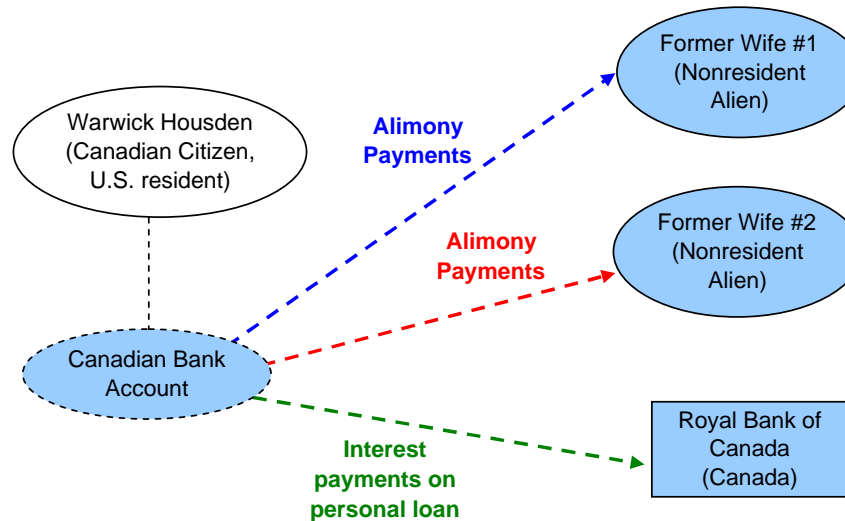


Housden v. Commissioner
63 TCM 2063 (1992)

Resident Alien Required to Withhold
U.S. Tax on Alimony and Interest

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U.S. residents with foreign vacation homes and foreign rental properties may unwittingly be subject to U.S. tax withholding requirements on interest paid to foreign lenders. Housden was a Canadian citizen and a resident alien of the United States. Housden paid his former wives alimony or separate maintenance in Canadian currency from a Canadian banking account. Housden also made interest payments to the Royal Bank of Canada, a foreign bank incorporated under the laws of Canada, for repayment of a personal loan.

In *Howkins v. Commissioner*, 49 T.C. 689 (1968), the Tax Court held that the resident alien taxpayer was required to withhold income tax from alimony payments made to a nonresident alien former wife from his bank account maintained outside of the United States. The decision was predicated upon the conclusions that: (1) taxpayer had the requisite control over the amounts paid to the former wife, (2) the alimony payments were fixed or determinable annual or periodic income, and (3) the alimony represented income to the former wife. Thus, it is established that alimony payments qualify under sections 1441 and 871 when they are fixed and/or determinable annual or periodic income. It is also established that the requisite control contemplated by the statute over the alimony payments made to former wives, nonresident aliens, is satisfied if made from an account maintained by a taxpayer, even if such account is located outside the United States. Thus, the alimony constituted income to the recipients (i.e., the former wives) "from sources within the United States" (the source being Housden a resident of the United States where the recipients' income was produced, rather than the origin of the actual physical payment). [Under the current United States-Canada tax treaty "Alimony and other similar amounts" arising in one country and paid to a resident of the other country are taxable only in the other country.]

Section 881(a)(1) imposes a tax on the amount received from sources within the United States by a foreign corporation as interest and other fixed or determinable annual or periodical gains, profits, or income. Section 1441(a) places a duty on all persons having the control, receipt, custody, disposal, or payment of any such income items as specified in section 871(a)(1) of any nonresident alien to withhold tax on such income items. The home base of the payor, rather than the place of payment or location of the debt instrument, is the critical factor in determining the source of interest. Housden was responsible for withholding tax as outlined in section 881(a).

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