to a financial institution or other person located outside the U.S., then no election out of withholding is permitted.

3. *Foreign Address.* If a payee provides a foreign residence address, then no election out of withholding is permitted, even if the payee directs the distribution to be delivered to a financial institution or other person within the U.S.
4. *No address.* If a payee does not provide a residence address (or provides an address for the payee's nominee, trustee, or agent), then no election out of withholding is permitted.
5. *NRA Withholding.* The applicable withholding rate for payments subject to Code section 1441, such as a qualified plan distribution to a nonresident alien (NRA), is 30% (unless a lower treaty rate applies). The withholding rules under Code section 3405 do not apply.

Effective Dates

These rules will be effective for distributions made on or after January 1, 2026. However, reliance on the rules for prior periods is permitted.