

NEW HIRE PAPERWORK ATTACHMENT

FORM INSTRUCTIONS

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Source: <http://sedm.org>

1. **PURPOSE OF THIS FORM**

- 1.1. This form is for use by people who do not want to participate in the federal income tax, which is voluntary. Those not choosing to participate are legally called “nontaxpayers” and “non-resident non-persons”. Those who choose to participate are legally called “taxpayers”. AFTER you volunteer to BECOME a “taxpayer”, the income tax is no longer voluntary and becomes enforceable. In other words, “nontaxpayers” don’t choose to volunteer to become “taxpayers” and have the I.R.C. enforced against them due to their free choice NOT to be engaged in regulated activities and franchises enumerated by Congress within the I.R.C.
- 1.2. This form is intended to be provided to private companies by private workers in connection with the paperwork they fill out when being hired.
- 1.3. This form is written to be the least confrontational possible so as not to jeopardize a new job offer or cause a person to be fired who has already been hired but who has chosen to change their withholding.

2. **PREPARATION INSTRUCTIONS:**

- 2.1. This form can be filled out electronically. If you have the free Adobe Acrobat Reader available at <http://adobe.com>, you can fill in all the fields and print it out. If you have the full version of Adobe Acrobat, you can also save the filled in form for later reuse. You can download the free Acrobat reader at: <http://get.adobe.com/reader/>
- 2.2. If you haven’t already, read our article below, which will show you how to develop a good administrative record that will immunize you from criminal prosecution or further illegal tax enforcement activity:

<i>Techniques for Building a Good Administrative Record</i> , Form #07.003 FORMS PAGE: http://sedm.org/Forms/FormIndex.htm DIRECT LINK: http://sedm.org/Forms/07-RespLetters/1-Guidance/AdminRecord/AdminRecord.htm

- 2.3. Fill in the name and address of the private company and private worker at the beginning of the letter and in Enclosure (8).
- 2.4. Sign the letter in blue ink.
- 2.5. At the end of the associated employment agreement, write:

“Not valid without attached Tax Withholding and Reporting Status Declaration and Request”

- 2.6. Complete Amended IRS form W-8BEN prepared per the instructions below and attach after the cover page for Enclosure 1.

<i>About IRS Form W-8BEN</i> , Form #04.202

FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

DIRECT LINK: http://sedm.org/compliant-member-only-forms/about-irs-form-w-8ben-form-04-002/
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- 2.7. Submit a copy to private employer or business associate. Keep the original for your records. You may also wish to provide it as a FedEx instead of handing it to them personally, in order to build a good trail of evidence if litigation later becomes necessary. The following form is useful for that purpose:

<i>Certificate/Proof/Affidavit of Service</i> , Form #01.002
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FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

DIRECT LINK: http://sedm.org/Forms/01-General/CertificateOfSvc.zip
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3. **CONTINGENCIES AND SITUATIONAL RESOURCES**

- 3.1. If the company you are submitting your withholding paperwork to falsely believes that the IRS has the authority to direct you the submitter what to put on a form or to disregard what you give to the company, the Courts say NO ONE should rely on anything the IRS says or prints as proven in the following:

<i>Reasonable Belief About Income Tax Liability</i> , Form #05.007
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FORMS PAGE: http://sedm.org/Forms/FormIndex.htm

DIRECT LINK: http://sedm.org/Forms/05-MemLaw/ReasonableBelief.pdf
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- 3.2. If anyone tries to compel you to provide or use or apply for a government identifying number, remember that only those lawfully occupying a public office in the U.S. government and therefore engaged in a “trade or business”, as indicated in the following. It is a CRIME to compel those who are non-resident non-persons not engaged in the “trade or business” franchise to use government numbers:

About SSNs and TINs on Government Forms and Correspondence, Form #05.012, Section 9

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/AboutSSNsAndTINs.pdf>

- 3.3. If the company asks you to submit an SSN/TIN for E-Verify, please consult:

About E-Verify, Form #04.107

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/04-Tax/1-Procedure/E-Verify/E-Verify.htm>

- 3.4. For those illegally compelled to provide or use government numbers, we recommend attaching the following to all withholding paperwork and writing “Not valid, false, and fraudulent without this attachment” on the main withholding forms.

Why It Is Illegal for Me to Request or Use a Taxpayer Identification Number, Form #04.205

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/04-Tax/2-Withholding/WhyTINIllegal.pdf>

- 3.5. If the company asks you to complete a companion I-9, please use:

I-9 Form Amended, Form #06.028

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/06-AvoidingFranch/i-9Amended.pdf>

- 3.6. If you are confused about the content of this form, we strongly suggest reading the following several times if necessary so that you can quickly and confidently answer any questions the recipient of this form might have:

Non-Resident Non-Person Position, Form #05.020

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf>

- 3.7. If the recipient of this form is confused about citizenship and doesn't understand how an American could be an “alien” under the I.R.C., please refer them to:

- 3.7.1. *W-8 Attachment: Citizenship*, Form #04.219 –succinctly educates recipients of W-8 forms about the various citizenship options and how they relate to statuses under the Internal Revenue Code. Helps eliminate the confusion in context between STATUTORY and CONSTITUTIONAL citizenship.

<http://sedm.org/Forms/FormIndex.htm>

- 3.7.2. *Why You are a “national”, “state national”, and Constitutional but not Statutory Citizen*, Form #05.006, Sections 2 through 4

<http://sedm.org/Forms/FormIndex.htm>

- 3.8. If you are asked to update this form at the end of the three year expiration of the IRS Form W-8, please use:

W-8 Update/Backup Withholding Threat Response, Form #04.221

<http://sedm.org/Forms/FormIndex.htm>

- 3.9. For several more resources relating to various situations you might find yourself in explaining or defending this document, please see:

Situational References, Form #07.001

DIRECT LINK: <http://sedm.org/LibertyU/SituationalRefs.htm>

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

4. **RESOURCES FOR FURTHER STUDY:**

- 4.1. *Non-Resident Non-Person Position*, Form #05.020.

<http://sedm.org/Forms/FormIndex.htm>

- 4.2. *W-8 Update/Backup Withholding Treat Response*, Form #04.221- responds to a request from a business or financial institution to update an existing IRS form W-8 after the end of the three year expiration date

<http://sedm.org/Forms/FormIndex.htm>

- 4.3. *W-8 Attachment: Citizenship*, Form #04.219 –succinctly educates recipients of W-8 forms about the various citizenship options and how they relate to statuses under the Internal Revenue Code. Helps eliminate the confusion in context between STATUTORY and CONSTITUTIONAL citizenship.

<http://sedm.org/Forms/FormIndex.htm>

- 4.4. *Income Tax Withholding and Reporting Course*, Form #12.004-brief overview of income tax withholding and reporting requirements for busy professionals

<http://sedm.org/Forms/FormIndex.htm>

- 4.5. *Federal and State Tax Withholding Options for Private Employers*, Form #09.003

<http://sedm.org/Forms/FormIndex.htm>

- 4.6. *The “Trade or Business” Scam*, Form #05.001-proves that the income tax is an excise tax upon “public officers” within the U.S. government.

<http://sedm.org/Forms/FormIndex.htm>

- 4.7. *Federal Enforcement Authority Within States of the Union*, Form #05.032. Proves that the IRS cannot lawfully penalize a person domiciled in a state of the Union who is not party to the franchise agreement codified in Subtitle A of the Internal Revenue Code (income taxes).
<http://sedm.org/Forms/FormIndex.htm>
- 4.8. *"Taxpayer" v. "Nontaxpayer": Which One are You?*. Proves that the I.R.C. is a franchise agreement that is private law that only applies to those who explicitly or implicitly consent voluntarily. Those who are parties to the agreement are called "taxpayers" as defined by Congress at 26 U.S.C. §7701(a)(14).
<http://famguardian.org/Subjects/Taxes/Articles/TaxpayerVNontaxpayer.htm>
- 4.9. *Who are "taxpayers" and who needs a "Taxpayer Identification Number"*, Form #05.013
<http://sedm.org/Forms/FormIndex.htm>
- 4.10. *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017. Shows how the government abuses presumption to prejudice and destroy your constitutional rights. This is done mostly using the words of art that this form redefines in such a way that they benefit rather than hurt you.
<http://sedm.org/Forms/FormIndex.htm>

Registered/Certified Mail #:

Subject: Tax Withholding and Reporting Status Declaration and Request

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Dear _____, and to whom else it may concern:

1 Introduction

I am providing this information to explain my withholding and reporting status because as you will see, my circumstances are different from what you likely deal with or because the various tax forms you provided do not permit a way to truthfully and accurately describe or document my lawful status. If I used the standard forms normally used, then I would have to commit perjury because they do not accurately reflect my status. I desire to be compliant with all applicable law and to ACCURATELY and COMPLETELY describe my civil status in relation to the national government on all forms I submit and all paperwork you produce relating to me. My tax status and withholding and reporting requirements are summarized below:

1. My tax status:
 - 1.1. I am an American National domiciled outside of the statutory “United States” defined within 26 U.S.C. §7701(a)(9) and (a)(10).
 - 1.2. I am a “transient foreigner” and “nonresident” because I was born or naturalized in a constitutional state but do not have a domicile on federal territory within the exclusively jurisdiction of Congress.
 - 1.3. I am a “non-resident non-person” per 8 U.S.C. §1101(a)(21) and a “national” of the United States OF AMERICA.
 - 1.4. I am not a statutory “alien” per 26 U.S.C. §7701(b)(1)(A).
 - 1.5. I am not a statutory “nonresident alien” per 26 U.S.C. §7701(b)(1)(B) or 26 C.F.R. §1.6012-1(b) because I am not an alien.

- 1.6. I am not engaged in the “trade or business” franchise, which is defined in 26 U.S.C. §7701(a)(26) as “the functions of a public office”.
 - 1.7. My estate is a “foreign estate” pursuant to 26 U.S.C. §7701(a)(31).
 - 1.8. *I make no elections* pursuant to 26 U.S.C. §6013(g) or (h), **to be treated as a U.S. resident or a resident alien** for tax purposes. See very top of Form W-8BEN, Enclosure 1, under “**Do not use this form for:**”, for clarifications for use.
 - 1.9. For the purpose of the Internal Revenue Code, I am not the “taxpayer” described in 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313.
 - 1.10. I am not the “individual” defined in 26 C.F.R. §1.1441-1(c)(3), 5 U.S.C. §552a(a)(2) or any other federal statute.
 - 1.11. I do not a statutory “employee” per 5 U.S.C. §2105 and I do not seek any government “benefits” or “privileges” that might cause me to be treated AS IF I am. Such benefits include Social Security, Medicare, Obamacare, etc.
2. Tax liability: I am not liable.
- 2.1. Not engaged in “personal services” because not within the “United States” and working for a non-resident company, foreign corporation, or private employer.

[TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter N > PART I > Sec. 864](#)
[Sec. 864.](#) - Definitions and special rules

(b) [Trade or business within the United States](#)

For purposes of [this part \[part I\], part II, and chapter 3](#), the term "trade or business within the United States" includes the performance of [personal services](#) within the United States at any time within the taxable year, but **does** not include -

(1) Performance of personal services for foreign employer

The performance of [personal services](#) -

(A) for a [nonresident alien](#) individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

- 2.2. 26 C.F.R. §1.6012-1(b) identifies “nonresident alien” individuals who are engaged in a “trade or business” franchise (federal public office) as having a requirement to file a return on Form 1040-NR.
 - 2.3. A “nonresident alien” must accrue income from a specific source or activity outlined by Congress in the Internal Revenue (I.R.C.) in order to have a requirement to file a return, and that source or activity is the effective conduct in a “trade or business” *within* the United States.
 - 2.4. No “income” pursuant to 26 U.S.C. §643(b).
 - 2.5. No “gross income” pursuant to 26 U.S.C. §871(b)(2).
 - 2.6. No “taxable income” pursuant to:
 - 2.6.1. [26 U.S.C. §864](#)(b)(1)(A).
 - 2.6.2. [26 U.S.C. §861](#)(a)(3)(C)(i).
 - 2.6.3. [26 U.S.C. §3401](#)(a)(6).
 - 2.6.4. [26 U.S.C. §1402](#)(b).
 - 2.6.5. [26 U.S.C. §871](#)(b)(1).
3. Withholding requirements: No withholding required.
- 3.1. Withholding only required for payments originating within the “United States” as required by 26 U.S.C. §871.
 - 3.2. [26 U.S.C. §3401](#)(a)(6) indicates that no withholding is required in my case:

[TITLE 26 > Subtitle C > CHAPTER 24 > § 3401](#)
[§ 3401. Definitions](#)

*(a) For the purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee [an elected or appointed public official] to his employer...**except that such term shall not include remuneration for:***

[...]

(6) such services, performed by a nonresident alien individual.

- 3.3. 26 C.F.R. §31.3401(a)(6)-1(b) indicates that no withholding is required in my case. The statute below relates to “employment taxes”, but I do not consent to work for a STATUTORY “employer”, public office, or instrumentality of the national government who would be subject to the statute below:

Title 26
PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE
Subpart E—Collection of Income Tax at Source
§ 31.3401(a)(6)-1 Remuneration for services of nonresident alien individuals.

(a) In general. All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, **if such remuneration otherwise constitutes wages within the meaning of §31.3401(a)-1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section.** In regard to wages paid under this section after February 28, 1979, the term “nonresident alien individual” does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

(b) Remuneration for services performed outside the United States. **Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding.**

- 3.4. Withholding only required if I am in receipt of earnings originating from within the STATUTORY “United States”. I am not in the “United States” as defined in 26 U.S.C. §7701(a)(9) and (a)(10). See 26 C.F.R. §1.872-2(f).
- 3.5. You are not within the STATUTORY “United States” within the meaning of the Internal Revenue Code, which is defined in [26 U.S.C. §7701](#)(a)(9) and (a)(10) and 4 U.S.C. §110(d) to mean the District of Columbia and federal territory. Nowhere within Subtitle A (income tax) are the states of the Union or the CONSTITUTIONAL “United States” implicated. Therefore, per the rules of statutory construction and interpretation, they are purposefully excluded. Please provide a definition of “State” from the I.R.C. that expressly includes a state of the Union if you disagree:

*“It is no longer open to question that **the general [federal] government [including its agents, the IRS], unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275, 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect to the internal affairs of the states, and emphatically not with regard to legislation.**”*
[Carter v. Carter Coal Co., [298 U.S. 238](#) (1936)]

*“The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; **but for a very long time [including AFTER the passage of the Sixteenth Amendment] this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions.** The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. United States v. Butler, supra.”*
[Ashton v. Cameron County Water Improvement District No. 1, [298 U.S. 513](#); 56 S.Ct. 892 (1936)]

4. Reporting requirements: No tax reporting required or allowed.
 - 4.1. IRS Form W-2 may only indicate “wages” and that term does not include earnings not connected with a “trade or business” per 26 U.S.C. §3401(a)(11).
 - 4.2. No reportable “wages” pursuant to 26 U.S.C. §3401(a)(11), 26 C.F.R. §31.3402(p)-1, and 26 C.F.R. §31.3401(a)-3(a).
 - 4.3. Information returns such as IRS Form W-2, 1042-s, 1098, and 1099 may only be filed against persons engaged in a “trade or business” as required by 26 U.S.C. §6041(a) and I am not engaged in a “trade or business”.
 - 4.4. Any information return reports filed would be knowingly false and subject to criminal liability pursuant to 26 U.S.C. §7206 and 7207 as well as civil liability pursuant to 26 U.S.C. §7434.
 - 4.5. IRS Form 1042-s is the form most often suggested for use with respect to nonresident aliens. This form, like all other information returns, is not appropriate for use in my case, because once again, 26 U.S.C. §6041(a) as well as the form instructions themselves say this form may only be connected with a “trade or business” and I am not engaged in a public office within the government, and neither are you. If you believe otherwise, I invite you to rebut the exhaustive analysis of what a “trade or business” found below within 30 days or be found to agree:

[The “Trade or Business” Scam, Form #05.001](#)
<http://sedm.org/Forms/FormIndex.htm>

5. Identifying numbers: None and I am not eligible for one.
 - 5.1. Cannot lawfully request on Form W-7 or W-9, or use a Taxpayer Identification Number. Taxpayer Identification Numbers may only lawfully be issued to “aliens” as defined in [26 U.S.C. §7701](#)(b)(1)(A) and I am not an alien. All “individuals”, in fact, are statutory and not constitutional aliens per 26 C.F.R. §1.1441-1(c)(3).
 - 5.2. Do not participate in the Social Security franchise.
 - 5.3. Not eligible to participate in Social Security. See and rebut the following within 30 days or be found to agree:

[Why You Aren’t Eligible for Social Security, Form #06.001](#)
<http://sedm.org/Forms/FormIndex.htm>

2 How to Lawfully Handle My Withholding and Reporting

As a “non-resident non-person” with respect to the federal government jurisdiction, there are no tax forms that I can use to document my proper civil status. This is because the IRS refuses to even recognize that there are in fact and in deed people in the country and throughout the world who they have no jurisdiction over, but who must be left alone as a matter of justice:

“Justice, as a moral habit, is that tendency of the will and mode of conduct which refrains from disturbing the lives and interests of others, and, as far as possible, hinders such interference on the part of others. This virtue springs from the individual's respect for his fellows as ends in themselves and as his co equals. The different spheres of interests may be roughly classified as follows: body and life; the family, or the extended individual life; property, or the totality of the instruments of action; honor, or the ideal existence; and finally freedom, or the possibility of fashioning one's life as an end in itself. The law defends these different spheres, thus giving rise to a corresponding number of spheres of rights, each being protected by a prohibition. . . . To violate the rights, to interfere with the interests of others, is injustice. All injustice is ultimately directed against the life of the neighbor; it is an open avowal that the latter is not an end in itself, having the same value as the individual's own life. The general formula of the duty of justice may therefore be stated as follows: Do no wrong yourself, and permit no wrong to be done, so far as lies in your power; or, expressed positively: Respect and protect the right.

[Readings on the History and System of Common Law, Second Edition, 1925, Roscoe Pound, p. 2]

The closest status to what I have have is “nonresident alien”, but I am not a statutory “nonresident alien”. In fact, I cannot lawfully have any civil status under the laws of Congress as a human being not domiciled or physically present on federal territory subject to the exclusive jurisdiction of Congress. I only use “nonresident alien” evidentiary documentation attached to this submission to show how the law and IRS treats “non-residents”. However, revenue laws and the laws of Congress generally impose NO DUTIES upon those who are statutory “non-resident non-persons”.

The attached completed IRS Form W-8BEN reflects my lawful status. As revealed in IRS publication 515, some of the legal purposes for the filing of Form W-8BEN are as follows:

1. To certify my ‘Nonresident’ status. I modified it to reflect my “non-resident non-person” (foreign person) status for income tax purposes. The older Form W-8 permitted this but that form is no longer available.
2. To specify an not subject but not statutorily exempt from backup withholding and 1099 reporting:

*“Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) **are exempt from backup withholding and Form 1099 reporting.**”*
[IRS Publication 515, Enclosure 4]

3. To claim the legal classification of “non-resident non-person”. A regulation for “nonresident aliens” that permits this is 26 C.F.R. §1.871-1(b)(1)(i), which is one who at *no* time during the taxable year received payments that were effectively connected with the conduct of a “trade or business” within the United States, as the term “trade or business” is defined by Congress at 26 U.S.C. §7701(a)(26). This status is documented in Enclosure 7 attached.
4. To claim an *exception* from information return reporting about me on your part. 26 U.S.C. §6041(a) authorizes reporting only on earnings connected with a “trade or business” and I do not occupy a public office within the U.S. government. See Enclosure 3 attached and 26 U.S.C. §7701(a)(26) for a definition of “trade or business”.
5. To notice you that I am under *no* legal obligation to apply for *or* obtain a Taxpayer Identification Number. 26 C.F.R. §1.1441-1(c)(3) indicates that “individuals” are statutory but not constitutional “aliens” and I am not an “alien”, but rather a “non-resident non-person”. Therefore, it would be unlawful and constitute perjury under penalty of perjury to file an IRS Form W-7 or W-9. Only statutory but not constitutional “aliens” are eligible for TINs and one can be a “nonresident alien” without being an alien, as confirmed by 26 U.S.C. §7701(b)(1)(A) and 26 U.S.C. §7701(b)(1)(B). These realities are also reflected in the following regulations, if you would like to investigate further:
 - 5.1. 31 C.F.R. §306.10. See Enclosure (6) later.
 - 5.2. 31 C.F.R. §103.34(a)(3)(x).

I emphasize that by submitting the Form W-8BEN, *I am making no elections* pursuant to 26 U.S.C. §871(d) to treat payments connected to our relationship **as if** they were payments effectively connected with a “trade or business” within the United States, as the term “trade or business” is defined by Congress at 26 U.S.C. §7701(a)(26). Consequently, 26 C.F.R. §1.6012-1(b) says that “nonresident aliens”, and by implication “non-resident non-persons” have no requirement to file a tax return.

For your convenience and record, I have enclosed the IRS Form W-8BEN Instructions for the payer as Enclosure 2. The IRS also publishes similar instructions for the recipient of the form, which I have included as Enclosure 3. These instructions require that:

1. The form is valid for three years from the date signed.
2. The form is for “your” files, do not send it to the IRS per the instructions.

Please retain this correspondence and all attachments in your files for future reference. If I neglect to resubmit an updated form three years from now please kindly contact me and I will be happy to do so.

I emphasize that you have no discretion to change my declared status and that doing so would constitute perjury and tampering with a witness, since the form is signed under penalty of perjury by me and not anyone else. I am the only one who can complete or submit the Form W-8BEN and no one else is authorized to do it for me. The law requires that you must accept what is given to you and use it as is.

“The employer is not authorized to alter the form or to dishonor the employee’s claim. The certificate goes into effect automatically in accordance with certain standards enumerated in §3402(f)(3).”
[U.S. v. Malinowski, 347 F.Supp. 347 (1972)]

In handling this request, please resist the temptation:

1. To cite any IRS publication as authority, which even the IRS says is not a good idea. By way of clarification, the attached IRS publications within the enclosures are not authoritative references, but simply informal policy guidance:

“IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, publications should not be cited to sustain a position.”
[Internal Revenue Manual, Section 4.10.7.2.8 (05-14-1999)]

2. To call the IRS for advice on this matter because the courts have ruled that anyone who relies on anything they or any other government employee says is foolish and it may not be correct advice. Furthermore, all such feedback is hearsay evidence because not authenticated under penalty of perjury and therefore not admissible as evidence. Furthermore, the IRS can’t practice law and simply administers Title 26, which is the law for “taxpayers”. See:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

3. To “presume” that you know what the law says and what is “included” within the definition or meanings of the terms used on government forms. Any attempt to “presume” anything that cannot be proven with evidence is a violation of due process and a violation of rights.

(1) [8:4993] Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party’s constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party’s due process and equal protection rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974) 414 US 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]
[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34]

IMPORTANT NOTE: Please notice that “terms” defined in law and used on government forms that implement the law typically have an entirely different meaning than the same words as used in ordinary everyday speech. Such terms include the following, NONE of which have anything to do with either you or me:

- 3.1. “United States” as defined in 26 U.S.C. §7701(a)(9) and (a)(10). Hint: Not any part of any state of the Union.
- 3.2. “trade or business” as defined in 26 U.S.C. §7701(a)(26). Hint: Not anything a man could do to earn a living, but simply public office in the government.
- 3.3. “employee” as defined in 26 U.S.C. §3401(c) and 26 C.F.R. §31.3401(c)-1 and 26 U.S.C. §6331(a). Hint: A government public officer and not private common law employee.
- 3.4. “employer” as defined in 26 U.S.C. §3401(d). Hint: A federal agency who pays public officers in their official capacity.
- 3.5. “State” as defined in 26 U.S.C. §7701(a)(10) and 4 U.S.C. §110(d). Hint: A federal territory or possession and no part of a state of the Union.
- 3.6. “income” as defined in 26 U.S.C. §643(b). Hint: The earnings of a trust or estate and not a human being which is wholly owned by a federal corporation called the “United States” as defined in 28 U.S.C. §3002(15)(A).

Instead, please consult the law and look at the definitions for yourself. If you want to include anything that is not listed in the definition of a *specific* term found in the code, please provide the specific place where the exact thing that you want to include is *expressly* specified. Otherwise, creating your own definitions of terms that you mistake for everyday words would cause you to violate the law and engage in little more than a state-sponsored religion. Below are the reasons why, from both the U.S. Supreme Court and a well-known legal dictionary:

"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene*, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v. Franklin*, 439 U.S. at 392-393, n. 10 ("As a rule, 'a definition which declares what a term 'means' . . . excludes any meaning that is not stated"); *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 502 (1945); *Fox v. Standard Oil Co. of N.J.*, 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, *Sutherland on Statutes and Statutory Construction* § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."
[\[Stenberg v. Carhart, 530 U.S. 914 \(2000\)\]](#)

"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."
[\[Black's Law Dictionary, Sixth Edition, p. 581\]](#)

If there is any question at all in your mind about what is "included" in the definition of any term used in the I.R.C., please refer to and rebut the following. If you don't rebut it within 30 days, I shall conclude that you agree with it:

[The Meaning of the Words "includes" and "including", Form #05.014](#)
<http://sedm.org/Forms/FormIndex.htm>

4. To quote rulings below the U.S. Supreme Court to justify your position. Not even the IRS is allowed to do that:

[IRM 4.10.7.2.9.8 \(05-14-1999\)](#)
Importance of Court Decisions

1. *Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.*

2. *Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.*

3. **Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.**

[Source: <http://www.irs.gov/irm/part4/ch10s11.html>]

3 Explanatory Enclosures

In order to make your payroll and accounting job as easy as possible, I have spent a great deal of time assembling several explanatory enclosures from IRS publications as well as the Internal Revenue Code. These enclosures provide legally admissible evidence to back up every statement of fact made in this correspondence. It is my hope that this information will simplify the process of justifying and explaining to others what you have done with my tax withholding or reporting, should you be called upon to do so at any time. Below is a summary and explanation of each of these enclosures, which you are welcome to further investigate:

#	Title	Explanation
1	IRS Form W-8BEN	Withholding form documenting my status
2	IRS Instructions for Form W-8BEN, cover and pages 2, 4, 5.	Proves that the IRS Form W-8BEN is used to claim exemption from withholding and reporting and to establish that you are not a "U.S. person". Recognizes that TINs are not required for nonresident aliens.
3	IRS Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY" (Supplement), cover and pages 2, 5, 6.	Describes legitimate uses of the W-8BEN form, which include exception from domestic information returns and to establish that earnings are not connected with a "trade or business". Also describes instructions for using the form. Acknowledges that the form may be used WITHOUT a Taxpayer Identification Number.
4	IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, cover and page 7.	Proves that the IRS Form W-8BEN is used to: 1. Establish foreign status; 2. Claim that the foreign person is exempt from reporting and withholding.

#	Title	Explanation
5	IRS Instructions for Form 1042-S, cover and page 14.	Proves that 1042s is not required to be filed against nonresident aliens who are not engaged in a "trade or business".
6	Title 31 U.S. Code of Federal Regulations section 306.10, Footnote 2, page 143.	Proves that Taxpayer Identification Numbers are not required for nonresident aliens not engaged in a "trade or business". Also shows that Taxpayer Identification Numbers are only required for payments connected with a "trade or business".
7	Title 26 U.S. Code of Federal Regulations section 1.871-1(b)(1)(i), page 336.	Documents the type of nonresident alien that I am, which is a nonresident alien not engaged in a "trade or business".

4 Conclusions

I readily acknowledge the unusual nature of this submission and sincerely thank you for taking the time to educate yourself about all the implications of it and all the laws, regulations, and publications authorizing it. I apologize for any added effort this may impose upon your busy schedule. The only motivation behind this submission is to comply with the law to the fullest extent possible. Any other approach, I believe, would be a violation of the tax laws as written and intended by the United States Congress.

If you find anything in error in this submission, I respectfully ask that you provide legally admissible evidence in writing (as I have), signed under penalty of perjury, proving why it is in error within 30 days. Otherwise, it shall be deemed by me that I am correct and that you agree entirely with this submission and all attachments. These materials have been carefully reviewed by over 100,000 people and I have also been researching this subject for quite some time. I have found no errors in anything enclosed herein. I agree to assume any and all consequences for this submission and indemnify you, the recipient of any and all liabilities that might result from accepting and implementing this submission. The law is clear: You can only rely on what I tell you regarding my status.

If you or anyone at your company would like to investigate the information contained herein further, the following resources may prove helpful. If you disagree with this submission or refuse to process it, I also respectfully request that you rebut the following materials in writing within 30 days or be found to agree. This includes the admissions at the end of the items indicated:

1. *Non-Resident Non-Person Position*, Form #05.020
<http://sedm.org/Forms/FormIndex.htm>
2. *The "Trade or Business" Scam*, Form #05.001
<http://sedm.org/Forms/FormIndex.htm>

I am looking forward to doing business with your company. Because of my status, I can do this at a much lower cost to your company than other people you may do business with due to the lack of information reporting and all associated paperwork that goes with such reporting. My contact information is indicated above. If there are any problems with the submission and instructions provided in support, please kindly contact me promptly to discuss them. I would also be happy to meet with your corporate counsel, accountant, or CPA to discuss the laws described herein and how to conscientiously comply with all of them. I am a law abiding American National and I would hope that all those I do business with are as well.

Thank you kindly for your assistance and cooperation.

"I declare under penalty of perjury from without the United States pursuant to 28 U.S.C. §1746(1) that the information provided by me in this submission is truthful, accurate, consistent with prevailing law, and complete to the best of my knowledge and belief."

Enclosures 1 through 7 identified in the table of contents follow on the remaining pages after this submission

5 Enclosure 1: Completed IRS Form W-8BEN

This enclosure is the withholding form that documents my lawful status.

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Certificate of Foreign Status of Non-resident for United States Tax Withholding and Reporting (Human)

Department of the Treasury Internal Revenue Service

For use by humans. Entities must use Form W-8BEN-E. Information about Form W-8BEN and its separate instructions is at www.irs.gov/formw8ben. Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do NOT use this form if:

Instead, use Form:

- You are NOT an individual ("individual" means a "non-resident non-person non-taxpayer" under the I.R.C.) W-8BEN-E
You are a statutory U.S. citizen or other U.S. person, including a resident alien individual W-9
You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the U.S. (other than personal services) W-8ECI
You are a beneficial owner who is receiving compensation for personal services performed in the United States 8233 or W-4
A person acting as an intermediary W-8IMY

Part I Identification of Non-Resident Non-Taxpayer (see instructions)

1 Name of human applicant 2 Country of nationality
3 Mailing address (Not a domicile or residence. Don't have a domicile or residence) (street, apt. or suite no., or rural route).
City or town, state or province. Include postal code where appropriate. Country
4 Mailing address (if different from above)
City or town, state or province. Include postal code where appropriate. Country
5 U.S. taxpayer identification number (SSN or ITIN), if required (not required) NONE (Not required. See 31 CFR 306.10; 31 CFR 103.34(a)(3)(x); W-8BEN Inst. p. 1,2,4,5 (Cat. 25576H); W-8 Supp. Inst. p. 1,2,6 (Cat. 26698G); Pub. 515 Inst. p. 7; Form 1042-s Inst. p. 1,14)
6 Foreign tax identifying number (see instructions)
7 Reference number(s) (see instructions) 8 Date of birth (MM-DD-YYYY) (see instructions)

Part II Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)

9 I certify that the non-resident is a resident of within the meaning of the income tax treaty between the United States and that country.
10 Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article of the treaty identified on line 9 above to claim a % rate of withholding on (specify type of income):
Explain the reasons the non-resident meets the terms of the treaty article:

Part III Certification

Under penalties of perjury from without the "United States" as defined in 28 U.S.C. §1746(1) and 26 U.S.C. §7701(a)(9) and (a)(10), I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify from without the "United States" that:

- I am the human who is the non-resident (or am authorized to sign for the human that is the non-resident) of all the earnings to which this form relates or am using this form to document myself as a statutory "non-resident non-person" that is an owner or account holder of a financial institution outside the geographical "United States" per I.R.C. 7701(a)(9) and (a)(10),
The human named on line 1 of this form is not a statutory "U.S. person", "person", or "individual" as defined in 26 U.S.C. §7701(a)(30) or 26 U.S.C. §7701(c), or 26 C.F.R. §1.1441-1(c)(3) respectively, would have to hold a public office to be any of these entities, and does not consensually hold such an office.
The earnings to which this form relates are:
(a) not effectively connected with the conduct of a "trade or business" (public office per 26 U.S.C. §7701(a)(26)) in the United States (government),
(b) not earned from sources within the geographical "United States" defined in 26 U.S.C. §7701(a)(9) and (a)(10),
(c) not subject to reporting per 26 U.S.C. §6041 because not connected to a statutory "trade or business" (public office)
(d) not subject to withholding because not statutory "income" per 26 U.S.C. §643(b) and earned by a "non-resident non-person non-taxpayer".
The non-resident named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country, and
For broker transactions or barter exchanges, the non-resident is either not-subject or statutorily exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the earnings of which I am the non-resident or any withholding agent that can disburse or make payments of the income of which I am the non-resident. I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.

Sign Here

Signature of non-resident (or individual authorized to sign for non-resident) Date (MM-DD-YYYY)

Print name of signer

Capacity in which acting (if form is not signed by non-resident)

6 Enclosure 2: IRS Instructions for Form W-8BEN, cover and pages 2, 4, and 5

This enclosure proves that the IRS Form W-8BEN is used to claim exemption from withholding and reporting and to establish that you are not a “U.S. person”. Recognizes that TINs are not required for statutory “nonresident aliens”, and by implication “non-resident non-persons”.

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Instructions for Form W-8BEN

(Rev. February 2006)

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding



Department of the Treasury
Internal Revenue Service

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

For definitions of terms used throughout these instructions, see *Definitions* on pages 3 and 4.

Purpose of form. Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of:

- Interest (including certain original issue discount (OID));
- Dividends;
- Rents;
- Royalties;
- Premiums;
- Annuities;
- Compensation for, or in expectation of, services performed;
- Substitute payments in a securities lending transaction; or
- Other fixed or determinable annual or periodical gains, profits, or income.

This tax is imposed on the gross amount paid and is generally collected by withholding under section 1441 or 1442 on that amount. A payment is considered to have been made whether it is made directly to the beneficial owner or to another person, such as an intermediary, agent, or partnership, for the benefit of the beneficial owner.

In addition, section 1446 requires a partnership conducting a trade or business in the United States to withhold tax on a foreign partner's distributive share of the partnership's effectively connected taxable income. Generally, a foreign person that is a partner in a partnership that submits a Form W-8 for purposes of section 1441 or 1442 will satisfy the documentation requirements under section 1446 as well. However, in some cases the documentation requirements of sections 1441 and 1442 do not match the documentation requirements of section 1446. See Regulations sections 1.1446-1 through 1.1446-6. Further, the owner of a disregarded entity, rather than the disregarded entity itself, shall submit the appropriate Form W-8 for purposes of section 1446.

If you receive certain types of income, you must provide Form W-8BEN to:

- **Establish that you are not a U.S. person;**
- Claim that you are the beneficial owner of the income for which Form W-8BEN is being provided or a partner in a partnership subject to section 1446; and

- If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty.

You may also be required to submit Form W-8BEN to claim an exception from domestic information reporting and backup withholding for certain types of income that are not subject to foreign-person withholding. Such income includes:

- Broker proceeds.
- Short-term (183 days or less) original issue discount (OID).
- Bank deposit interest.
- Foreign source interest, dividends, rents, or royalties.
- Proceeds from a wager placed by a nonresident alien individual in the games of blackjack, baccarat, craps, roulette, or big-6 wheel.

You may also use Form W-8BEN to certify that income from a notional principal contract is not effectively connected with the conduct of a trade or business in the United States.

A withholding agent or payer of the income may rely on a properly completed Form W-8BEN to treat a payment associated with the Form W-8BEN as a payment to a foreign person who beneficially owns the amounts paid. If applicable, the withholding agent may rely on the Form W-8BEN to apply a reduced rate of withholding at source.

Provide Form W-8BEN to the withholding agent or payer before income is paid or credited to you. Failure to provide a Form W-8BEN when requested may lead to withholding at a 30% rate (foreign-person withholding) or the backup withholding rate.

Additional information. For additional information and instructions for the withholding agent, see the Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

Who must file. You must give Form W-8BEN to the withholding agent or payer if you are a foreign person and you are the beneficial owner of an amount subject to withholding. Submit Form W-8BEN when requested by the withholding agent or payer whether or not you are claiming a reduced rate of, or exemption from, withholding.

Do not use Form W-8BEN if:

- You are a U.S. citizen (even if you reside outside the United States) or other U.S. person (including a resident alien individual). Instead, use Form W-9, Request for Taxpayer Identification Number and Certification.
- You are a disregarded entity with a single owner that is a U.S. person and you are not a hybrid entity claiming treaty benefits. Instead, provide Form W-9.

- You are a nonresident alien individual who claims exemption from withholding on compensation for independent or dependent personal services performed in the United States. Instead, provide Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, or Form W-4, Employee's Withholding Allowance Certificate.
- You are receiving income that is effectively connected with the conduct of a trade or business in the United States, unless it is allocable to you through a partnership. Instead, provide Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States. If any of the income for which you have provided a Form W-8BEN becomes effectively connected, this is a change in circumstances and Form W-8BEN is no longer valid. You must file Form W-8ECI. See *Change in circumstances* on this page.
- You are filing for a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section 115(2), 501(c), 892, 895, or 1443(b). Instead, provide Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding. However, you should use Form W-8BEN if you are claiming treaty benefits or are providing the form only to claim you are a foreign person exempt from backup withholding. You should use Form W-8ECI if you received effectively connected income (for example, income from commercial activities).
- You are a foreign flow-through entity, other than a hybrid entity, claiming treaty benefits. Instead, provide Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding. However, if you are a partner, beneficiary, or owner of a flow-through entity and you are not yourself a flow-through entity, you may be required to furnish a Form W-8BEN to the flow-through entity.
- You are a disregarded entity for purposes of section 1446. Instead, the owner of the entity must submit the form.
- You are a reverse hybrid entity transmitting beneficial owner documentation provided by your interest holders to claim treaty benefits on their behalf. Instead, provide Form W-8IMY.
- You are a withholding foreign partnership or a withholding foreign trust within the meaning of sections 1441 and 1442 and the accompanying regulations. A withholding foreign partnership or a withholding foreign trust is a foreign partnership or trust that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for each partner's, beneficiary's, or owner's distributive share of income subject to withholding that is paid to the partnership or trust. Instead, provide Form W-8IMY.
- You are acting as an intermediary (that is, acting not for your own account, but for the account of others as an agent, nominee, or custodian). Instead, provide Form W-8IMY.
- You are a foreign partnership or foreign grantor trust for purposes of section 1446. Instead, provide Form

W-8IMY and accompanying documentation. See Regulations sections 1.1446-1 through 1.1446-6.

Giving Form W-8BEN to the withholding agent. Do not send Form W-8BEN to the IRS. Instead, give it to the person who is requesting it from you. Generally, this will be the person from whom you receive the payment, who credits your account, or a partnership that allocates income to you. Give Form W-8BEN to the person requesting it before the payment is made to you, credited to your account or allocated. If you do not provide this form, the withholding agent may have to withhold at the 30% rate, backup withholding rate, or the rate applicable under section 1446. If you receive more than one type of income from a single withholding agent for which you claim different benefits, the withholding agent may, at its option, require you to submit a Form W-8BEN for each different type of income. Generally, a separate Form W-8BEN must be given to each withholding agent.

Note. If you own the income or account jointly with one or more other persons, the income or account will be treated by the withholding agent as owned by a foreign person if Forms W-8BEN are provided by all of the owners. If the withholding agent receives a Form W-9 from any of the joint owners, the payment must be treated as made to a U.S. person.

Change in circumstances. If a change in circumstances makes any information on the Form W-8BEN you have submitted incorrect, you must notify the withholding agent or payer within 30 days of the change in circumstances and you must file a new Form W-8BEN or other appropriate form.

If you use Form W-8BEN to certify that you are a foreign person, a change of address to an address in the United States is a change in circumstances. Generally, a change of address within the same foreign country or to another foreign country is not a change in circumstances. However, if you use Form W-8BEN to claim treaty benefits, a move to the United States or outside the country where you have been claiming treaty benefits is a change in circumstances. In that case, you must notify the withholding agent or payer within 30 days of the move.

If you become a U.S. citizen or resident alien after you submit Form W-8BEN, you are no longer subject to the 30% withholding rate or the withholding tax on a foreign partner's share of effectively connected income. You must notify the withholding agent or payer within 30 days of becoming a U.S. citizen or resident alien. You may be required to provide a Form W-9. For more information, see Form W-9 and instructions.

Expiration of Form W-8BEN. Generally, a Form W-8BEN provided without a U.S. taxpayer identification number (TIN) will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8BEN signed on September 30, 2005, remains valid through December 31, 2008. A Form W-8BEN furnished with a U.S. TIN will remain in effect until a change in circumstances makes any information on the form incorrect, provided that the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner who provided the Form W-8BEN. See the instructions for line 6

A disregarded entity shall not submit this form to a partnership for purposes of section 1446. Instead, the owner of such entity shall provide appropriate documentation. See Regulations section 1.1446-1.


Amounts subject to withholding. Generally, an amount subject to withholding is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income. FDAP income is all income included in gross income, including interest (as well as OID), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums).

For purposes of section 1446, the amount subject to withholding is the foreign partner's share of the partnership's effectively connected taxable income.

Withholding agent. Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches of certain foreign banks and insurance companies. Generally, the person who pays (or causes to be paid) the amount subject to withholding to the foreign person (or to its agent) must withhold.

For purposes of section 1446, the withholding agent is the partnership conducting the trade or business in the United States. For a publicly traded partnership, the withholding agent may be the partnership, a nominee holding an interest on behalf of a foreign person, or both. See Regulations sections 1.1446-1 through 1.1446-6.

Specific Instructions

 **TIP** *A hybrid entity should give Form W-8BEN to a withholding agent only for income for which it is claiming a reduced rate of withholding under an income tax treaty. A reverse hybrid entity should give Form W-8BEN to a withholding agent only for income for which no treaty benefit is being claimed.*

Part I

Line 1. Enter your name. If you are a disregarded entity with a single owner who is a foreign person and you are not claiming treaty benefits as a hybrid entity, this form should be completed and signed by your foreign single owner. If the account to which a payment is made or credited is in the name of the disregarded entity, the foreign single owner should inform the withholding agent of this fact. This may be done by including the name and account number of the disregarded entity on line 8 (reference number) of the form. However, if you are a disregarded entity that is claiming treaty benefits as a hybrid entity, this form should be completed and signed by you.

Line 2. If you are a corporation, enter the country of incorporation. If you are another type of entity, enter the country under whose laws you are created, organized, or

governed. If you are an individual, enter N/A (for "not applicable").

Line 3. Check the one box that applies. By checking a box, you are representing that you qualify for this classification. You must check the box that represents your classification (for example, corporation, partnership, trust, estate, etc.) under U.S. tax principles. Do not check the box that describes your status under the law of the treaty country. If you are a partnership or disregarded entity receiving a payment for which treaty benefits are being claimed, you must check the "Partnership" or "Disregarded entity" box. If you are a sole proprietor, check the "Individual" box, not the "Disregarded entity" box.



Only entities that are tax-exempt under section 501 should check the "Tax-exempt organization" box. Such organizations should use Form W-8BEN only if they are claiming a reduced rate of withholding under an income tax treaty or some code exception other than section 501. Use Form W-8EXP if you are claiming an exemption from withholding under section 501.

Line 4. Your permanent residence address is the address in the country where you claim to be a resident for purposes of that country's income tax. If you are giving Form W-8BEN to claim a reduced rate of withholding under an income tax treaty, you must determine your residency in the manner required by the treaty. Do not show the address of a financial institution, a post office box, or an address used solely for mailing purposes. If you are an individual who does not have a tax residence in any country, your permanent residence is where you normally reside. If you are not an individual and you do not have a tax residence in any country, the permanent residence address is where you maintain your principal office.

Line 5. Enter your mailing address only if it is different from the address you show on line 4.

Line 6. If you are an individual, you are generally required to enter your social security number (SSN). To apply for an SSN, get Form SS-5 from a Social Security Administration (SSA) office or, if in the United States, you may call the SSA at 1-800-772-1213. Fill in Form SS-5 and return it to the SSA.

If you do not have an SSN and are not eligible to get one, you must get an individual taxpayer identification number (ITIN). To apply for an ITIN, file Form W-7 with the IRS. It usually takes 4-6 weeks to get an ITIN.



An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law.

If you are not an individual or you are an individual who is an employer or you are engaged in a U.S. trade or business as a sole proprietor, you must enter an employer identification number (EIN). If you do not have an EIN, you should apply for one on Form SS-4, Application for Employer Identification Number. If you are a disregarded entity claiming treaty benefits as a hybrid entity, enter your EIN.

A partner in a partnership conducting a trade or business in the United States will likely be allocated effectively connected taxable income. The partner is

required to file a U.S. federal income tax return and must have a U.S. taxpayer identification number (TIN).

You must provide a U.S. TIN if you are:

- Claiming an exemption from withholding under section 871(f) for certain annuities received under qualified plans,
- A foreign grantor trust with 5 or fewer grantors,
- Claiming benefits under an income tax treaty, or
- Submitting the form to a partnership that conducts a trade or business in the United States.

However, a U.S. TIN is not required to be shown in order to claim treaty benefits on the following items of income:

- Dividends and interest from stocks and debt obligations that are actively traded;
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund);
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the SEC under the Securities Act of 1933; and
- Income related to loans of any of the above securities.

TIP You may want to obtain and provide a U.S. TIN on Form W-8BEN even though it is not required. A Form W-8BEN containing a U.S. TIN remains valid for as long as your status and the information relevant to the certifications you make on the form remain unchanged provided at least one payment is reported to you annually on Form 1042-S.

Line 7. If your country of residence for tax purposes has issued you a tax identifying number, enter it here. For example, if you are a resident of Canada, enter your Social Insurance Number.

Line 8. This line may be used by the filer of Form W-8BEN or by the withholding agent to whom it is provided to include any referencing information that is useful to the withholding agent in carrying out its obligations. For example, withholding agents who are required to associate the Form W-8BEN with a particular Form W-8IMY may want to use line 8 for a referencing number or code that will make the association clear. A beneficial owner may use line 8 to include the number of the account for which he or she is providing the form. A foreign single owner of a disregarded entity may use line 8 to inform the withholding agent that the account to which a payment is made or credited is in the name of the disregarded entity (see instructions for line 1 on page 4).

Part II

Line 9a. Enter the country where you claim to be a resident for income tax treaty purposes. For treaty purposes, a person is a resident of a treaty country if the person is a resident of that country under the terms of the treaty.

Line 9b. If you are claiming benefits under an income tax treaty, you must have a U.S. TIN unless one of the exceptions listed in the line 6 instructions above applies.

Line 9c. An entity (but not an individual) that is claiming a reduced rate of withholding under an income tax treaty must represent that it:

- Derives the item of income for which the treaty benefit is claimed, and

- Meets the limitation on benefits provisions contained in the treaty, if any.

An item of income may be derived by either the entity receiving the item of income or by the interest holders in the entity or, in certain circumstances, both. An item of income paid to an entity is considered to be derived by the entity only if the entity is not fiscally transparent under the laws of the entity's jurisdiction with respect to the item of income. An item of income paid to an entity shall be considered to be derived by the interest holder in the entity only if:

- The interest holder is not fiscally transparent in its jurisdiction with respect to the item of income, and
- The entity is considered to be fiscally transparent under the laws of the interest holder's jurisdiction with respect to the item of income. An item of income paid directly to a type of entity specifically identified in a treaty as a resident of a treaty jurisdiction is treated as derived by a resident of that treaty jurisdiction.

If an entity is claiming treaty benefits on its own behalf, it should complete Form W-8BEN. If an interest holder in an entity that is considered fiscally transparent in the interest holder's jurisdiction is claiming a treaty benefit, the interest holder should complete Form W-8BEN on its own behalf and the fiscally transparent entity should associate the interest holder's Form W-8BEN with a Form W-8IMY completed by the entity.

CAUTION An income tax treaty may not apply to reduce the amount of any tax on an item of income received by an entity that is treated as a domestic corporation for U.S. tax purposes. Therefore, neither the domestic corporation nor its shareholders are entitled to the benefits of a reduction of U.S. income tax on an item of income received from U.S. sources by the corporation.

To determine whether an entity meets the limitation on benefits provisions of a treaty, you must consult the specific provisions or articles under the treaties. Income tax treaties are available on the IRS website at www.irs.gov.

TIP If you are an entity that derives the income as a resident of a treaty country, you may check this box if the applicable income tax treaty does not contain a "limitation on benefits" provision.

Line 9d. If you are a foreign corporation claiming treaty benefits under an income tax treaty that entered into force before January 1, 1987 (and has not been renegotiated) on (a) U.S. source dividends paid to you by another foreign corporation or (b) U.S. source interest paid to you by a U.S. trade or business of another foreign corporation, you must generally be a "qualified resident" of a treaty country. See section 884 for the definition of interest paid by a U.S. trade or business of a foreign corporation ("branch interest") and other applicable rules.

In general, a foreign corporation is a qualified resident of a country if any of the following apply.

- It meets a 50% ownership and base erosion test.
- It is primarily and regularly traded on an established securities market in its country of residence or the United States.
- It carries on an active trade or business in its country of residence.
- It gets a ruling from the IRS that it is a qualified resident.

7 Enclosure 3: IRS Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY

This enclosure describes legitimate uses of the W-8BEN form, which include exception from domestic information returns and to establish that earnings are not connected with a “trade or business”. Also describes instructions for using the form. Acknowledges that the form may be used WITHOUT a Taxpayer Identification Number.

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Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY

(Rev. May 2006)



Department of the Treasury
Internal Revenue Service

Instructions for the Withholding Agent

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

A Form W-8 provided by a foreign grantor trust with 5 or fewer grantors is valid even if the trust does not provide a U.S. taxpayer identification number.

Before You Begin

These instructions supplement the instructions for:

- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.
- Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States.
- Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.
- Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

For general information and the purpose of each of the forms described in these instructions, see those forms and their accompanying instructions.

Throughout these instructions, a reference to or mention of "Form W-8" includes Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

Requirement To Withhold

For purposes of section 1441 and 1442, a withholding agent must withhold 30% of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can associate the payment with documentation (for example, Form W-8 or Form W-9) upon which it can rely to treat the payment as made to (a) a payee that is a U.S. person or (b) a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold if the foreign person assumes responsibility for withholding on the payment as a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust and has provided a valid Form W-8IMY. Withholding is also not required if the payment is made to a U.S. branch of certain foreign insurance companies or foreign banks that agree to be treated as U.S. persons and provide a valid Form W-8IMY.

Generally, an amount is subject to withholding if it is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income. FDAP income is all income included in gross income, including interest (and original issue discount), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums). FDAP income also does not include items of income excluded from gross income without regard to the U.S. or foreign status of the owner of the income, such as interest under section 103(a).

Generally, a partnership that allocates effectively connected taxable income (ECTI) to a foreign person must withhold at the highest tax rate applicable to that person for the type of income allocated (for example, ordinary income or capital gains). Unless the partnership is a publicly traded partnership, the partnership must withhold in the year the ECTI is allocable to the foreign partner, rather than the year in which the distribution is made. The partnership may rely on documentation (for example, Form W-8BEN or Form W-9) to determine if the partner is foreign or domestic and the type of partner (for example, individual or corporate). A partnership that does not receive valid documentation or knows or has reason to know that the documentation is incorrect or unreliable must presume the partner is foreign.

Who Is the Withholding Agent?

Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. If several persons qualify as withholding agents for a single payment, the tax required to be withheld must only be withheld once. Generally, the person who pays (or causes to be paid) an amount subject to withholding to the foreign person (or to its agent) must withhold. See the instructions for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, for return filing and information reporting obligations.

For ECTI allocable to a foreign partner, the partnership is generally the withholding agent and must file Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, and Form

Responsibilities of the Withholding Agent

If you are a withholding agent making a payment of U.S. source interest, dividends, rents, royalties, commissions, nonemployee compensation, other fixed or determinable annual or periodical gains, profits, or income, and certain other amounts (including broker and barter exchange transactions, and certain payments made by fishing boat operators), you are generally required to obtain from the payee either a Form W-9, Request for Taxpayer Identification Number and Certification, or a Form W-8. These forms are also used to establish a person's status for purposes of domestic information reporting (for example, on a Form 1099) and backup withholding. If you receive a Form W-9, you must generally make an information return on a Form 1099. If you receive a Form W-8, you are exempt from reporting on Form 1099, but you may have to file Form 1042-S and withhold under the rules applicable to payments made to foreign persons. See the Instructions for Form 1042-S for more information.

Generally, a foreign person that is a partner in a partnership that submits a Form W-8 for purposes of section 1441 or 1442 will satisfy the documentation requirements under section 1446. However, in some cases the documentation requirements for sections 1441 and 1442 do not match the documentation requirements of section 1446. For example, a partner may generally submit Form W-8BEN to establish itself as a foreign person for purposes of section 1446, but a foreign partnership or foreign grantor trust must submit Form W-8IMY and accompanying documentation as provided by Regulations sections 1.1446-1 through 1.1446-6. Also, the owner of a disregarded entity, rather than the entity itself, must submit the appropriate Form W-8 for purposes of section 1446.

Generally, you must withhold 30% from the gross amount of FDAP income paid to a foreign person unless you can reliably associate the payment with a Form W-8. You can reliably associate a payment with a Form W-8 if you hold a valid form, you can reliably determine how much of the payment relates to the form, and you have no actual knowledge or reason to know that any of the information or certifications on the form are unreliable or incorrect. In addition, a partnership that has ECTI allocable to a foreign partner is a withholding agent with respect to that income and must withhold in accordance with the provisions of Regulations sections 1.1446-1 through 1.1446-6. See the instructions to Forms 8804, 8805, and 8813.

Do not send Forms W-8 to the IRS. Instead, keep the forms in your records for as long as they may be relevant to the determination of your tax liability under section 1461.

Failure To Obtain Form W-8 or Form W-9 — Presumption Rules

If you do not receive a Form W-8 or Form W-9, or cannot otherwise determine whether a payment should be treated as made to a U.S. person or to a foreign person, use the presumption rules provided in the regulations under sections 1441, 1446, 6045, and 6049.

Requesting Form W-8

Request a Form W-8 from any person to whom you are making a payment that you presume or otherwise believe to be a foreign person. You should request the form before making a payment so that you have the form when you make the payment. A withholding agent or payer that fails to obtain a Form W-8 or Form W-9 and fails to withhold as required under the presumption rules may be assessed tax at the 30% rate or backup withholding rate of 28%, as well as interest and penalties for lack of compliance.

A partnership should request a Form W-8 or W-9 from any partner that is allocated income that is effectively connected with the conduct of the partnership's U.S. trade or business. A partnership that fails to withhold as required under section 1446, is liable for the tax required to be withheld. In addition, the partnership may be liable for interest, penalties, and additions to the tax even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI.

When you receive a completed Form W-8, you must review it for completeness and accuracy. This responsibility extends to the information attached to Form W-8IMY, including beneficial owner withholding certificates or other documentation and information. The following special rules apply when requesting a specific type of Form W-8.

Form W-8BEN

Request Form W-8BEN from any foreign person or organization to which you are making a payment if it is the beneficial owner of the income, whether or not it is claiming a reduced rate of, or exemption from, withholding. In addition, if you are a partnership, request Form W-8BEN for purposes of section 1446 from any foreign partner that is allocated ECTI, other than a foreign partner that is a partnership, grantor trust, or person or organization that qualifies to file Form W-8EXP.

Also request Form W-8BEN when a payee may claim an exception from domestic information reporting as a foreign person or to establish that certain income is not effectively connected with the conduct of a U.S. trade or business.

A beneficial owner is required to enter its U.S. taxpayer identification number (TIN) on line 6 of Form W-8BEN if it is a beneficial owner that is claiming benefits under an income tax treaty or submitting the form to a partnership that conducts a trade or business in the United States.

However, a U.S. TIN is not required to be shown in order to claim treaty benefits on the following items of income:

- Dividends and interest from stocks and debt obligations that are actively traded;
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund);
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the SEC under the Securities Act of 1933; and
- Income related to loans of any of the above securities.

A U.S. TIN is not required to claim treaty benefits if the payment is unexpected and you, the withholding agent, meet certain requirements. A payment is unexpected if

- a. The permanent residence address is not in the treaty country or the withholding agent is notified of a new permanent residence address that is not in the treaty country. However, the beneficial owner may be treated as a resident of the treaty country if it provides a reasonable explanation for the permanent residence address outside the treaty country or the withholding agent has in its possession, or obtains, documentary evidence that establishes residency in a treaty country.
- b. The mailing address is not in the treaty country or the withholding agent has a mailing address that is not in the treaty country as part of its account information. However, the beneficial owner may be treated as a resident of the treaty country if:
 - The withholding agent has in its possession, or obtains, additional documentation supporting the claim of residence in the treaty country and the additional documentation does not contain an address outside the treaty country,
 - The withholding agent has in its possession, or obtains, documentation that establishes that the beneficial owner is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if required by the applicable treaty),
 - The withholding agent knows that the beneficial owner is a bank or insurance company that is a resident of the treaty country and the mailing address is the address of a branch of that bank or insurance company, or
 - The beneficial owner provides a written statement that reasonably establishes that it is a resident of the treaty country.
- c. The account holder has standing instructions for the withholding agent to pay amounts from its account to an address outside, or an account maintained outside, the treaty country unless the direct account holder provides a reasonable explanation in writing establishing the account holder's residency in a treaty country.

For additional information on the due diligence requirements applicable to withholding agents, see Regulations section 1.1441-7(b).

Dual claims. If you are making payments to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf and on behalf of persons in their capacity as interest holders in that entity, you may, at your option, accept the dual claims even though you hold different withholding certificates that require you to treat the entity inconsistently for different payments or for different portions of the same payment. If, however, inconsistent claims are made for the same portion of a payment, you may either reject both claims and request consistent claims or you may choose which reduction to apply. For partnerships that allocate effectively connected taxable income to partners that are foreign partnerships, the rules under section 1.1446-5 apply.

Requesting a New Form W-8

Request a new Form W-8:

- Before the expiration of an existing Form W-8 (see *Period of Validity* below for more information),
- If the existing form does not support a claim of reduced rate for a type of income that the submitter of the form has not previously received, or

- If you know or have reason to know of a change in circumstances that makes any information on the current form unreliable or incorrect.

Example. A foreign investor opens an account with a broker to purchase U.S. Treasury bonds and provides Form W-8BEN to obtain the portfolio interest exemption. The investor does not complete Part II of Form W-8BEN (because he is not claiming treaty benefits). Later, the investor purchases U.S. stock and claims treaty benefits on dividend income. The investor at that time completes a new Form W-8BEN providing the information required in Part II.

Period of Validity

Form W-8BEN

Generally, a Form W-8BEN provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8BEN signed on September 30, 2006, remains valid through December 31, 2009. A Form W-8BEN with a U.S. TIN will remain in effect until a change of circumstances makes any information on the form incorrect, provided that the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner.

Form W-8ECI

Generally, a Form W-8ECI will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect.

Form W-8EXP

Generally, a Form W-8EXP provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year. However, in the case of an integral part of a foreign government (within the meaning of Temporary Regulations section 1.892-2T(a)(2)) or a foreign central bank of issue, a Form W-8EXP filed without a U.S. TIN will remain in effect until a change in circumstances makes any of the information on the form incorrect. A Form W-8EXP furnished with a U.S. TIN will remain in effect until a change in circumstances makes any information on the form incorrect provided that the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner.

Form W-8IMY

Generally, a Form W-8IMY remains valid until the status of the person whose name is on the certificate is changed in a way relevant to the certificate or circumstances change that make the information on the certificate no longer correct. The indefinite validity period does not extend, however, to any withholding certificates, documentary evidence, or withholding statements associated with the certificate. Moreover, it does not extend to any statements attached to the certificate if a change of circumstances makes the information on the attached statements no longer correct.

Forms Received That Are Not Dated

If a Form W-8 is valid except that the person providing the form has not dated the form, the withholding agent may date the form from the day it is received and measure the validity period from that date.

Substitute Forms W-8

You may develop and use your own Form W-8BEN, W-8ECI, W-8EXP, or W-8IMY (a substitute form) if its content is substantially similar to the IRS's official Form W-8BEN, W-8ECI, W-8EXP, or W-8IMY (to the extent required by these instructions) and it satisfies certain certification requirements. You may develop and use a substitute form that is in a foreign language, provided that the substitute form also provides the English version of the statements and information otherwise required to be included on the substitute form. You may combine Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY into a single substitute form.

The substitute form must contain instructions that adequately inform the beneficial owner of what is meant by permanent residence address and beneficial ownership. You are, however, encouraged to provide all relevant instructions, especially if the payee requests them.

You may incorporate a substitute Form W-8 into other business forms you customarily use, such as account signature cards, provided the required certifications are clearly set forth. However, you may not:

1. Use a substitute form that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or
2. Imply that a person may be subject to 30% withholding or backup withholding unless that person agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-8 is valid only if it contains the same penalties of perjury statement as the official forms and the required signature. However, if the substitute form is contained in some other business form, the words "information on this form" may be modified to refer to that portion of the business form containing the substitute form information. The design of the substitute form must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained in the form.

Content of Substitute Form

Form W-8BEN

The substitute Form W-8BEN must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The certifications in Part II must be included in a substitute form only if treaty benefits are claimed, and then only to the extent that the certifications are required. For example, if the substitute form is intended for use by individuals only, the certifications contained in boxes 9c and 9d are not required.

Penalties of perjury statement. The design of the substitute Form W-8BEN must be such that the information and certifications that are being attested to by

the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "*The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and, if applicable, obtain a reduced rate of withholding.*"

Form W-8ECI

The substitute Form W-8ECI must contain all of the information required in Part I, other than lines 7 or 8. The certifications in Part II of Form W-8ECI must be included in a substitute form.

Penalties of perjury statement. The design of the substitute Form W-8ECI must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "*The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and that the income for which this form is provided is effectively connected with the conduct of a trade or business within the United States.*"

Form W-8EXP

The substitute Form W-8EXP must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The substitute Form W-8EXP must also contain all of the statements and certifications contained in Parts II and III, but a specific part needs to be included (in its entirety) only if it is relevant. For example, if the only beneficial owners a U.S. withholding agent has as account holders are foreign governments, the withholding agent may use a substitute Form W-8EXP that contains only the required information in Part I, plus the required statements and certifications from Part II that are related to foreign governments.

Penalties of perjury statement. The design of the substitute Form W-8EXP must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "*The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession.*"

Form W-8IMY

The substitute Form W-8IMY must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The substitute Form W-8IMY must also contain all of the statements and certifications contained in Parts II, III, IV, V, or VI, but a specific part needs to be included (in its entirety) only if it is relevant. For example, if the only intermediaries a U.S. withholding agent has as account holders are qualified

8 Enclosure 4: IRS Publication 515: Withholding of Tax on Nonresident Aliens and Foreign Entities, Cover and Page 7

This enclosure proves that the IRS Form W-8BEN is used to: 1. Establish foreign status; 2. Claim that the foreign person is exempt from reporting and withholding.

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Department
of the
Treasury

Internal
Revenue
Service

Publication 515

(Rev. November 2001)

Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Entities

For Withholding in 2002



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documentation that establishes either of the following.

- The payee is a U.S. person.
- The payee is a foreign person that is the beneficial owner of the income and is entitled to a reduced rate of withholding.

Generally, you must get the documentation before you make the payment. The documentation is not valid if you know, or have reason to know, that it is unreliable or incorrect. See *Standards of Knowledge*, later.

If you cannot reliably associate a payment with valid documentation, you must use the presumption rules discussed later. For example, if you do not have documentation or you cannot determine the portion of a payment that is allocable to specific documentation, you must use the presumption rules.

The specific types of documentation are discussed in this section. You should, however, also see the discussion, *Withholding on Specific Income*, as well as the instructions to the particular forms. As the withholding agent, you may also want to see the *Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY*.

Joint owners. If you make a payment to joint owners, you need to get documentation from each owner.

Form W-9. Generally, you can treat the payee as a U.S. person if the payee gives you a Form W-9. The Form W-9 can only be used by a U.S. person and must contain the payee's taxpayer identification number (TIN). If there is more than one owner, you may treat the total amount as paid to a U.S. person if any one of the owners gives you a Form W-9. See *U.S. Taxpayer Identification Numbers*, later. U.S. persons are not subject to NRA withholding, but may be subject to Form 1099 reporting and backup withholding.

Form W-8. Generally, a foreign person that is a beneficial owner of the income should give you a Form W-8. Until further notice, you can rely upon Forms W-8 that contain a P.O. box as a permanent residence address provided you do not know, or have reason to know, that the person providing the form is a U.S. person or that a street address is available. You may rely on Forms W-8 for which there is a U.S. mailing address provided you received the form prior to December 31, 2001.

If certain requirements are met, the foreign person can give you documentary evidence, rather than a Form W-8. You can rely on documentary evidence in lieu of a Form W-8 for a payment made in a U.S. possession.

Other documentation. Other documentation may be required to claim an exemption from, or a reduced rate of, withholding on pay for personal services. The nonresident alien individual may have to give you a Form W-4 or a Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*. These forms are discussed in *Pay for Personal Services Performed under Withholding on Specific Income*.

Beneficial Owners

If all the appropriate requirements have been established on a Form W-8BEN, W-8ECI, W-8EXP or, if applicable, on documentary evidence, you may treat the payee as a foreign beneficial owner.

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, is used by a foreign person to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) If applicable, claim a reduced rate of, or exemption from, withholding under an income tax treaty.

Form W-8BEN may also be used to claim that the foreign person is exempt from Form 1099 reporting and backup withholding for income that is not subject to NRA withholding. For example, a foreign person may provide a Form W-8BEN to a broker to establish that the gross proceeds from the sale of securities are not subject to Form 1099 reporting or backup withholding.

Claiming treaty benefits. You may apply a reduced rate of withholding to a foreign person that provides a Form W-8BEN claiming a reduced rate of withholding under an income tax treaty only if the person provides a U.S. TIN and certifies that:

- It is a resident of a treaty country,
- It is the beneficial owner of the income,
- If it is an entity, it derives the income within the meaning of section 894 of the Internal Revenue Code (it is not fiscally transparent), and
- It meets any limitation on benefits provision contained in the treaty, if applicable.

If the foreign beneficial owner claiming a treaty benefit is related to you, the foreign beneficial owner must also certify on Form W-8BEN that it will file Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, if the amount subject to NRA withholding received during a calendar year exceeds, in the aggregate, \$500,000.

An entity derives income for which it is claiming treaty benefits only if the entity is not treated as fiscally transparent for that income. See *Fiscally transparent entities* discussed earlier under *Flow-Through Entities*.

Limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits. For example, a foreign corporation may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemptions from, or reduced rates of, U.S. tax vary under each treaty. You must check the provisions of the tax treaty that apply. Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding that apply in cases where all conditions of the particular treaty articles are satisfied.

If a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

If you know, or have reason to know, that an owner of income is not eligible for treaty benefits claimed, you must not apply the treaty rate. You are not, however, responsible for misstatements on a Form W-8, documentary evidence, or statements accompanying documentary evidence for which you did not have actual knowledge, or reason to know that the statements were incorrect.

Marketable securities. A Form W-8BEN provided to claim treaty benefits does not need a U.S. TIN if the foreign beneficial owner is claiming the benefits on income from marketable securities. For this purpose, income from a marketable security consists of the following items.

- Dividends and interest from stocks and debt obligations that are actively traded.
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund).
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the SEC under the Securities Act of 1933.
- Income related to loans of any of the above securities.

Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, is used by a foreign person to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) Claim that the income is effectively connected with the conduct of a trade or business in the United States. (See *Effectively Connected Income*, later.)

Effectively connected income for which a valid Form W-8ECI has been provided is generally not subject to NRA withholding.

Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) Claim a reduced rate of, or an exemption from, withholding as such an entity.

9 Enclosure 5: IRS Instructions for Form 1042-S, Cover and Page 14

This enclosure proves that 1042s is not required to be filed against non-resident non-persons who are not engaged in a “trade or business”.

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Instructions for Form 1042-S

Foreign Person's U.S. Source Income Subject to Withholding

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

 Use the 2006 Form 1042-S only for income paid during 2006. Do not use the 2006 Form 1042-S for income paid during 2005.

What's New


Beginning in 2006, processing year 2007, IRS will no longer accept 3 1/2-inch diskettes for filing information returns.

New regulations under section 1446 apply to publicly traded partnerships (PTP) that have effectively connected income. The PTP can no longer elect to withhold tax based on effectively connected income allocable to its foreign partners. The PTP must withhold on the distribution of that income to its foreign partners. See page 5.

Purpose of Form

Use Form 1042-S to report income described under *Amounts Subject to Reporting on Form 1042-S* on page 4 and to report amounts withheld under Chapter 3 of the Internal Revenue Code.

Also use Form 1042-S to report distributions of effectively connected income by a publicly traded partnership or nominee. See *Publicly Traded Partnership (Section 1446 Withholding Tax)* on page 5.

 Every person required to deduct and withhold any tax under Chapter 3 of the Code is liable for such tax.

Copy A is filed with the Internal Revenue Service. Copies B, C, and D are for the recipient. Copy E is for your records.

Do not use Form 1042-S to report an item required to be reported on—

- Form W-2 (wages and other compensation made to employees (other than compensation for dependent personal services for which the beneficial owner is claiming treaty benefits) including wages in the form of group-term life insurance),

- Form 1099, or
- Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, or Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Withholding agents otherwise required to report a distribution partly on a Form 8288-A or Form 8805 and partly on a Form 1042-S may instead report the


entire amount on Form 8288-A or Form 8805.

Who Must File

Every withholding agent (defined on page 2) must file an information return on Form 1042-S to report amounts paid during the preceding calendar year that are described under *Amounts Subject to Reporting on Form 1042-S* on page 4. However, withholding agents who are individuals are not required to report a payment on Form 1042-S if they are not making the payment as part of their trade or business and no withholding is required to be made on the payment. For example, an individual making a payment of interest that qualifies for the portfolio interest exception from withholding is not required to report the payment if the portfolio interest is paid on a loan that is not connected to the individual's trade or business. However, an individual paying an amount that has actually been subject to withholding is required to report the payment. Also, an individual paying an amount on which withholding is required must report the payment, whether or not the individual actually withholds. See *Multiple Withholding Agent Rule* beginning on page 10 for exceptions to reporting when another person has reported the same payment to the recipient. Also see *Publicly Traded Partnerships (Section 1446 Withholding Tax)* on page 5.

You must file a Form 1042-S even if you did not withhold tax because the income was exempt from tax under a U.S. tax treaty or the Code, including the exemption for income that is effectively connected with the conduct of a trade or business in the United States, or you released the tax withheld to the recipient. For exceptions, see *Amounts That Are Not Subject to Reporting on Form 1042-S* beginning on page 4.

Amounts paid to bona fide residents of U.S. possessions and territories are not subject to reporting on Form 1042-S if the beneficial owner of the income is a U.S. citizen, national, or resident alien.

 If you are required to file Form 1042-S, you must also file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. See Form 1042 for more information.


Where, When, and How To File

Forms 1042-S, whether filed on paper, electronically, or on magnetic media,

must be filed with the Internal Revenue Service by March 15, 2007. You are also required to furnish Form 1042-S to the recipient of the income on or before March 15, 2007.

Send any paper Forms 1042-S with Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, to the Internal Revenue Service Center, Philadelphia, PA 19255-0607. You must use Form 1042-T to transmit paper Forms 1042-S. Use a separate Form 1042-T to transmit each type of Form 1042-S. See *Payments by U.S. Withholding Agents* beginning on page 5 and the Form 1042-T instructions for more information. If you have 250 or more Forms 1042-S to file, follow the instructions under *Electronic/Magnetic Media Reporting* below.

Extension of time to file. To request an extension of time to file Forms 1042-S, file Form 8809, Application for Extension of Time To File Information Returns. See the Form 8809 instructions for where to file that form. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S. By filing Form 8809, you will get an automatic 30-day extension to file Form 1042-S. If you need more time, a second Form 8809 may be submitted before the end of the initial extended due date. See Form 8809 for more information.

 If you are requesting extensions of time to file for more than 50 withholding agents or payers, you must submit the extension requests electronically or magnetically. See Pub. 1187, *Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically or Magnetically*, for more information.

Electronic/Magnetic Media Reporting

If you file 250 or more Forms 1042-S, you are required to submit them electronically or using magnetic media.

Electronic submissions are filed using the Filing Information Returns Electronically (FIRE) System. The FIRE System operates 24 hours a day, 7 days a week, at <http://fire.irs.gov>. For more information, see Pub. 1187.

Acceptable form of magnetic media are tape cartridges that meet the specifications in Pub. 1187.

The electronic/magnetic media filing requirement applies separately to original and amended returns. Any person, including a corporation, partnership,

Box 9, Withholding Agent's Employer Identification Number (EIN)

You are generally required to enter your EIN. However, if you are filing Form 1042-S as a QI, withholding foreign partnership, or withholding foreign trust, enter your QI-EIN, WP-EIN, or WT-EIN. Enter the number and check the applicable box.

If you do not have an EIN, you can apply for one online at www.irs.gov/smallbiz or by telephone at 1-800-829-4933. Also, you can apply for an EIN by filing Form SS-4, Application for Employer Identification Number. File amended Forms 1042-S when you receive your EIN.

To get a QI-EIN, WP-EIN, or WT-EIN, submit Form SS-4 with your application for that status. (See the definitions for *Qualified intermediary (QI)* on page 3 and *Withholding foreign partnership (WP)* or *withholding foreign trust (WT)* on page 4 for more information.) Do not send an application for a QI-EIN, WP-EIN, or WT-EIN to the Philadelphia Service Center; it will not be processed.

Box 10, Withholding Agent's Name and Address

Enter your name and address. If your post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

If you are a nominee that is the withholding agent under section 1446, check the box and enter the PTP's name and other information in boxes 17 through 20.

Note. On statements furnished to Canadian recipients of U.S. source deposit interest, in addition to your name and address, you must include the telephone number of a person to contact. This number must provide direct access to an individual who can answer questions about the statement. The telephone number is not required on Copy A of paper forms or on electronic/magnetic media filed with the IRS. You must also include a statement that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

Box 11, Recipient's Account Number

You may use this box to enter the account number assigned by you to the recipient.

Box 12, Recipient Code

Enter the recipient code from the list on page 12. The following special instructions apply.

- If applicable, use recipient code 09 (artist or athlete) instead of recipient code 01 (individual), 02 (corporation), or 03

(partnership other than a withholding foreign partnership).

- Use recipient code 12 if you are making a payment to a QI and 04 if you are making a payment to a WP or a WT.

- If you are making a payment to an NQI or flow-through entity, you generally must use the recipient code that applies to the type of recipient who receives the income from the NQI or flow-through entity.

- Use recipient code 03 (partnership other than a withholding foreign partnership) only if you are reporting a payment of income that is effectively connected with the conduct of a trade or business of a nonwithholding foreign partnership in the United States.

Otherwise, follow the rules that apply to payments to flow-through entities.

- Use recipient code 20 (unknown recipient) only if you have not received a withholding certificate or other documentation for a recipient or you cannot determine how much of a payment is reliably associated with a specific recipient. Do not use this code because you cannot determine the recipient's status as an individual, corporation, etc. The regulations under Chapter 3 of the Code provide rules on how to determine a recipient's status when a withholding agent does not have the necessary information.

- Only QIs may use recipient codes 13 (private arrangement intermediary withholding rate pool—general), 14 (private arrangement intermediary withholding rate pool—exempt organizations), 15 (qualified intermediary withholding rate pool—general), and 16 (qualified intermediary withholding rate pool—exempt organizations). A QI should only use recipient code 14 or 16 for pooled account holders that have claimed an exemption based on their tax-exempt status and not some other exemption (for example, treaty or other Code exception). A U.S. withholding agent making a payment to a QI should use recipient code 12.

Box 13, Recipient's Name and Address

Name. Enter the complete name of the recipient.

- If you do not know the name of the recipient, enter "Unknown Recipient."
- If Form 1042-S is being completed by a QI, WP, or WT for a withholding rate pool, enter "Withholding rate pool" in box 13. No address is necessary.

- A QI reporting payments made to a PAI on a withholding rate pool basis must include the name and address of the PAI in box 13.

Address. You must generally enter a foreign address in box 13. However, there are limited exceptions. For example, you may enter a U.S. address when reporting payments of scholarship or fellowship grants (income code 15).

For addresses outside the United States or its possessions, follow the foreign country's practice for entering the postal code. Do not abbreviate the country name.

For addresses within the United States, use the U.S. Postal Service 2-letter abbreviation for the state name. Do not enter "United States" or "U.S."

Box 14, Recipient's U.S. Taxpayer Identification Number (TIN)

You must obtain and enter a U.S. taxpayer identification number (TIN) for:

- Any recipient whose income is effectively connected with the conduct of a trade or business in the United States.

Note. For these recipients, exemption code 01 should be entered in box 6.

- Any foreign person claiming a reduced rate of, or exemption from, tax under a tax treaty between a foreign country and the United States, unless the income is an unexpected payment (as described in Regulations section 1.1441-6(g)) or consists of dividends and interest from stocks and debt obligations that are actively traded; dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund); dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933; and amounts paid with respect to loans of any of the above securities.

- Any nonresident alien individual claiming exemption from tax under section 871(f) for certain annuities received under qualified plans.

- A foreign organization claiming an exemption from tax solely because of its status as a tax-exempt organization under section 501(c) or as a private foundation.

- Any QI.
- Any WP or WT.
- Any nonresident alien individual claiming exemption from withholding on compensation for independent personal services.
- Any foreign grantor trust with five or fewer grantors.
- Any U.S. branch of a foreign bank or foreign insurance company that is treated as a U.S. person.

If a foreign person provides a TIN on a Form W-8, but is not required to do so, the withholding agent must include the TIN on Form 1042-S.

Box 15, Recipient's Country of Residence for Tax Purposes

Enter the unabbreviated name of the recipient's country of residence for tax purposes.

Box 16, Recipient's Country Code

You must enter the code (from the list that begins on page 15) for the country of which the recipient claims residency under that country's tax laws. Enter "OC"

10 Enclosure 6: Title 31 U.S. Code of Federal Regulations, Section 306.10, Footnote 2, page 143

This enclosure proves that Taxpayer Identification Numbers are not required for non-resident non-persons not engaged in a “trade or business”. Also shows that Taxpayer Identification Numbers are only required for payments connected with a “trade or business”.

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TITLE 31 CODE OF FEDERAL REGULATIONS

Fiscal Service, Treasury

§ 306.11

the context, refer only to transferable securities.

[38 FR 7078, Mar. 15, 1973, as amended at 59 FR 59036, Nov. 15, 1994; 64 FR 38125, July 15, 1999]

§ 306.3 Transportation charges and risks in the shipment of securities.

The following guidelines apply to the transportation of reissued securities or securities presented for authorized transactions:

(a) The securities may be presented in person by the owner or the owner's agent.

(b) If securities are not presented in person, shipment of the securities is at the owner's risk and expense.

(c) Reissued securities will be delivered by certified mail or by other means, at the risk of the registered owner and at the expense of the Department.

[64 FR 38125, July 15, 1999]

Subpart B—Registration

§ 306.10 General.

The registration used must express the actual ownership of a security and may not include any restriction on the authority of the owner to dispose of it in any manner, except as otherwise specifically provided in these regulations. The Treasury Department reserves the right to treat the registration as conclusive of ownership. Requests for registration should be clear, accurate, and complete, conform with one of the forms set forth in this subpart, and include appropriate taxpayer identifying numbers.² The registration of all bonds owned by the same person, organization, or fiduciary should be uniform with respect to the name of the owner and, in the case of a fiduciary, the description of the fiduciary

²Taxpayer identifying numbers are not required for foreign governments, nonresident aliens not engaged in trade or business within the United States, international organizations and foreign corporations not engaged in trade or business and not having an office or place of business or a financial or paying agent within the United States, and other persons or organizations as may be exempted from furnishing such numbers under regulations of the Internal Revenue Service.

capacity. Individual owners should be designated by the names by which they are ordinarily known or under which they do business, preferably including at least one full given name. The name of an individual may be preceded by any applicable title, as, for example, *Mrs.*, *Miss*, *Ms.*, *Dr.*, or *Rev.*, or followed by a designation such as *M.D.*, *D.D.*, *Sr.*, or *Jr.* Any other similar suffix should be included when ordinarily used or when necessary to distinguish the owner from a member of his family. A married woman's own given name, not that of her husband, must be used, for example, *Mrs. Mary A. Jones*, not *Mrs. Frank B. Jones*. The address should include, where appropriate, the number and street, route, or any other local feature and the Zip Code.

§ 306.11 Forms of registration for transferable securities.

The forms of registration described below are authorized for transferable securities:

(a) *Natural persons in their own right.* In the names of natural persons who are not under any legal disability, in their own right, substantially as follows:

(1) *One person.* In the name of one individual. Examples:

John A. Doe (123-45-6789).
Mrs. Mary C. Doe. (123-45-6789).
Miss Elizabeth Jane Doe (123-45-6789).

An individual who is sole proprietor of a business conducted under a trade name may include a reference to the trade name. Examples:

John A. Doe, doing business as Doe's Home Appliance Store (123-45-6789).

or

John A. Doe (123-45-6789), doing business as Doe's Home Appliance Store.

(2) *Two or more persons—general.* Securities will not be registered in the name of one person payable on death to another, or in any form which purports to authorize transfer by less than all the persons named in the registration (or all the survivors).³ Securities will

³Warning. Difference Between Transferable Treasury Securities Registered in the Names of Two or More Persons and United States

Continued

11 Enclosure 7: Title 26 U.S. Code of Federal Regulations, Section 1.871-1(b)(1)(i), p. 336

This enclosure proves that Taxpayer Identification Numbers are not required for non-resident non-persons not engaged in a “trade or business”. Also shows that Taxpayer Identification Numbers are only required for payments connected with a “trade or business”.

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(ii) In 1999, *P* chooses to apply this section to all losses recognized in its 1987 taxable year and in all subsequent years. Consequently, the loss on the sale of *N* is allocated against U.S. source income under paragraph (a)(1) of this section. Allocation of the loss against U.S. source income reduces *P*'s overall foreign loss account and increases *P*'s tax liability in 2 years: 1990, a year that will not be open for assessment on June 30, 1999, and 1997, a year that will be open for assessment on June 30, 1999. Pursuant to paragraph (e)(2)(i) of this section, *P* must file an amended federal income tax return that reflects the rules of this section for 1997, but not for 1990.

Example 3. (i) *P*, a domestic corporation, has a calendar taxable year. On March 10, 1989, *P* recognizes a \$100 capital loss on the sale of *N*, a foreign corporation. The loss is allocated against foreign source income under § 1.861-8(e)(7) on *P*'s federal income tax return for 1989 and results in excess foreign tax credits for that year. The excess credit is carried back to 1988, pursuant to section 904(c). In 1999, *P* chooses to apply this section to all losses recognized in its 1989 taxable year and in all subsequent years. On June 30, 1999, *P*'s 1988 taxable year is closed for assessment, but *P*'s 1989 taxable year is open with respect to claims for refund.

(ii) Because *P* chooses to apply this section to its 1989 taxable year, the loss on the sale of *N* is allocated against U.S. source income under paragraph (a)(1) of this section. Allocation of the loss against U.S. source income would have permitted the foreign tax credit to be used in 1989, reducing *P*'s tax liability in 1989. Nevertheless, under paragraph (e)(2)(ii) of this section, because the credit was carried back to 1988, *P* may not claim the foreign tax credit in 1989.

[T.D. 8805, 64 FR 1511, Jan. 11, 1999, as amended by T.D. 8973, 66 FR 67085, Dec. 28, 2001; 67 FR 3812, Jan. 28, 2002]

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

NONRESIDENT ALIEN INDIVIDUALS

§ 1.871-1 Classification and manner of taxing alien individuals.

(a) *Classes of aliens.* For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See § 1.1-1(b). Nonresident alien individuals

are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States. However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code. Accordingly, any reference in §§ 1.1-1 through 1.1388-1 and §§ 1.1491-1 through 1.1494-1 of this part to non-resident alien individuals does not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise specifically provided. Similarly, any reference to resident aliens or U.S. residents includes those with respect to whom an election is in effect, unless otherwise specifically provided.

(b) *Classes of nonresident aliens—(1) In general.* For purposes of the income tax, nonresident alien individuals are divided into the following three classes:

(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States.

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under § 1.871-9 to be, engaged in a trade or business in the United States, and

(iii) Nonresident alien individuals who are bona fide residents of Puerto Rico during the entire taxable year.

An individual described in subdivision (i) or (ii) of this subparagraph is subject to tax pursuant to the provisions of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations thereunder. See §§ 1.871-7 and 1.871-8. The provisions of subpart A do not apply to individuals described in subdivision (iii) of this subparagraph, but such individuals, except as provided in section 933 with respect to Puerto Rican source income, are subject to the tax imposed by section 1 or section 1201(b). See § 1.876-1.