

FOREIGN NATIONALS WORKING IN CANADA

If companies that are not resident in Canada send employees or self-employed contractors to Canada to perform services, they have various compliance obligations under the Canadian Income Tax Act (Federal) ("the Act"). The use of the term "company" is referable to non-Canadian entities regardless of how they are organized within their own jurisdiction. This paper is an overview of two specific requirements under the Act and consequently, limited to Regulations 102 and 105. If services are rendered in the Province of Quebec, additional obligations may be applicable which are beyond the scope of this paper.

Individuals performing services in Canada will require a Canadian individual income tax number. The application is titled *Application for a Canada Revenue Agency Individual Tax Number (ITN) for Non-Residents (form T1261 E (06))* (Attachment 1).

Employees

Remuneration paid by foreign companies to their employees who are not resident in Canada, but provide some services in Canada, is subject to the same withholding and remitting requirements as remuneration paid by Canadian employers under Regulation 102 of the Act. Employers are required to withhold and remit withholding tax, Canada Pension Plan contributions and Employment Insurance premiums for each employee unless a waiver has been obtained from the Canadian tax authority, Canada Revenue Agency ("CRA"), for withholding tax and other criteria are met which allow an employer not to remit Canada Pension Plan contributions and Employment Insurance. Exemptions may be available for Canada Pension Plan based on a reciprocal agreement on social security or for Employment Insurance contributions if the jurisdiction in which an employee is resident has an employment insurance system similar to Canada's. Non-resident employers are required to prepare and submit the expected Canadian information returns and advices to their employees within the same time constraints as Canadian employers. A non-resident employer is required to obtain a Canadian individual tax number for each non-resident employee. If a resident or non-resident employer fails to deduct or remit necessary Canadian withholding taxes, they may be held liable for the whole amount together with any interest and penalties.

In some instances, non-resident employees may benefit from tax equalization or other indemnification payments. CRA considers this to be additional remuneration related to the employment services and therefore, subject to Regulation 102 withholding. Additionally, other employment benefits may result in taxable amounts also subject to Regulation 102 withholding.

Regulation 102 withholding does not represent a final tax obligation to Canada by the non-resident employee. It is an installment payment on account of the non-resident's ultimate tax liability to Canada. A non-resident employee is required to file a Canadian personal income tax returns even if a waiver is obtained. If an employer wishes to submit a request for a Regulation 102 Waiver, it should be made as soon as the employer becomes aware that it is necessary for an employee to work in Canada. CRA requests that the waiver submission occur thirty days in advance of the start of the work or first payment. If a waiver is granted, the employer must still issue the required Canadian wage information slips to non-resident employees. The remuneration upper limits to obtain a waiver are CAN\$10,000 if the employee is a resident of the United States and \$5,000 for other countries that have a tax treaty with Canada. The waiver application is titled *Regulation 102 Waiver Application—Joint Employer/Employee (form R102-J (E))* (Attachment 2).

For Canadian purposes, the Canada-U.S. Tax Convention (Article XV, paragraph 2) sets out an exemption if the remuneration does not exceed CAN\$10,000 (on a calendar year basis), or the employee is not present in Canada for a period which exceeds 183 days in a twelve month period commencing or ending in the fiscal year, and the remuneration is not paid by or on behalf of an employer who is a resident in Canada, or is not borne by a permanent establishment in Canada. Even if this provision is applicable, a waiver request should still be submitted if an employer does not want to deduct and remit wage withholdings.

Self-employed persons

Regulation 105 of the Act requires withholding tax of 15% to be withheld on the payment of fees, commissions, or other amounts to a non-resident person if the services are provided in Canada. A person includes an individual, a corporation or a trust. If travel time is covered as part of the service provided, then Regulation 105 withholding would apply to this type of payment as it is considered payment in respect of services rendered in Canada. The applicability of other taxes such as the Goods and Service Tax or Harmonized Sales Tax in respect of services rendered in Canada by a non-resident are beyond the scope of this paper.

The CRA provides an administrative exception from withholding tax for reasonable travel expenses. At the present time, the CRA allows an administrative exception for travel expenses to a maximum of CAN\$45 a day per person for meals and to a maximum of CAN\$100 a day for accommodation. Reasonable travel expenses in excess of these amounts which are supported by vouchers retained by the payor may also be excluded from the Regulation 105 withholding requirements.

If services are performed inside and outside of Canada by a non-resident, payment for the portion of the service rendered outside of Canada are not subject to Regulation 105 withholding, however, a reasonable allocation will be necessary to determine the portion of the payment that is subject to Regulation 105.

Regulation 105 withholding does not mean that a non-resident has no further obligation to Canada. The withholding is a payment on account of a non-resident's income tax liability in Canada. Consequently, it is necessary for a non-resident to file a Canadian income tax return to calculate their tax liability to Canada or obtain a refund.

If the non-resident wishes to request a Regulation 105 waiver, it should be made as soon as the individual is made aware that they will be rendering a self-employed service in Canada. A waiver application should be submitted a minimum of thirty days before service begins in Canada or an initial payment is made. The waiver application is titled *Regulation 105 Waiver Application (form R105E(08))* (Attachment 3). If a waiver is granted, the payor must still issue the required Canadian information slips to a non-resident, self-employed individual.

If a non-resident company sends a self-employed contractor to Canada to provide services on their behalf, the foreign company will be required to withhold and remit Regulation 105 withholding. This applies even though the foreign company has no presence in Canada.

Film industry

Special rules may be available to non-resident persons working in the film and video production industry in Canada.

A *Regulation 102 Waiver Application – Film Industry (form R106 E (09))* for employees and a *Regulation 105 Waiver Application – Film Industry (form R107 E (08))* for self-employed persons are available (Attachment 4).

Disclaimer

This paper was prepared as a service for our clients and other persons dealing with the subject issues. It is not intended to be a complete statement of the law or an opinion on any subject. The references to legislation, forms and practices are subject to change. Although we endeavour to ensure its accuracy, no one should act upon this paper without a thorough examination of the law after the facts of a specific situation are considered and obtaining professional advice with connection to any particular matter. No part of this paper may be reproduced without prior written permission of *Newton Israelstam LLP*.

January 10, 2011

ATTACHMENT 1



APPLICATION FOR A CANADA REVENUE AGENCY INDIVIDUAL TAX NUMBER (ITN) FOR NON-RESIDENTS

Before you start:

- Do not submit this form if you have, or are eligible to obtain, a social insurance number (SIN). For more information about obtaining a SIN, call Social Development Canada (SDC) toll-free at, **1-800-206-7218**. Select option "3" for SIN information. If you are calling from outside Canada, or if you have a rotary dial telephone, call **(506) 548-7961** (long distance charges will apply). You may also visit their web site at **www.sdc.gc.ca**.
- Do not submit this form if you have previously obtained a SIN, an ITN, or a temporary taxation number. Continue to use the tax number you have already been issued.

Indicate the reason you are applying for an ITN:

- Filing a Canadian income tax return
- Filing an application to waive or reduce Canadian withholding tax on payments that you receive
- Disposing of taxable Canadian property

Supporting documents:

- Valid Passport
- Driver's licence
- Birth certificate/Proof of Birth
- Other (please identify): _____

IDENTIFICATION (please print)

1. Name

Last name	First name	Middle name(s)

2. Foreign address

Apartment number, street address, street name

City	Province or State	Country	Postal code or zip code

3. Mailing address (if different from above)

Apartment number, street address, street name

City	Province or State	Country	Postal code or zip code

4. Birth information

Date of birth (year, month, day)	Country of birth

5. Other information

Foreign tax identification number	Telephone number

CERTIFICATION

I, _____
(Please print name)

certify that the information given on this form is, to the best of my knowledge, correct and complete.

_____	_____
Date	Signature

Is this form for you?

Use this form to apply for an individual tax number (ITN) from the Canada Revenue Agency (CRA). An ITN is a nine-digit number issued to non-resident individuals who need an identification number but who are not eligible to obtain a social insurance number (SIN).

Who can apply

You can apply if you do not have, and are not eligible to obtain, a SIN but you need to provide an individual tax number to the CRA. For example, this could occur if you are:

- an international student who either has to file or intends to file a Canadian income tax return;
- a non-resident filing an application to waive or reduce Canadian withholding tax;
- a non-resident disposing of taxable Canadian property; or
- a non-resident who has to file or intends to file a Canadian income tax return

Note: Do not complete Form T1261 if you already have an ITN, a SIN, or a temporary taxation number.

How to apply

You can apply by mail or in person. Be sure to mail or bring with you:

- your completed Form T1261; and
- the original or a certified or notarized copy of documents, that substantiate the information provided on the form.

The document(s) you present must be current and must verify your identity, including your name, photograph, and date of birth. You may have to provide a combination of documents for this purpose. Examples of acceptable documents include a passport, driver's licence, birth certificate, work permit, study permit/student authorization, visitor record, and diplomatic identity card.

We may, at a later date, request other supporting documentation.

Documents can be certified by local officials such as doctors, accountants, lawyers, teachers or officials in a federal department or a provincial ministry.

When to apply

Complete this form as soon as you meet the requirements described in "Who can apply" on this page. Apply early to make sure you receive an ITN before you need to use it. Allow four to six weeks for us to notify you in writing of your ITN. If you have not received your ITN at the end of the six-week period, you may call us to find out the status of your application (see "Telephone help" on this page).

Where to apply

In person: You can apply for an ITN at the International Tax Services Office, 2204 Walkley Road, Ottawa, Ontario, CANADA.

By mail: If you are completing Form T1261 for the purpose of filing an income tax return, sign and date the form, and send it to us along with the original, certified, or notarized copies of your documents.

If you are sending Form T1261 only, forward it to:

International Tax Services Office
Returns Processing Division
2204 Walkley Road
Ottawa ON K1A 1A8
CANADA

We will return any original documents that you submit. We will not return copies of documents.

Specific instructions

Indicate the reason you are applying for an ITN – You must check a box to indicate the reason you are applying for an ITN.

Supporting documents – Identify the supporting documents that you have provided. Details on supporting documents are explained under "How to apply".

Identification

1. Name – Enter your legal name as it appears on your documentation.

2. Foreign address – Enter your address in the country where you permanently or normally reside. Include the postal code or zip code.

3. Mailing address – Enter your mailing address if it is different from your address above. We will use this address to return your original documents and send written notification of your ITN.

4. Birth information – Enter your date of birth in "year/month/day" format, and your country of birth.

5. Other information – Enter the tax identification number that has been issued to you in the country in which you permanently or normally reside. Also enter the country of residence if other than Canada.

Sole proprietors

If you are a sole proprietor, you may also have to apply for a Business Number. For more information, visit our Web site at www.cra.gc.ca.

Telephone help

If, after reading these instructions, you are not sure how to complete your application or you still have questions, call the International Tax Services Office for help at:

- **1-800-267-5177** for calls from Canada and the United States; or
- **(613) 952-3741** for calls from outside Canada and the United States. We accept collect calls.

ATTACHMENT 2

Instructions for non-resident employee

Use this form if you are a non-resident employee seeking treaty-based tax relief from Regulation 102 withholding while providing employment services in Canada during the calendar year and you are a resident of:

- the United States and are expected to earn no more than CAN \$10,000; or
- another country that has a tax treaty with Canada and are expected to earn no more than CAN \$5,000.

a) How do you apply?

1. Complete and sign Part A of this form and attach the appropriate identification documents, if required.
2. If you do not have a SIN and you have a work permit, you must apply for a SIN from Service Canada. For more information about obtaining a SIN, call Service Canada toll-free at 1-800-206-7218 and select option "3" for SIN information. If you are calling from outside Canada, or if you have a rotary dial telephone, call 506-548-7961 (long distance charges will apply). You may also visit their Web site at www.servicecanada.gc.ca.

If you do not have a SIN or an ITN, your employer can apply for an ITN on your behalf. Please complete and provide your employer with Form T1261, *Application for a Canada Revenue Agency Individual Tax Number (ITN) for Non-Residents*, along with certified or notarized copies of documentation that includes your name, photograph, and date of birth. Examples of acceptable documents include a passport, work permit, driver's licence, birth certificate, or visitor record. You can get Form T1261 on the CRA Web site at www.cra-arc.gc.ca.

3. You must submit Form R102-J and, if applicable, Form T1261 to your employer before you provide services in Canada. Your employer must send a copy of these forms to the CRA tax services office (TSO) that serves the area where you will be providing services in Canada, including any additional documentation 30 days before the employment services in Canada are to begin.
4. Your payer will sign Part B of Form R102-J and provide you with a copy.
5. Your payer will also provide you with a T4 *Statement of Remuneration* paid reporting the amounts paid to you before the end of February of the following year.

b) Conditions

1. You may have an obligation to file a tax return in Canada. For more information, see Guide 5013-G, *General Income Tax and Benefit Guide for Non-Residents and Deemed Residents of Canada*, available on the CRA Web site at: www.cra.gc.ca. Failure to fulfill your tax filing requirements may result in future waiver requests being denied.
2. If the information presented in this waiver application changes for any reason, you must inform the CRA immediately. Failure to do so may result in the waiver request being rescinded and the withholding requirement reinstated.

Instructions for non-resident employers

1. Review Form R102-J submitted by the employee to ensure that the employee has completed and signed Part A. If the employee does not have an ITN, ensure that you attach Form T1261 and the supporting documents to the waiver application (see paragraph 4 below). An ITN will be assigned once the forms are submitted to the CRA. If Part A has not been completed, you must withhold the appropriate amount of tax. For more information, see Guide T4001, *Employers' Guide – Payroll Deductions and Remittances*.
2. Complete and sign Part B of the form and provide a copy to the employee.
3. If one of the following conditions is met, the CRA will issue you authorization to not withhold tax:
 - A) Total remuneration (in Canadian currency) to be paid to your employee for employment duties performed in Canada does not exceed CAN \$10,000 if the employee is a resident of the United States;OR
 - B) Total remuneration (in Canadian currency) to be paid to your employee for employment duties performed in Canada does not exceed CAN \$5,000 if the employee is a resident of a country that has a tax treaty with Canada that exempts this employee from tax in Canada.

Send a copy of this form and any additional documentation to the CRA tax services office (TSO) that serves the area where the employee's services will be provided 30 days before the employment services in Canada are to begin. The TSO will make every effort to process properly documented waiver applications in situations where they are received less than 30 days before the employment services in Canada are to begin.

4. If the employee does not have an ITN, you must submit Form T1261 along with the supporting documentation at the same time as Form R102-J. If the documentation to apply for an ITN is not available at the time of the R102-J application, you have until the end of the calendar year to submit it along with Form T1261 to the CRA.
5. If the total remuneration expected to be paid to the employee exceeds the income thresholds indicated in paragraph 3 above, you must withhold and remit the appropriate withholdings. For more information, see Guide T4001, *Employers' Guide – Payroll Deductions and Remittances*.
6. Complete and file a T4 Information return with the CRA, and provide the employee with their copy of the T4 slip. You must report the employee's ITN or SIN on their T4 slip. For more information, see Guide RC4120, *Employers' Guide – Filing the T4 Slip and Summary*.
7. If the information presented in this waiver application changes for any reason, you should notify the CRA immediately. Failure to do so may result in the waiver request being rescinded and the withholding requirement reinstated.
8. Contact the CRA tax services office that serves the area where your employee will be providing services in Canada if you have any questions regarding the form.

ATTACHMENT 3



REGULATION 105 WAIVER APPLICATION

Instructions

Use this form if you are a non-resident self-employed individual or corporation and want to apply for a reduced amount of *Regulation 105* withholding tax from amounts paid to you for services provided in Canada. If you perform services that relate to the film industry, use form R107, *Regulation 105 Waiver Application – Film Industry*, which is available on our Web site at: www.cra.gc.ca or at any tax services office.

Attach a copy of all relevant contracts to this application.

Section I – Applicant identification

1. Is this the applicant's first application in Canada?
 No Yes

2. Check one of the boxes to indicate the applicant type contracted to provide services in Canada for the current contract.
 Individual Unincorporated group Partnership Corporation Joint venture Limited liability company (LLC)
 Other (specify) _____

3. Legal name and address of the individual or contracted entity providing services in Canada (if an unincorporated musical group, state the group's name):

Country of residence	Name	Date of birth:	DD	MM	YYYY
Address					Telephone no.

4. Professional or operating name of the applicant, if different than the legal name noted in No. 3 above: _____

5. Applicant's social security number or similar government-issued tax number from his or her country of residence: _____

6. Individual, corporation, or business account number(s) provided previously by the Canada Revenue Agency (CRA): _____

7. If this application is being made by someone other than the applicant contracted for services, provide the following:

Name	Telephone no.	Fax no.
Address		

8. Has this person been authorized by the applicant to discuss the applicant's tax affairs in Canada? If yes, attach a copy of the letter of authority.
 No Yes

9. If the applicant is an unincorporated group, a corporation, a partnership, a joint venture, or an LLC, complete the following chart (if you need more space, attach a separate page).

Names of individual group members, shareholders, partners, or LLC members, also indicate the foreign social security number or social insurance number	Position or title	Address and country of residence	Percentage of voting shares or income or profit/loss	Date of birth
				DD MM YYYY
				DD MM YYYY
				DD MM YYYY
				DD MM YYYY
				DD MM YYYY
				DD MM YYYY
				DD MM YYYY

10. Type of industry in which the applicant's services will be provided:
 Entertainment Sport/Recreation Construction Petroleum and gas Transportation Communications
 Business professionals Education Architectural/Engineering/Scientific/Technical Health Other (specify) _____

11. If services are to be provided in the entertainment industry, indicate in which of the following areas.
 Theatre production Music Speaker/Lecturer Other (specify) _____

Section III – Previous and future service information

21. Complete the following chart for the current contract(s) information (attach a separate page if you need more space).

Dates of service (dd-mm-yyyy) from	Dates of service (dd-mm-yyyy) to	City and province/territory of service	Payer name and address	Amount of fee and the currency

22. Has the applicant provided services in Canada:

a) previously this calendar year? No Yes (complete No. 23 below) b) in the previous three calendar years? No Yes (complete No. 23 below)

23. If yes to either No. 22 a) or b), complete the following chart (attach a separate page if you need more space).

Dates of previous service (dd-mm-yyyy) from	Dates of previous service (dd-mm-yyyy) to	Waiver applied for? If no complete I to IV	^I Payer name and address	^{II} Fee (\$) received and the currency	^{III} Amount of tax withheld; if tax was not withheld, enter "0"	^{IV} Consecutive days spent outside Canada during this contract
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				

24. If there is a written agreement for the applicant to provide services in Canada later in the current calendar year or within the next three calendar years, complete the following chart (attach a separate page if you need more space).

Dates of future service (dd-mm-yyyy) from	Dates of future service (dd-mm-yyyy) to	City and province/territory of service	Payer name and address	Amount of fee and the currency

25. Declaration

I, (print) _____, certify that the information and supporting documentation provided with this application are true and correct and that I will meet the Canadian income tax return filing requirements as well as my withholding, remitting, and reporting requirements. I agree that notice of the approval or denial of this waiver application may be provided to the payer indicated in this application.

Signature of non-resident waiver applicant or authorized representative

Date

Instructions

Please mail or fax this application along with the applicant's supporting documentation (as outlined in "Instructions for Regulation 105 Waiver application") to the CRA tax services office that serves the area where the applicant's services will be provided.

Instructions for the Regulation 105 Waiver Application

Payer withholding and reporting requirements

Regulation 105 of the *Income Tax Act* requires every person (whether resident or non-resident in Canada) who pays a non-resident person (individual, corporation, partnership, joint venture, limited liability company, or other) a fee, commission, or other amount for services (of a non-employment nature) rendered in Canada, to deduct and withhold 15% tax from such a payment. Payers are generally required to remit the tax to the Canada Revenue Agency (CRA) by the 15th of the month following the month in which they paid the non-resident. Payers who fail to withhold without authorization from the CRA may be assessed tax, penalty, and interest. Payers are required to complete a T4A-NR *Statement of fees, commissions, or other amounts paid to non-residents for services rendered in Canada* information slip for each non-resident person they pay and to provide each payee with the appropriate slip copies. Payers must file all slips together with one T4A-NR Summary form with the CRA. For more detailed information on preparing these forms, see our publication *RC4445, T4A-NR Payments To Non-Residents for Services Provided in Canada*.

Waivers on withholding

Non-residents of Canada who feel that the withholding tax is more than their actual tax liability to Canada may apply to have the tax waived or reduced. If the application is approved, the CRA will authorize the respective payer(s) to not withhold or to withhold at a reduced rate. The non-resident **applicant** and **any person properly authorized** or the respective payer(s) will receive written information from the CRA of the result of the waiver application.

Who may apply for a waiver

- Non-resident persons (i.e. an individual, partnership, joint venture, corporation, or limited liability company) who will be providing services (of a non-employment nature) in Canada
- United States artistes and athletes providing services in Canada who will earn less than \$15,000 (in Canadian currency) for the whole current year, including reimbursable expenses or expenses paid on their behalf
- Non-U.S. artistes and athletes who will be providing services in Canada

How and where to apply

Complete Form R105, *Regulation 105 Waiver Application*, and mail or fax it, along with the necessary supporting documentation – as identified on the final page of these instructions – to the CRA tax services office that serves the area where the applicant's services will be provided. Our TSOs and their telephone numbers are listed on the CRA's Web site at: www.cra.gc.ca

Applications should normally be received by the applicable TSO 30 days before the start of the applicant's services in Canada or 30 days before the first payment to the applicant for those services. Applications received outside of this time frame may also be reviewed.

Notes

A waiver is not a final determination of a non-resident's tax liability to Canada. This is determined once the non-resident's Canadian income tax return has been assessed.

These instructions may also be used by non-residents applying for a waiver based on their statement of income and expenses directly related to their services to be provided in Canada. All income and expense claims must be supported by proper documentation.

How to complete form R105, Regulation 105 Waiver Application

The following instructions are numbered in relation to the questions as they appear on the Form R105. Note that some questions are self-explanatory and do not have instructions.

Section I – Applicant identification area

2. Check the applicable box to indicate the type of applicant who will be providing services in Canada under the current contract. This will help determine which particular article of a tax treaty may be applied if an exemption from tax is determined. For example: a personal services corporation or a "star" corporation is often found in the entertainment and sports industries and utilized by individuals who provide their services through these types of corporations.
3. If the applicant is an individual, provide his or her legal name from the birth certificate. If the entity is an **unincorporated** musical group or a partnership, provide the name of the group or partnership.
4. If the applicant is an individual who uses and is identified by a professional or stage name other than his or her legal name, provide this name.
5. If the applicant is an individual, provide the government-issued identification or tax number from his or her country of residence. For U.S. resident individuals, provide the social security number. If the applicant is not an individual, complete question No. 9 on the application instead.
6. Indicate any Business Number or similar identifier that the CRA may have issued previously to the applicant. For example, the applicant may have received a Temporary Tax Number (TTN) or an Individual Tax Number (ITN) if he or she previously filed a Canadian income tax return. If the applicant is an individual and does not have a social insurance number (SIN) or an ITN, please have him or her complete form T1261, *Application for a Canada Revenue Agency Individual Tax Number (ITN) for Non-Residents*. If the applicant is a corporation and does not have a business number, please have him or her complete form RC1, *Request for Business Number (BN)*. These forms are available on our Web site at www.cra.gc.ca
7. Provide the agent's details if he or she is not the applicant (e.g., manager).
8. If the "yes" box is checked, provide documentation to support that the person has power of attorney or expressed written authorization to discuss the applicant's waiver application and/or his or her tax affairs with the CRA.
9. Complete the chart detailing the names of all members of an unincorporated group or a partnership including a limited liability company, or shareholders (if a corporation), and their respective titles, addresses and countries of residence, and social security or similar government-issued identification numbers. Also, please provide the percentages according to which income or profits/losses will be allocated between the members based on any agreement between the members or partners. For a corporation, provide the percentage allocation of voting shares between shareholders.

Section II – Current service information

12. Indicate if the payer and the applicant are dealing at "arm's length" with one another. Parties are usually considered to be operating at arm's length if they are not related to each other.
13. Enter the amount guaranteed by contract to be paid to the applicant for the current services to be performed in Canada. Do not include amounts referred to in question No. 14 or No. 15.
14. If it is possible that the applicant will receive an amount in addition to the amount guaranteed by contract, state the amount and the reason why an additional amount may be paid. Such amount could be in respect of an overage provision in a contract; i.e. a payment based on achieving higher ticket sales for a concert versus the guaranteed sales level. An overage provision also includes contracts where a bonus provision exists.
15. If a payer will be reimbursing an applicant for transportation, accommodation, meals, or incidental expenses, or paying a third party directly for these expenses incurred by the applicant, indicate which types of expenses are being paid and their amounts.
16. Indicate the type of any equipment, rented outside of Canada, for use in Canada. Provide the cost of the rental and the country of residence of the owner of the equipment.
17. An applicant may be in Canada before or after the dates of service outlined in his or her contract. State the actual date of the applicant's expected arrival in Canada, and his or her expected date of departure from Canada.
18. Indicate why the applicant will leave Canada during the period indicated in question No. 17. Provide the number of consecutive days to be spent outside of Canada during the contract and the actual dates.
20. If the applicant will be paying any person for services provided to, or on behalf of, the applicant in Canada, please provide the name and address of that person, **indicate whether that person is an employee or a sub-contractor**, and provide the amount to be paid to that person.

Declaration

25. Print your name and sign and date the form. A person other than the applicant may sign this application only if that person has been authorized by the applicant to communicate with the CRA with respect to his or her waiver request or Canadian tax affairs. **The applicant must provide the CRA with a letter of authority for anyone acting on his or her behalf.**

Documents to submit with a completed form R105

Contracts and sub-contracts

- A signed and complete copy of the most current service contract documenting the parties to the agreement (names and addresses), the dates and place(s) of services, the amounts to be paid and to whom, the schedule of payments, an outline of the work to be done and by whom. The contract must include the conditions under which the contract can be either voided or extended by one or both parties.
- Full disclosure and signed, complete copies of all sub-contracts and rental agreements between the applicant and any other person providing services in Canada, either to the applicant or on behalf of the applicant. "Any other person" includes other self-employed resident or non-resident sub-contractors, or the applicant's resident or non-resident employees.
- Settlement sheets (if applicable) for previous services provided in Canada within the previous three calendar years.
- Agreements documenting future services to be provided in Canada.

Identification information

- Provide members of an unincorporated group or a partnership: A copy of the group or partnership agreement (if applicable) outlining how income and profits/losses are distributed or allocated between the members.
- Joint venture or limited liability company (LLC): Copies of their joint venture agreements or LLC membership agreement. In addition, LLCs electing to be treated as a corporation in the U.S. must provide a copy of their most recently assessed U.S. tax return and/or a letter from the IRS confirming the LLCs election and "start date" to be considered resident in the U.S.
- Corporations: A copy of the articles of incorporation and any documents substantiating any name or other changes subsequent to incorporation. In addition, we may request documented proof of shareholders and officers and any voting shares they may hold.
- For every person providing services in Canada, provide confirmation of each individual, shareholder, partner, or group member's country of residence. (Provide copies of passports, citizenship cards, social insurance numbers, or similar government-issued identification numbers, health cards, or certification of residence). This information is also required for any employees or non-resident sub-contractors being paid by the applicant for services provided in Canada.
- Provide copies of all Canadian work visas.
- Provide a letter showing power of attorney authorization to the representative to discuss the applicant's tax affairs and waiver application with the CRA.

Number of consecutive days outside of Canada

- If the applicant will be spending five or more consecutive days outside of Canada during the current contract period, documentation may be required to validate the absences.

ATTACHMENT 4



Regulation 102 Waiver Application – Film Industry

Is this form for you?

Use this form if you are a non-resident providing behind-the-scenes services in the film and television industry in Canada as an **employee**, whether or not your employer is a resident of Canada, and you want to apply for a waiver of the tax required to be deducted from the remuneration that will be paid to you.

If you will be providing services through a loan-out corporation, complete this form for the payment(s) you will receive from the loan-out corporation. You will also need to complete Form R107, *Regulation 105 Waiver Application – Film Industry* for the payment(s) made from the production company to the loan-out corporation.

Applicant Identification

Is this the applicant's first Regulation 102 waiver application in Canada?

Yes No

1. Legal name

2. Address

3. Telephone number

4. Country of permanent residence

5. Professional or operating name, if different than legal name noted in number 1 above.

6. Applicant's Social Security Number or similar government tax number in country of residence

7. Provide your Individual Tax Number (ITN) or Social Insurance Number (SIN): _____

Note: The Individual Tax Number was previously called a Temporary Tax Number (TTN)

If an ITN/TTN has not been previously assigned, please provide your date of birth and attach a copy of a document such as your passport, birth certificate, or driver's licence to verify your identity.

Year	Month	Day
_ _ _	_	_

8. In what type of visual entertainment will services be provided?

- Feature film
 Movie of the week
 Television series
 Commercial
 Other (specify) _____

9. Indicate the type of services the applicant will provide in Canada.

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Director | <input type="checkbox"/> Assistant Director | <input type="checkbox"/> Producer | <input type="checkbox"/> Director of Photography |
| <input type="checkbox"/> Set Designer | <input type="checkbox"/> Artistic director | <input type="checkbox"/> Make-up/hair stylist | <input type="checkbox"/> Costume designer |
| <input type="checkbox"/> Sound Technician | <input type="checkbox"/> Lighting Technician | <input type="checkbox"/> Electrical Technician | <input type="checkbox"/> Location Manager |
| <input type="checkbox"/> Camera operator | <input type="checkbox"/> Photographer | <input type="checkbox"/> Production accountant | |
| <input type="checkbox"/> Other (specify) _____ | | | |

10. What is the title of the Canadian production?

This information you provided on this form is collected under the authority of the *Income Tax Act* (ITA) and is protected by the provisions of the *Privacy Act*. It is used to process requests for the application of Subsection 153(1.1) of the ITA and is retained in information bank number CRA PPU 098.

Current Employment Information

11. Are the payer(s) and the applicant dealing at arm's-length with one another?
(Parties are usually considered to be acting at arm's-length if they are not related to each other.)

Yes No

12. Current employer's full name, Canadian business number (BN) and address along with the name and telephone number of a contact person who would have details of the contract being performed in Canada.

Name	Canadian Business Number (BN)
Address	
Contact Person	Phone number

13. Total wages (indicate currency) guaranteed to be paid to the applicant according to the current employment contract.
Please provide a copy of the employment contract.

14. Could the applicant potentially receive additional fees or amounts related to this contract?
(e.g., commissions/bonuses/benefits):

Yes No

Amount (if known) _____ Currency _____

15. Applicant's date of arrival in and departure from Canada:

Arrival date	Year	Month	Day	Departure date	Year	Month	Day

16. Will the applicant be spending five or more consecutive days outside of Canada during the period noted in number 15?

Yes No

If yes, provide the following information and written confirmation from the payer or production company.

Reason for leaving	Number of days spent outside Canada	Absence start date (YYYY-MM-DD)

17. Will this contract be renewed or extended beyond its current length?

Yes No

If yes, provide the following information and written confirmation from the payer or production company.

Under what conditions would it be renewed or extended?	Estimated length of extension

Previous and future service

18. Has the applicant been employed in Canada:

- a) in the current calendar year? Yes No
- b) in the three preceding calendar years? Yes No

If you answered "yes" to a) or b), please complete Part 1 of Appendix A.

19. Is there a written agreement for the applicant to provide employment services in Canada later in the current calendar year or in the following calendar year?

Yes No

If you answered "yes", please complete Part 2 of Appendix A.

AUTHORIZING A REPRESENTATIVE

Complete this section to authorize the Canada Revenue Agency (CRA) to deal with another person (such as your payer, payroll company, accountant or agent) as your representative for matters **pertaining to this waiver**.

Note: If you wish to authorize a representative to deal with the CRA for your other tax matter, please complete Form T1013, *Authorizing or Cancelling a Representative*, which can be found on our website at www.cra-arc.gc.ca under Forms and Publications.

PLEASE PRINT

Name of representative

Address of representative

Name of Non-resident applicant

Address of Non-resident applicant

Telephone No.

Non-resident applicant's signature

Year Month Day

DECLARATION BY A NON-RESIDENT WAIVER APPLICANT

Each non-resident individual providing employment services in Canada and requesting a waiver on the withholding required on payments to be made to them, must complete and sign this section.

Certification

I, _____ hereby declare that I am a
(print individual's legal name)
resident of _____ for income tax purposes.
(country)

I certify that the information and supporting documentation provided with this application is true and correct and that I will fulfill my Canadian income tax return filing requirements. I understand that failure to fulfill these requirements may result in future waiver requests being denied.

I consent to the Canada Revenue Agency providing a copy of the waiver approval/denial letter, which includes my Tax Identification Number, to the payer(s)/payroll company noted in my application.

I undertake to provide to the Canada Revenue Agency documentation as may be necessary to substantiate the information I have provided in my waiver application.

I understand that I must inform the Canada Revenue Agency immediately of any changes to the information presented in my waiver application. Failure to do so may result in my waiver request being denied and my payer authorized to withhold accordingly.

Signature

Position

Dated

Year Month Day



Regulation 105 Waiver Application – Film Industry

Is this form for you?

Use this form if you are a non-resident, **self-employed individual or corporation** providing behind-the-scenes services in the film and television industry in Canada and want to apply for a waiver of the tax required to be deducted from the remuneration that will be paid to you.

Employees providing behind-the-scenes **employment services** in the film and television industry in Canada who want to apply for a reduction in the amount of Regulation 102 withholding tax should use the form – *Regulation 102 Waiver Application – Film Industry*.

If you will be providing services through a loan-out corporation, complete this form for the payment(s) made from the production company to the loan-out corporation, and the *Regulation 102 Waiver Application – Film Industry* for the payment(s) you will receive from the loan-out corporation.

Waivers on withholding

Non-residents of Canada who feel the withholding tax may be more than their actual tax liability to Canada may apply to have the tax waived or reduced. If we approve your application, we will authorize your payer(s) to not withhold, or to withhold at a reduced rate. The non-resident **applicant** or **any person properly authorized** and the respective payer(s) will receive written notice from the Canada Revenue Agency (CRA) of the result of the waiver application.

Payer withholding and reporting requirements

Regulation 105 of the *Canadian Income Tax Act* requires every person (whether resident or non-resident in Canada) who pays a non-resident person a fee, commission, or other amount for services (of a non-employment nature) rendered in Canada, to deduct and withhold 15% tax from such a payment. The non-resident person rendering services could be an individual, corporation, partnership, joint venture, limited liability company, or other.

Payers are required to remit the tax to the CRA by the 15th of the month following the month in which they paid the non-resident.

Payers who fail to withhold without written authorization from the CRA may be assessed tax, penalty, and interest.

Payers are required to complete a T4A-NR information slip (*Statement of Fees, Commissions or Other Amounts Paid to Non-Residents for Services Rendered in Canada*) for each non-resident person they pay and to provide each payee with the appropriate slip copies. Payers must file all slips together with one T4A-NR Summary form (*Summary of Fees, Commissions, or Other Amounts Paid to Non-Residents for Services Rendered in Canada*) with the CRA. For more detailed information on preparing these forms, see our publication T4061, *Non-Resident Withholding Tax Guide*.

Please ensure that you have completed all sections of the Regulation 105 film services waiver application form before submitting it for our review.

This information you provided on this form is collected under the authority of the *Income Tax Act (ITA)* and is protected by the provisions of the *Privacy Act*. It is used to process requests for the application of Subsection 153(1.1) of the ITA and is retained in information bank number CRA-PPU 098

CHECKLIST

The following is a list of documentation to be submitted with your application:

- A copy of the contract/agreement.
- A copy of the Articles of Incorporation, if the applicant is a corporation that does not have a Canadian Business Number (BN).
- If the applicant is an individual who does not already have an Individual Tax Number (ITN), you must provide a copy of documents verifying your identity, such as a passport, driver's license, work permit, or birth certificate.
- A copy of IRS Form 8832, stamped by the IRS as being accepted, is required for a Limited Liability Company (LLC) seeking a waiver based on treaty protection. Form 8832 certifies the LLC has elected to be treated as a corporation in the US for tax purposes.

Note: We are unable to process incomplete applications.

How to apply:

Complete this *Regulation 105 Waiver Application - Film Industry* and mail or fax it, along with supporting documentation, to the CRA Film Services Unit that serves the location where the services will be provided. Film Services Units are located in Montréal, Toronto and Vancouver. Their addresses and contact information are listed below.

If the applicant will provide services in more than one location or province, submit only one application for *all* of the services. We may request additional information after reviewing your application. This application may be completed and signed by a person authorized to act on behalf of the non-resident in their dealings with the CRA.

The applicable Film Services Unit should receive your application 30 days before the start of the applicant's services in Canada, or 30 days before the first payment to the applicant for those services. Applications received outside of this time frame will be reviewed, but if approved, would not apply to payments already made.

If you require additional assistance to complete this application, please contact the applicable Film Services Unit.

FILM SERVICES UNITS

For services performed in British Columbia, Alberta, Saskatchewan and Manitoba:

Vancouver Tax Services Office
Film Services Unit, 447-14
1166 West Pender Street
Vancouver, BC V6E 3H8

Client Enquiries :
Tel: 604-666-7911
Fax: 604-666-7436

For Services performed in Ontario, Nunavut, the Northwest Territories and the Yukon Territory and all commercial productions:

Toronto Centre Tax Services Office
Film Services Unit
1 Front Street West
Toronto, ON M5J 2X6

Client Enquiries
Tel: 416-954-0542
Fax: 416-954-8528

For Services performed in Quebec, Prince Edward Island, Nova Scotia, New Brunswick, Newfoundland and Labrador:

Montréal Tax Services Office
Film Services Unit
305 Rene-Levesque Blvd. West, 10th Floor
Montreal, QC H2Z 1A6

Client Enquiries
Tel: 514-283-0512
Fax: 514-496-4574

17. Provide the following information about the production studio/locations. This may be an actual production studio as well as other locations. There may be multiple locations.

Name	Address	Canadian Business Number (BN)	Contact Person	Telephone Number	Fax Number

18. Provide the following information about the foreign parent company. (If different from the payer)

Name	Address	Canadian Business Number (BN)	Contact Person	Telephone Number	Fax Number

19. Does the applicant have a long-term service contract with the (Canadian) production company or its foreign parent (e.g. major studio)?

Yes No

If yes, explain the nature of the service contract with this production company or its foreign parent.

20. Is the applicant's contract for this project related to any previous or future contracts in Canada with this production company or major studio?

Yes No

If yes, provide the waiver applicant's relationship to the projects for which services were or are to be provided.

21. Are the payer(s) and the applicant dealing at arm's-length with one another?
(Parties are usually considered to be acting at arm's-length if they are not related to each other.)

Yes No

Section III – Current Service Information

22. Applicant's date of arrival in Canada:

Year	Month	Day

Applicant's date of departure from Canada:

Year	Month	Day

23. Will the applicant be spending five or more consecutive days outside of Canada during the period noted in #21?

Yes No

If yes, provide the following information and written confirmation from the payer or production company:

Reason for leaving Canada: _____

Dates spent outside Canada:

From:

Year	Month	Day

To:

Year	Month	Day

24. Will this contract be renewed or extended beyond its current length?

Yes (explain) No

Under what conditions would it be renewed or extended? _____

Estimated length of extension: _____

Authorizing a representative

Complete this section to authorize the Canada Revenue Agency (CRA) to deal with another person (such as your payer, payroll company, agent or a production accountant) as your representative for matters **pertaining only to this waiver**.

Note: If you wish to authorize a representative to deal with the CRA for your other tax matters, please complete form T1013, *Authorizing or Cancelling a Representative* (for individuals) or RC59, *Business Consent Form*, which can also be found on our website at www.cra-arc.gc.ca under Forms and Publications.

Please print:

Name of Representative _____

Address of Representative _____

Name of Non-resident Applicant _____

Address of Non-resident Applicant _____

Non-resident applicant's signature

Year	Month	Day

Date

Telephone No.

DECLARATION BY A NON-RESIDENT WAIVER APPLICANT

Each non-resident person (individual or corporation) providing services in Canada and requesting a waiver of the withholding required on payments to be made to them, must complete and sign this section.

If you will be providing services in Canada as a partnership, only one copy of this declaration should be completed; however, all partners must be identified in supporting documentation that includes their country of residence, address, and date of birth.

For Corporations

I, _____ hereby
(print individual's legal name)
declare that _____ is a
(state legal name of corporation)
resident for tax purposes of _____
(country)

For individuals and members of a partnership

I, _____ hereby declare that
(print individual's legal name)
I am a resident for income tax purposes of _____
(country)

I certify that the information and supporting documentation provided with this application is true and correct and that I will fulfill my Canadian income tax return filing requirements. I understand that failure to fulfill these requirements may result in future waiver requests being denied.

I consent to the Canada Revenue Agency providing a copy of the waiver approval/denial letter, which includes my Tax Identification Number, to the payer(s)/payroll company noted in my application.

I undertake to provide to the Canada Revenue Agency any relative documentation as may be necessary to substantiate the information I have provided in my waiver application.

I understand that I must inform the Canada Revenue Agency immediately of any changes to the information presented in my waiver application. Failure to do so may result in my waiver request being denied and my payer authorized to withhold accordingly.

Signature

Position

Date

Year	Month	Day

