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U.S. Tax Guide for Aliens

For use in preparing 2007 Returns

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Introduction

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as nonresident aliens and resident aliens. This publication will help you determine your status and give you information you will need to file your U.S. tax return. Resident aliens generally are taxed on their worldwide income, the same as U.S. citizens. Nonresident aliens are taxed only on their income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States.

Table A, What You Need To Know About U.S. Taxes, provides a list of questions and the chapter or chapters in this publication where you will find the related discussion.
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Answers to frequently asked questions are presented in the back of the publication.

The information in this publication is not as comprehensive for resident aliens as it is for nonresident aliens. Resident aliens are generally treated the same as U.S. citizens and can find more information in other IRS publications.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions. You can write to us at the following address:

Internal Revenue Service
Individual Forms and Publications Branch
SE:W:CAR:MP:T1
111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at "taxforms@irs.gov." (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

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Tax questions. If you have a tax question, check the information available on www.irs.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

What's New for 2007

Tax benefits extended. The following tax benefits were extended through 2007.
- Deduction for educator expenses in figuring adjusted gross income.
- District of Columbia first-time homebuyer credit.

IRA deduction expanded. If you were covered by a retirement plan, you may be able to take an IRA deduction if your 2007 modified adjusted gross income (AGI) is less than $62,000 ($103,000 if a qualifying widow(er)). You may be able to deduct up to an additional $3,000 if you were a participant in a 401(k) plan and your employer was in bankruptcy in an earlier year.

Standard mileage rates. The 2007 rate for business use of your vehicle is 48 1/2 cents a mile.
The 2007 rate for use of your vehicle to move is 20 cents a mile. The special rate for charitable use of your vehicle to provide relief related to Hurricane Katrina has expired.

Unreported social security and medicare tax on wages. If you are an employee and your employer did not withhold social security and medicare tax, see Form 8919 to figure and report this tax.

New recordkeeping requirements for contributions of money. For charitable contributions of money, regardless of the amount, you must maintain as a record of the contribution a bank record (such as a cancelled check) or a written record from the charity. The written record must include the name of the charity, date, and amount of the contribution. Charitable contributions are discussed in chapter 5.

What’s New for 2008

IRA deduction expanded. You may be able to deduct up to $5,000 ($6,000 if age 50 or older at the end of the year). You may be able to take an IRA deduction if you were covered by a retirement plan and your 2008 modified AGI is less than $63,000 ($105,000) if a qualifying widow(er)

You may be able to deduct up to an additional $3,000 if you were a participant in a 401(k) plan and your employer was in bankruptcy in an earlier year.

Personal exemption and itemized deduction phaseouts reduced. Taxpayers with adjusted gross income above a certain amount may lose part of their deduction for personal exemptions and itemized deductions. The amount by which these deductions are reduced in 2008 will be only ½ of the amount of the reduction that otherwise would have applied in 2007.

Frivolous tax submissions. The IRS has published a list of positions that are identified as frivolous. The penalty for filing a frivolous tax return is $5,000. Also, the $5,000 penalty will apply to other specified frivolous submissions. For more information, see Penalties in chapter 7.

Interest-related dividends and short-term capital gain dividends received from mutual funds. Beginning in 2008, the exemption from 30% tax on certain interest-related dividends and short-term capital gain dividends received from a mutual fund or other regulated investment company will no longer apply.

Reminders

Third party designee. You can check the “Yes” box in the “Third Party Designee” area of your return to authorize the IRS to discuss your return with a friend, family member, or any other person you choose. This allows the IRS to call the person you identified as your designee to answer any questions that may arise during the processing of your return. It also allows your designee to perform certain actions such as asking the IRS for copies of notices or transcripts related to your return. Also, the authorization can be revoked. See your income tax package for details.

Change of address. If you change your mailing address, be sure to notify the Internal Revenue Service using Form 8822, Change of Address.

Nonresident aliens who filed Form 1040NR or Form 1040NR-EZ with the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, should send the form there. Resident aliens should send the form to the Internal Revenue Service Center for their old address (addresses for the service centers are on the back of the form).

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.
Nonresident Alien or Resident Alien?

Introduction
You should first determine whether, for income tax purposes, you are a nonresident alien or a resident alien. Figure 1-4 will help you make this determination. You are both a nonresident and resident in the same year, you have a dual status. Dual status is explained later. Also explained later are topics and special situations.

Topics
This chapter discusses:
• How to determine if you are a nonresident, resident, or dual-status alien, and
• How to treat a nonresident spouse as a resident alien.

Useful Items
You may want to see:
Form (and Instructions)
• 1040 U.S. Individual Income Tax Return
• 1040A U.S. Individual Income Tax Return
• 1040NR U.S. Nonresident Alien Income Tax Return
• 8833 Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
• 8840 Closer Connection Exception Statement for Aliens
• 8843 Statement for Exempt Individuals and Individuals With a Medical Condition

See chapter 12 for information about getting these forms.

Nonresident Aliens
If you are an alien (not a U.S. citizen), you are considered a nonresident alien unless you meet one of the two tests described next under Resident Aliens.

Resident Aliens
You are a resident alien of the United States for tax purposes if you meet either the green card test or the substantial presence test for calendar year 2007 (January 1–December 31). Even if you do not meet either of these tests, you may be able to choose to be treated as a U.S. resident for part of the year. See First-Year Choice under Dual-Status Aliens, later.

Green Card Test
You are a resident for tax purposes if you are a lawful permanent resident of the United States at any time during calendar year 2007. (However, see Dual-Status Aliens, later.) This is known as the “green card” test. You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued you an alien registration card, also known as a “green card.” You continue to have resident status under this test unless the status is taken away from you or is administratively or judicially determined to have been abandoned.

Resident status taken away. Resident status is considered to have been taken away from you if the U.S. government issues you a final administrative or judicial order of exclusion or deportation. A final judicial order is an order that you may no longer appeal to a higher court of competent jurisdiction.

Resident status abandoned. An administrative or judicial determination of abandonment of resident status may be initiated by you, the USCIS, or a U.S. consular officer. If you initiate the determination, your resident status is considered to be abandoned when you file either of the following with the USCIS or U.S. consular officer:
• Your application for abandonment.
• Your Alien Registration Receipt Card attached to a letter stating your intent to abandon your resident status.
You must file the letter by certified mail, return receipt requested. You must keep a copy of the letter and proof that it was mailed and received.

If the USCIS or U.S. consular officer initiates this determination, your resident status will be considered to be abandoned when the final administrative order of abandonment is issued. If you are granted an appeal to a federal court of competent jurisdiction, a final judicial order is required.

Under U.S. immigration law, a lawful permanent resident who is required to file a tax return as a resident and fails to do so may be regarded as having abandoned status and may lose permanent resident status.

A long-term resident who ceases to be a lawful permanent resident may be subject to special reporting requirements and tax provisions. See Expatriation Tax in chapter 4.

Termination of residency after June 3, 2004. If you terminate your residency after June 3, 2004, you will still be considered a U.S. resident for tax purposes until you notify the Secretary of Homeland Security and file Form 8854, Initial and Annual Expatriation Information Statement.

Substantial Presence Test
You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for calendar year 2007. To meet this test, you must be physically present in the United States on at least:
1. 31 days during 2007, and
2. 183 days during the 3-year period that includes 2007, 2006, and 2005, counting:
   a. All the days you were present in 2007, and
   b. ½ of the days you were present in 2006, and
   c. ½ of the days you were present in 2005.

Example. You were physically present in the United States on 120 days in each of the years 2005, 2006, and 2007. To determine if you meet the substantial presence test for 2007, count the full 120 days of presence in 2007, 40 days in 2006 (½ of 120), and 20 days in 2005 (½ of 120). Because the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 2007.

The term United States includes the following areas:
• All 50 states and the District of Columbia.
• The territorial waters of the United States.
• The seabed and subsoil of those submarine areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

The term does not include U.S. possessions and territories or U.S. airspace.

Days of Presence in the United States
You are treated as present in the United States on any day you are physically present in the country at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the United States for the substantial presence test.
• Days you commute to work in the United States from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.
• Days you are in the United States for less than 24 hours when you are in transit between two places outside the United States.
• Days you are in the United States as a crew member of a foreign vessel.
• Days you are unable to leave the United States because of a medical condition that arose while you are in the United States.
• Days you are an exempt individual.
The specific rules that apply to each of these categories are discussed next.

### Regular commuters from Canada or Mexico.

Do not count the days on which you commute to work in the United States from your residence in Canada or Mexico if you regularly commute from Canada or Mexico. You are considered to commute regularly if you commute to work in the United States on more than 75% of the workdays during your working period.

For this purpose, “commute” means to travel to work and return to your residence within a 24-hour period. “Workdays” are the days on which you work in the United States or Canada or Mexico. “Working period” means the period beginning with the first day in the current year on which you are physically present in the United States to work and ending on the last day in the current year on which you are physically present in the United States to work. If your work requires you to be present in the United States only on a seasonal or cyclical basis, your working period begins on the first day of the season or cycle on which you are present in the United States to work and ends on the last day of the season or cycle on which you are present in the United States to work. You can have more than one working period in a calendar year, and your working period can begin in one calendar year and end in the following calendar year.

**Example.** Maria Perez lives in Mexico and works for Compañía ABC in its office in Mexico. She was assigned to her firm’s office in the United States from February 1 through June 1. On June 2, she resumed her employment in Mexico. On 69 days, Maria commuted each morning from her home in Mexico to work in Compañía ABC’s U.S. office. She returned to her home in Mexico on each of those evenings. On 7 days, she worked in her firm’s Mexico office. For purposes of the substantial presence test, Maria does not count the days she commuted to work in the United States because those days equal more than 75% of the workdays during the working period (69 workdays in the United States divided by 76 workdays in the working period equals 90.8%).

**Days in transit.** Do not count the days you are in the United States for less than 24 hours and you are in transit between two places outside the United States. You are considered to be in transit if you engage in activities that are substantially related to completing travel to your foreign destination. For example, if you travel between airports in the United States to change
The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
• Have a closer connection during the year to one foreign country in which you have a tax home than to the United States, or if you have a closer connection to two foreign countries, discussed next.

Closer connection to two foreign countries. You can demonstrate that you have a closer connection to two foreign countries (but not more than two) if you meet all of the following conditions.

• You maintained a tax home beginning on the first day of the year in one foreign country.
• You changed your tax home during the year to a second foreign country.
• You continued to maintain your tax home in the second foreign country for the rest of the year.
• You had a closer connection to each foreign country than to the United States for the period during which you maintained a tax home in that foreign country.
• You are subject to tax as a resident under the tax laws of either foreign country for the entire year or subject to tax as a resident in both foreign countries for the period during which you maintained a tax home in each foreign country.

Tax home. Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you permanently or indefinitely work as an employee or a self-employed individual. If you do not have a regular or main place of business because of the nature of your work, then your tax home is the place where you regularly live. If you do not fit either of these categories, you are considered an itinerant and your tax home is wherever you work.

For determining whether you have a closer connection to a foreign country, your tax home must also be in existence for the entire current year, and must be located in the same foreign country to which you are claiming to have a closer connection.

Foreign country. In determining whether you have a closer connection to a foreign country, the term "foreign country" means:
• Any territory under the sovereignty of the United Nations or a government other than that of the United States,
• The territorial waters of the foreign country (determined under U.S. law),
• The seabed and subsoil of those subma- rine areas which are adjacent to the terri- torial waters of the foreign country and over which the foreign country has exclu- sive rights under international law to ex- plore and exploit natural resources, and
• Possessions and territories of the United States.

Establishing a closer connection. You will be considered to have a closer connection to a foreign country than the United States if you or the IRS establishes that you have maintained more significant contacts with the foreign country than with the United States. In determining whether you have maintained more significant contacts with the foreign country than with the United States, the facts and circumstances to be considered include, but are not limited to, the following.

1. The country of residence you designate on forms and documents.
2. The types of official forms and documents you file, such as Form W-9, Form W-8BEN, or Form W-8ECI.
3. The location of:
   a. Your permanent home,
   b. Your family,
   c. Your personal belongings, such as cars, furniture, clothing, and jewelry,
   d. Your current social, political, cultural, professional, or religious affiliations,
   e. Your business activities (other than those that constitute your tax home),
   f. The jurisdiction in which you hold a driver’s license,
   g. The jurisdiction in which you vote, and
   h. Charitable organizations to which you contribute.

It does not matter whether your permanent home is a house, an apartment, or a furnished room. It also does not matter whether you rent or own it. It is important, however, that your home be available at all times, continuously, and not solely for short stays.

You cannot claim you have a closer connection to a foreign country if either of the following applies:
• You personally applied, or took other steps during the year, to change your status to that of a permanent resident, or
• You had an application pending for adjust- ment of status during the current year.

Steps to change your status to that of a perma- nent resident include, but are not limited to, the filing of the following forms.

Form I-580, Waiver of Rights, Privileges, Exemptions and Immunities
Form I-485, Application to Register Perma- nent Residence or Adjust Status
Form I-130, Petition for Alien Relative, on your behalf
Form I-140, Immigrant Petition for Alien Worker, on your behalf
Form ETA-750, Application for Alien Em- ployment Certification, on your behalf
Form DS-230, Application for Immigrant Visa and Alien Registration

Form 8840. You must attach a fully completed Form 8840 to your income tax return to claim you have a closer connection to a foreign coun- try or countries.
If you do not have to file a return, send the form to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, by the due date for filing Form 1040NR or Form 1040-NR-EZ. The due date for filing is discussed later in chapter 7.

If you do not timely file Form 8840, you cannot claim a closer connection to a foreign country or countries. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Effect of Tax Treaties

The rules given here determine if you are a U.S. resident. However, you do not have to file a return, send the form to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, by the due date for filing Form 1040NR or Form 1040-NR-EZ. The due date for filing is discussed later in chapter 7.

If you do not timely file Form 8840, you cannot claim a closer connection to a foreign country or countries. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

First-Year Choice

You can be both a nonresident alien and a resident alien during the same tax year. This usually occurs in the year you arrive in or depart from the United States. Aliens who have dual status should see chapter 6 for information on filing a return for a dual-status tax year.

First Year of Residency

If you are a U.S. resident for the calendar year, but you were not a U.S. resident at any time during the preceding calendar year, you are a U.S. resident only for the part of the calendar year that begins on the residency starting date. You are a nonresident alien for the part of the year before that date.

Residency starting date under substantial presence test. If you meet the substantial presence test for a calendar year, your residency starting date is generally the first day you are present in the United States during that calendar year. However, you do not have to
count up to 10 days of actual presence in the United States if on those days you establish that:

- You had a closer connection to a foreign country than to the United States, and
- You were present in that foreign country.

See Connection to a Foreign Country, earlier.

In determining whether you can exclude up to 10 days, the following rules apply.

- You can exclude days from more than one period of presence as long as the total days in all periods are not more than 10.
- You cannot exclude any days in a period of consecutive days of presence if all the days in that period cannot be excluded.
- Although you can exclude up to 10 days of presence in determining your residency starting date, you must include those days when determining whether you meet the substantial presence test.

Example. Ivan Ivanovich is a citizen of Russia. He came to the United States for the first time on January 6, 2007, to attend a business meeting and returned to Russia on January 10, 2007. His tax home remained in Russia. On March 1, 2007, he moved to the United States and resided here for the rest of the year. Ivan is able to establish a closer connection to Russia for the period January 6–10. Thus, his residency starting date is March 1.

Statement required to exclude up to 10 days of presence. You must file a statement with the IRS if you are excluding up to 10 days of presence in the United States for purposes of your residency starting date. You must sign and date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable):

- Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
- Your passport number and the name of the foreign country that issued your passport.
- The tax year for which the statement applies.
- The first day that you were present in the United States during the year.
- The dates of the days you are excluding in figuring your first day of residency.
- Sufficient facts to establish that you have maintained your tax home in a closer connection to a foreign country during the period you are excluding.

Attach the required statement to your income tax return. If you are not required to file a return, send the statement to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, on or before the due date for filing Form 1040NR or Form 1040-NR-EZ. The due date for filing is discussed in chapter 7.

If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. Therefore, your first day of residency will be the first day you are present in the United States. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Residency starting date under green card test. If you meet the green card test at any time during a calendar year, but do not meet the substantial presence test for that year, your residency starting date is the first day in the calendar year on which you are present in the United States as a lawful permanent resident.

If you make the first-year choice, your residency starting date is the earlier of the first day during the year you are present in the United States or the substantial presence test or as a lawful permanent resident.

Residency during the preceding year. If you were a U.S. resident during any part of the preceding calendar year and you are a U.S. resident for any part of the current year, you will be considered a dual-status alien for the period of the current year. This applies whether you are a resident under the substantial presence test or green card test.

Example. Robert Bach is a citizen of Switzerland. He came to the United States as a U.S. resident for the first time on May 1, 2006, and remained on January 5, 2007, as a lawful permanent resident and still resides here in calendar year 2007. Robert’s U.S. residency is deemed to begin on January 1, 2007, because he qualified as a resident in calendar year 2006.

First-Year Choice

If you do not meet either the green card test or the substantial presence test for 2006 or 2007 and you did not choose to be treated as a resident for part of 2006, you must meet the substantial presence test for 2006, which you can choose to be treated as a U.S. resident for part of 2007. To make this choice, you must:

1. Be present in the United States for at least 31 days in a row in 2007, and
2. Be present in the United States for at least 75% of the number of days beginning with the first day of the 31-day period and ending with the last day of 2007. For purposes of the 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.

When counting the days of presence in (1) and (2) above, do not count the days you were in the United States under any of the exceptions discussed earlier under Days of Presence in the United States.

If you make the first-year choice, your residency starting date for 2007 is the first day of the earliest 31-day period described in (1) above that you use to qualify for the choice. You are treated as a U.S. resident for the rest of the year. If you are present for more than one 31-day period and you satisfy condition (2) above for
Choosing Resident
De minimis presence.
period after you have met that test. To request
turn. You can file the paper form or use one of mination date, you can exclude up to 10 days of
you meet the substantial presence test for 2008. 2004, you will still be considered a U.S. resident
You cannot file Form 1040 or the statement until If you terminate your residency after June 3,
choice.
You must attach a statement to Form
Earlier residency termination date.


The number of days of presence in the United States during 2008.
The date or dates of your 31-day period of


You are married to a U.S. citizen or resi-


A similar choice is available if, at the
end of the tax year, one spouse is a nonresident
alien and the other spouse is a U.S. citizen or
resident. See Nonresident Spouse Treated as a
Resident, later. If you previously made that
choice and it is still in effect, you do not need to
make the choice explained here.

Making the choice. You should attach a
statement signed by both spouses to your joint
return for the year of the choice. The statement
must contain the following information.

Each of those periods, your residency starting

date is the first day of the first 31-day period. If
you are present for more than one 31-day period
but you satisfy condition (2) above only for a
later 31-day period, your residency starting date
is the first day of the later 31-day period.

Note. You do not have to be married to
make this choice.

Example 1. Juan DaSilva is a citizen of the
Philippines. He came to the United States for the
first time on November 1, 2007, and was here on
31 consecutive days (from November 1 through December 1, 2007). Juan returned to the Philip-
ines on December 1 and came back to the United States on December 17, 2007. He stayed in
the United States for the rest of the year. During 2008, Juan was a resident of the United States under the substantial
presence test. Juan can make the first-year choice for 2007 because he was in the United States in 2007 for a period of 31 days in a row (November 1 through De-
cember 1) and for at least 75% of the days following (including the first day of his 31-day period). He can meet the first-year choice for 2007 because up to 5 days of absence are
considered days of presence for purposes of the 75% requirement.

Statement required to make the first-year
choice. You must attach a statement to Form
1040 to make the first-year choice. The state-
ment must contain your name and address and
specify the following.

• That you are making the first-year choice.
• That you were not a resident in 2006.
• That you are a resident under the substan-
tial presence test in 2008.
• The number of days of presence in the
United States during 2008.
• The date or dates of your 31-day period of
presence and the period of continuous
presence in the United States during
2007.
• The date or dates of absence from the
United States during 2007 that you are
treating as days of presence.

You cannot file Form 1040 or the statement until you meet the substantial presence test for 2008. If
you have not met the test for 2008 as of April 15, 2008, you can request an extension of time for filing your 2007 Form 1040 until a reasonable period after you have met that test. To request an extension to file until October 15, 2008, use Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Re-
turn. You can file the paper form or use one of the
electronic filing options explained in the Form 4868 instructions. You should pay with this
extension the amount of tax you expect to owe for 2007 figured as if you were a nonresident
alien the entire year. You can use Form 1040NR or Form 1040NR-EZ to figure the tax. Enter the
tax on Form 4868. If you do not pay the tax due, you will be charged interest on any tax not paid
by the regular due date of your return, and you may be charged a penalty on the late payment.
Once you make the first-year choice, you may not revoke it without the approval of the Internal Revenue Service.
If you do not follow the procedures discussed here for making the first-year choice, you will be
treated as a nonresident alien for the entire year. However, this does not apply if you can show by
clear and convincing evidence that you took reasonable actions to become aware of the filing
procedures and significant steps to comply with the procedures.

Choosing Resident
Alien Status

If you are a dual-status alien, you can choose to be treated as a U.S. resident for the entire year if all of the following apply.

• You were a nonresident alien at the begin-
ning of the year.
• You are a resident alien or U.S. citizen at the end of the year.
• You are married to a U.S. citizen or resi-
dent alien at the end of the year.
• Your spouse joins you in making the choice.

This includes situations in which both you and your spouse were nonresident aliens at the be-

ginning of the tax year and both of you are resident aliens at the end of the tax year.

Note. If you are single at the end of the year, you cannot make this choice.

If you make this choice, the following rules apply.

• You and your spouse are treated as U.S. residents for the entire year for income tax
purposes.
• You and your spouse are taxed on world-
wide income.
• You and your spouse must file a joint re-
turn for the year of the choice.
• Neither you nor your spouse can make
this choice for any later tax year, even if
you are separated, divorced, or widowed.
• The special instructions and restrictions
for dual-status taxpayers in chapter 6 do
not apply to you.

A declaration that you both qualify to make
the choice and that you choose to be
treated as U.S. residents for the entire tax
year.
• The name, address, and taxpayer identifi-
cation number (SSN or ITIN) of each
spouse. (If one spouse died, include the
name and address of the person who
makes the choice for the deceased
spouse.)

You generally make this choice when you file your joint return. However, you also can make the choice by filing Form 1040X, Amended U.S. Individual Income Tax Return. Attach Form 1040,
Form 1040A, or Form 1040EZ and print “Amended” across the top of the corrected re-
turn. If you make this choice after the due date for filing your 2007 return, you and your spouse must also amend any returns that you may have filed after the
year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed your original Form 1040. If you file the amended joint return within 3 years of the date you paid your income tax for that year, whichever is later.

Last Year of Residency

If you were a U.S. resident in 2007 but are not a U.S. resident during any part of 2008, you cease
to be a U.S. resident on your residency termina-
tion date. Your residency termination date is
December 31, 2007, unless you qualify for an earlier date as discussed next.

Earlier residency termination date. You
may qualify for a residency termination date that is earlier than December 31. This date is:

1. The last day in 2007 that you are physi-
cally present in the United States, if you
met the substantial presence test.
2. The first day in 2007 that you are no longer
a lawful permanent resident of the United States, if you met the green card test, or
3. The later of (1) or (2), if you met both tests.

You can use this date only if, for the remainder of 2007, your tax home was in a foreign country
and you had a closer connection to that foreign country. See Closer Connection to a Foreign Country, earlier.

A long-term resident who ceases to be a
lawful permanent resident may be subject to special reporting require-
ments and tax provisions. See Expatriation Tax in chapter 4.

If you terminate your residency after June 3, 2004, you will still be considered a U.S. resident for
tax purposes until you notify the Secretary of Homeland Security and file Form 8854, Initial and Annual Expatriation Information Statement.

De minimis presence. If you are a U.S. resi-
dent because of the substantial presence test and you qualify to use the earlier residency ter-
mination date, you can exclude up to 10 days of actual presence in the United States in deter-
mining your residency termination date. In deter-
mining whether you can exclude up to 10 days, the following rules apply.

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You must file a return if either meets the filing requirements for the year you make the choice, but you do not have to file a return for any later tax year.

Example. Lola Bovary is a citizen of Malta. She came to the United States for the first time on March 1, 2007, and resided here until August 25, 2007. On December 12, 2007, Lola came to Malta for the period December 12–16. Lola is not a U.S. resident for tax purposes during 2007 because she was present in the United States for 183 days (178 days for the period March 1 to August 25 plus 5 days in December). Lola's residency termination date is August 25, 2007.

Residency during the next year. If you are a U.S. resident during any part of 2008 and you remain a resident through the end of 2007, you will be taxed as a resident through the end of 2007. This applies whether you have a closer connection to a foreign country than the United States during 2007, and whether you are a resident under the substantial presence test or green card test.

Statement required to establish your residency termination date. You must sign and date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable):

- Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
- Your passport number and the name of the country that issued your passport.
- The tax year for which the statement applies.
- The last day that you were present in the United States during the year.
- Sufficient facts to establish that you have maintained your tax home in the United States during the year and that you have a closer connection to a foreign country for your last day of presence in the United States during the year or following the abandonment or resuspension of your status as a lawful permanent resident.
- The date that your status as a lawful permanent resident was abandoned or rescinded.
- Sufficient facts (including copies of relevant documents) to establish that your status as a lawful permanent resident has been abandoned or rescinded.
- If you can exclude days under the de minimis presence rule, discussed earlier, include the dates of the days you are excluding and sufficient facts to establish that you have maintained your tax home in the United States during the year and that you have a closer connection to a foreign country during the period you are excluding.

Attach the required statement to your income tax return. If you are not required to file a return, send the statement to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, on or before the due date for filing Form 1040NR or Form 1040NR-EZ. The due date for filing is discussed in chapter 7.

If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

Nonresident Spouse Treated as a Resident

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other spouse is a nonresident alien, you can choose to treat the nonresident spouse as a U.S. resident. This includes situations in which one spouse is a nonresident alien at the beginning of the tax year, but a resident alien at the end of the year, and the other spouse is a nonresident alien at the end of the year.

If you make this choice, you and your spouse are treated as income tax purposes as residents for your entire tax year. Neither you nor your spouse can claim under any tax treaty not to be a U.S. resident. You are both taxed on worldwide income. You must file a joint income tax return for the year you make the choice, and you and your spouse can file joint or separate returns in later years.

If you file a joint return under this provision, the special instructions and restrictions for dual-status taxpayers in chapter 6 do not apply to you.

Example. Bob and Sharon Williams are married and both are nonresident aliens at the beginning of the year. In June, Bob became a resident alien and remained a resident for the rest of the year. Bob and Sharon both choose to be treated as resident aliens by attaching a statement to their joint return. Bob and Sharon must file a joint return for the year they make the choice, but they can file either joint or separate returns for later years.

How To Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following information:

- A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for the entire tax year.
- The name, address, and identification number of each spouse. (If one spouse died, include the name and address of the person making the choice for the deceased spouse.)

Amended return. You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040X. Attach Form 1040X, Form 1040A, or Form 1040EZ and print "Amended" across the top of the corrected return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

Suspending the Choice

The choice to be treated as a resident alien is suspended for any tax year (after the tax year you made the choice) if neither spouse is a U.S. citizen or resident alien at any time during the tax year. This means each spouse must file a separate return as a nonresident alien for that year if either makes the filing requirements for nonresident aliens discussed in chapter 7.

Example. Dick Brown was a resident alien on December 31, 2004, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed joint return 2004 and 2005 income tax returns. On January 10, 2006, Dick became a nonresident alien. Judy had remained a nonresident alien throughout the period. Dick and Judy could have filed joint or separate returns for 2006 because Dick was a resident alien for part of that year. However, because neither Dick nor Judy is a resident alien at any time during 2007, their choice is suspended for that year. If either makes the filing requirements for nonresident aliens discussed in chapter 7, they must file separate returns as nonresident aliens for 2007. If Dick becomes a resident alien again in 2008, their choice is no longer suspended.

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained earlier under Suspending the Choice) or ended in one of the following ways. If the choice is ended in one of the following ways, neither spouse can make this choice in any later tax year.
1. **Revocation.** Either spouse can revoke the choice for any tax year, provided he or she makes the revocation by the due date for filing the tax return for that tax year. The spouse who revokes the choice must attach a signed statement declare that the choice is being revoked. The statement must include the name, address, and identification number of each spouse. If one spouse dies, include the name and address of the person who is revoking the choice for the deceased spouse.) The statement also must include a list of any states, foreign countries, and possessions that have community property laws in which either spouse is domiciled or where real property is located from which either spouse receives income. File the statement as follows:

a. If the spouse revoking the choice must file a return, attach the statement to the return for the first year the revocation applies.

b. If the spouse revoking the choice does not have to file a return, but does file a return (for example, to obtain a refund), attach the statement to the return.

c. If the spouse revoking the choice does not have to file a return and does not file a claim for refund, send the statement to the Internal Revenue Service Center where you filed the last joint return.

2. **Death.** The death of either spouse ends the choice, beginning with the first tax year following the year the spouse died. However, if the surviving spouse is a U.S. citizen or resident and is entitled to the joint tax rates as a surviving spouse, the choice will not end until the close of the last year for which these joint rates may be used. If both spouses die in the same tax year, the choice ends on the first day after the close of the tax year in which the spouses died.

3. **Legal separation.** A legal separation under a decree of divorce or separate maintenance ends the choice as of the beginning of the tax year in which the legal separation occurs.

4. **Inadequate records.** The Internal Revenue Service can end the choice for any tax year that either spouse has failed to keep adequate books, records, and other information necessary to determine the correct income tax liability, or to provide adequate access to those records.

### Special Situations

If you are a nonresident alien from American Samoa or Puerto Rico, you may be treated as a resident alien. If you are a nonresident alien in the United States and a bona fide resident of American Samoa or Puerto Rico during the entire tax year, you are taxed, with certain exceptions, according to the rules for resident aliens of the United States. For more information, see chapter 5.

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### Interest Income

**Generally,** U.S. source interest income includes the following items:

- Interest on bonds, notes, or other interest-bearing obligations of U.S. residents or domestic corporations.
- Interest paid by a domestic or foreign partnership or foreign corporation engaged in a U.S. trade or business at any time during the tax year.
- Original issue discount.
- Interest from a state, the District of Columbia, or the U.S. Government.

The place or manner of payment is immaterial in determining the source of the income. A substitute interest payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is sourced in the same manner as the interest on the transferred security.

**Exceptions.** U.S. source interest income does not include the following items:

1. **Interest paid by a resident alien or a domestic corporation** if for the 3-year period ending with the close of the payer’s tax year preceding the interest payment, at least 80% of the payer’s total gross income:
   - a. Is from sources outside the United States, and
   - b. Is attributable to the active conduct of a trade or business by the individual or corporation in a foreign country or a U.S. possession.

2. **Interest paid by a foreign branch of a domestic corporation** or a domestic partnership on deposits or withdrawable accounts with mutual savings banks, cooperative banks, credit unions, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under federal or state law if the interest paid or credited can be deducted by the association.

3. **Interest on deposits with a foreign branch** of a domestic corporation or domestic partnership, but only if the branch is in the commercial banking business.

### Dividends

In most cases, dividend income received from domestic corporations is U.S. source income. Dividend income from foreign corporations is usually foreign source income. Exceptions to both of these rules are discussed below. A substitute dividend payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is sourced in the same manner as a distribution on the transferred security.

**First exception.** Dividends received from a domestic corporation are not U.S. source income if the corporation elects to take the American Samoa economic development credit.
Example 1. Christina Brooks, a resident of the Netherlands, worked 240 days for a U.S. company during the tax year. She received $80,000 in compensation. None of it was for fringe benefits. Christina performed services in the United States for 60 days and performed services in the Netherlands for 180 days. Using the time basis for determining the source of compensation, $20,000 ($80,000 × 60/180) is her U.S. source income.

Example 2. Rob Waters, a resident of South Africa, is employed by a corporation. His annual salary is $100,000. None of it is for fringe benefits. During the first quarter of the year he worked entirely within the United States. On April 1, Rob was transferred to Singapore for the remainder of the year. Rob is able to establish that the first quarter of the year and the last 3 quarters of the year are two separate, distinct, and continuous periods of time. Accordingly, $25,000 of Rob’s annual salary is attributable to the first quarter of the year (.25 × $100,000). All of it is U.S. source income because he worked entirely within the United States during that quarter. The remaining $75,000 is attributable to the last three quarters of the year. During those quarters, he worked 150 days in Singapore and 30 days in the United States. His periodic performance of services in the United States did not result in distinct, separate, and continuous periods of time. Of his $75,000 salary, $20,000 ($75,000 × 30/180) is U.S. source income for the year.

Multi-year compensation. The source of multi-year compensation is generally determined on a time basis over the period to which the compensation is attributable. Multi-year compensation is compensation that is included in your income in one tax year but that is attributable to a period that includes two or more tax years. You determine the period to which the compensation is attributable based on the facts and circumstances of your case. For example, an amount of compensation that specifically relates to a period of time that includes several calendar years is attributable to the entire multi-year period.

The amount of compensation treated as from U.S. sources is figured by multiplying the total multi-year compensation by a fraction. The numerator of the fraction is the number of days (or unit of time less than a day, if appropriate) that you performed labor or personal services in the United States in connection with the project. The denominator of the fraction is the total number of days (or unit of time less than a day if appropriate) that you performed labor or personal services in connection with the project.

Geographical Basis

Compensation you receive as an employee in the form of the following fringe benefits is sourced on a geographical basis.

- **Housing.**
- **Education.**
- **Local transportation.**
- **Tax reimbursement.**
- **Hazardous or hardship duty pay as defined in Regulations section 1.861-4(b)(2)(v)(D)(5).**
- **Moving expense reimbursement.**

The amount of fringe benefits must be reasonable and you must substantiate them by adequate records or by sufficient evidence.

Principal place of work. The above fringe benefits, except for tax reimbursement and hazardous or hardship duty pay, are sourced based on your principal place of work. Your principal place of work is usually the place where you spend most of your working time. This could be your office, plant, store, shop, or other location. If there is no one place where you spend most of your working time, your main job location is the place where your work is centered, such as where you report for work or are otherwise required to "base" your work.

If you have more than one job at any time, your main job location depends on the facts in each case. The more important factors to be considered are:

- The total time you spend at each place.
- The amount of work you do at each place, and
- How much money you earn at each place.

Housing. The source of a housing fringe benefit is determined based on the location of your principal place of work. A housing fringe benefit includes payments to you or on your behalf (and your family’s if your family resides with you) only for the following:

- **Rent.**
- **Utilities (except telephone charges).**
- **Real and personal property insurance.**
- **Occupancy taxes not deductible under section 164 or 216(a).**
- **Nonrefundable fees for securing a leasehold.**
- **Rental of furniture and accessories.**
- **Household repairs.**
- **Residential parking.**
- **Fair rental value of housing provided in kind by your employer.**

A housing fringe benefit does not include:

- **Deductible interest and taxes (including deductible interest and taxes of a tenant-stockholder in a cooperative housing corporation).**
- **The cost of buying property, including principal payments on a mortgage.**
- **The cost of domestic labor (maids, gardeners, etc.).**
- **Pay television subscriptions.**
- **Improvements and other expenses that increase the value or appreciably prolong the life of property.**
- **Purchased furniture or accessories.**
- **Depreciation or amortization of property or improvements.**
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Table 2-1. Summary of Source Rules for Income of Nonresident Aliens

<table>
<thead>
<tr>
<th>Item of income</th>
<th>Factor determining source</th>
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<tbody>
<tr>
<td>Salaries, wages, other compensation</td>
<td>Where services performed</td>
</tr>
<tr>
<td>Business income:</td>
<td></td>
</tr>
<tr>
<td>Personal services</td>
<td>Where services performed</td>
</tr>
<tr>
<td>Sale of inventory—purchased</td>
<td>Where sold</td>
</tr>
<tr>
<td>Sale of inventory—produced</td>
<td>Allocation</td>
</tr>
<tr>
<td>Interest</td>
<td>Residence of payer</td>
</tr>
<tr>
<td>Dividends</td>
<td>Whether a U.S. or foreign corporation*</td>
</tr>
<tr>
<td>Rents</td>
<td>Location of property</td>
</tr>
<tr>
<td>Royalties:</td>
<td></td>
</tr>
<tr>
<td>Natural resources</td>
<td>Location of property</td>
</tr>
<tr>
<td>Patents, copyrights, etc.</td>
<td>Where property is used</td>
</tr>
<tr>
<td>Sale of real property</td>
<td>Location of property</td>
</tr>
<tr>
<td>Sale of personal property</td>
<td>Seller’s tax home (but see Personal Property, later, for exceptions)</td>
</tr>
<tr>
<td>Pensions</td>
<td>Where services were performed that earned the pension</td>
</tr>
<tr>
<td>Sale of natural resources</td>
<td>Allocation based on fair market value of product at export terminal. For more information, see section 1.663-1(b) of the regulations.</td>
</tr>
</tbody>
</table>

*Exceptions include:

1. Dividends paid by a U.S. corporation are foreign source if the corporation elects the American Samoa economic development credit.
2. Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation’s gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared.

Alternative Basis

If you are an employee, you can determine the source of your compensation under an alternative basis if you establish to the satisfaction of the IRS that, under the facts and circumstances of your case, the alternative basis more properly determines the source of your compensation than the time or geographical basis. If you use an alternative basis, you must keep (and have available for inspection) records to document why the alternative basis more properly determines the source of your compensation. Also, if your total compensation is $250,000 or more, you must check box R on page 5 of Form 1040NR, and attach a written statement to your tax return that sets forth all of the following.

1. Your name and social security number
2. The specific compensation income, or the specific fringe benefit, for which you are using the alternative basis.
3. For each item in (2), the alternative basis of allocation of source used.
4. For each item in (2), a computation showing how the alternative allocation was computed.
5. A comparison of the dollar amount of the U.S. compensation and foreign compensation sourced under both the alternative basis and the time or geographical basis discussed earlier.

Transportation Income

Transportation income is income from the use of a vessel or aircraft or for the performance of services directly related to the use of any vessel or aircraft. This is true whether the vessel or aircraft is owned, hired, or leased. The term “vessel or aircraft” includes any container used in connection with a vessel or aircraft.

All income from transportation that begins and ends in the United States is treated as derived from sources in the United States. If the transportation begins or ends in the United States, 50% of the transportation income is treated as derived from sources in the United States.

For transportation income from personal services, 50% of the income is U.S. source income if the transportation is between the United States and a U.S. possession. For nonresident aliens, this only applies to income derived from, or in connection with, an aircraft.

For information on how U.S. source transportation income is taxed, see chapter 4.

Scholarships, Grants, Prizes, and Awards

Generally, the source of scholarships, fellowships, grants, prizes, and awards is the residence of the payer regardless of who actually disburses the funds. However, see Activities to be performed outside the United States, later.

For example, payments for research or study in the United States made by the United States, a noncorporate U.S. resident, or a domestic
corporation, are from U.S. sources. Similar pay- ments from a foreign government or foreign cor- poration are foreign source payments because the funds may be disbursed through a U.S. agent. Payments made by an entity designated as a public international organization under the Inter- national Organizations Immunities Act are from foreign sources.

Activities to be performed outside the United States. Scholarships, fellowship grants, targeted grants, and achievement awards received by nonresident aliens for activities performed, or to be performed, outside the United States are not U.S. source income.

These rules do not apply to amounts paid as salary or other compensation for services. See Personal Services, earlier, for the source rules that apply.

Pensions and Annuities

If you receive a pension from a domestic trust for services performed both in and outside the United States, part of the pension payment is from U.S. sources. That part is the amount at- tributable to earnings of the pension plan and the employer contributions made for services performed in the United States. This applies whether the distribution is made under a quali- fied or nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded). If you performed services as an employee of the United States, you may receive a distribution from the U.S. Government under a plan, such as the Civil Service Retirement System, that is treated as a qualified pension plan. Your U.S. source income is the otherwise taxable amount of the distribution that is attributable to your total U.S. Government basic pay other than tax-exempt pay for services performed outside the United States.

Rent or Royalties

Your U.S. source income includes rent and royalty income received during the tax year from property located in the United States or from any interest in that property.

U.S. source income also includes rents or royalties for the use of, or for the privilege of using, in the United States, intangible property such as patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and similar property.

Real Property

Real property is land and buildings and gener- ally anything built on, growing on, or attached to land. Gross income from sources in the United States includes gains, profits, and income from the sale or other disposition of real property located in the United States.

Natural resources. The income from the sale of products of any farm, mine, oil or gas well, other natural deposit, or timber located in the United States and sold in a foreign country, or located in a foreign country and sold in the United States, is partly from sources in the United States. For information on determining that part, see section 1.863-1(b) of the regula- tions.

Personal Property

Personal property is property, such as machin- ery, equipment, or furniture, that is not real prop- erty.

Gain or loss from the sale or exchange of personal property generally has its source in the United States if you have a tax home in the United States. If you do not have a tax home in the United States, the gain or loss generally is considered to be from sources outside the United States.

Tax home. Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you permanently or indefinitely work as an employee or a self-employed individual. If you do not have a regular or main place of business because of the nature of your work, then your tax home is the place where you regularly live. If you do not fit either of these categories, you are considered an itinerant and your tax home is wherever you work.

Inventory property. Inventory property is per- sonal property that is stock in trade or that is held primarily for sale to customers in the ordi- nary course of your trade or business. Income from the sale of inventory that you purchased is sourced where the property is sold. Generally, this is where title to the property passes to the buyer. For example, income from the sale of inventory in the United States is U.S. source income, whether you purchased it in the United States or in a foreign country.

Income from the sale of inventory property that you produced in the United States and sold outside the United States (or vice versa) is partly from sources in the United States and partly from sources outside the United States. For in- formation on making this allocation, see section 1.863-3 of the regulations.

These rules apply even if your tax home is not in the United States.

Depreciable property. To determine the source of any gain from the sale of depreciable personal property, you must first figure the part of the gain that is not more than the total depre- ciation adjustments on the property. You allo- cate this part of the gain to sources in the United States based on the ratio of U.S. depreciation adjustments to total depreciation adjustments. The rest of this part of the gain is considered to be from sources outside the United States.

For this purpose, “U.S. depreciation adjust- ments” are the depreciation adjustments to the basis of the property that are allowable in figuring taxable income from U.S. sources. However, if the property is used predominantly in the United States during a tax year, all depreciation deductions allocable for that year are treated as U.S. depreciation adjustments. But there are some exceptions for certain transportation, communications, and other property used inter- nationally.

Gain from the sale of depreciable property that is more than the total depreciation adjust- ments on the property is sourced as if the prop- erty were inventory property, as discussed above.

A loss recognized after January 7, 2002, is sourced in the same way as the deprecia- tion deductions were sourced. However, if the prop- erty was used predominantly in the United States, the entire loss reduces U.S. source in- come. You can choose to apply this rule to losses recognized in tax years beginning after 1986. For details about making this choice, see section 1.865-1(2) of the regulations.

The basis of property usually means the cost (money plus the fair market value of other prop- erty or services) of property you acquire. Depre- ciation is an amount deducted to recover the cost or other basis of a trade or business asset. The amount you can deduct depends on the property’s cost, when you began using the prop- erty, how long it will take to recover your cost, and which depreciation method you use. A depre- ciation deduction is any deduction for depre- ciation or amortization or any other allowable deduction that treats a capital expenditure as a deductible expense.

Intangible property. Intangible property in- cludes patents, copyrights, secret processes and formulas, goodwill, trademarks, trade names, or other like property. The gain from the sale of amortizable or depreciable intangible property, up to the previously allowable amortization or deprecia- tion deductions, is sourced in the same way as the original deductions were sourced. This is the same as the source rule for gain from the sale of depreciable property. See Deprecia- ble property, earlier, for details on how to apply this rule.

Gain in excess of the amortization or depre- ciation deductions is sourced in the country where the property was used if the income from the sale is contingent on the productivity, use, or disposi- tion of the property, the income is sourced ac- cording to your tax home as discussed earlier. If payments for goodwill do not depend on its pro- ductivity, use, or disposition, the gain is the country in which the goodwill was generated.

Sales through offices or fixed places of busi- ness. Despite any of the above rules, if you do not have a tax home in the United States, but you maintain an office or other fixed place of business in the United States, treat the income from any sale of personal property (including inventory property) that is attributable to that office or place of business as U.S. source in- come. However, this rule does not apply to sales of inventory property for use, disposition, or con- sumption outside the United States if your office or other fixed place of business outside the United States materially participated in the sales.

If you have a tax home in the United States but maintain an office or other fixed place of business outside the United States, income from sales of personal property, other than inventory, depreciable property, or intangibles, that is at- tributable to that foreign office or place of busi- ness may be treated as U.S. source income. The income is treated as U.S. source income if an income tax of less than 10% of the income from the sale is paid to a foreign country. This rule also applies to losses recognized after Jan- uary 7, 2002, if the foreign country would have imposed an income tax of less than 10% had the sale resulted in a gain. You can choose to apply this rule to losses recognized in tax years begin- ning after 1986. For details about making the

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Community Income

If you are married and you or your spouse is subject to the community property laws of a foreign country, a U.S. state, or a U.S. possession, you generally must follow those laws to determine the income of yourself and your spouse for U.S. tax purposes. But you must disregard certain community property laws if:

- Both you and your spouse are nonresident aliens, or
- One of you is a nonresident alien and the other is a U.S. citizen or resident and you do not both choose to be treated as U.S. residents as explained in chapter 1.

In these cases, you and your spouse must report community income as explained below.

Earned income. Earned income of a spouse, other than trade or business income and a partner’s distributive share of partnership income, is treated as the income of the spouse whose services produced the income. That spouse must report all of it on his or her separate return.

Trade or business income. Trade or business income, other than a partner’s distributive share of partnership income, is treated as the income of the spouse carrying on the trade or business. That spouse must report all of it on his or her separate return.

Partnership income (or loss). A partner’s distributive share of partnership income (or loss) is treated as the income (or loss) of the partner. The partner must report all of it on his or her separate return.

Separate property income. Income derived from the separate property of one spouse (and which is not earned income, trade or business income, or partnership distributive share income) is treated as the income of that spouse. That spouse must report all of it on his or her separate return. Use the appropriate community property law to determine what is separate property.

Other community income. All other community income is treated as provided by the applicable community property laws.

Nonresident Aliens

Nonresident aliens can exclude the following items from their gross income.

Interest Income

U.S. source interest income that is not connected with a U.S. trade or business is excluded from income if it is from:

- Deposits (including certificates of deposit) with persons in the banking business,
- Deposits or withdrawable accounts with mutual savings banks, cooperative banks, credit unions, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under federal or state law (if the interest paid or credited can be deducted by the association), and
- Amounts held by an insurance company under an agreement to pay interest on them.

Government obligations. Interest on obligations of a state or political subdivision, the District of Columbia, or a U.S. possession, generally is not included in income. However, interest on certain private activity bonds, arbitrage bonds, and certain bonds not in registered form is included in income.

Portfolio interest. U.S. source interest income that is not connected with a U.S. trade or business and that is portfolio interest on obligations issued after July 18, 1984, is excluded from income. Portfolio interest is interest (including original issue discount) that is paid on obligations:

- Not in registered form (bearer obligations) that are sold only to foreign investors, and the interest on which is payable only outside the United States and its possessions, and that has on its face a statement that any U.S. person holding the obligation will be subject to limitations under the U.S. income tax laws,
- In registered form that are targeted to foreign markets and the interest on which is paid through financial institutions outside the United States, or
- In registered form that are not targeted to foreign markets, if you furnished the payee of the interest (or the withholding agent) a statement that you are not a U.S. person. You should have made this statement on a Form W-8BEN or on a substitute form similar to Form W-8BEN. In either case, the statement should have been signed under penalties of perjury, should have certified that you are not a U.S. citizen or resident, and should have included your name and address.
Portfolio interest does not include the following types of interest.

- Interest you receive on an obligation issued by a corporation of which you own, directly or indirectly, 10% or more of the total voting power of all classes of voting stock. You performed personal services of which you are physically present in the United States for 183 days or more during your tax year.

- Interest you receive on an obligation issued by a partnership of which you own, directly or indirectly, 10% or more of the capital or profits interests.

- Contingent interest.

For the definition of 10% shareholder, see Regulations section 1.871-14(g).

**Contingent interest.** Portfolio interest does not include contingent interest. Contingent interest is either of the following:

1. **Interest** that is determined by reference to:
   - a. Any receipts, sales, or other cash flow of the debtor or related person;
   - b. Income or profits of the debtor or related person;
   - c. Any change in value of any property of the debtor or a related person, or
   - d. Any dividend, partnership distributions, or similar payments made by the debtor or a related person.

2. Any other type of contingent interest that is identified by the Secretary of the Treasury in regulations.

For the definition of “related person” in connection with any contingent interest, and for the exceptions that apply to interest described in item (1), see subparagraphs (B) and (C) of Internal Revenue Code section 871(h)(4).

**Exception for existing debt.** Contingent interest does not include interest paid or accrued on any debt with a fixed term that was issued:

- On or before April 7, 1993, or
- After April 7, 1993, pursuant to a written binding contract in effect on that date and at all times thereafter before that debt was issued.

**Dividend Income**

The following dividend income is exempt from the 30% tax. Certain dividends paid by foreign corporations. There is no 30% tax on certain interest-related dividends from sources within the United States that you receive from a mutual fund or other regulated investment company. The mutual fund will designate in writing which dividends are short-term capital gain dividends from sources within the United States that you receive from a mutual fund or other regulated investment company. The mutual fund will designate in writing which dividends are short-term capital gain dividends. This tax relief will not apply to you if you are present in the United States for 183 days or more during your tax year.

**Services Performed for Foreign Employer**

If you were paid by a foreign employer, your U.S. source income may be exempt from U.S. tax, but only if you meet one of the situations discussed next.

**Employees of foreign persons, organizations, or offices.** Income for personal services performed in the United States as a nonresident alien is considered to be U.S. sources and is tax exempt if you meet all three of the following conditions.

1. You perform personal services as an employee of or under a contract with a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident.

2. You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year.

3. Your pay for these services is not more than $3,000.

If you do not meet all three conditions, your income from personal services performed in the United States is U.S. source income and is taxed according to the rules in chapter 4.

**Contingent interest.** If you were paid by a foreign employer, your U.S. source income may be exempt from U.S. tax, but only if you meet one of the situations discussed next.

1. You perform personal services as an employee of or under a contract with a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident.

2. You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year.

3. Your pay for these services is not more than $3,000.

If you do not meet all three conditions, your income from personal services performed in the United States is U.S. source income and is taxed according to the rules in chapter 4.

**Foreign employer.** A foreign employer is:

- A nonresident alien individual, foreign partnership, or foreign corporation, or
- An office or place of business maintained in a foreign country or in a U.S. possession by a U.S. corporation, a U.S. partnership, or an individual who is a U.S. citizen or resident.

The term “foreign employer” does not include a foreign government. Pay from a foreign government that is exempt from U.S. income tax is discussed in chapter 10.

**Income from certain annuities.** Do not include in income any annuity received under a qualified annuity plan or from a qualified trust exempt from U.S. income tax if you meet both of the following conditions.

1. You receive the annuity only because:
   - a. You performed personal services outside the United States while you were a nonresident alien, or
   - b. You performed personal services inside the United States while you were a nonresident alien and you met the three conditions, described earlier, under Employees of foreign persons, organizations, or offices.

2. At the time the first amount is paid as an annuity under the plan (or by the trust), 90% or more of the employees for whom contributions or benefits are provided under the annuity plan (or under the plan...
Scholarships and Fellowship Grants

If you are a candidate for a degree, you may be able to exclude from your income part or all of the amounts you receive as a qualified scholarship or fellowship. The rules discussed here apply to both resident and nonresident aliens.

If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax. See Scholarships, Grants, Prizes, and Awards in chapter 2 to determine whether your grant is from U.S. sources.

A scholarship or fellowship is excludable from income only if:

1. You are a candidate for a degree at an eligible educational institution, and
2. You use the scholarship or fellowship to pay qualified education expenses.

Candidate for a degree. You are a candidate for a degree if you:

1. Attend a primary or secondary school or are pursuing a degree at a college or university, or
2. Attend an accredited educational institution that is authorized to provide:
   a. A program that is acceptable for full credit toward a bachelor’s or higher degree, or
   b. A program of training to prepare students for gainful employment in a recognized occupation.

Eligible educational institution. An eligible educational institution is one that maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where it carries on its educational activities.

Types of Your Main Home

If you sold your main home, you may be able to exclude up to $250,000 of the gain on the sale of your home. If you are married and file a joint return, you may be able to exclude up to $500,000. For information on the requirements for this exclusion, see Publication 523.

This exclusion does not apply to nonresident aliens who are subject to the expatriation tax rules discussed in chapter 4.

Example. On January 7, Maria Gomez is notified of a scholarship of $2,500 for the spring semester. As a condition for receiving the scholarship, Maria must serve as a part-time teaching assistant. Of the $2,500 scholarship, $1,000 represents payment for her services. Assuming that Maria meets all other conditions, she can exclude no more than $1,500 from income as a qualified scholarship.

Gambling Winnings From Dog or Horse Racing

You can exclude from your gross income winnings from legal wagers initiated outside the United States in a parimutuel pool with respect to a live horse or dog race in the United States.

Gain From the Sale of Your Main Home

If you sold your main home, you may be able to exclude up to $250,000 of the gain on the sale of your home. If you are married and file a joint return, you may be able to exclude up to $500,000. For information on the requirements for this exclusion, see Publication 523.

This exclusion does not apply to nonresident aliens who are subject to the expatriation tax rules discussed in chapter 4.

Introduction

Resident and nonresident aliens are taxed in different ways. Resident aliens are generally taxed in the same way as U.S. citizens. Nonresident aliens are taxed based on the source of their income and whether or not their income is effectively connected with a U.S. trade or business. The following discussions will help you determine if income you receive during the tax year is effectively connected with a U.S. trade or business and how it is taxed.

Topics

This chapter discusses:

- Income that is effectively connected with a U.S. trade or business.
- Income that is not effectively connected with a U.S. trade or business.

Useful Items

You may want to see:

- Publication 
- Form (and Instructions) 
- Schedule D (Form 1040) 

See chapter 12 for information about getting these publications and forms.

Resident Aliens

Resident aliens are generally taxed in the same way as U.S. citizens. This means that their worldwide income is subject to U.S. tax and...
must be reported on their U.S. tax return. Income of resident aliens is subject to the graduated tax rates that apply to U.S. citizens. Resident aliens use the Tax Table or Tax Computation Worksheets located in the Form 1040 instructions, which apply to U.S. citizens.

Nonresident Aliens

A nonresident alien's income that is subject to U.S. income tax must be divided into two categories:

1. Income that is effectively connected with a trade or business in the United States, and
2. Income that is not effectively connected with a trade or business in the United States (discussed under The 30% Tax, later).

The difference between these two categories is that effectively connected income, after allowable deductions, is taxed at graduated rates. These are the same rates that apply to U.S. citizens and residents. Income that is not effectively connected is taxed at a flat 30% (or lower treaty) rate.

If you were formerly a U.S. citizen or resident alien, these rules may not apply. See Expiration Tax, later, in this chapter.

Trade or Business in the United States

Generally, you must be engaged in a trade or business during the tax year to be able to treat income received in that year as effectively connected with that trade or business. Whether you are engaged in a trade or business in the United States depends on the nature of your activities. The discussions that follow will help you determine whether you are engaged in a trade or business in the United States.

Personal Services

If you perform personal services in the United States at any time during the tax year, you usually are considered engaged in a trade or business in the United States. Certain compensation paid to a nonresident alien by a foreign employer is not included in gross income. For more information, see Services Performed for Foreign Employer in chapter 3.

Other Trade or Business Activities

Other examples of being engaged in a trade or business in the United States follow.

Students and trainees. You are considered engaged in a trade or business in the United States if you are temporarily present in the United States as a nonimmigrant under an "F," "J," "M," or "Q" visa. A nonresident alien temporarily present in the United States under a "J" visa includes a nonresident alien individual admitted to the United States as an exchange visitor under the Mutual Educational and Cultural Exchange Act of 1961. The taxable part of any scholarship or fellowship grant that is U.S. source income is treated as effectively connected with a trade or business in the United States.

Business operations. If you own and operate a business in the United States selling services, products, or merchandise, you are, with certain exceptions, engaged in a trade or business in the United States.

Partnerships. If you are a member of a partnership that at any time during the tax year is engaged in a trade or business in the United States, you are considered to be engaged in a trade or business in the United States.

Beneficiary of an estate or trust. If you are the beneficiary of an estate or trust that is engaged in a trade or business in the United States, you are treated as being engaged in the same trade or business.

Trading in stocks, securities, and commodities. If your only U.S. business activity is trading in stocks, securities, or commodities (including hedging transactions) through a U.S. resident broker or other agent, you are not engaged in a trade or business in the United States.

For transactions in stocks or securities, this applies to any nonresident alien, including a dealer or broker in stocks and securities.

For transactions in commodities, this applies to commodities that are usually traded on an organized commodity exchange and to transactions that are usually carried out at such an exchange.

This discussion does not apply unless you have a U.S. office or other fixed place of business at any time during the tax year through which, or by the direction of which, you carry out your transactions in stocks, securities, or commodities.

Trading for a nonresident alien's own account. You are not engaged in a trade or business in the United States if trading for your own account in stocks, securities, or commodities is your only U.S. business activity. This applies even if the trading takes place while you are present in the United States or is done by your employee or your broker or other agent.

This does not apply to trading for your own account if you are a dealer in stocks, securities, or commodities. This does not necessarily mean, however, that as a dealer you are considered to be engaged in a trade or business in the United States. Determine that based on the facts and circumstances in each case or under the rules given above in Trading in stocks, securities, and commodities.

Effectively Connected Income

If you are engaged in a U.S. trade or business, all income, gain, or loss for the tax year that you get from sources within the United States (other than certain investment income) is treated as effectively connected income. This applies whether or not there is any connection between the income and the trade or business being carried on in the United States during the tax year.

Two tests, described next under Investment Income, determine whether certain items of investment income (such as interest, dividends, and royalties) are treated as effectively connected with that business.

In limited circumstances, some kinds of foreign source income may be treated as effectively connected with a trade or business in the United States. For a discussion of these rules, see Foreign Income, later.

Investment Income

Investment income from U.S. sources that may or may not be treated as effectively connected with a U.S. trade or business generally falls into the following three categories:

1. Fixed or determinable income (interest, dividends, rents, royalties, premiums, annuities, etc.).
2. Gains (some of which are considered capital gains) from the sale or exchange of the following types of property:
   a. Timber, coal, or domestic iron ore with a retained economic interest.
   b. Patents, copyrights, and similar property on which you receive contingent payments after October 4, 1966.
   c. Patents transferred before October 5, 1966.
   d. Original issue discount obligations.
3. Capital gains (and losses).

Use the two tests, described next, to determine whether an item of U.S. source income falling in one of the three categories above and received during the tax year is effectively connected with your U.S. trade or business. If the tests indicate that the item of income is effectively connected, you must include it with your other effectively connected income. If the item of income is not effectively connected, include it with all other income discussed under The 30% Tax, later, in this chapter.

Asset-use test. This test usually applies to income that is not directly produced by trade or business activities. Under this test, if an item of income is from assets (property) used in, or held for use in, the trade or business in the United States, it is considered effectively connected.

An asset is used in, or held for use in, the trade or business in the United States if the asset is:

- Held for the principal purpose of promoting the conduct of a trade or business in the United States,
- Acquired and held in the ordinary course of the trade or business conducted in the United States (for example, an account receivable or note receivable arising from that trade or business), or
- Otherwise held to meet the present needs of the trade or business in the United States and not its anticipated future needs.
Generally, stock of a corporation is not treated as an asset used in, or held for use in, a trade or business in the United States. **Business-activities test.** This test usually applies when income, gain, or loss comes directly from the active conduct of the trade or business. The business-activities test is most important when:

- Dividends or interest are received by a dealer in stocks or securities,
- Royalties are received in the trade or business of licensing patents or similar property, or
- Service fees are earned by a servicing business.

Under this test, if the conduct of the U.S. trade or business was a material factor in producing the income, the income is considered effectively connected.

**Personal Service Income**

You usually are engaged in a U.S. trade or business when you perform personal services in the United States. Personal service income you receive in a tax year in which you are engaged in a U.S. trade or business is effectively connected with that trade or business. Income received in a year other than the year you performed the services is also effectively connected if it would have been effectively connected if received in the year you performed the services. Personal service income includes wages, salaries, commissions, fees, per diem allowances, and employee allowances and bonuses. The income may be paid to you in the form of cash, services, or property.

If you are engaged in a U.S. trade or business only because you perform personal services in the United States during the tax year, income and gains from assets, and gains and losses from the sale or exchange of capital assets are generally not effectively connected with your trade or business. However, if there is a direct economic relationship between your holding of the asset and your trade or business of performing personal services, the income, gain, or loss is effectively connected.

**Pensions.** If you were a nonresident alien engaged in a U.S. trade or business after 1986 because you performed personal services in the United States, and you later receive a pension or property. U.S. real property interests (whether or not they are capital assets) are taxed as if you are engaged in a U.S. trade or business in the United States. For example, profit from the sale in the United States of inventory property purchased either in this country or in a foreign country is effectively connected trade or business income. A share of U.S. source profits or losses of a partnership that is engaged in a trade or business in the United States is also effectively connected with a trade or business in the United States. **Real Property Gain or Loss**

Gains and losses from the sale or exchange of U.S. real property interests (whether or not they are capital assets) are taxed as if you are engaged in a trade or business in the United States. You must treat the gain or loss as effectively connected with that trade or business.

2. **At least 90% of your U.S. source transportation income is attributable to regularly scheduled transportation.**

"Fixed place of business" generally means a place, site, structure, or other similar facility through which you engage in a trade or business. "Regularly scheduled transportation" means that a ship or aircraft follows a published schedule with repeated sailings or flights at regular intervals between the same points for voyages or flights that begin or end in the United States. This definition applies to both scheduled and chartered air transportation.

If you do not meet the two conditions above, the income is not effectively connected and is taxed at a 4% rate. See **Transportation Tax,** later, in this chapter.

**Business Profits and Losses and Sales Transactions**

All profits or losses from U.S. sources that are from the operation of a business in the United States are effectively connected with a trade or business in the United States. For example, if you do not meet the two conditions above, profit from the sale in the United States of inventory property purchased either in this country or in a foreign country is effectively connected trade or business income. A share of U.S. source profits or losses of a partnership that is engaged in a trade or business in the United States is also effectively connected with a trade or business in the United States.

**Real Property Gain or Loss**

Gains and losses from the sale or exchange of U.S. real property interests (whether or not they are capital assets) are taxed as if you are engaged in a trade or business in the United States. You must treat the gain or loss as effectively connected with that trade or business.

**U.S. real property holding corporation.** A corporation is a U.S. real property holding corporation if the fair market value of the corporation's U.S. real property interests are at least 50% of the total fair market value of:

- The corporation's U.S. real property interests, plus
- The corporation's interests in real property located outside the United States, plus
- The corporation's other assets that are used in, or held for use in, a trade or business.

Gain or loss on the sale of the stock in any domestic corporation is taxed as if you are engaged in a U.S. trade or business unless you establish that the corporation is not a U.S. real property holding corporation.

A U.S. real property interest does not include a class of stock of a corporation that is regularly traded on an established securities market, unless you hold more than 5% of the fair market value of that class of stock. An interest in a foreign corporation owning U.S. real property generally is not a U.S. real property interest unless the corporation chooses to be treated as a domestic corporation.

**Qualified investment entities. Special rules apply to qualified investment entities (QIEs). A QIE is any real estate investment trust (REIT) or any regulated investment company (RIC) that is a U.S. real property holding corporation.**

Generally, any distribution from a QIE to a shareholder that is attributable to gain from the sale or exchange of a U.S. real property interest is treated as a U.S. real property gain by the shareholder receiving the distribution. A distribution by a QIE on stock regularly traded on an established securities market in the United States is not treated as gain from the sale or exchange of a U.S. real property interest if you did not own more than 5% of that stock at any time during the 1-year period ending on the date of the distribution. A distribution that is not treated as gain by the shareholder from the sale or exchange of a U.S. real property interest is included in the shareholder's gross income as a regular dividend.

**Domestically controlled QIE.** The sale of an interest in a domestically controlled QIE is not the sale of a U.S. real property interest. The entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of disposition, or (b) the period during which the entity was in existence.

**Wash sale.** If you dispose of an interest in a domestically controlled QIE in an applicable wash sale transaction, special rules apply. An applicable wash sale transaction is one in which you:

1. Dispose of an interest in the domestically controlled QIE during the 30-day period before the ex-dividend date of a distribution that you would (but for the disposition) have treated as gain from the sale or exchange of a U.S. real property interest, and
2. Acquire, or enter into a contract or option to acquire, a substantially identical interest in that business or property as the income, that began on the first day of the 30-day period.

If this occurs, you are treated as having gained from the sale or exchange of a U.S. real property interest in an amount equal to the distribution made after June 15, 2006, that would have been treated as such gain. This also applies to any substitute dividend payment. A transaction is not treated as an applicable wash sale transaction if:

- You actually receive the distribution from the domestically controlled QIE related to the interest disposed of, or acquired, in the transaction, or
- You dispose of any class of stock in a QIE that is regularly traded on an established securities market in the United States but only if you did not own more than 5% of that class of stock at any time during the 1-year period ending on the date of the distribution.

Alternative minimum tax. There may be a minimum tax on your net gain from the disposition of U.S. real property interests. Figure the amount of the tax, if any, on Form 6251.

Withholding of tax. If you dispose of a U.S. real property interest, the buyer may have to withhold tax. See the discussion of Tax Withheld on Real Property Sales in chapter 8.

Foreign Income

You must treat three kinds of foreign source income as effectively connected with a trade or business in the United States if:

- You have an office or other fixed place of business in the United States to which the income can be attributed,
- That office or place of business is a material factor in the production of the income, and
- The income is produced in the ordinary course of the trade or business carried on through that office or other fixed place of business.

An office or other fixed place of business is a material factor if it significantly contributes to, and is an essential economic element in, the earning of the income. The three kinds of foreign source income are listed below.

1. Rents and royalties for the use of, or for the privilege of using, intangible personal property located outside the United States or from any interest in such property. Included are rents or royalties for the use, or for the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, goodwill, trade-marks, trade brands, franchises, and similar properties if the rents or royalties are from the active conduct of a trade or business in the United States.

2. Dividends or interest from the active conduct of a banking, financing, or similar business in the United States. A substitute dividend or interest payment received under a securities lending transaction or a sale-repurchase transaction is treated the same as the amounts received on the transferred security.

3. Income, gain, or loss from the sale outside the United States, through the U.S. office or other fixed place of business, of:
   - Stock in trade,
   - Property that would be included in inventory if on hand at the end of the tax year, or
   - Property held primarily for sale to customers in the ordinary course of business.

Item (3) will not apply if you sold the property for use, consumption, or disposition outside the United States and an office or other fixed place of business in a foreign country was a material factor in the sale.

Any foreign source income that is equivalent to any item of income described above is treated as effectively connected with a U.S. trade or business. For example, foreign source interest and dividend equivalents are treated as U.S. effectively connected income if the income is derived by a foreign person in the active conduct of a banking, financing, or similar business within the United States.

Tax on Effectively Connected Income

Income you receive during the tax year that is effectively connected with your trade or business in the United States is, after allowable deductions, taxed at the rates that apply to U.S. citizens and residents.

Generally, you can receive effectively connected income only if you are a nonresident alien engaged in trade or business in the United States during the tax year. However, income you receive from the sale or exchange of property, the performance of services, or any other transaction in another tax year is treated as effectively connected in that year if it would have been effectively connected in the year the transaction took place or you performed the services.

Example. Ted Richards, a nonresident alien, entered the United States in August 2006, to perform personal services in the U.S. office of his overseas employer. He worked in the U.S. office until December 25, 2006, but did not leave this country until January 11, 2007. On January 8, 2007, he received his final paycheck for services performed in the United States during 2006. All of Ted’s income during his stay here is U.S. source income.

During 2006, Ted was engaged in the trade or business of performing personal services in the United States. Therefore, all amounts paid to him in 2006 for services performed in the United States during 2006 are effectively connected with that trade or business during 2006.

The salary payment Ted received in January 2007 is U.S. source income to him in 2007. It is effectively connected with a trade or business in the United States because he was engaged in a trade or business in the United States during 2006 when he performed the services that earned the income.

Real property income. You may be able to choose to treat all income from real property as effectively connected. See Income From Real Property, later, in this chapter.

The 30% Tax

Tax at a 30% (or lower treaty) rate applies to certain items of income or gains from U.S. sources but only if the items are not effectively connected with your U.S. trade or business.

Fixed or Determinable Income

The 30% (or lower treaty) rate applies to the gross amount of U.S. source fixed or determinable annual or periodic gains, profits, or income. Income is fixed if it is paid in amounts known ahead of time. Income is determinable whenever there is a basis for figuring the amount to be paid. Income can be periodic if it is paid from time to time. It does not have to be paid annually or at regular intervals. Income can be determinable or periodic even if the length of time during which the payments are made is increased or decreased.

Items specifically included as fixed or determinable income are interest (other than original issue discount), dividends, rents, premiums, annuities, salaries, wages, and other compensation. A substitute dividend or interest payment received under a securities lending transaction or a sale-repurchase transaction is treated the same as the amounts received on the transferred security. Other items of income, such as royalties, also may be subject to the 30% tax.

Some fixed or determinable income may be exempt from U.S. tax. See chapter 3 if you are not sure whether the income is taxable.

Original issue discount (OID). If you sold, exchanged, or received a payment on a bond or other debt instrument that was issued at a discount after March 31, 1972, all or part of the original issue discount (OID) (other than portfolio interest) may be subject to the 30% tax. The amount of OID is the difference between the stated redemption price at maturity and the issue price of the debt instrument. The 30% tax applies in the following circumstances.

1. You received a payment on a debt instrument. In this case, the amount of OID subject to tax is the OID that accrued while you held the debt instrument minus the OID previously taken into account. But the tax on the OID cannot be more than the payment minus the tax on the interest payment on the debt instrument.

2. You sold or exchanged the debt instrument. The amount of OID subject to tax is the OID that accrued while you held the debt instrument minus the amount already taxed in (1) above.

Report on your return the amount of OID shown on Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, if you bought the debt instrument at original issue. However, you must recalculate your proper
Example of Capital Assets
You can make this choice only for real property used in a trade or business in the United States that you own or have an interest in and hold for the production of income, and for a capital asset, a gain is a gain on the sale or exchange of a capital asset.

Social Security Benefits
A nonresident alien must include 85% of any U.S. social security benefit (and the social security equivalent part of a tier 1 railroad retirement benefit) in U.S. source fixed or determinable annual or periodic income. This income is exempt under some tax treaties. See Table 1 in Publication 901, U.S. Tax Treaties, for a list of tax treaties that exempt U.S. social security benefits from U.S. tax.

Sales or Exchanges of Capital Assets
These rules apply only to those capital gains and losses from sources in the United States that are not effectively connected with a trade or business in the United States. These rules do not apply to the sale or exchange of a U.S. real property interest or to the sale of any property that is effectively connected with a trade or business in the United States. See Real Property Gain or Loss, earlier, under Effectively Connected Income.

A capital asset is everything you own except:
- Inventory.
- Business accounts or notes receivable.
- Depreciable property used in a trade or business.
- Real property used in a trade or business.
- Supplies regularly used in a trade or business.
- Certain copyrights, literary or musical or artistic compositions, letters or memo-randa, or similar property.
- Certain U.S. government publications.
- Certain commodities derivative financial instruments held by a commoditiesderive-tors.
- Hedging transactions.

A capital gain is a gain on the sale or exchange of a capital asset. A capital loss is a loss on the sale or exchange of a capital asset.

The debt instrument is a stripped bond or a stripped coupon (including zero coupon instruments backed by U.S. Treasury se-curities).

You bought the debt instrument at a premium or paid an acquisition premium.

For the definition of premium and acquisition premium and instructions on how to recompute OID, get Publication 1212.

If you held a bond or other debt instrument that was issued at a discount before April 1, 1972, contact the IRS for further information. See chapter 12.

Gambling Winnings
In general, nonresident aliens are subject to the 30% tax on the gross proceeds from gambling won in the United States if that income is not effectively connected with a U.S. trade or business and is not exempted by treaty. However, no tax is imposed on nonbusiness gambling income a nonresident alien wins playing black-jack, baccarat, craps, roulette, or big-6 wheel in the United States.

Nonresident aliens are taxed at graduated rates on net gambling income won in the United States that is effectively connected with a U.S. trade or business.

The four types of gains listed earlier are tax exempt unless
- the proceeds from gambling what is treated as such. Specific tax treatment for these gains and losses is discussed later. Sales or exchanges of capital assets (including real property) that are effectively connected with a trade or business in the United States on a separate Schedule D (Form 1040), Form 4797, or both.

Attach them to Form 1040NR.

183-day rule. If you were in the United States for 183 days or more during the tax year, your net gain from sales or exchanges of capital assets is taxed at a 30% (or lower treaty) rate. For purposes of the 30% (or lower treaty) rate, net gain is the excess of your capital gains from U.S. sources over your capital losses from U.S. sources. This rule applies even if any of the transactions occurred while you were not in the United States.

To determine your net gain, consider the amount of your gains and losses that would be recognized and taken into account only if, and to the extent that, they would be recognized and taken into account if you were in a U.S. trade or business during the year and the gains and losses were effectively connected with that trade or business during the year.

In arriving at your net gain, do not take the following into consideration:
- The four types of gains listed earlier.
- The deduction for a capital loss carryover.
- Capital losses in excess of capital gains.
- Exclusion for gain from the sale or exchange of qualified small business stock (section 1202 exclusion).
- Losses from the sale or exchange of prop-erty held for personal use. Capital losses resulting from casualties or thefts may be deductible on Schedule A (Form 1040NR).

Itemized Deductions in chapter 5.

If you were not engaged in a trade or business in the United States and have not established a tax year for a prior period, your tax year will be the calendar year for purposes of the 183-day rule. Also, you must file your tax return on a calendar-year basis.

If you were in the United States for less than 183 days during the tax year, unless you are engaged in a U.S. trade or business, you do not have to file a U.S. tax return (Form 1040NR) because

The 30% Tax

If you have income from real property located in the United States that you own or have an interest in and hold for the production of income, you can choose to treat all income from that property as income effectively connected with a U.S. trade or business in the United States. The choice applies to all income from real property located in the United States and held for the production of income and to all income from any interest in such property. This includes income from rents, royalties from mines, oil or gas wells, or other natural resources. It also includes gains from the sale or exchange of timber, coal, or domestic iron ore with a retained economic interest.

You can make this choice only for real property income that is not otherwise effectively connected with your U.S. trade or business. If you make the choice, you can claim deductions attributable to the real property income and only your net income from real property is taxed.

This choice does not treat a nonresident alien, who is not otherwise engaged in a U.S. trade or business, as being engaged in a trade or business in the United States during the year.

Example. You are a nonresident alien and are not engaged in a U.S. trade or business. You own a single-family house in the United States that you rent out. Your rental income for the year is $10,000. This is your only U.S. source in-come. As discussed earlier under The 30% Tax, the rental income is subject to a tax at a 30% (or lower treaty) rate. You received a Form 1042-S showing that your tenants properly withheld this tax from the rental income. You do not have to file a U.S. tax return (Form 1040NR) because
your U.S. tax liability is satisfied by the withhold- ing of tax.
If you make the choice discussed above, you can offset the $10,000 income by certain rental expenses. (See Publication 527, Residential Rental Property, for information on rental ex- penses.) Any resulting net income is taxed at graduated rates. If you make this choice, report the rental income and expenses on Schedule E (Form 1040) and attach the schedule to Form 1040NR. For the first year you make the choice, also attach the statement discussed next.

Making the choice. Make the initial choice by attaching a statement to your return, or amended return, for the year of the choice. In- clude the following in your statement.
• That you are making the choice.
• Whether the choice is under Internal Rev- enue Code section 871(d) (explained above) or a tax treaty.
• A complete list of all your real property, or any interest in real property, located in the United States. Give the legal identification of U.S. timber, coal, or iron ore in which you have an interest.
• The extent of your ownership in the prop- erty.
• The location of the property.
• A description of any major improvements to the property.
• The dates you owned the property.
• Your income from the property.
• Details of any previous choices and revo- cations of the real property income choice.
This choice stays in effect for all later tax years unless you revoke it.

Revolving the choice. You can revoke the choice without IRS approval by filing Form 1040X, Amended U.S. Individual Income Tax Return, for the year you made the choice and for later tax years. You must file Form 1040X within 3 years from the date your return was filed or 2 years from the time the tax was paid, whichever is later. If this time period has expired for the year of choice, you cannot revoke the choice for that year. However, you may revoke the choice for later tax years only if you have IRS approval. For information on how to get IRS approval, see Regulation section 1.871-10(d)(2).

Transportation Tax
A 4% tax rate applies to transportation income that is not effectively connected because it does not meet the two conditions listed earlier under Transportation Income. If you receive transpor- tation income subject to the 4% tax, you should figure the tax and show it on line 56 of Form 1040NR. Attach a statement to your return that includes the following information (if applicable).
• Your name, taxpayer identification num- ber, and tax year.
• A description of the types of services per- formed (whether on or off board).
• Names of vessels or registration numbers of aircraft on which you performed the services.
• Amount of U.S. source transportation in- come derived from each type of service for each vessel or aircraft for the calendar year.
• Total amount of U.S. source transportation income derived from all types of services for the calendar year.
This 4% tax applies to your U.S. source gross transportation income. This only includes transpor- tation income that is treated as derived from sources in the United States if the transportation begins or ends in the United States. For trans- portation income from personal services, the transportation must be between the United States and a U.S. possession. For personal services of a nonresident alien, this only applies to income derived from, or in connection with, an aircraft.

Expatriation Tax
The expatriation tax provisions apply to U.S. citizens who have renounced their citizenship or terminated their U.S. residency. In 2004, the expatriation rules changed. If you expatriated before June 4, one set of rules applies. If you expatriated after June 3, another set of rules applies. These rules are explained later under Expatriation Before June 4, 2004 and Expatriation After June 3, 2004.

Long-term resident defined. You are a long-term resident if you were a lawful perma- nent resident of the United States in at least 8 of the last 15 tax years ending with the year your residency ends. In determining if you meet the 8-year requirement, the taxpayer is treated as a resident of a foreign country under a tax treaty and do not waive treaty bene- fits.

Expatriation Before June 4, 2004
If you expatriated before June 4, 2004, the expa- riation rules apply if one of the principal pur- poses of the action is the avoidance of U.S. taxes. Unless you received a ruling from the IRS that you did not expatriate to avoid U.S. taxes, you are presumed to have tax avoidance as a principal purpose if:
1. Your average annual net income tax for the last 5 tax years ending before the date of your action to relinquish your citizenship or terminate your residency was more than $100,000, or
2. Your net worth on the date of your action was $500,000 or more.
The amounts above are adjusted for inflation if your expatriation action is after 1996 (see Table 4-1).

Reporting requirements. If you lost your U.S. citizenship, you should have filed Form 8884 with a consular office or a federal court at the time of loss of citizenship. If you ended your long-term residency, you should have filed Form 8884 with the Internal Revenue Service when you filed your dual-status tax return for the year your residency ended.

Your U.S. residency is considered to have ended when you ceased to be a lawful perma- nent resident or you began to be treated as a resident of another country under a tax treaty and do not waive treaty benefits.

Penalties. If you failed to file Form 8884, you may have to pay a penalty equal to the greater of 5% of the expatriation tax or $1,000. The penalty will be assessed for each year dur- ing which your failure to file continues for the 10-year period. The penalty will not be imposed if you can show that the failure is due to reason- able cause and not willful neglect.

Expatriation After June 3, 2004
If you expatriated after June 3, 2004, the expatri- ation rules apply to you if any of the following statements apply.
1. Your average annual net income tax for the 5 years ending before the date of expa- riation or termination of residency is more than:
   a. $124,000 if you expatriated or termi- nated residency in 2004.
   b. $127,000 if you expatriated or termi- nated residency in 2005.
   c. $131,000 if you expatriated or termi- nated residency in 2006.

Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Your 5-year average annual net income tax was more than</th>
<th>OR Your net worth equaled or exceeded</th>
<th>THEN the rules outlined on this page apply if . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>$106,000</td>
<td>$528,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>1998</td>
<td>109,000</td>
<td>543,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>1999</td>
<td>110,000</td>
<td>552,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>2000</td>
<td>112,000</td>
<td>562,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>2001</td>
<td>116,000</td>
<td>580,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>2002</td>
<td>120,000</td>
<td>599,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>2003</td>
<td>122,000</td>
<td>608,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
<tr>
<td>2004</td>
<td>124,000</td>
<td>622,000</td>
<td>Table 4-1. Inflation-Adjusted Amounts for Expatriation Actions Before June 4, 2004</td>
</tr>
</tbody>
</table>

*If you expatriated after June 3, 2004, see Expatriation After June 3, 2004, on this page.
d. $136,000 if you expatriated or termin-
ated residency in 2007.

2. Your net worth is $2 million or more on the
doctorate of your expatriation or termination of re-
sidency.

3. You fail to certify on Form 8854 that you have
talied the following for the 5 years preceding the date
of your expatriation or termination of re-
sidency.

Exception for dual-citizens and certain mi-
ors. Dual-citizens and certain minors (de-
fining next) are not subject to the expatriation tax
even if they meet (1) or (2) above. However, they
they must provide the certification required in
(3) above.

Dual-citizens. You are a dual-citizen if all of
the following apply:

You became at birth a U.S. citizen and a citizen
of another country and you con-
tinue to be a citizen of that other country.

You were never a resident alien of the United
States as defined in chapter 1.

You never held a U.S. passport.

You were present in the United States for
more no more than 30 days during any calendar
year that is 1 of the 10 calendar years
preceding your loss of U.S. citizenship.

Certain minors. You may qualify for the ex-
ception described above if you meet all of the
following requirements.

You became a U.S. citizen at birth.

Neither of your parents was a U.S. citizen
at the time of your birth.

You expatriated before you were 18½.

You were not present in the United States
for more than 30 days during any calendar
year that is 1 of the 10 calendar years
preceding your expatriation.

Tax consequences of presence in the United
States. The following rules apply if you do not
meet the exception above for dual-citizens and
 certain minors and the expatriation rules would
otherwise apply to you.

The expatriation tax does not apply to any
tax year during the 10-year period if you are
physically present in the United States for more
than 30 days during the calendar year ending in
that year. Instead, you are treated as a U.S.
resident for the entire year that is 1 of the 10 calendar years
preceding your loss of U.S. citizenship.

How To Figure the Expatriation Tax

If the expatriation tax applies to you, you are
generally subject to tax on your U.S. source
income and gains on a net basis at the
the graduated tax rates applicable to individuals with
allowable deductions unless you would be
subject to a higher tax under the 30% tax (discussed
earlier) on income not connected with a U.S.
trade or business.

For this purpose, U.S. source gross income
defined in chapter 2) includes gains from the
sale or exchange of:

Property (other than stock or debt obliga-
tions) located in the United States,
Stock issued by a U.S. domestic corpora-
tion, and
Debt obligations of U.S. persons or of the
United States, a state or political subdivi-

dion thereof, or the District of Columbia.

U.S. source income also includes any income
or gain derived from stock in certain controlled
foreign corporations if you owned, or were con-
considered to own, at any time during the 2-year
period ending on the date of your expiration,
more than 50% of:

The total combined voting power of all
classes of that corporation’s stock, or
The total value of the stock.

The income or gain is considered U.S. source
income only to the extent of your share of earn-
ings and profits earned or accumulated before the
date of expatriation and during the periods
you met the ownership requirements discussed
above.

Any exchange of property is treated as a sale
of the property at its fair market value on the
date of the exchange and any gain is treated as
U.S. source gross income in the tax year of the
exchange unless you enter into a gain recogni-
tion agreement under Notice 97-19.

Other information. For more information on
the expatriation tax provisions, including excep-

tions to the tax and special U.S. source rules, see
section 877 of the Internal Revenue Code.

Expatriation Tax Return

If you are subject to the expatriation tax, you
must file Form 1040NR for each year of the
10-year period following expiration. Complete
line “P” on page 5 of Form 1040NR. See Special
Rules for Former U.S. Citizens and Former U.S.
Long-Term Residents in the instructions for Form
1040NR. You must attach a statement to Form
1040NR listing, by category (dividends, interest,
etc.), all items of U.S. and foreign
source income, whether or not taxable in the
United States.

If you do not attach a complete statement in
any year you are liable for any U.S. taxes, you
will not be considered to have filed a true and
accurate return. You will not be entitled to any
tax deductions or credits if your tax liability for
the year is later adjusted.
Interrupted Period of Residence

You are subject to tax under a special rule if you interrupt your period of U.S. residence with a period of nonresidence. The special rule applies if you meet all of the following conditions.

1. You were a U.S. resident for a period that includes at least 3 consecutive calendar years.
2. You were a U.S. resident for at least 183 days in each of those years.
3. You ceased to be treated as a U.S. resident.
4. You then again became a U.S. resident before the end of the third calendar year after the end of the period described in (1) above.

Under this special rule, you are subject to tax on your U.S. source gross income and gains on a net basis at the graduated rates applicable to individuals (with allowable deductions) for the period you were a nonresident alien, unless you would be subject to a higher tax under the 30% tax (discussed earlier) on income not connected with a U.S. trade or business.

Example. John Willow, a citizen of New Zealand, entered the United States on April 1, 2002, as a lawful permanent resident. He returned to New Zealand, entered the United States on April 1, 2007, as a lawful permanent resident. He became a resident before the close of the third calendar year (2007) beginning after the end of his first period of residence (August 1, 2004). Therefore, he is subject to tax under the special rule for the period of nonresidence (August 2, 2004, through October 4, 2007) if it is more than the tax that would normally apply to him as a nonresident alien.

Reporting requirements. If you are subject to this tax for any year in the period you were a nonresident alien, you must file Form 1040NR for that year. The return is due by the due date (including extensions) for filing your U.S. income tax return for the year that you again become a U.S. resident. If you already filed returns for that period, you must file amended returns. You must attach a statement to your return that identifies the source of all of your U.S. and foreign gross income and the items of income subject to this special rule.

5. Figuring Your Tax

Introduction

After you have determined your alien status, the source of your income, and if and how that income is taxed in the United States, your next step is to figure your tax. The information in this chapter is not as comprehensive for resident aliens as it is for nonresident aliens. Resident aliens should get publications, forms, and instructions for U.S. citizens, because the information for filing returns for resident aliens is generally the same as for U.S. citizens.

If you are both a nonresident alien and a resident alien in the same tax year, see chapter 6 for a discussion of dual-status aliens.

Topics

This chapter discusses:

- Identification numbers,
- Filing status,
- Deductions,
- Exemptions,
- Tax credits and payments, and
- Special rules for bona fide residents of American Samoa and Puerto Rico.

Useful Items

You may want to see:

Publication

- 463 Travel, Entertainment, Gift, and Car Expenses
- 501 Exemptions, Standard Deduction, and Filing Information
- 521 Moving Expenses
- 526 Charitable Contributions
- 535 Business Expenses
- 597 Information on the United States--Canada Income Tax Treaty

Form (and Instructions)

- W-7 Application for IRS Individual Taxpayer Identification Number
- 1040 U.S. Individual Income Tax Return
- 1040NR U.S. Nonresident Alien Income Tax Return
- 1040NR-EZ U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- 2106 Employee Business Expenses
- 2106-EZ Unreimbursed Employee Business Expenses
- 3903 Moving Expenses
- 4563 Exclusion of Income for Bona Fide Residents of American Samoa

See chapter 12 for information about getting these publications and forms.

Tax Year

You must figure your income and file a tax return on the basis of an annual accounting period called a tax year. If you have not previously established a fiscal tax year, your tax year is the calendar year. A calendar year is 12 consecutive months ending on December 31. If you have previously established a regular fiscal year (12 consecutive months ending on the last day of a month other than December or a 52–53 week year) and are considered to be a U.S. resident for any calendar year, you will be treated as a U.S. resident for any part of your fiscal year that falls within that calendar year.

Identification Number

A taxpayer identification number must be furnished on returns, statements, and other tax-related documents. For an individual, this is a social security number (SSN). If you do not have and are not eligible to get an SSN, you must apply for an individual taxpayer identification number (ITIN). An employer identification number (EIN) is required if you are engaged in a trade or business as a sole proprietor and have employees or a qualified retirement plan.

You must furnish a taxpayer identification number if you are:

- An alien who has income effectively connected with the conduct of a U.S. trade or business at any time during the year,
- An alien who has a U.S. office or place of business at any time during the year,
- A nonresident alien spouse treated as a resident, as discussed in chapter 1, or
- Any other alien who files a tax return, an amended return, or a refund claim (but not information returns).

Social security number (SSN). Generally, you can get an SSN if you have been lawfully admitted to the United States for permanent residence or under other immigration categories that authorize U.S. employment.

To apply for this number, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration (SSA) office or call the SSA at 1-800-772-1213. You can also download Form SS-5 from the SSA’s website at www.socialsecurity.gov/online/ss-5.html. You must visit an SSA office in person and submit your Form SS-5 along with original documentation showing your age, identity, immigration status, and authority to work in the United States. If you are an F-1 or M-1 student, you must also show your Form I-20. If you are a J-1 exchange visitor, you will also need to show your Form DS-2019. Generally, you will receive your card...
about 2 weeks after the SSA has all of the necessary information.

Individual taxpayer identification number (ITIN). If you do not have and are not eligible to get an SSN, you must apply for an ITIN. For details on how to do so, see Form W-7 and its instructions. It usually takes about 4–6 weeks to get an ITIN. If you already have an ITIN, enter it wherever an SSN is required on your tax return.

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. In addition to those aliens who are required to furnish their SSN (or ITIN) for individual taxes and an EIN for business taxes, you may apply for an EIN, file Form SS-4, Application for Employer Identification Number, with the IRS.

Filing Status

The amount of your tax depends on your filing status. Your filing status is important in determining whether you can take certain deductions and credits. The rules for determining your filing status are different for resident aliens and nonresident aliens.

Resident Aliens

Resident aliens can use the same filing statuses available to U.S. citizens. See your form instructions or Publication 501 for more information on filing status.

Married filing jointly. Generally, you can file as married filing jointly only if both you and your spouse were resident aliens for the entire tax year, or if you make one of the choices discussed in this chapter to treat your spouse as a resident alien for the entire tax year. Note. Even if you are considered unmarried for head of household purposes because you are married to a nonresident alien, you may still be considered married for purposes of the earned income credit. In that case, you will not be entitled to the credit. See Publication 596 for more information.

Nonresident Aliens

If you are a nonresident alien filing Form 1040NR, you may be able to use one of the filing statuses discussed below. If you are filing Form 1040NR-EZ, you can only claim “Single nonresident alien” or “Married nonresident alien” as your filing status.

Married nonresident alien. Married nonresident aliens who are not married to U.S. citizens or residents generally must use the Tax Table column or the Tax Computation Worksheet for married filing separate returns when determining the tax on income effectively connected with a U.S. trade or business.

Exceptions. Married nonresident aliens normally cannot use the Tax Table column or the Tax Computation Worksheet for single individuals. However, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year and you are a married resident of Canada, Mexico, the Republic of Korea (South Korea), or are a married U.S. national. See the instructions for Form 1040NR or Form 1040NR-EZ to see if you qualify. U.S. national was defined earlier in this section under Marital Status.

A nonresident alien generally cannot file as married filing jointly. However, a nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident and file a joint return on Form 1040, Form 1040A, or Form 1040EZ. For information on these choices, see chapter 1. If you do not make the choice to file jointly, file Form 1040NR or Form 1040NR-EZ and use the Tax Table column or the Tax Computation Worksheet for married individuals filing separately.

Qualifying widow(er). If your spouse died in 2005 or 2006, you did not remarry before the end of 2007, and you have a dependent child living with you, you may qualify to file as a qualifying widow(er) and use the joint return tax rates. This applies only if you could have filed a joint return with your spouse for the year your spouse died.

Head of household. You may qualify as head of household if you are unmarried or considered unmarried on the last day of the year and you pay more than half the cost of keeping up a home for you and a qualifying person. You must be a resident alien for the entire tax year.

You are considered unmarried for this purpose if your spouse was a nonresident alien at any time during the year and you do not make one of the choices discussed in chapter 1 to treat your spouse as a resident alien for the entire tax year.

Note. Even if you are considered unmarried for head of household purposes because you are married to a nonresident alien, you may still be considered married for purposes of the earned income credit. In that case, you will not be entitled to the credit. See Publication 596 for more information.

Nonresident Aliens

If you are a nonresident alien filing Form 1040NR, you may be able to use one of the filing statuses discussed below. If you are filing Form 1040NR-EZ, you can only claim “Single nonresident alien” or “Married nonresident alien” as your filing status.

Married nonresident alien. Married nonresident aliens who are not married to U.S. citizens or residents generally must use the Tax Table column or the Tax Computation Worksheet for married filing separate returns when determining the tax on income effectively connected with a U.S. trade or business.

Exceptions. Married nonresident aliens normally cannot use the Tax Table column or the Tax Computation Worksheet for single individuals. However, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year and you are a married resident of Canada, Mexico, the Republic of Korea (South Korea), or are a married U.S. national. See the instructions for Form 1040NR or Form 1040NR-EZ to see if you qualify. U.S. national was defined earlier in this section under Marital Status.

A nonresident alien generally cannot file as married filing jointly. However, a nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident and file a joint return on Form 1040, Form 1040A, or Form 1040EZ. For information on these choices, see chapter 1. If you do not make the choice to file jointly, file Form 1040NR or Form 1040NR-EZ and use the Tax Table column or the Tax Computation Worksheet for married individuals filing separately.

Qualifying widow(er). You may be eligible to file as a qualifying widow(er) and use the joint return tax rates if all of the following conditions apply.

1. You were a resident of Canada, Mexico, or the Republic of Korea (South Korea), or a U.S. national (defined below).
2. Your spouse died in 2005 or 2006 and you did not remarry before the end of 2007.
3. You have a dependent child living with you.

See the instructions for Form 1040NR for the rules for filing as a qualifying widow(er) with a dependent child.

Resident Aliens

You can claim the same deductions allowed to U.S. citizens if you are a resident alien for the entire tax year. While the discussion that follows contains some of the same general rules and guidelines that apply to you, it is specifically directed toward nonresident aliens. You should get Form 1040 and instructions for more information on how to claim your allowable deductions.

Note. Even if your spouse is considered unmarried for head of household purposes because you are a nonresident alien, your spouse may still be considered married for purposes of the earned income credit. In that case, your spouse will not be entitled to the credit. See Publication 596 for more information.

Special rules for aliens from certain U.S. possessions. A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico for the entire tax year and who is temporarily working in the United States should read Bona Fide Residents of American Samoa or Puerto Rico, at the end of this chapter, for information about special rules.

Reporting Your Income

You must report each item of income that is taxable according to the rules in chapters 2, 3, and 4. For resident aliens, this includes income from sources both within and outside the United States. For nonresident aliens, this includes income from both income that is effectively connected with a trade or business in the United States (subject to graduated tax rates) and income from U.S. sources that is not effectively connected (subject to a flat 30% tax rate or lower tax treaty rate).

Deductions

Resident and nonresident aliens can claim similar deductions on their U.S. tax returns. However, nonresident aliens generally can claim only deductions related to income that is effectively connected with their U.S. trade or business.

Resident Aliens

You can claim the same deductions allowed to U.S. citizens if you are a resident alien for the entire tax year. While the discussion that follows contains some of the same general rules and guidelines that apply to you, it is specifically directed toward nonresident aliens. You should get Form 1040 and instructions for more information on how to claim your allowable deductions.
Nonresident Aliens
You can claim deductions to figure your effectively connected taxable income. You generally cannot claim deductions related to income that is not connected with your U.S. business activities. Except for personal exemptions, and certain itemized deductions, discussed later, you can claim deductions only to the extent they are connected with your effectively connected income.

Ordinary and necessary business expenses.
You can deduct all ordinary and necessary expenses in the operation of your U.S. trade or business to the extent they relate to income effectively connected with that trade or business. The deduction for travel expenses while in the United States is discussed under Itemized Deductions, later. For information about other business expenses, see Publication 535.

Losses.
You can deduct losses resulting from transactions that you entered into for profit and that were not reimbursed for by insurance, etc., to the extent that they relate to income that is effectively connected with a trade or business in the United States.

Educator expenses.
If you were an eligible educator in 2007, you can deduct as an adjustment to income up to $250 in unreimbursed travel expenses for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment, and other equipment and materials used in the classroom. For more information, see your tax form instructions.

Individual retirement arrangement (IRA), if you made contributions to a traditional IRA for 2007, you may be able to take an IRA deduction. But you must have taxable compensation effectively connected with a U.S. trade or business to do so. A statement should be sent to you by June 2, 2008, that shows all contributions to your traditional IRA for 2007. If you were covered by a retirement plan (qualified pension, profit-sharing (including 401(k)s), annuity, SEP, SIMPLE, etc.) at work or through self-employment, your IRA deduction may be reduced or eliminated. But you can still make contributions to an IRA even if you cannot deduct them. If you made nondeductible contributions to a traditional IRA for 2007, you must report them on Form 8606, Nondeductible IRAs.

For more information, see Publication 590, Individual Retirement Arrangements (IRAs).

Moving expenses.
If you are a nonresident alien temporarily in the United States earning taxable income for performing personal services, you can deduct moving expenses to the United States if you meet both of the following tests.

- You are a full-time employee for at least 39 weeks during the 12 months right after you move, or if you are self-employed, you work full time for at least 39 weeks during the first 12 months and 78 weeks during the first 24 months right after you move.
- Your new job location is at least 50 miles farther (by the shortest commonly traveled route) from your former home than your former job location was. If you had no former job location, the new job location must be at least 50 miles from your former home.

You cannot deduct the moving expense you have when returning to your home abroad or moving to a foreign job site.

Figure your deductible moving expenses to the United States on Form 3903, and deduct them on line 26 of Form 1040NR.

For more information on the moving expense deduction, see Publication 521.

Reimbursements.
If your employer reimbursed you for allowable moving expenses under an accountable plan, your employer should have excluded these reimbursements from your income. You can only deduct allowable moving expenses that were not reimbursed by your employer or that were reimbursed but the reimbursement was included in your income. For more information, see Publication 521.

Moving expense or travel expense.
If you deduct moving expenses to the United States, you cannot also deduct travel expenses (discussed later under Itemized Deductions) while temporarily away from your tax home in a foreign country. Moving expenses are based on a change in your principal place of business while travel expenses are based on your temporary absence from your principal place of business.

Self-employed SEP, SIMPLE, and qualified retirement plans.
If you are a self-employed individual, you may be able to deduct contributions to a SEP, SIMPLE, or qualified retirement plan that provides retirement benefits for yourself and your common-law employees, if any. To make deductible contributions for yourself, you must have net earnings from self-employment that are effectively connected with your U.S. trade or business.

Get Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), for further information.

Penalty on early withdrawal of savings.
You must include in income all effectively connected interest income you receive or that is credited to your account during the year. Do not include it if you pay interest to an early withdrawal from a time savings account. However, if the interest income is effectively connected with your U.S. trade or business during the year, you can deduct on line 29 of Form 1040NR the amount of the early withdrawal penalty that is the banking institution charged.

Student loan interest expense.
If you paid interest on a student loan in 2007, you may be able to deduct up to $2,500 of the interest you paid. Generally, you can claim the deduction if all of the following requirements are met.

1. Your filing status is any filing status except married filing separately.
2. Your modified adjusted gross income is less than $70,000.
3. No one else is claiming an exemption for you on their 2007 tax return.
4. You paid interest on a loan taken out only to pay tuition and other qualified higher education expenses for yourself, your spouse, someone who was your dependent when the loan was taken out, or someone you could have claimed as a dependent for the year the loan was taken out except that:
   a. The person filed a joint return,
   b. The person had gross income that was equal to or more than the exemption amount for that year ($3,400 for 2007), or
   c. You could be claimed as a dependent on someone else’s return.

5. The loan is not from a related person or a qualified employer plan.
6. The education expenses were paid or incurred within a reasonable period of time before or after the loan was taken out.
7. The person for whom the expenses were paid or incurred was an eligible student.

Use the worksheet in the Form 1040NR or Form 1040NR-EZ Instructions to figure the deduction. For more information, see Publication 970, Tax Benefits for Education.

Exemptions
Resident aliens can claim personal exemptions and deductions for dependents in the same way as U.S. citizens. However, nonresident aliens generally can claim only a personal exemption for themselves on their U.S. tax return.

Resident Aliens
You can claim personal exemptions and deductions for dependents according to the residency rules for U.S. citizens. You can claim an exemption for your spouse on a separate return if your spouse had no gross income for U.S. tax purposes and was not the dependent of another taxpayer. You can claim this exemption even if your spouse has not been a resident alien for a full tax year or is an alien who has not come to the United States.

You can claim an exemption for each person who qualifies as a dependent according to the rules for U.S. citizens. The dependent must be a citizen or national (defined earlier) of the United States or be a resident of the United States, Canada, or Mexico for some of the calendar year in which your tax year begins. Get Publication 501 for more information.

Your spouse and each dependent for whom you claim an exemption must have either an SSN or an ITIN. See Identification Number, earlier.

Phase-out of exemptions.
If the adjusted gross income shown on your tax return is more than the amount shown below for your filing status, your deduction for exemptions may be reduced or eliminated. Use the worksheet in your income tax return instructions to figure the amount, if any, you can deduct.

- $117,300, if married filing separately.
- $156,400, if single.
Nonresident Aliens

Generally, if you are a nonresident alien engaged in a trade or business in the United States, you can claim a personal exemption ($3,400 for 2007). You may be able to claim an exemption for a spouse and a dependent if you are described in any of the following discussions.

Your spouse and each dependent for whom you claim an exemption must have either an SSN or an ITIN. See Identification Number, earlier.

Residents of Mexico or Canada or U.S. nationals. If you are a resident of Mexico or Canada or a national of the United States (defined earlier), you can also claim a personal exemption for your spouse if your spouse had no gross income for U.S. tax purposes and cannot be claimed as the dependent on another U.S. taxpayer’s return. In addition, you can claim exemptions for your dependents who meet certain tests. Residents of Mexico, Canada, or nationals of the United States must use the same rules as U.S. citizens to determine who is a dependent and for which dependents exemptions can be claimed. See Publication 501 for these rules.

Phase-out of exemptions. If the adjusted gross income shown on line 36 of Form 1040NR or line 10 of Form 1040NR-EZ is more than the amount shown below for your filing status, your deduction for exemptions may be reduced or eliminated. Use the worksheet in the Form 1040NR or 1040NR-EZ instructions to figure the amount, if any, you can deduct.

You cannot claim an exemption for your spouse if he or she had no gross income during the year and cannot be claimed as a dependent on another U.S. taxpayer’s return.

You can claim exemptions for each of your dependents admitted to the United States on Form 1040NR or 1040NR-EZ.

List your spouse and dependents on line 7c of Form 1040NR. Enter the total on the appropriate line to the right of line 7c.

Residents of the Republic of Korea (South Korea). Nonresident aliens who are residents of the Republic of Korea (South Korea) may be able to claim exemptions for a spouse and children. The income tax treaty with the Republic of Korea (South Korea) imposes two additional requirements on Korean residents:

1. The spouse and all children claimed must live with the alien in the United States at some time during the tax year, and
2. The additional deduction for the exemptions must be prorated based on the ratio of the alien’s U.S. source gross income effectively connected with a U.S. trade or business for the tax year to the alien’s entire income from all sources during the tax year.

Example. Mr. Park, a nonresident alien who is a resident of Korea, lives temporarily in the United States with his wife and two children. During the tax year he receives U.S. compensa- tion of $9,000. He also receives $3,000 of income from sources outside the United States that is not effectively connected with his U.S. trade or business. Thus, his total income for the year is $12,000. Mr. Park meets all requirements for claiming exemptions for his spouse and two children. The additional deduction for 2007 is $7,650 figured as follows:

\[
\begin{align*}
\text{Total Income} & = 9,000 + 3,000 \\
\text{U.S. Source Income} & = 9,000 \\
\text{Ratio} & = \frac{9,000}{12,000} = 0.75 \\
\text{Additional Deduction} & = 0.75 \times 3,400 = 2,550
\end{align*}
\]

Students and business apprentices from India. Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty may be able to claim exemptions for their spouse and dependents. You can claim an exemption for your spouse if he or she had no gross income during the year and cannot be claimed as a dependent on another U.S. taxpayer’s return.

You can claim exemptions for each of your dependents admitted to the United States on Form 1040NR or 1040NR-EZ. If you meet the same dental expenses, state and local income taxes, real estate taxes, interest you paid on a home mortgage, charitable contributions, casualty and theft losses, and miscellaneous deductions. Use Schedule A of Form 1040NR to claim itemized deductions.

If you are filing Form 1040NR-EZ, you can only claim a deduction for state or local income taxes. If you are claiming any other itemized deduction, you must file Form 1040NR.

Standard deduction. Nonresident aliens cannot claim the standard deduction. However, see Students and business apprentices from India, next.

Students and business apprentices from India. A special rule applies to students and business apprentices who are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty. You can claim the standard deduction provided you do not claim itemized deductions.

Use Table 7, 8, or 9 in Publication 501 to figure your standard deduction. If you are filing Form 1040NR, enter the standard deduction on line 37 of Form 1040NR. In the space to the left of line 37, print, “Standard Deduction Allowed Under U.S.–India Income Tax Treaty.” If you are filing Form 1040NR-EZ, enter the amount on line 11.

State and local income taxes. If during the tax year, you receive income that is connected with a trade or business in the United States, you can deduct state and local income taxes you paid on that income.

Charitable contributions. You can deduct your charitable contributions or gifts to qualified organizations subject to certain limits. Qualified organizations include organizations that are religious, educational, charitable, public benefit, or scientific purposes.

You can claim exemptions for each of your dependents admitted to the United States on Form 1040NR or 1040NR-EZ. If you meet the same dental expenses, state and local income taxes, real estate taxes, interest you paid on a home mortgage, charitable contributions, casualty and theft losses, and miscellaneous deductions. Use Schedule A of Form 1040NR to claim itemized deductions.

If you are filing Form 1040NR, you can only claim a deduction for state or local income taxes. If you are claiming any other itemized deduction, you must file Form 1040NR.

Standard deduction. Nonresident aliens cannot claim the standard deduction. However, see Students and business apprentices from India, next.

Itemized Deductions

Residents of the Republic of Korea (South Korea). Nonresident aliens who are residents of the Republic of Korea (South Korea) may be able to claim exemptions for a spouse and children. The income tax treaty with the Republic of Korea (South Korea) imposes two additional requirements on Korean residents:

1. The spouse and all children claimed must live with the alien in the United States at some time during the tax year, and
2. The additional deduction for the exemptions must be prorated based on the ratio of the alien’s U.S. source gross income effectively connected with a U.S. trade or business for the tax year to the alien’s entire income from all sources during the tax year.

Example. Mr. Park, a nonresident alien who is a resident of Korea, lives temporarily in the United States with his wife and two children. During the tax year he receives U.S. compensation of $9,000. He also receives $3,000 of income from sources outside the United States that is not effectively connected with his U.S. trade or business. Thus, his total income for the year is $12,000. Mr. Park meets all requirements for claiming exemptions for his spouse and two children. The additional deduction for 2007 is $7,650 figured as follows:

\[
\begin{align*}
\text{Total Income} & = 9,000 + 3,000 \\
\text{U.S. Source Income} & = 9,000 \\
\text{Ratio} & = \frac{9,000}{12,000} = 0.75 \\
\text{Additional Deduction} & = 0.75 \times 3,400 = 2,550
\end{align*}
\]

You can claim the same itemized deductions as U.S. citizens, using Schedule A of Form 1040. These deductions include certain medical and dental expenses, state and local income taxes, real estate taxes, interest you paid on a home mortgage, charitable contributions, casualty and theft losses, and miscellaneous deductions.

If you do not itemize your deductions, you can claim the standard deduction for your particular filing status. For further information, see Form 1040 and instructions.

Nonresident Aliens

You can deduct certain itemized deductions if you receive income effectively connected with your U.S. trade or business. These deductions include state and local income taxes, charitable contributions to U.S. organizations, casualty and theft losses, and miscellaneous deductions.
the amount) or a written communication from the charity. The written communication must include the date of the contribution, and the amount of the contribution.

You may deduct a cash contribution of $250 or more only if you have a written statement from the charitable organization showing:

1. The amount of any money contributed.
2. Whether the organization gave you any goods or services in return for your contribution, and
3. A description and estimate of the value of any goods or services described in (2).

If you received only intangible religious benefits, the organization must state this and it does not have to describe or value the benefit.

Noncash contributions. For contributions not made in cash, the records you must keep depend on the amount of your deduction. See Publication 526 for details. For example, if you make a noncash contribution and the amount of your deduction is more than $500, you must complete and attach to your tax return Form 8283, Noncash Charitable Contributions. If you deduct more than $500 for a contribution of a motor vehicle, boat, or airplane, you must also attach a statement from the charitable organization to your return. If your total deduction is over $5,000, you also may have to get appraisals of the values of the property. If the donated property is valued at more than $5,000, you must obtain a qualified appraisal. You generally must attach to your tax return an appraisal of any property if your deduction for the property is more than $500. See Form 8283 and its instructions for details.

Contributions of appreciated property. If you contribute property to a qualified organization, the amount of your charitable contribution is generally the fair market value of the property at the time of the contribution. However, if you contribute property with a fair market value that is more than your basis in it, you may have to reduce the fair market value by the amount of appreciation (increase in value) when you figure your deduction. Your basis in the property is generally what you paid for it. If you need more information about basis, get Publication 551, Basis of Assets.

Different rules apply to figuring your deduction, depending on whether the property is:

- Ordinary income property, or
- Capital gain property.

For information about these rules, see Publication 526.

Limit. The amount you can deduct in a tax year is limited in the same way it is for a citizen or resident of the United States. For a discussion of limits on charitable contributions and other information, get Publication 526.

Casualty and theft losses. You can deduct your loss from fire, storm, shipwreck, or other casualty, or theft of property even though your home is not connected with a U.S. trade or business. The property can be personal use property or income-producing property not connected with a U.S. trade or business. The property must be located in the United States at the time of the casualty or theft. You can deduct theft losses only in the year in which you discover the loss.

The amount of the loss is the fair market value of the property immediately before the casualty or theft less its fair market value immediately after the casualty or theft (but not more than its cost or adjusted basis) less any insurance or other reimbursement. The fair market value of property immediately after a theft is considered zero, because you no longer have the property.

If your property is covered by insurance, you should file a timely insurance claim for reimbursement. If you do not, you cannot deduct this loss as a casualty or theft loss.

Figure your deductible casualty and theft losses on Form 4684, Casualties and Thefts.

Losses from personal use property. You cannot deduct the first $100 of each casualty or theft loss to property held for personal use. You can deduct only the total of these losses for the year (reduced by the $100 limit) that is more than 10% of your adjusted gross income (line 36, Form 1040NR) for the year.

Losses from income-producing property. These losses are not subject to the limitations that apply to personal use property. Use Section B of Form 4684 to figure your deduction for these losses.

Job expenses and other miscellaneous deductions. You can deduct job expenses, such as allowable unreimbursed travel expenses (discussed next), and other miscellaneous deductions. Generally, the allowable deductions must be related to effectively connected income.

Deductible expenses include:

- Union dues,
- Safety equipment and small tools needed for your job,
- Dues to professional organizations,
- Subscriptions to professional journals,
- Tax return preparation fees, and
- Casualty and theft losses of property used in performing services as an employee (employee property).

Most miscellaneous itemized deductions are deductible only if they are more than 2% of your adjusted gross income (line 36, Form 1040NR). For more information on miscellaneous deductions, see the instructions for Form 1040NR.

Travel expenses. You may be able to deduct your ordinary and necessary travel expenses while you are temporarily performing personal services in the United States. Generally, a temporary assignment in a single location is one that is realistically expected to last (and does in fact last) for one year or less. You must be able to show you were present in the United States on an activity that required your temporary absence from your regular place of work.

For example, if you have established a "tax home" through regular employment in a foreign country, and intend to return to similar employment in the same country at the end of your temporary stay in the United States, you can deduct reasonable travel expenses you paid. You cannot deduct travel expenses for other members of your family or party.

Deductible travel expenses. If you qualify, you can deduct your expenses for:

- Transportation—airfare, local transporta-
  tion, including train, bus, etc.,
- Lodging—rent paid, utilities (do not in-
  clude telephone), hotel or motel room ex-
  penses, and
- Meal expenses—actual expenses allowed
  if you keep records of the amounts, or, if
  you do not wish to keep detailed records,
you are generally allowed a standard meal allowance amount depending on the date and area of your travel. You can deduct only 50% of unreimbursed meal expenses.

The standard meal allowance rates for high-cost areas are in Publication 1542, Per Diem Rates (For Travel Within the Continental United States), which is available only on the Internet at www.irs.gov/pub/irs-pdf/p1542.pdf. The rates for other areas are in Publication 463.

Use Form 2106 or 2106-EZ to figure your allowable expenses that you claim on line 9 of Schedule A (Form 1040NR).

Expenses allocable to U.S. tax-exempt income. You cannot deduct an expense, or part of an expense, that is allocable to U.S. tax-exempt income, including income exempt by tax treaty.

Example. Irina Oak, a citizen of Poland, resided in the United States for part of the year to acquire business experience from a U.S. company. During her stay in the United States, she received a salary of $8,000 from her Polish employer. She received no other U.S. source income. She spent $3,000 on travel expenses, of which $1,000 were for meals. None of these expenses were reimbursed. Under the tax treaty with Poland, $5,000 of her salary is exempt from U.S. income tax. In filling out Form 2106-EZ, she must reduce her deductible meal expenses by half ($500). She must reduce the remaining $2,500 of travel expenses by 62.5% ($1,563) because 62.5% ($5,000 - $8,000) of her salary is exempt from tax. She enters the remaining total of $937 on line 9 of Schedule A (Form 1040NR). She completes the remaining lines according to the instructions for Schedule A.

More information. For more information about deductible expenses, reimbursements, and recordkeeping, get Publication 463.

Tax Credits and Payments

This discussion covers tax credits and payments for resident aliens, followed by a discussion of the credits and payments for nonresident aliens.

Resident Aliens

Resident aliens generally claim tax credits and report tax payments, including withholding, us-

ing the same rules that apply to U.S. citizens.

The following items are some of the credits you may be able to claim.
Retirement savings contributions credit. You may claim a credit, subject to certain limits, for income tax you paid or accrued to a foreign country on foreign source income. You cannot claim a credit for taxes paid or accrued on excluded foreign earned income. To claim a credit for income taxes paid or accrued to a foreign country, you generally will file Form 1116, Foreign Tax Credit (Individual, Estate, or Trust), with your Form 1040. For more information, get Publication 514, Foreign Tax Credit for Individuals.

Child and dependent care credit. You may be able to take this credit if you pay someone to care for your qualifying child who is under age 13, or your disabled dependent or disabled spouse, so that you can work or look for work. Generally, you must be able to claim an exemption for your dependent. For more information, get Publication 503, Child and Dependent Care Expenses, and Form 2441, Child and Dependent Care Expenses.

Credit for the elderly or the disabled. You may qualify for this credit if you are 65 or older or if you retired on permanent and total disability. For more information on this credit, get Publication 524, Credit for the Elderly or the Disabled, and Schedule R (Form 1040).

Education credits. You may qualify for these credits if you paid qualified education expenses for yourself, your spouse, or your dependent. There are two education credits: the Hope credit and the lifetime learning credit. You cannot claim these credits if you are married filing separately. Use Form 8863, Education Credits (Hope and Lifetime Learning Credits), to figure the credit. For more information, see Publication 970.

Retirement savings contributions credit. You may qualify for this credit (also known as the saver’s credit) if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2007. You cannot claim this credit if:

1. You were born after January 1, 1990,
2. You were a full-time student,
3. Your exemption is claimed by someone else on his or her 2007 tax return, or
4. Your adjusted gross income is more than:
   a. $52,000, if your filing status is married filing jointly,
   b. $39,000, if your filing status is head of household, or
   c. $26,000, if your filing status is single, married filing separately, or qualifying widow(er).

Use Form 8880, Credit for Qualified Retirement Savings Contributions, to figure the credit. For more information, see Publication 590.

Child tax credit. You may be able to take this credit if you have a qualifying child. A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2007.
- Is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsis- ter, or a descendant of any of them (for example, your grandchild, niece, or nephew).
- Is a U.S. citizen, a U.S. national, or a resi- dent alien.
- Did not provide over half of his or her own support for 2007.
- Lived with you more than half of 2007. Temporary absences, such as for school, vacation, or medical care, count as time you lived in the home.

An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption. See your form instructions for additional de- tails.

Adoption credit. You may qualify to take a tax credit of up to $1,390 for adopting a child. This amount may be allowed for the adoption of a child with spe- cial needs regardless of whether you have quali- fying expenses. To claim the adoption credit, file Form 8839, Qualified Adoption Expenses, with your Form 1040.

Earned income credit. You may qualify for an earned income credit of up to $4,800 in 2007 if you have earned income and have earned income that is less than $11,700 ($14,300 if married filing jointly). If you are a nonresident alien and the number was is-

You were born after January 1, 1990,
2. You were a full-time student,
3. Your exemption is claimed by someone Valid for Employment

You may have a qualifying child and your earned income and adjusted gross income were each less than $12,590 ($14,590 if married filing jointly), your credit could be as much as $4.71. If you do not have a qualifying child and your earned income and adjusted gross income were each less than $12,590 ($14,590 if married filing jointly), your credit could be as much as $428. You cannot claim the earned income credit if your filing status is married filing separately.

You are a U.S. citizen, or your dependent, or your spouse as discussed in Chapter 5, or if they qualify as certain married individuals living apart (see Joint Return Test in Publication 503).

The amount of your child and dependent care expense that qualifies for the credit in any tax year cannot be more than your earned in- come from the United States for that tax year. Earned income generally means wages, salar- ies, and professional fees for personal services performed. For more information, get Publication 503.

Education credits. If you are a nonresident alien for any part of the year, you generally cannot claim the education credits. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse as dis- cussed in chapter 1, you may be eligible for these credits.

Retirement savings contributions credit. You may qualify for this credit (also known as the saver’s credit) if you made eligible contribu- tions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2007. You cannot claim this credit if:

- You were born after January 1, 1990,
You were a full-time student, your exemption is claimed by someone else on his or her 2007 tax return, or your adjusted gross income is more than $26,000.

Use Form 8880 to figure the credit. For more information, see Publication 590.

**Child tax credit.** You may be able to take this credit if you have a qualifying child. A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2007.
- Is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
- Is a U.S. citizen, a U.S. national, or a resident alien.
- Did not provide over half of his or her own support for 2007.
- Lived with you more than half of 2007.

Temporary absences, such as for school, vacation, or medical care, count as time lived in the home.

An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption.

See your form instructions for additional details.

**Adoption credit.** You may qualify to take a tax credit of up to $1,390 for qualifying expenses paid to adopt an eligible child. This amount may be allowed for the adoption of a child with special needs regardless of whether you have qualifying expenses. To claim the adoption credit, file Form 8839 with your Form 1040NR.

Married nonresident aliens can claim the credit if you file a joint return, file as a married filing separately, or file as a qualifying joint return with a U.S. citizen or resident spouse as discussed in chapter 1, or if they qualify as certain married individuals living apart (see Married Persons Filing Separate Returns in the Form 8839 instructions).

**Credit for prior year minimum tax.** If you paid alternative minimum tax in a prior year, get Form 8801, Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts, to see if you qualify for this credit.

**Earned income credit.** If you are a nonresident alien for any part of the tax year, you generally cannot get the earned income credit. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse as discussed in chapter 1, you may be eligible for the credit.

You, your spouse, and any qualifying child must have valid SSNs to claim this credit. You cannot claim the credit unless you have an ITIN. If a social security card has a legend that says Not Valid for Employment and the number was issued so that you or your spouse or your qualifying child could receive a federally funded benefit, you cannot claim the earned income credit. An example of a federally funded benefit is Medicaid. If a card has this legend and the individual’s immigration status has changed so that the individual is now a U.S. citizen or lawful permanent resident, the SSA to issue a new social security card without the legend.

See Publication 596 for more information on the credit.

**Tax Withheld.** You can claim the tax withheld during the year as a payment against your U.S. tax. You claim it in the “Payments” section on page 2 of Form 1040NR or line 18 of Form 1040NR-EZ. The tax withheld reduces any tax you owe with Form 1040NR or Form 1040NR-EZ.

**Withholding from wages.** Any federal income tax withheld from your wages during the tax year while you were a nonresident alien is allowed as a payment against your U.S. income tax liability for the same year. You can claim the income tax withheld whether or not you were engaged in a trade or business in the United States during the year, and whether or not the wages (or any other income) were connected with a trade or business in the United States.

**Excess social security tax withheld.** If you have two or more employers, you may be able to claim a credit against your U.S. income tax liability for social security tax withheld in excess of the maximum required. See Social Security and Medicare Taxes in chapter 8 for more information.

**Tax paid on undistributed long-term capital gains.** If you are a shareholder in a mutual fund (or other regulated investment company) or real estate investment trust, you can claim a credit for your share of any taxes paid by the company on its undistributed long-term capital gains. You will receive information on Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, which you must attach to your return.

**Tax withheld at the source.** You can claim as a payment any tax withheld at the source on investment and other fixed or determinable annual or periodic income paid to you. Fixed or determinable income includes interest, dividend, rental, and royalty income that you do not claim to be effectively connected income. Wage or salary payments can be fixed or determinable income to you, but usually are subject to withholding as discussed above. Taxes on fixed or determinable income are withheld at a 30% rate or a lower treaty rate.

**Tax withheld on partnership income.** If you are a foreign partner in a partnership, the partnership will withhold tax on your share of effectively connected taxable income from the partnership. The partnership will give you a statement on Form 8453. For more information, see Partnership Information and Form 8582, Foreign Partnership's Information Statement of Section 1446 Whitholding Tax, showing the tax withheld. A partnership using an ITIN will withhold tax on your share of effectively connected taxable income during the year if you are a U.S. citizen or resident alien. If the partnership withholds tax, you will receive a statement on Form 123-G. Claim the tax withheld as a payment on line 67a or 67b of Form 1040NR, as appropriate.

Claiming tax withheld on your return. When you fill out your tax return, take extra care to enter the correct amount of any tax withheld shown on your information documents. The following table lists some of the more common information documents and shows where to find the amount of tax withheld.

<table>
<thead>
<tr>
<th>Form number</th>
<th>Location of tax withheld</th>
<th>Information Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>RR-1042S</td>
<td>Box 12</td>
<td>W-2c, W-3c, W-4</td>
</tr>
<tr>
<td>SSA-1042S</td>
<td>Box 9</td>
<td>1042-S</td>
</tr>
<tr>
<td>W-12</td>
<td>Box 2</td>
<td>RRB-1042S</td>
</tr>
<tr>
<td>8288-A</td>
<td>Box 2</td>
<td>1042-S</td>
</tr>
</tbody>
</table>

**Bona Fide Residents of American Samoa or Puerto Rico.**

If you are a nonresident alien who is a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you generally are taxed the same as resident aliens.

**Residents of Puerto Rico.** If you are a bona fide resident of Puerto Rico for the entire year, you can exclude from gross income all income from sources in Puerto Rico (other than amounts for services performed as an employee of the United States or any of its agencies).

If you report income on a calendar year basis and you do not have wages subject to withholding, file your return and pay your tax by June 15. You must also make your first payment of estimated tax by June 15. You cannot file a joint income tax return or make joint payments of estimated tax. However, if you are married to a U.S. citizen or resident, see Resident Spouse Treated as a Resident in chapter 1.

If you earn wages subject to withholding, your U.S. income tax return is due on April 15. Your first payment of estimated tax is also due by April 15. For information on withholding and estimated tax, see chapter 8.

You cannot claim exemptions for dependents who are residents of Puerto Rico unless the dependents are citizens of the United States.

**Residents of American Samoa.** If you are a bona fide resident of American Samoa for the entire year, you can exclude from gross income all income from sources in American Samoa (other than amounts for services performed as an employee of the U.S. government or any of its agencies).

For more information about this exclusion, get Form 4563 and Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.
6.

Dual-Status Tax Year

Introduction

You have a dual-status tax year when you have been both a resident alien and a nonresident alien in the same year. Dual status does not refer to your citizenship, only to your resident status in the United States. In determining your U.S. income tax liability for a dual-status tax year, different rules apply for the part of the year you are a resident of the United States and the part of the year you are a nonresident.

The most common dual-status tax years are the years of arrival and departure. See Dual-Status Aliens in chapter 1.

If you are married and choose to be treated as a U.S. resident for the entire year, as explained in chapter 1, the rules of this chapter do not apply to you for that year.

Topics

This chapter discusses:

- Income subject to tax,
- Restrictions for dual-status taxpayers,
- Exemptions,
- How to figure the tax,
- Forms to file,
- When and where to file, and
- How to fill out a dual-status return.

Useful Items

You may want to see:

Publication
- 503 Child and Dependent Care Expenses
- 514 Foreign Tax Credit for Individuals
- 524 Credit for the Elderly or the Disabled
- 575 Pension and Annuity Income

Form (and Instructions)
- 1040 U.S. Individual Income Tax Return
- 1040-C U.S. Departing Alien Income Tax Return
- 1040-ES Estimated Tax for Individuals
- 1040-ES (NR) U.S. Estimated Tax for Nonresident Alien Individuals
- 1040NR U.S. Nonresident Alien Income Tax Return
- 1116 Foreign Tax Credit

See chapter 12 for information about getting these publications and forms.

Tax Year

You must file your tax return on the basis of an annual accounting period called a tax year. If you have not previously established a fiscal tax year, your tax year is the calendar year. A calendar year is 12 consecutive months ending on December 31. If you have previously established a regular fiscal year (12 consecutive months ending on the last day of a month other than December, or a 52–53 week year) and are considered to be a U.S. resident for any calendar year, you will be treated as a U.S. resident for any part of your fiscal year that falls within that calendar year.

Income Subject to Tax

For the part of the year you are a resident alien, you are taxed on income from all sources. Incomes from sources outside the United States is taxable if you receive it while you are a resident alien. The income is taxable even if you earned it while you were a nonresident or if you became a nonresident alien after receiving it and before the end of the year.

For the part of the year you are a nonresident alien, you are taxed on income from U.S. sources and on certain foreign source income treated as effectively connected with a U.S. trade or business. (The rules for treating foreign source income as effectively connected are discussed in chapter 1 under Foreign Income.)

Income from sources outside the United States that is not effectively connected with a trade or business in the United States is not taxable if you receive it while you are a nonresident alien. The income is not taxable even if you earned it while you were a resident alien or if you became a resident alien after receiving it and before the end of the year.

Income from U.S. sources is taxable whether you receive it while a nonresident alien or a resident alien unless specifically exempt under the Internal Revenue Code or a tax treaty provision. Generally, tax treaty provisions apply only to the part of the year you were a nonresident. In certain cases, however, treaty provisions may apply while you were a resident alien. See chapter 9 for more information.

When determining what income is taxed in the United States, you must consider exemptions under U.S. tax law as well as the reduced tax rates and exemptions provided by tax treaties between the United States and certain foreign countries. For a further discussion of tax treaties, see chapter 9.

Exemptions

As a dual-status taxpayer, you usually will be able to claim your own personal exemption. Subject to the general rules for qualification, you can claim exemptions for your spouse and dependents when you figure taxable income for the part of the year you are a resident alien. The amount you can claim for these exemptions is limited to your taxable income (figured before subtracting exemptions) for the part of the year you are a resident alien. You cannot use exemptions (other than your own) to reduce taxable income to less than zero for that period.

Special rules apply to exemptions for the part of the tax year you are a nonresident alien if you are a:

1) Standard deduction. You cannot use the standard deduction allowed on Form 1040. However, you can itemize any allowable deductions.

2) Exemptions. Your total deduction for the exemptions for your spouse and allowable dependents cannot be more than your taxable income (figured without deducting personal exemptions) for the period you are a resident alien.

3) Head of household. You cannot use the head of household Tax Table column or Tax Computation Worksheet.

4) Joint return. You cannot file a joint return. However, see Choosing Resident Alien Status under Dual-Status Aliens in chapter 1.

5) Tax rates. If you are married and a nonresident of the United States for all or part of the tax year and you do not choose to file jointly as discussed in chapter 1, you must use the Tax Table column or Tax Computation Worksheet for married filing separately to figure your tax on income effectively connected with a U.S. trade or business. You cannot use the Tax Table column or Tax Computation Worksheet for married filing jointly or single. However, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year and you are a:

- Married resident of Canada, Mexico, or the Republic of Korea (South Korea), or
- Married U.S. national.

See the instructions for Form 1040NR to see if you qualify.

A U.S. national is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who choose to become U.S. nationals instead of U.S. citizens.

6) Tax credits. You cannot claim the education credits, the earned income credit, or the credit for the elderly or the disabled unless:

- You are married, and
- You choose to be treated as a resident for all of 2007 by filing a joint return with your spouse who is a U.S. citizen or resident, as discussed in chapter 1.

Restrictions for Dual-Status Taxpayers

The following restrictions apply if you are filing a tax return for a dual-status tax year.

1) Standard deduction. You cannot use the standard deduction allowed on Form 1040. However, you can itemize any allowable deductions.

2) Exemptions. Your total deduction for the exemptions for your spouse and allowable dependents cannot be more than your taxable income (figured without deducting personal exemptions) for the period you are a resident alien.

3) Head of household. You cannot use the head of household Tax Table column or Tax Computation Worksheet.

4) Joint return. You cannot file a joint return. However, see Choosing Resident Alien Status under Dual-Status Aliens in chapter 1.

5) Tax rates. If you are married and a nonresident of the United States for all or part of the tax year and you do not choose to file jointly as discussed in chapter 1, you must use the Tax Table column or Tax Computation Worksheet for married filing separately to figure your tax on income effectively connected with a U.S. trade or business. You cannot use the Tax Table column or Tax Computation Worksheet for married filing jointly or single. However, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year and you are a:

- Married resident of Canada, Mexico, or the Republic of Korea (South Korea), or
- Married U.S. national.

See the instructions for Form 1040NR to see if you qualify.

A U.S. national is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who choose to become U.S. nationals instead of U.S. citizens.

6) Tax credits. You cannot claim the education credits, the earned income credit, or the credit for the elderly or the disabled unless:

- You are married, and
- You choose to be treated as a resident for all of 2007 by filing a joint return with your spouse who is a U.S. citizen or resident, as discussed in chapter 1.

Restrictions for Dual-Status Taxpayers

The following restrictions apply if you are filing a tax return for a dual-status tax year.
How To Figure Tax

When you figure your U.S. tax for a dual-status year, you are subject to different rules for the part of the year you are a resident and the part of the year you are a nonresident.

Income

All income for your period of residence and all income that is effectively connected with a trade or business in the United States for your period of nonresidence, after allowable deductions, is added and taxed at the rates that apply to U.S. citizens and residents. Income that is not connected with trade or business in the United States for your period of nonresidence is subject to the flat 30% rate or lower treaty rate. You cannot take any deductions against this income.

Social security and railroad retirement benefits.

During the part of the year you are a resident alien, part of the social security and railroad retirement benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the flat 30% tax, unless exempt, or subject to a lower treaty rate. (See The 30% Tax in chapter 4.)

During the part of the year you are a resident alien, part of the social security and railroad retirement benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the flat 30% tax, unless exempt, or subject to a lower treaty rate. (See The 30% Tax in chapter 4.)

Use the Social Security Benefits Worksheet in the Form 1040 instructions to help you figure the taxable part of your social security and equivalent tier 1 railroad retirement benefits for the part of the year you were a resident alien. If you received U.S. social security benefits while you were a nonresident alien, the Social Security Administration will send you Form SSA-1042S showing your combined benefits for the entire year and the amount of tax withheld. You will not receive separate statements for the benefits received during your periods of U.S. residence and nonresidence. Therefore, it is important for you to keep careful records of these amounts. You will need this information to properly complete your return and determine your tax liability.

If you received railroad retirement benefits while you were a nonresident alien, the U.S. Railroad Retirement Board (RRB) will send you Form RRB-1042S, Statement for Nonresident Alien Recipients of Payments by the Railroad Retirement Board, and/or Form RRB-1099-R, Annualization of Pensions by the Railroad Retirement Board. If your country of legal residence changed or your rate of tax changed during the tax year, you may receive more than one form.

You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year.

You may qualify to take a tax credit for up to $1,190 for qualifying expenses paid to adopt an eligible child. This amount may be allowed for the adoption of a child with special needs regardless of whether you have qualifying expenses. To claim the adoption credit, file Form 8839 with your U.S. income tax return that you file.

Married dual-status aliens can claim the credit only if they choose to file a joint return with a U.S. citizen or resident spouse as discussed in chapter 1, or if they qualify as certain married individuals living apart.

Payments

You can report as payments against your U.S. income tax liability certain taxes you paid, or that were withheld from your income. These include:

- Tax withheld from wages earned in the United States,
- Taxes withheld at the source from various items of income from U.S. sources other than wages,
- Estimated tax paid with Form 1040-EZ or Form 1040-ES (NR), and
- Tax paid with Form 1040-C, at the time of departure from the United States.

Forms To File

The U.S. income tax return you must file as a dual-status alien depends on whether you are a resident alien or a nonresident alien at the end of the tax year.

Resident at end of year. You must file Form 1040 if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. Write “Dual-Status Return” across the top of the return. Attach a statement to your return to show the income for the part of the year you are a resident. You can use Form 1040 as the statement, but be sure to mark “Dual-Status Statement” across the top.

Nonresident at end of year. You must file Form 1040NR or Form 1040NR-EZ if you are a dual-status taxpayer who gives up residence in the United States during the year and who is not a U.S. resident on the last day of the tax year. Write “Dual-Status Return” across the top of the return. Attach a statement to your return to show the income for the part of the year you are a resident. You can use Form 1040 as the statement, but be sure to mark “Dual-Status Statement” across the top.

Tax Credits and Payments

This discussion covers tax credits and payments for dual-status aliens.

Credits

As a dual-status alien, you generally can claim tax credits using the same rules that apply to resident aliens. There are certain restrictions that may apply. These restrictions are discussed here, along with a brief explanation of credits often claimed by individuals.

Foreign tax credit.

If you have paid or are liable for the payment of income tax to a foreign country on income from foreign sources, you may be able to claim a credit for the foreign taxes.

If you claim the foreign tax credit, you generally must file Form 1116 with your income tax return. For more information, see the instructions for Form 1116 or get Publication 514.

Child and dependent care credit.

You may qualify for this credit if you pay someone to care for your qualifying child who is under age 13, or if you pay someone to care for your disabled dependent or disabled spouse so that you can work or look for work. Generally, you must be able to claim an exemption for your dependent.

Married dual-status aliens can claim the credit only if they choose to file a joint return with a U.S. citizen or resident spouse as discussed in chapter 1, or if they qualify as certain married individuals living apart.

You may qualify for this credit (also known as the saver’s credit) if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2007. You cannot claim this credit if:

- You were born after January 1, 1990.
- You were a full-time student.
- Your exemption is claimed by someone else on his or her 2007 tax return.
- Your adjusted gross income is more than $26,000.

Use Form 8880 to figure the credit. For more information, see Publication 590.

Child tax credit.

You may be able to take this credit if you have a qualifying child. A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2007.
- Is your son, daughter, steppchild, foster child, brother, sister, stepbrother, stepsis-
ter, or a descendant of any of them (for example, your grandchild, niece, or ne-
hew).
- Is a U.S. citizen, a U.S. national, or a resi-
dent alien.
- Did not provide over half of his or her own support for 2007.

Lived with you more than half of 2007.
Illustration of Dual-Status Return


The Major Product Co. later offered Sam a permanent job, and he returned to the United States with a permanent visa on September 10, 2007.

During Sam’s temporary assignment in the United States, the Major Product Co. paid him $6,500. He accounted to his employer for his expenses for travel, meals, and lodging while on temporary assignment, and was reimbursed for his expenses. This amount was not included on his wage statement, Form W-2, given to him when he left the United States.

After Sam became permanently employed, his wages for the rest of the year were $21,800, including reimbursement of his moving expenses. He arrived and received a Form W-2 for this period. His other income received in 2007 was:

- Interest income paid by the U.S. Bank (not effectively connected):
  - March 31: $45
  - June 30: $48
  - September 30: $68
  - December 31: $89

- Dividend income paid by Major Product Co. (not effectively connected):
  - April 3: $120
  - July 3: $120
  - October 2: $120

- Interest income (in U.S. dollars) paid by the U.K. Bank:
  - March 31: $90
  - June 30: $110
  - September 30: $118
  - December 31: $120

Sam paid the following expenses while he was in the United States:

- Moving expenses incurred and paid in September:
  - VA State income tax: $8,300
  - Contributions to U.S. charities: $612

Before Sam left the United States in May, he filed Form 1040-C (see chapter 11). He owed no tax when he left the United States.

Form 1040NR

Sam completes Form 1040NR as follows.

Pages 1, 2, and 3.

Sam prints his name, address, social security number, and type of entry visa on page 1 of Form 1040NR. He prints “Dual-Status Statement” across the top of the form.

On line 8, Sam enters his salary while a nonresident. He enters the state income tax withheld from his salary on line 37 (carried from page 3, line 17, Schedule A) and the federal income tax withheld ($336) from his salary on line 38. He also carries these amounts to Form 1040 (discussed later).

Page 4.

Sam also reports the not effectively connected U.S. income received while he was a nonresident alien. He reports the April and July dividends from the Major Product Co. in column (c) of line 76a, page 4. He figures the tax on his dividend income on lines 88 and 89 and carries it forward to page 2, line 53 on Form 1040NR. (The rate of tax on this income is limited to 15% by Article 10 of the U.S.-U.K. income tax treaty. Treaty rates vary from country to country, so be sure to check the provisions in the treaty you are claiming.)

Sam also reports $36, the amount of tax withheld at source by the Major Product Co. in column (a) of line 76a, Form 1040NR, and carries it forward to page 2, line 66. Later he will report the amount on Form 1040.

Page 5.

Sam is not required to report the interest credited to his account by the U.S. Bank during the period he was a nonresident alien. Interest on deposits with U.S. banks that is not effectively connected with a U.S. trade or business generally is treated as income from sources in the United States but is not taxable to a nonresident alien. He checks the “Yes” box on page 5, line L, of Form 1040NR, and explains why this income is not included on his return.

The interest income received from the U.K. Bank while Sam was a nonresident alien is foreign-source income and not taxable on his U.S. return.

Sam completes all applicable items on page 5 of Form 1040NR. This provides the dates of arrival and departure, and information concerning tax treaty benefits that he has claimed.

Form 1040

Sam completes Form 1040 as follows.

Page 1.

Sam prints his name, social security number, and address on page 1 of Form 1040. He checks the “You” box for the Presidential Election Campaign Fund and “Single” under filing status. He also checks the exemption block for himself and prints “Dual-Status Return” across the top of the form.

Sam reports on line 7, Form 1040, all wages received during the period he was a resident of the United States ($21,800) and the wages received during the period he was a nonresident alien ($6,500) that was effectively connected with his U.S. trade or business. This income is taxed at the graduated rates.

Sam reports on Form 1040 the interest income credited to his account by the U.S. Bank and the U.K. Bank in September and December, while he was a U.S. resident. If any of the interest income received while he was a nonresident alien was effectively connected with his U.S. trade or business, he would also report these amounts on Form 1040. If he had paid foreign income tax on the interest income received from the U.K. Bank, he would claim a foreign tax credit.

The dividend income includes only the October dividend, which was received while Sam was a U.S. resident. The dividend income received during his period of nonresidence was not effectively connected with his U.S. trade or business and, therefore, not taxed at the graduated rates.

Sam completes Form 3903 (not illustrated) to figure his moving expense deduction and reports the total on Form 1040, line 26.

Schedule A (Form 1040).

Sam cannot claim the standard deduction because he has a dual-status tax year. He reports his itemized deductions on Schedule A (Form 1040). The only itemized deduction he had while he was a nonresident alien was the state income tax withheld from his pay. For information purposes, he lists this amount on Schedule A, line 1, Form 1040NR, in addition to including it on Schedule A, Form 1040.

Sam totals his itemized deductions on line 29, Schedule A (Form 1040).
Page 2. Sam checks box 39b and reports the amount from line 28 of Schedule A (Form 1040) on line 40, Form 1040.

Sam enters $3,400 for one personal exemption on Form 1040, line 42. He subtracts the amount on line 42 from the amount on line 41 to figure his taxable income, line 43.

Sam is now ready to figure the tax on his income taxed at the graduated rates. He uses the column in the Tax Table for single individuals. He enters $2,035 on line 44. Because he had no alternative minimum tax to add, he enters $2,035 again on line 46.

Sam also enters $2,035 on line 57 because he had no credits to subtract.

To this tax he must add the tax on the income taxed at the 30% or lower treaty rate. Because there is no line on Form 1040 for this tax, he reports the amount ($36) on the dotted line next to line 63 and includes it in the total tax on line 63.

Sam adds the total amount of tax withheld ($2,671) from his wages to the amount the tax withheld at source ($36 from Form 1040NR, line 66). He enters $2,707 on line 64. He also writes a brief explanation.

Sam compares the total tax on Form 1040, line 63 to the total payments on line 72, to see if he has overpaid his tax or if he owes an additional amount. Because the amount of tax withheld and the amount of tax paid at source are more than his total tax, he has overpaid his tax. He subtracts the amount on line 63 from the amount on line 72 to figure his refund.

Sam checks to be sure that he has completed all parts of Form 1040 that apply to him. He also checks to see if he has completed the necessary parts of the Form 1040NR that he is attaching as a statement. He then signs and dates the return and enters his occupation.

Sam mails the return to the following address.
Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301-0215
**Dual Status Return**

**Form 1040 (2007)**

**Department of the Treasury—Internal Revenue Service**

**Dual Status Tax Year**

**Check only one.**

1. **Single**
2. **Married filing separately**
3. **Married filing jointly**
4. **Qualifying widow(er) with dependent child**

**Income**

- **Attach Form(s) 8812, Form 8857.**
- **Tax-exempt interest.**
- **Ordinary dividends.**
- **Guaranteed dividend income (see page 5).**
- **Alimony received.**
- **Social security benefits.**
- **Capital gain or (loss).**
- **Other gain or (loss), other than Form 8824.**
- **IRA distributions.**
- **TSA travel accident insurance.**
- **Retirement plans:职场, retirement plans, profit-sharing, 401(k), etc.**
- **Unemployment compensation.**
- **Social security benefits.**
- **Other income.**

**Adjusted Gross Income**

- **Educator expenses.**
- **Charitable contributions.**
- **Health savings account deduction.**
- **Moving expenses.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**

**Adjusted Gross Income**

- **Education expenses.**
- **Charitable contributions.**
- **Health savings account deduction.**
- **Moving expenses.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**
- **Other income.**

**Credits**

- **Add lines 64, 65, 66a, and 67 through 71. These are your total credits.**
- **Add line 64 through lines 23.**
- **Add lines 24 through line 63.**

**Taxable Income**

- **Subtract line 40 from line 38.**
- **Subtract line 42 from line 41.**
- **If line 42 is more than line 41, enter -0-.”**

**Other Taxes**

- **Add line 64 through line 63.**
- **Add line 64 through line 63.**
- **Add line 64 through line 63.**

**Refund**

- **Add line 64 through line 63.**
- **Add line 64 through line 63.**
- **Add line 64 through line 63.**

**Others**

- **Add line 64 through line 63.**
- **Add line 64 through line 63.**
- **Add line 64 through line 63.**

**Paid Preparer**

- **No.**
- **City of employer.**
- **EIN.**
- **Designation.**
- **Telephone.**
- **Address.**

**Preparer's Use Only**

- **Spouse's occupation.**
- **Spouse's signature.**
- **Date.**

**Preparer's Signature and Information**

- **Designation.**
- **Telephone.**
- **Address.**
- **Preparer's EIN.**
- **Preparer's Social Security Number.**

**For Shareholders, Privacy Act, and Paperwork Reduction Act Notics, see page 85**

Oct. No. 118005

**Publication 519 10:57 - 10-MAR-2008**
### Schedule A—Itemized Deductions (See pages 26, 27, 28, and 29.)

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>State income taxes</td>
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</tr>
<tr>
<td>2</td>
<td>Local income taxes</td>
<td>[Space]</td>
</tr>
<tr>
<td>3</td>
<td>Add lines 1 and 2</td>
<td>[Space]</td>
</tr>
<tr>
<td>4</td>
<td>Gifts by cash or check</td>
<td>[Space]</td>
</tr>
<tr>
<td>5</td>
<td>Gifts by cash or check if you made any gift of $200 or more</td>
<td>[Space]</td>
</tr>
<tr>
<td>6</td>
<td>Itemized deductions</td>
<td>[Space]</td>
</tr>
<tr>
<td>7</td>
<td>Cash or check</td>
<td>[Space]</td>
</tr>
<tr>
<td>8</td>
<td>Itemized deductions</td>
<td>[Space]</td>
</tr>
<tr>
<td>9</td>
<td>Unemployment tax withheld</td>
<td>[Space]</td>
</tr>
<tr>
<td>10</td>
<td>Medicare tax withheld</td>
<td>[Space]</td>
</tr>
<tr>
<td>11</td>
<td>Federal income tax withheld from Form 1040</td>
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<tr>
<td>12</td>
<td>Total tax withheld</td>
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<tr>
<td>13</td>
<td>Add lines 10 through 12</td>
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<tr>
<td>14</td>
<td>Itemized deductions</td>
<td>[Space]</td>
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<tr>
<td>15</td>
<td>Add lines 13 through 14</td>
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**Subtotal:**

<table>
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<th>Amount</th>
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<tbody>
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<td>Itemized deductions</td>
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<tr>
<td>17</td>
<td>Total</td>
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### Other Taxes

#### Casualty and Theft Losses

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</thead>
<tbody>
<tr>
<td>18</td>
<td>Casualty and theft losses</td>
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### Miscellaneous Deductions

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>19</td>
<td>Miscellaneous deductions</td>
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### Total Payments

<table>
<thead>
<tr>
<th>Line</th>
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<tbody>
<tr>
<td>20</td>
<td>Total payments</td>
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**Subtotal:**

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<tbody>
<tr>
<td>21</td>
<td>Total payments</td>
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### Other Payments

<table>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>22</td>
<td>Other payments</td>
<td>[Space]</td>
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**Subtotal:**

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<tbody>
<tr>
<td>23</td>
<td>Other payments</td>
<td>[Space]</td>
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### Add Total Payments

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>Add total payments</td>
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**Subtotal:**

<table>
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<th>Line</th>
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<tbody>
<tr>
<td>25</td>
<td>Add total payments</td>
<td>[Space]</td>
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### Add Other Payments

<table>
<thead>
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<tbody>
<tr>
<td>26</td>
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<tbody>
<tr>
<td>27</td>
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<td>[Space]</td>
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### Total

<table>
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<td>28</td>
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**Subtotal:**

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</thead>
<tbody>
<tr>
<td>29</td>
<td>Total</td>
<td>[Space]</td>
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</tbody>
</table>

### Add Total and Other Payments

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Add total and other payments</td>
<td>[Space]</td>
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**Subtotal:**

<table>
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<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Add total and other payments</td>
<td>[Space]</td>
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</table>

### Add Total to Your Adjusted Gross Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>Add total to your adjusted gross income</td>
<td>[Space]</td>
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**Subtotal:**

<table>
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<tr>
<th>Line</th>
<th>Description</th>
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<tbody>
<tr>
<td>33</td>
<td>Add total to your adjusted gross income</td>
<td>[Space]</td>
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</table>

### Total Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>Total income</td>
<td>[Space]</td>
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</tbody>
</table>

**Subtotal:**

<table>
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</thead>
<tbody>
<tr>
<td>35</td>
<td>Total income</td>
<td>[Space]</td>
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</table>

### Add Your Adjusted Gross Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>Add your adjusted gross income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

**Subtotal:**

<table>
<thead>
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<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>Add your adjusted gross income</td>
<td>[Space]</td>
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</table>

### Tax and Credits

#### No tax is from Form 8814

<table>
<thead>
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<tbody>
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<td>38</td>
<td>No tax is from Form 8814</td>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>39</td>
<td>No tax is from Form 8814</td>
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### Add Other Credits

<table>
<thead>
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<th>Amount</th>
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<tbody>
<tr>
<td>40</td>
<td>Add other credits</td>
<td>[Space]</td>
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**Subtotal:**

<table>
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<tbody>
<tr>
<td>41</td>
<td>Add other credits</td>
<td>[Space]</td>
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</table>

### Subtract Total Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>Subtract total income</td>
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**Subtotal:**

<table>
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<tr>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Subtract total income</td>
<td>[Space]</td>
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</table>

### Add Total From Schedules

<table>
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</thead>
<tbody>
<tr>
<td>44</td>
<td>Add total from Schedules</td>
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**Subtotal:**

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<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>45</td>
<td>Add total from Schedules</td>
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### Total Income

<table>
<thead>
<tr>
<th>Line</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Total income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

**Subtotal:**

<table>
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</thead>
<tbody>
<tr>
<td>47</td>
<td>Total income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

### Add All Credits

<table>
<thead>
<tr>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>48</td>
<td>Add all credits</td>
<td>[Space]</td>
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</table>

**Subtotal:**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>Add all credits</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

### Total Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>50</td>
<td>Total income</td>
<td>[Space]</td>
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</table>

**Subtotal:**

<table>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>Total income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

### Subtract Total Income

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>52</td>
<td>Subtract total income</td>
<td>[Space]</td>
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**Subtotal:**

<table>
<thead>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>53</td>
<td>Subtract total income</td>
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</table>

### Add All Credits

<table>
<thead>
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<tr>
<td>54</td>
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<td>55</td>
<td>Add all credits</td>
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### Total Income

<table>
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<tbody>
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<td>56</td>
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**Subtotal:**

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<tr>
<td>57</td>
<td>Total income</td>
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### Subtract Total Income

<table>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>58</td>
<td>Subtract total income</td>
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**Subtotal:**

<table>
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<tbody>
<tr>
<td>59</td>
<td>Subtract total income</td>
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</tr>
</tbody>
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### Add All Credits

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>60</td>
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</tbody>
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**Subtotal:**

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</thead>
<tbody>
<tr>
<td>61</td>
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### Total Income

<table>
<thead>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>62</td>
<td>Total income</td>
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**Subtotal:**

<table>
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<tbody>
<tr>
<td>63</td>
<td>Total income</td>
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</tr>
</tbody>
</table>

### Subtract Total Income

<table>
<thead>
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<tbody>
<tr>
<td>64</td>
<td>Subtract total income</td>
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**Subtotal:**

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>65</td>
<td>Subtract total income</td>
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### Add All Credits

<table>
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<tr>
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</tbody>
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**Subtotal:**

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</thead>
<tbody>
<tr>
<td>67</td>
<td>Add all credits</td>
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</tr>
</tbody>
</table>

### Total Income

<table>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>68</td>
<td>Total income</td>
<td>[Space]</td>
</tr>
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**Subtotal:**

<table>
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<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>69</td>
<td>Total income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>

### Subtract Total Income

<table>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>70</td>
<td>Subtract total income</td>
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**Subtotal:**

<table>
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<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>Subtract total income</td>
<td>[Space]</td>
</tr>
</tbody>
</table>
**Form 1040NR (2007)**

**Page 4**

### Tax on Income Not Effectively Connected With a U.S. Trade or Business

Attach Forms 1042-S, SSA-1042S, RRB-1042S, or similar forms.

<table>
<thead>
<tr>
<th>Nature of income</th>
<th>(a) U.S. tax withheld at source</th>
<th>Enter amount of income under the appropriate rate of tax (see page 29)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(b) 10%</td>
<td>(c) 15%</td>
</tr>
<tr>
<td></td>
<td>(d) 30%</td>
<td>(e) Other (specify)</td>
</tr>
<tr>
<td></td>
<td>(f)</td>
<td>(g)</td>
</tr>
</tbody>
</table>

#### 76 Dividends paid by:
- **a** U.S. corporations
- **b** Foreign corporations

#### 77 Interest:
- **a** Mortgage
- **b** Paid by foreign corporations
- **c** Other

#### 78 Industrial royalties (patents, trademarks, etc.)
- 78

#### 79 Motion picture or T.V. copyright royalties
- 79

#### 80 Other royalties (copyrights, recording, publishing, etc.)
- 80

#### 81 Real property income and natural resources royalties
- 81

#### 82 Pensions and annuities
- 82

#### 83 Social security benefits
- 83

#### 84 Gains (include capital gain from line 92 below)
- 84

#### 85 Other (specify)
- 85

#### 86 Total U.S. tax withheld at source. Add column (a) of lines 76a through 85. Enter the total here and on Form 1040NR, line 66.
- 86

#### 87 Add lines 76a through 85 in columns (b)–(e).
- 87

#### 88 Multiply line 87 by rate of tax at top of each column.
- 88

#### 89 Tax on income not effectively connected with a U.S. trade or business. Add columns (b)–(e) of line 88. Enter the total here and on Form 1040NR, line 53.
- 89

### Capital Gains and Losses From Sales or Exchanges of Property

Enter only the capital gains and losses from property sales or exchanges that are from sources within the United States and not effectively connected with a U.S. business. Do not include a gain or loss on disposing of a U.S. real property interest; report these gains and losses on Schedule D (Form 1040).

- **90** Kind of property and description (if necessary, attach statement of descriptive details not shown below)
- **91** Date acquired (mo., day, yr.)
- **92** Date sold (mo., day, yr.)
- **93** Sales price
- **94** Cost or other basis
- **95** LOSS If (d) is more than (e), subtract (d) from (e)
- **96** GAIN If (d) is more than (e), subtract (e) from (d)

### Additional Instructions

- **97** Add columns (f) and (g) of line 90.
- **98** Add columns (f) and (g) of line 91. Enter the net gain here and on line 84 above (if a loss, enter -0-).

---

*Form 1040NR (2007)*
**Other Information** (If an item does not apply to you, enter “N/A.”)

<table>
<thead>
<tr>
<th>A</th>
<th>What country issued your passport?</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>Were you ever a U.S. citizen?</td>
<td>No</td>
</tr>
<tr>
<td>C</td>
<td>Give the purpose of your visit to the United States</td>
<td>Temporary assignment</td>
</tr>
<tr>
<td>D</td>
<td>Current nonimmigrant status and date of change (see page 29)</td>
<td>N/A</td>
</tr>
<tr>
<td>E</td>
<td>Date you entered the United States (see page 29)</td>
<td>3-18-07</td>
</tr>
<tr>
<td>F</td>
<td>Did you give up your permanent residence as an immigrant in the United States this year?</td>
<td>No</td>
</tr>
<tr>
<td>G</td>
<td>Dates you entered and left the United States during the year.</td>
<td>2005 N/A, 2006 N/A, and 2007 162</td>
</tr>
<tr>
<td>H</td>
<td>Give number of days (including vacation and nonworkdays) you were present in the United States during:</td>
<td>2005 N/A, 2006 N/A, and 2007 162</td>
</tr>
<tr>
<td>I</td>
<td>If you are a resident of Canada, Mexico, or the Republic of Korea (South Korea), or a U.S. national, did your spouse contribute to the support of any child claimed on Form 1040NR, line 7c?</td>
<td>N/A</td>
</tr>
<tr>
<td>J</td>
<td>Did you file a U.S. income tax return for any year before 2007?</td>
<td>No</td>
</tr>
<tr>
<td>K</td>
<td>To which Internal Revenue office did you pay any amounts claimed on Form 1040NR, lines 60, 63, and 65?</td>
<td>N/A</td>
</tr>
<tr>
<td>L</td>
<td>Have you excluded any gross income other than foreign source income not effectively connected with a U.S. trade or business?</td>
<td>No</td>
</tr>
<tr>
<td>M</td>
<td>If you are claiming the benefits of a U.S. income tax treaty with a foreign country, give the following information. See page 30 for additional information.</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>N</td>
<td>Did you have a permanent establishment (as defined by the tax treaty) in the United States at any time during 2007?</td>
<td>No</td>
</tr>
<tr>
<td>O</td>
<td>If you file this return for a trust, does the trust have a U.S. business?</td>
<td>No</td>
</tr>
<tr>
<td>P</td>
<td>Is this an “expatriation return” (see page 30)?</td>
<td>No</td>
</tr>
<tr>
<td>Q</td>
<td>During 2007, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States?</td>
<td>No</td>
</tr>
<tr>
<td>R</td>
<td>Check this box if you have received compensation income of $250,000 or more and you are using an alternative basis to determine the source of this compensation income (see page 30)</td>
<td>No</td>
</tr>
</tbody>
</table>

---

**Form 1040NR (2007)**

Chapter 6 Dual-Status Tax Year Page 39
7.

Filing Information

Introduction
This chapter provides the basic filing information that you may need.

Topics
This chapter discusses:
• Forms aliens must file,
• When and where to file,
• Penalties,
• Amended returns and claims for refund, and
• Transportation of currency or monetary instruments.

Useful Items
You may want to see:
Forms (and Instructions)
1040 U.S. Individual Income Tax Return
1040A U.S. Individual Income Tax Return
1040EZ Income Tax Return for Single and Joint Filers With No Dependents
1040NR U.S. Nonresident Alien Income Tax Return
1040NR-EZ U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents

See chapter 12 for information about getting these forms.

What, When, and Where To File
What return you must file as well as when and where you file that return, depends on your status at the end of the tax year as a resident or a nonresident alien.

Resident Aliens
Resident aliens should file Form 1040EZ, 1040A, or 1040 at the address shown in the instructions for that form. The due date for filing the return and paying any tax due is April 15 of the year following the year for which you are filing a return (but see the Tip, later).

Under U.S. immigration law, a lawful permanent resident who is required to file a tax return as a resident and fails to do so may be regarded as having abandoned status and may lose permanent resident status.

Extensions of time to file. You are allowed an automatic extension to June 15 to file if your main place of business and the home you live in are outside the United States and Puerto Rico on April 15. You can get an extension of time to October 15 to file your return if you get an extension by April 15 (June 15 if you qualify for the June 15 extension). Use Form 4868 to get the extension to October 15. In addition to this 6-month extension, taxpayers who are out of the country (as defined in the Form 4868 instructions) can request a discretionary 2-month additional extension of time to file their returns (to December 15 for calendar year taxpayers). To request this extension, you must send the IRS a letter explaining the reasons why you need the additional 2 months. Send the letter by the extended due date (October 15 for calendar year taxpayers) to the following address:

Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301-0215

You will not receive any notification from the IRS unless your request is denied for being untimely.

The discretionary 2-month additional extension is not available to taxpayers who have an approved extension of time to file on Form 2350 (for U.S. citizens and resident aliens abroad who expect to qualify for special tax treatment).

If the due date for filing falls on a Saturday, Sunday, or legal holiday, the due date is the next day which is not a Saturday, Sunday, or legal holiday.

You may be able to file your return electronically. See IRS e-file in your form instructions.

Nonresident Aliens
Nonresident aliens who are required to file an income tax return should use Form 1040NR or, if qualified, Form 1040NR-EZ. If you are any of the following, you must file a return.

1. A nonresident alien individual engaged or considered to be engaged in a trade or business in the United States during 2007. (But see Exceptions, later.) You must file even if:
   a. Your income did not come from a trade or business conducted in the United States,
   b. You have no income from U.S. sources, or
   c. Your income is exempt from income tax.

2. A nonresident alien individual not engaged in a trade or business in the United States with U.S. income on which the tax liability was not satisfied by the withholding of tax at the source.

3. A representative or agent responsible for filing the return of an individual described in (1) or (2).

4. A fiduciary for a nonresident alien estate or trust. You must also file if you want to:
   • Claim a refund of overwithheld or overpaid tax, or
   • Claim the benefit of any deductions or credits. For example, if you have no U.S. business activities but have income from real property that you choose to treat as effectively connected income (discussed in chapter 4), you must timely file a true and accurate return to take any allowable deductions against that income. For information on what is timely, see When to file for deductions and credits under When To File, later.

Exceptions. You do not need to file Form 1040NR or Form 1040NR-EZ if:
1. Your only U.S. trade or business was the performance of personal services, and
   a. Your wages were less than $3,400, and
   b. You have no other need to file a return to claim a refund of overwithheld taxes, to satisfy additional withholding at source, or to claim income exempt or partly exempt by treaty, or

2. You were a nonresident alien student, teacher, or trainee who was temporarily present in the United States under an “F,” “J,” “M,” or “Q” visa and you have no in- come that is subject to tax, such as wages, tips, scholarship and fellowship grants, dividends, etc.

Even if you have left the United States and filed a Form 1040-C U.S. Departing Alien Income Tax Return, on departure, you still must file an annual U.S. income tax return. If you are married and both you and your spouse are required to file, you must each file a separate return.

Form 1040NR-EZ
You can use Form 1040NR-EZ if all of the following conditions are met.
1. You do not claim any dependents.
2. You cannot be claimed as a dependent on someone else’s U.S. tax return.
3. If you were married, you cannot claim an exemption for your spouse.
4. Your taxable income is less than $100,000.
5. You are not claiming any itemized deductions (other than for state and local income taxes).
6. Your only U.S. source income is from wages, salaries, tips, taxable refunds of
state and local income taxes, and scholarship or fellowship grants. (If you had taxable interest or dividend income, you cannot use this form.)

7. You are not claiming any adjustments to income other than the student loan interest deduction or scholarship and fellowship grants. (If you had tax-exempt interest or dividend income, you cannot use this form.)

8. You are not claiming any tax credits.

This is not an "expatriation return." See Expatriation Tax in chapter 4.

10. The only taxes you owe are:
   a. The income tax from the Tax Table.
   b. The social security and Medicare tax from Form 4137 or Form 8919.

11. You are not claiming a credit for excess social security and tier 1 FRTA tax withheld.

If you do not meet all of the above conditions, you must file Form 1040NR.

When To File

If you are an employee and you receive wages subject to U.S. income tax withholding, you will generally file by the 15th day of the 4th month after your tax year ends. If you file for the 2007 calendar year, your return is due April 15, 2008. If you are not an employee who receives wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 2007 calendar year, file your return by June 15, 2008.

Extensions of time to file. If you cannot file your return by the due date, file Form 4868 or use one of the electronic filing options explained in the Form 4868 instructions. For the 2007 calendar year, this will extend the due date to October 15, 2008 (December 15, 2008, if the regular due date of your return is June 16, 2008). You must file the extension by the regular due date of your return.

In addition to the 6-month extension to October 15, taxpayers whose main place of business is outside the United States and Puerto Rico and who live outside those jurisdictions can request a discretionary 2-month extension of time to file their returns (to December 15 for calendar year taxpayers). To request this extension, you must send the IRS a letter explaining the reasons why you need the additional two months. Send the letter by the extended due date (October 15 for calendar year taxpayers) to the following address:

Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301-0215

You will not receive any notification from the IRS unless your request is denied for being untimely.

When to file for deductions and credits. To get the benefit of any allowable deductions or credits, you must timely file a true and accurate return. For this purpose, a return is timely if it is filed within 16 months of the due date just discussed. However, if you did not file a 2006 tax return and 2007 is not the first year for which you are required to file one, your 2007 return is timely for this purpose if it is filed by the earlier of:
   a. The date that is 16 months after the due date for filing your 2007 return, or
   b. The date the IRS notifies you that your return has not been filed and that you cannot claim certain deductions and credits.

The allowance of the following credits is not affected by this time requirement.
   a. Credit for withheld taxes.
   b. Credit for excise tax on certain uses of gasoline and special fuels.
   c. Credit for tax paid by a mutual fund (or other regulated investment company) or a real estate investment trust on undistributed long-term capital gains.

Protective return. If your activities in the United States were limited and you do not believe that you had any gross income effectively connected with a U.S. trade or business during the year, you can file a protective return (Form 1040NR) by the deadline explained above. By filing a protective return, you protect your right to receive the benefit of deductions and credits in the event the IRS later determined that some or all of your income is effectively connected. You are not required to report any effectively connected income or any deductions on the protective return, but you must give the reason the return is being filed.

If you believe some of your activities resulted in effectively connected income, file your return reporting that income and related deductions by the regular due date. To protect your right to claim deductions or credits resulting from other activities, attach a statement to that return explaining that you wish to protect your right to claim deductions and credits if it is later determined that the other activities produced effectively connected income.

You can follow the same procedure if you believe you have no U.S. tax liability because of your activities in the Northern Mariana Islands (CNMI). See the section on CNMI in chapter 11.

Penalties

The law provides penalties for failure to file returns or pay taxes as required.

Civil Penalties

If you do not file your return and pay your tax by the due date, you may have to pay a penalty. You may also have to pay a penalty if you substantially understate your tax, file a frivolous tax return, fail to supply your taxpayer identification number, or file a return after you have been notified by the IRS of a deficiency in your tax.

Filing late. If you do not file your return by the due date (including extensions), you may have to pay a failure-to-file penalty. The penalty is based on the tax not paid by the due date (without regard to extensions). The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%.

Fraud. If you file your return to avoid paying your tax, you may have to pay a fraud penalty.
month that your return is late, up to a maximum of 75%.

**Return over 60 days late.** If you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of $100 or 100% of the unpaid tax.

**Exception.** You will not have to pay the penalty if you show that you failed to file on time because of reasonable cause and not because of willful neglect.

**Paying tax late.** You will have to pay a failure-to-pay penalty of 1% of 1% (.50%) of your unpaid taxes for each month, or part of a month, after the due date that the tax is not paid. This penalty does not apply during the automatic 6-month extension of time to file period, if you paid at least 90% of your actual tax liability on or before the due date of your return and pay the balance when you file the return.

The monthly rate of the failure-to-pay penalty is half the usual rate (.25% instead of .50%) if an installment agreement is in effect for that month. You must have filed your return by the due date (including extensions) to qualify for this reduced penalty.

If a notice of intent to levy is issued, the rate will increase to 1% at the start of the first month beginning at least 10 days after the day that the notice is issued. If a notice and demand for immediate payment is issued, the rate will increase to 1% at the start of the first month beginning after the day that the notice and demand is issued.

This penalty cannot be more than 25% of your unpaid tax. You will not have to pay the penalty if you can show that you had a good reason for not paying your tax on time.

**Combined penalties.** If both the failure-to-file penalty and the failure-to-pay penalty (discussed earlier) apply in any month, the 5% (or 15%) failure-to-file penalty is reduced by the failure-to-pay penalty. However, if you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of $100 or 100% of the unpaid tax.

**Accuracy-related penalty.** You may have to pay an accuracy-related penalty if you underpay your tax because:

- You show "negligence" or "disregard" of rules or regulations, or
- You substantially understate your income tax.

The penalty is equal to 20% of the underpayment. The penalty will not be figured on any part of an underpayment on which the fraud penalty (discussed later) is charged.

**Negligence or disregard.** The term "negligence" means failure to make reasonable attempt to comply with the tax law or to exercise ordinary and reasonable care in preparing a return. Negligence also includes failure to keep adequate books and records. You will not have to pay a negligence penalty if you have a reasonable basis for a position you took.

The term "disregard" includes any careless, reckless, or intentional disregard.

**Adverse disclosure.** You can avoid the penalty for disregard of rules or regulations if you adequately disclose on your return a position that has at least a reasonable basis. See **Disclosure statement**.

This exception will not apply to an item that is attributable to a tax shelter. In addition, it will not apply if you fail to keep adequate books and records, or substantiate items properly.

**Substantial understatement of income tax.** You understated your tax if the tax shown on your return is less than the correct tax. The understatement is substantial if it is more than the larger of 10% of the correct tax or $5,000. However, the amount of the understatement is reduced to the extent the understatement is due to:

1. Substantial authority, or
2. Adequate disclosure and a reasonable basis.

If an item on your return is attributable to a tax shelter, there is no reduction for an adequate disclosure. However, there is a reduction for a position with substantial authority, but only if you reasonably believed that your tax treatment was more likely than not the proper treatment.

**Substantial authority.** Whether there is or is not substantial authority for the tax treatment of an item depends on the facts and circumstances. Consideration will be given to court opinions, Treasury regulations, revenue rulings, revenue procedures, and notices and announcements issued by the IRS and published in the Internal Revenue Bulletin that involve the same or similar circumstances as yours.

**Disclosure statement.** To adequately disclose the relevant facts about your tax treatment of an item, use Form 8275, Disclosure Statement. You must also have a reasonable basis for treating the item the way you did. In cases of substantial understatement only, items that meet the requirements of Revenue Procedure 2008-14, 2008-7 IRB 435 (or later update) are considered adequately disclosed on your return without filing Form 8275.

Use Form 8275-R, Regulation Disclosure Statement, to disclose items or positions contrary to regulations.

**Reasonable cause.** You will not have to pay a penalty if you show a good reason (reasonable cause) for the way you treated an item. You must also show that you acted in good faith.

Filing erroneous claim for refund or credit. You may have to pay a penalty if you file an erroneous claim for refund or credit. You will not have to pay the penalty if you show that you failed to file on time because of reasonable cause and not because of willful neglect.

**Criminal Penalties**

You may be subject to criminal prosecution (brought to trial) for actions such as:

1. Tax evasion,  
2. Willful failure to file a return, supply information, or pay any tax due,  
3. Fraud and false statements, or  
4. Preparing and filing a fraudulent return.

**Amended Returns and Claims for Refund**

If you find changes in your income, deductions, or credits after you mail your return, file Form 1040X, Amended U.S. Individual Income Tax Return. Also use Form 1040X if you should have filed Form 1040, 1040A, or 1040EZ instead of Form 1040NR or 1040NR-EZ, or vice versa. If you amend Form 1040NR or Form 1040NR-EZ or file the correct return, attach the corrected return (Form 1040, Form 1040NR, etc.) to Form 1040X. Print "Amended" across the top. Ordinarily, an amended return claiming a refund must be filed within 3 years from the date your
return was filed or within 2 years from the time the tax was paid, whichever is later. A return filed before the final due date is considered to have been filed on the due date.

Transportation of Currency or Monetary Instruments

FinCEN Form 105 (formerly Customs Form 4790), Report of International Transportation of Currency or Monetary Instruments, must be filed by each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, currency or other monetary instruments in a total amount of more than $10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States. The filing requirement also applies to each person who receives in the United States currency or monetary instruments totaling more than $10,000 at one time from any place outside of the United States.

The term “monetary instruments” means the following:

• Coin and currency of the United States or of any other country,
• Travelers’ checks in any form,
• Investment securities or stock in bearer form or otherwise in such form that title to them passes upon delivery,
• Negotiable instruments (including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title to them passes upon delivery, and
• Checks, promissory notes, and money orders which are signed but on which the name of the payee has been omitted.

However, the term does not include:

• Checks or money orders made payable to the order of a named person which have not been endorsed or which contain restrictive endorsements,
• Warehouse receipts, or
• Bills of lading.

A transfer of funds through normal banking procedures (wire transfer) that does not involve the physical transportation of currency or bearer monetary instruments is not required to be reported on FinCEN Form 105.

Filing requirements. FinCEN Form 105 filing requirements follow.

Recipients. Each person who receives currency or other monetary instruments in the United States must file FinCEN Form 105 within 15 days after receipt, with the Customs officer in charge at any port of entry or departure, or by mail to the following address.

Commissioner of Customs
Attention: Currency Transportation Reports
Washington, DC 20229

Shipping or mailers. If the currency or other monetary instrument does not accompany the person entering or departing the United States, FinCEN Form 105 can be filed by mail at the above address on or before the date of entry, departure, mailing, or shipping.

Travelers. Travelers must file FinCEN Form 105 with the Customs officer in charge at any Customs port of entry or departure, when entering or departing the United States.

Penalties. Civil and criminal penalties are provided for failing to file a report, filing a report containing material omissions or misstatements, or filing a false or fraudulent report. Also, the entire amount of the currency or monetary instrument may be subject to seizure and forfeiture.

More information. More information regarding the filing of FinCEN Form 105 can be found in the instructions on the back of the form.

8. Paying Tax Through Withholding or Estimated Tax

Introduction

This chapter discusses how to pay your U.S. income tax as you earn or receive income during the year. In general, the federal income tax is a pay as you go tax. There are two ways to pay as you go.

1. Withholding. If you are an employee, your employer probably withholds income tax from your pay. Tax may also be withheld from certain other income—including pensions, bonuses, commissions, and gambling winnings. In each case, the amount withheld is paid to the U.S. Treasury in your name.

2. Estimated tax. If you do not pay your tax through withholding, or do not pay enough tax that way, you might have to pay estimated tax. People who are in business for themselves generally will have to pay their tax this way. You may have to pay estimated tax if you receive income such as dividends, interest, rent, and royalties. Estimated tax is used to pay not only income tax, but self-employment tax and alternative minimum tax as well.

Topics

This chapter discusses:

• How to notify your employer of your alien status,
• Income subject to withholding of income tax,
• Exemptions from withholding,
• Social security and Medicare taxes, and
• Estimated tax rules.

Useful Items

You may want to see:

Publication

▪ 515 Withholding of Tax on Nonresident Aliens and Foreign Entities
▪ 901 U.S. Tax Treaties

Form (and Instructions)

▪ W-4 Employee’s Withholding Allowance Certificate
▪ W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
▪ 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
▪ W-9 Request for Taxpayer Identification Number and Certification
▪ 1040-ES (NR) U.S. Estimated Tax for Nonresident Alien Individuals
▪ 8233 Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual
▪ 8288-B Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

See chapter 12 for information about getting these publications and forms.

Notification of Alien Status

You must let your employer know whether you are a resident or a nonresident alien so your employer can withhold the correct amount of tax from your wages.

If you are a resident alien under the rules discussed in chapter 1, you must file Form W-9 or a similar statement with your employer. If you are a nonresident alien under those rules, you must furnish to your employer Form W-8233 or Form W-8BEN, establishing that you are a foreign person, or Form W-4, establishing that your compensation is subject to graduated withholding at the same rates as resident aliens or U.S. citizens.
Withholding From Compensation

The following discussion generally applies only to nonresident aliens. Tax is withheld from resi-
dent aliens in the same manner as U.S. citizens.

Wages and other compensation paid to a
nonresident alien for services performed as an
employee are usually subject to graduated with-
holding at the same rates as resident aliens and U.S. citizens. Therefore, your compensation
unless it is specifically excluded from the term
"wages" by law, or is exempt from tax by treaty, is subject to graduated withholding.

Wages Exempt From Withholding

Withholding on Wages

If you are an employee and you receive wages
subject to graduated withholding, you will be
required to fill out a Form W-4. Also fill out Form
W-4 for a scholarship or fellowship grant to the
extent it represents payment for past, present,
or future services and for which you are not
claiming a tax treaty withholding exemption on Form 8233 (discussed later under Income En-
titled to Tax Treaty Benefits). These are services
you are required to perform as an employee and
as a condition of receiving the scholarship or fellowship (or tuition reduction).

Nonresident aliens should fill out Form W-4
using the following instructions instead of the
instructions on the Form W-4. This is because of the
restrictions on a nonresident alien’s filing status, the limited number of personal exemp-
tions a nonresident alien is allowed, and be-
cause a nonresident alien cannot claim the
standard deduction.

1. Check only “Single” marital status on line 3
(regardless of your actual marital status).

2. Claim only one allowance on line 5, unless
you are a resident of Canada, Mexico, or
the Republic of Korea (South Korea), or a
U.S. national.

3. Write “Nonresident Alien” or “NRA” on the
dotted line on line 6. You can request addi-
tional withholding on line 6 at your option.

4. Do not claim “Exempt” withholding status
on line 7.

A U.S. national is an individual who, al-
though not a U.S. citizen, owes his or her alle-
giance to the United States. U.S. nationals
include American Samoans, and Northern Mari-
ana Islanders who chose to become U.S. na-
tionals instead of U.S. citizens.

See Withholding on Scholarships and Fel-
lowship Grants later, for how to fill out Form W-4
if you receive a U.S. source scholarship or fel-
lowship grant that is not a payment for services.

Students and business apprentices from In-
dia. If you are eligible for the benefits of Article
21(2) of the United States-India Income Tax
Treaty, you may claim an additional withholding
allowance for the standard deduction. You can
claim an additional withholding allowance for your
spouse only if your spouse will have no
gross income for 2008 and cannot be claimed as
a dependent on another U.S. taxpayer’s 2008
return. You may also claim an additional with-
holding allowance for each of your dependents
admitted to the United States on "F-1," "F-2," "M-1,
or "M-2" visas if they meet the same rules that
apply to U.S. citizens.

Household employees. If you work as a
household employee, your employer does not
have to withhold income tax. However, you may
claim a voluntary income tax withholding by
filing a Form W-4 with your employer. The
agreement goes into effect when your employer
accepts the agreement by beginning the with-
holding. You or your employer may end the
agreement by letting the other know in writing.

Withholding on Tip Income

Tips you receive during the year for services
performed in the United States are subject to U.S. income tax. Include them in taxable in-
come. In addition, tips received while working for
one employer, amounting to $20 or more in a
month, are subject to graduated withholding.

Independent Contractors

If there is no employee-employer relationship
between you and the person for whom you per-
services, your compensation is subject to the
30% (or lower treaty) rate of withholding. How-
ever, if you are engaged in a trade or busi-
ness in the United States during the tax year,
your compensation for personal services as an
independent contractor (independent personal
services) may be entirely or partly exempt from
withholding if you reach an agreement with the
Internal Revenue Service on the amount of with-
holding required. An agreement that you reach
with the IRS regarding withholding from your
compensation for independent personal serv-
ices is effective for payments covered by the
agreement after it is agreed to by all parties. You
must agree to timely file an income tax return for
the current tax year.

Residents of Puerto Rico. If you are a non-
resident alien employee who is a resident of
Puerto Rico, wages for services performed in
Puerto Rico are generally not subject to with-
holding unless you are an employee of the United
States or any of its agencies in Puerto Rico.

Residents of the U.S. Virgin Islands. Non-
resident aliens who are bona fide residents of the
U.S. Virgin Islands are not subject to with-
holding of U.S. tax on income earned while tem-
porarily employed in the United States. This is
because those persons pay their income tax to
the U.S. Virgin Islands. To avoid having tax
withheld on income earned in the United States,
bona fide residents of the U.S. Virgin Islands
should write a letter, in duplicate, to their em-
ployers, stating that they are bona fide residents
of the U.S. Virgin Islands and expect to pay tax
on all income to the U.S. Virgin Islands.

Withholding on Pensions

If you receive a pension as a result of personal services performed in the United States, the
pension income is subject to the 30% (or lower treaty) rate of withholding. You may, however,
have tax withheld at graduated rates on the
portion of the pension that arises from the per-
formance of services in the United States after
December 31, 1986. You must fill out Form
W-8BEN and give it to the withholding agent or
payer before the income is paid or credited to you.

Withholding on Tip Income

Tips you receive during the year for services
performed in the United States are subject to U.S. income tax. Include them in taxable in-
come. In addition, tips received while working for
one employer, amounting to $20 or more in a
month, are subject to graduated withholding.

Independent Contractors

If there is no employee-employer relationship
between you and the person for whom you per-
services, your compensation is subject to the
30% (or lower treaty) rate of withholding. How-
ever, if you are engaged in a trade or busi-
ness in the United States during the tax year,
your compensation for personal services as an
independent contractor (independent personal
services) may be entirely or partly exempt from
withholding if you reach an agreement with the
Internal Revenue Service on the amount of with-
holding required. An agreement that you reach
with the IRS regarding withholding from your
compensation for independent personal serv-
ices is effective for payments covered by the
agreement after it is agreed to by all parties. You
must agree to timely file an income tax return for
the current tax year.
Central withholding agreements. If you are a nonresident alien entertainer or athlete performing or participating in athletic events in the United States, you may be able to enter into a withholding agreement with the IRS for reduced withholding provided certain requirements are met. Under no circumstances will such a withholding agreement reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement must submit the following information:

1. A list of the names and addresses of the nonresident aliens to be covered by the agreement.
2. Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances to be covered by the agreement including, but not limited to, contracts with:
   a. Employers, agents, and promoters,
   b. Exhibition halls,
   c. Persons providing lodging, transportation, and advertising, and
   d. Accompanying personnel, such as band members or trainers.
3. An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
4. A proposed budget containing itemized estimates of all gross income and expenses for the period covered in the agreement, including any documents to support these estimates.
5. The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
6. The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for the aliens during the period covered by the agreement.

When the IRS approves the estimated budget and the designated central withholding agents, the Associate Chief Counsel (International) will prepare a withholding agreement. The agreement must be signed by each withholding agent, each nonresident alien covered by the agreement, and the Commissioner of the Internal Revenue Service or his delegate.

Generally, each withholding agent must agree to withhold income tax from payments made to the nonresident alien, to pay over the withheld tax to the U.S. Treasury on the dates and in the amounts specified in the agreement, and to have the IRS apply the payments of withheld tax to the withholding agent’s Form 1042 account. Each withholding agent will be required to file Form 1042 and Form 1042-S for each tax year in which income is paid to a nonresident alien covered by the withholding agreement. The IRS will credit the withheld tax payments, posted to the withholding agent’s Form 1042 account, in accordance with the Form 1042. Each nonresident alien covered by the withholding agreement must agree to file Form 1040NR or, if he or she qualifies, Form 1040NR-EZ.

A request for a central withholding agreement should be sent to the following address at least 90 days before the agreement is to take effect.

Central Withholding Agreement Program
Internal Revenue Service
SE:S:CCP:IC IC 0175
1220 SW 3rd Ave.
Portland, OR 97204

Final payment exemption. Your final payment of compensation during the tax year for independent personal services may be entirely or partly exempt from withholding. This exemption is available only once during your tax year and applies to a maximum of $5,000 of compensation. To obtain this exemption, you or your agent must give the following statements and information to the Commissioner or his delegate.

- A statement by each withholding agent from whom you have received gross income effectively connected with a trade or business in the United States during the tax year, showing the amount of income paid and the tax withheld. Each statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- A statement by the withholding agent from whom you expect to receive the final payment of compensation, showing the amount of the payment and the amount of tax that would be withheld if a final payment exemption was not granted. This statement must also be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- A statement by you that you do not intend to receive any other income effectively connected with a trade or business in the United States during the current tax year.
- The amount of tax that has been withheld or paid under any other provision of the Internal Revenue Code or regulations for any income effectively connected with your trade or business in the United States during the current tax year.
- The amount of your outstanding tax liabilities, if any, including interest and penalties, from the current tax year or prior tax periods.
- Any provision of an income tax treaty (South Korea), or who is a national of the United States. However, if you are a U.S. national or a resident of Canada, Mexico, or the Republic of Korea (South Korea), you are subject to the same 30% withholding rate and the amount that can be paid to you because of the exemption. You must give two copies of the letter to the withholding agent and must also attach a copy of the letter to your income tax return for the tax year for which the exemption is effective.

Allowance for Personal Exemption

Withholding on payments for independent personal services is generally based on the amount of your compensation payment minus the value of any exemption ($3,500 for 2008).

To determine the income for independent personal services performed in the United States to which the 30% (or lower treaty) rate will apply, you are allowed one personal exemption. If you are not a U.S. national and are not a resident of Canada, Mexico, or the Republic of Korea (South Korea), for purposes of 30% withholding, the exemption is prorated at $9.56 per day in 2008 for the period that labor or personal services are performed in the United States. To claim an exemption from withholding on the personal exemption amount, fill out the applicable parts of Form 8233 and give it to the withholding agent.

Example. Eric Schmidt, who is a resident of Germany, worked under a contract with a U.S. firm (not as an employee) in the United States for 100 days during 2008 before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Eric is married and has three dependent children. His wife is not employed and has no income subject to U.S. tax. The amount of the personal exemption to be allowed against the income for his personal services performed within the United States in 2008 is $956 (100 days × $9.56), and withholding at 30% is applied against the balance. Thus, $1,513.20 in tax is withheld from Eric’s earnings (30% of $5,044 ($6,000 − $956)).

U.S. nationals or residents of Canada, Mexico, or the Republic of Korea (South Korea). If you are a nonresident alien who is a resident of Canada, Mexico, or the Republic of Korea (South Korea), or who is a national of the United States, you are subject to the same 30% withholding on your compensation for independent personal services performed in the United States. However, if you are a U.S. national or a resident of Canada or Mexico, you are allowed
the same personal exemptions as U.S. citizens. For the 30% (or lower treaty rate) withholding, you will have no gross income for 2008 and cannot be claimed as a dependent on another U.S. taxpayer’s 2008 return. You can also file an exemption for each dependent not admitted to the United States on “F-2,” “J-2,” or “M-2” visas if they meet the same rules that apply to U.S. citizens. For the 30% (or lower treaty rate) withholding on compensation for independent personal services performed in the United States, you are allowed $9.56 per day for each allowable exemption in 2008.

Withholding From Other Income

Other income subject to 30% withholding generally includes fixed or determinable income such as interest (other than portfolio interest), dividends, pensions and annuities, and gains from certain sales and exchanges, discussed in chapter 4. If you are a resident of India, you are allowed an exemption for days you expect to be in the United States in 2008 by the daily exemption amount ($9.56). For the 30% (or lower treaty rate) withholding, the withholding rate on your share of effectively connected taxable income from the partnership will be 30% (or lower treaty rate) if you file Form W-8ECI with the payer of the income.

Another type of income allocable to you if you gave the second most tax rate applies to a particular type of income. In this case the partnership will withhold tax on your actual distributions of effectively connected income in the partnership. The withholding will give a statement on Form 8805, Foreign Partnership’s Information Statement of Section 1446. Withholding Tax, showing the tax withheld. A partnership that is publicly traded will withhold tax on your actual distributions of effectively connected income. In this case the partnership will withhold tax on your share of effectively connected income is generally the highest rate of tax that applies to you (35% for 2008). However, the partnership may withhold at the highest rate that applies to a particular type of income allocable to you if you gave the partnership the appropriate documentation (generally, Form W-8BEN). Long-term capital gain is an example of a particular type of income to which a highest tax rate applies. Claim the tax withheld as a credit on your 2008 Form 1040NR.

Withholding on Scholarships and Fellowship Grants

There is no withholding on a qualified scholarship received by a candidate for a degree. See chapter 3.

Any part of a scholarship or fellowship grant that is a payment for services is subject to graduated withholding as discussed earlier under Withholding on Wages.

Alternate Withholding Procedure

Your withholding agent may choose to use an alternate procedure by asking you to fill out Form W-4 and the Personal Allowances Worksheet (attached to Form W-4). Use the following instructions instead of the Form W-4 instructions to complete the worksheet.

Line A. Enter the total of the following amounts on line A.

Personal exemption. Include the prorated part of your allowable personal exemption. Figure the amount by multiplying the number of days you expect to be in the United States in 2008 by the daily exemption amount ($9.56).

Expenses. Include expenses that will be deductible on your return. These include away-from-home expenses (meals, lodging, and transportation), certain state and local income taxes, charitable contributions, and casualty losses, discussed earlier under Itemized Deductions in chapter 5. They also include business expenses, moving expenses, and the IRA deduction discussed under Deductions in chapter 5.

Nontaxable grant or scholarship. Include the part of your grant or scholarship that is not taxable under U.S. law or under a tax treaty.

Line B. Enter -0- unless the following paragraph applies to you.

If you are a student who qualifies under Article 21(2) of the United States-India Income Tax Treaty, and you are not claiming deductions for away-from-home expenses or other itemized deductions discussed earlier, enter the standard deduction on line B. The standard deduction amount for 2008 is $5,450.

Lines C and D. Enter -0- on both lines unless the following paragraphs apply to you.

If you are a resident of Canada, Mexico, the Republic of Korea (South Korea), or a U.S. national, an additional daily exemption amount may be allowed for your spouse and each of your dependents.

If you are a resident of India who is eligible for the benefits of Article 21(2) of the United States-India Income Tax Treaty, you can claim the additional daily exemption amount for your spouse only if your spouse will have no gross income for 2008 and cannot be claimed as a dependent on another U.S. taxpayer’s 2008 return. You can also claim the additional daily exemption amount for your spouse only if your spouse will have no gross income for 2008 and cannot be claimed as a dependent on another U.S. taxpayer’s 2008 return.

Any entries should be made on lines E, F, and G.

Line H. Add the amounts on lines A through D and enter the total on line H.

Form W-4. Complete lines 1 through 4 of Form W-4. Sign and date the form and give it
with the Personal Allowances Worksheet to your withholding agent. If you file a Form W-4 to reduce or eliminate the withholding on your scholarship or grant, you must file an annual U.S. income tax return to be allowed the exemptions and deductions you claimed on that form. If you are in the United States during more than one tax year, you must attach a statement to your yearly Form W-4 indicating that you have withheld U.S. income tax return for the previous year. If you have not been in the United States long enough to be required to file a tax return, you must file the exemption statement to your Form W-4 saying you will file a U.S. income tax return when required.

After the withholding agent has accepted your Form W-4, tax will be withheld on your scholarship or grant at the graduated rates that apply to wages. The gross amount of the income is reduced by the amount on line H of the work-sheets and the withholding tax is figured on the remainder.

You will receive a Form 1042-S from the withholding agent (usually the payer of your grant) showing the gross amount of your taxable scholarship or fellowship grant less the withhold- ing allowance amount, the tax rate, and the amount of tax withheld. Use this form to prepare your annual U.S. income tax return.

Income Entitled to Tax Treaty Benefits

If a tax treaty between the United States and your country provides an exemption from, or a reduced rate of, tax for certain items of income, you should notify the payor of the income (the withholding agent) of your foreign status to claim a tax treaty withholding exemption. Generally, you do this by filing either Form W-8BEN or Form W-8BEN-EZ with the withholding agent.

File Form W-8BEN for income that is not personal services income. File Form 8233 for personal services income as discussed next.

Employees and independent contractors. If you perform personal services as an employee or as an independent contractor and you can claim an exemption from withholding on that personal service income because of a tax treaty, give Form 8233 to the withholding agent from whom amounts will be received.

Even if you submit Form 8233, the witholding agent may have to withhold tax from your income. This is because the factors on which the treaty exemption is based may not be determin- able until after the close of the tax year. In this case, you must file Form 1040NR (or Form 1040NR-EZ if you qualify) to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty exemp- tion.

Students, teachers, and researchers. Students, teachers, and researchers must at- tach the appropriate statement shown in Appendix A (for students) or Appendix B (for teachers and researchers) at the end of this publication to the Form 8233 and give it to the withholding agent. For treaties not listed in the appendices, attach a statement in a format similar to those for other treaties.

If you received a scholarship or fellowship and personal services income from the same withholding agent, use Form 8233 to claim an exemption from withholding based on a tax treaty for both types of income.

Special events and promotions. Withhold- ing at the full 30% rate is required for payments made to a nonresident alien or foreign corpora- tion for gate receipts (or television or other re- ceipts) from rock music festivals, boxing promotions, and other entertainment or sporting events, unless the withholding agent has been specifically advised otherwise by letter from the IRS. This is true even if the income may be exempt from taxation by provisions of a tax treaty. One reason for this is that the partial or complete exemption is usually based on factors that become determined after the close of the tax year.

The required letter should be re- quested from the:

Central Withholding Agreement Program Internal Revenue Service SE:S:CP:IC: MS 0175 1220 SW 3rd Ave.
Portland, OR 97204

Entertainers and athletes can also apply for reduced withholding on the basis of their net income after expenses. See Central withholding agreements under Withholding From Compen- sation, earlier.

You will be required to pay U.S. tax, at the time of your departure from the United States, on any income for which you incorrectly claimed a treaty exemption. For more details on treaty provisions that apply to compensation, see Publication 901.

Income Entitled to Tax Treaty Benefits

Withholding on Real Property Sales

If you are a nonresident alien and you dispose of a U.S. real property interest, the transferee (buyer) of the property generally must withhold a tax equal to 10% of the amount realized on the disposition.

A distribution by a qualified investment entity to a nonresident alien shareholder that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is subject to withholding at 35%. Withholding is also required on certain distributions and other transactions by domestic or foreign corporations, partnership interests, trusts, and estates. These rules are cov- ered in Publication 515.

For information on the tax treatment of disposi- tions of U.S. real property interests, see Real Property Gain or Loss in chapter 4.

If you are a partner in a domestic partner- ship, and the partnership disposes of a U.S. real property interest at a gain, the partnership will withhold tax on the amount of gain allocable to its foreign partners. Your share of the income and tax withheld will be reported to you on Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax, or Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding (in the case of a publicly traded partnership).

The property is acquired by the United States, a U.S. state or possession, a politi- cal subdivision, or the District of Columbia.

A distribution from a domestically con- trolled qualified investment entity that is treated as a distribution of a U.S. real property interest only because an interest in the entity was disposed of in an applica- ble wash sale transaction. See Wash sale

Chapter 8 Paying Tax Through Withholding or Estimated Tax

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Paying Tax Through Withholding or Estimated Tax

Social Security and Medicare Taxes

If you work as an employee in the United States, you must pay social security and Medicare taxes in most cases. Your payments of these taxes contribute to your coverage under the U.S. social security system. Social security coverage provides retirement benefits, survivors and disability benefits, and medical insurance (Medicare) benefits to individuals who meet certain eligibility requirements.

In most cases, the first $97,500 of taxable wages received in 2007 for services performed in the United States is subject to social security tax. All taxable wages are subject to Medicare tax. Your employer deducts these taxes from your combined wages for 2007 or more than $6,045. Use the appropriate worksheet in chapter 3 of Publication 505, Tax Withholding and Estimated Tax, to figure your credit.

If any one employer deducted more than $6,045, you cannot claim a credit for that amount. Ask your employer to refund the excess.

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States. Your employer should be able to tell you if social security and Medicare taxes apply to your wages. You cannot make voluntary payments if no taxes are due.

Students and Exchange Visitors

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. These types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment.

Social security and Medicare taxes will be withheld from your pay for these services if you are considered a resident alien as discussed in chapter 1, even though your nonimmigrant classification (“F,” “J,” “M,” or “Q”) remains the same. Services performed by a spouse or minor child of nonimmigrant aliens with the classification of “F-2,” “J-2,” “M-2,” and “Q-3” are covered under social security.

Nonresident Alien Students

If you are a nonresident alien temporarily admitted to the United States as a student, you generally are not permitted to work for a wage or salary to engage in business while you are in the United States. In some cases, a student admitted to the United States in “F-1,” “M-1,” or “J-1” status is granted permission to work. Social security and Medicare taxes are not withheld from pay for the work unless the student is considered a resident alien.

Any student who is enrolled and regularly attending classes at a school may be exempt from social security and Medicare taxes on pay for services performed for that school.

The U.S. Citizenship and Immigration Services (USCIS) permits on-campus work for students in “F,” “J,” “M,” or “Q” status who are nonresident aliens. The job or internship must be related to the student’s academic studies. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

Employment due to severe economic necessity and for optional practical training is sometimes permitted for students in “F-1” status. Students granted permission to work due to severe economic necessity or for optional practical training will be issued Form I-766 by the USCIS. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

Students in “M-1” status who have completed a course of study can accept employment for practical training for up to 6 months and must have a Form I-20 or Form I-766 issued by the USCIS. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

In all other cases, any services performed by a nonresident alien student are not considered as performed to carry out the purpose for which the student was admitted to the United States. Social security and Medicare taxes will be withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

Exchange Visitors

Nonresident aliens are temporarily admitted to the United States as exchange visitors under section 101(a)(15) of the Immigration and Nationality Act through the sponsorship of approved organizations and institutions that are responsible for establishing a program for the exchange visitor and for any later modification of that program. Generally, an exchange visitor who has the permission of the sponsor can work for the same reasons as the students discussed above. In these cases, permission is
social security or Medicare taxes are withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

If you are a "J-1" visa holder, your spouse or child may be permitted to work in the United States with the prior approval of the USCIS and issuance of Form I-766 or Form I-776.

Nonresident aliens temporarily admitted to the United States as participants in international cultural exchange programs under section 101(a)(15)(Q) of the Immigration and Nationality Act may be exempt from social security and Medicare taxes. "Q-1," "Q-2," and "Q-3" visa holders are aliens whose employment or training affords the opportunity for culture-sharing with the American public. They are allowed to work in the United States for a specific employer in an approved cultural exchange program. The employer must be the petitioner through whom the alien obtained the "Q" visa. Social security and Medicare taxes are not withheld from pay for this work unless the alien is considered a resident alien. Aliens with "Q" visas are not permitted to engage in employment outside the exchange program activities.

Refund of Taxes Withheld in Error

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. Attach the following items to Form 843.

- A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
- A copy of your visa.
- Form I-94 (or other documentation showing your dates of arrival or departure).
- If you have an F-1 visa, Form I-20.
- If you have a J-1 visa, Form DS-2019.
- If you are engaged in optional practical training, Form I-766 or Form I-4888.
- A statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your own statement and explain why you are not attaching a statement from your employer or on Form 8316 claiming your employer will not issue the refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. Attach the following items to Form 843.

- A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
- A copy of your visa.
- Form I-94 (or other documentation showing your dates of arrival or departure).
- If you have an F-1 visa, Form I-20.
- If you have a J-1 visa, Form DS-2019.
- If you are engaged in optional practical training, Form I-766 or Form I-4888.
- A statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your own statement and explain why you are not attaching a statement

Self-Employment Tax

Self-employment tax is the social security and Medicare taxes for individuals who are self-employed. Nonresident aliens are not subject to self-employment tax. Resident aliens of the U.S. Virgin Islands, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa are considered U.S. residents for this purpose and are subject to the self-employment tax.

Resident aliens must pay self-employment tax under the same rules that apply to U.S. citizens. However, a resident alien employed by an international organization, a foreign government, or a wholly-owned instrumentality of a foreign government is not subject to the self-employment tax on income earned in the United States.

Self-employment income you receive while you are a resident alien is subject to self-employment tax even if it was paid for services you performed as a nonresident alien.

Example: Bill Jones is an author engaged in writing books. Bill had several books published in a foreign country while he was a resident alien. After becoming a U.S. resident, he continued to receive royalties from his foreign publisher. Bill reports his income and expenses on the cash basis (he reports income on his tax return when received and deducts expenses when paid). Bill’s 2007 self-employment income includes the royalties received after he became a U.S. resident even though the books were published while he was a nonresident alien. This royalty income is subject to self-employment tax.

Refund of Taxes Withheld in Error

If you have a J-1 visa, Form DS-2019. U.S. social security taxes (including the Medicare taxes for individuals who are self-employed. Only wages paid in figuring your adjusted gross income.

If you must pay self-employment tax, you will usually be the same agency to which you or your employer pays your foreign social security taxes. The foreign agency will be able to tell you what information is needed for them to issue the certificate. Your employer should keep a copy of the certificate because it may be needed to show why you are exempt from U.S. social security taxes. Only wages paid in figuring your adjusted gross income.

Refund of Taxes Withheld in Error

If you have an F-1 visa, Form I-20. can deduct one-half of the self-employment tax paid for the services unless the pay is exempt under the Internal Revenue Code.

If you have an F-1 visa, Form I-20. can deduct one-half of the self-employment tax paid for the services unless the pay is exempt under the Internal Revenue Code.

Filing a Claim for Refund

If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. Attach the following items to Form 843.

- A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
- A copy of your visa.
- Form I-94 (or other documentation showing your dates of arrival or departure).
- If you have an F-1 visa, Form I-20.
- If you have a J-1 visa, Form DS-2019.
- If you are engaged in optional practical training, Form I-766 or Form I-4888.
- A statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your own statement and explain why you are not attaching a statement

Refund of Taxes Withheld in Error

If you have a J-1 visa, Form DS-2019. U.S. social security taxes (including the Medicare taxes for individuals who are self-employed. Only wages paid in figuring your adjusted gross income.

If you must pay self-employment tax, you will usually be the same agency to which you or your employer pays your foreign social security taxes. The foreign agency will be able to tell you what information is needed for them to issue the certificate. Your employer should keep a copy of the certificate because it may be needed to show why you are exempt from U.S. social security taxes. Only wages paid in figuring your adjusted gross income.

Refund of Taxes Withheld in Error

If you have a J-1 visa, Form DS-2019. U.S. social security taxes (including the Medicare taxes for individuals who are self-employed. Only wages paid in figuring your adjusted gross income.
on or after the effective date of the agreement can be exempt from U.S. social security taxes. Some of the countries with which the United States has agreements will not issue certificates of coverage. In this case, either you or your employer should request a statement that your wages are not covered by the U.S. social security system. Request the statement from the following address. U.S. Social Security Administration Office of International Programs P.O. Box 17741 Baltimore, MD 21235-7741

Self-employed individuals. Under most agreements, self-employed individuals are covered by the social security system of the country where they reside. However, under some agreements, you may be exempt from U.S. self-employment tax if you temporarily transfer your business activity to or from the United States.

If you believe that your self-employment income is subject only to U.S. self-employment tax and is exempt from foreign social security taxes, request a certificate of coverage from the U.S. Social Security Administration at the address given earlier. This certificate will establish your exemption from foreign social security taxes.

To establish that your self-employment income is subject only to foreign social security taxes and is exempt from U.S. self-employment tax, request a certificate of coverage from the appropriate agency of the foreign country. If the foreign country will not issue the certificate, you should request a statement that your income is not covered by the U.S. social security system. Request it from the U.S. Social Security Administration at the address given earlier. Attach a photocopy of either statement to Form 1040.

Tax Treaty

To do this, see the instructions for Form 1040-ES (NR) and Publication 505. Penalty for failure to pay estimated income tax. You will be subject to a penalty for underpayment of installments of estimated tax except in certain situations. These situations are explained on Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts.

Estimated Tax Form 1040-ES (NR)

You may have income from which no U.S. income tax is withheld. Or the amount of tax withheld may be less than the income tax you estimate you will owe at the end of the year. If so, you may have to make estimated tax payments for 2008 if you expect to owe at least $1,000 in tax and you expect your withholding and credits to be less than the smaller of:

1. 90% of the tax to be shown on your 2007 income tax return, or
2. 100% of the tax shown on your 2007 income tax return (if your 2007 return covered all 12 months of the year).

If your adjusted gross income for 2007 was more than $115,000 ($75,000 if your filing status for 2008 is married filing separately), substitute 110% for 100% in (2) above if you are not a farmer or fisherman. Item (2) also does not apply if you did not file a 2007 return.

A nonresident alien should use Form 1040-ES (NR) to figure and pay estimated tax. If you pay by check, make it payable to the “United States Treasury.”

How to estimate your tax for 2008. If you filed a 2007 return on Form 1040NR or Form 1040NR-EZ and expect your income, number of exemptions, and total deductions for 2008 to be nearly the same, you should use your 2007 return as a guide to complete the Estimated Tax Worksheet in the Form 1040-ES (NR) instructions. If you did not file a return for 2007, or if your income, exemptions, deductions, or credits will be different for 2008, you must estimate these amounts. Figure your estimated tax liability using the Tax Rate Schedule in the 2008 Form 1040-ES (NR) instructions for your filing status.

Note. If you expect to be a resident of Puerto Rico during the entire year, use Form 1040-ES or Form 1040-ES (Español).

When to pay estimated tax. Make your first estimated tax payment by the due date for filing the previous year’s Form 1040NR or Form 1040NR-EZ. If you have wages subject to the same withholding rules that apply to U.S. citizens, you must file Form 1040NR or Form 1040NR-EZ and make your first estimated tax payment by April 15, 2008. If you do not have wages subject to withholding, file your income tax return and make your first estimated tax payment by June 16, 2008.

If your first estimated tax payment is due April 15, 2008, you can pay your estimated tax in full at that time or in four equal installments. If your tax return is not on a calendar-year basis, your due dates are the 15th day of the 4th, 6th, and 9th months of your fiscal year, and the 1st month of the following fiscal year. If any date falls on a Saturday, Sunday, or legal holiday, use the next day that is not a Saturday, Sunday, or legal holiday.

Changes in income, deductions, or exemptions. Even if you are not required to make an estimated tax payment in April or June, your circumstances may change so that you will have to make estimated tax payments later. This can happen if you receive additional income or any of your deductions are reduced or eliminated. If so, see the instructions for Form 1040-ES (NR) and Publication 505 for information on figuring your estimated tax.

9. Tax Treaty Benefits

Introduction

A nonresident alien (and certain resident aliens) from a country with which the United States has an income tax treaty may qualify for certain benefits. Most treaties require that the nonresident alien be a resident of the treaty country to qualify. However, some treaties require that the nonresident alien be a national or a citizen of the treaty country.

See Table 9-1 for a list of tax treaty countries. You can generally arrange to have withholding tax reduced or eliminated on wages and other income that are eligible for tax treaty benefits. See Income Entitled to Tax Treaty Benefits in chapter 8.

Topics

This chapter discusses:

• Typical tax treaty benefits,
• How to obtain copies of tax treaties, and
• How to claim tax treaty benefits on your tax return.

Useful Items

You may want to see:

Publication

• 901 U.S. Tax Treaties

Form (and Instructions)

• 1040NR U.S. Nonresident Alien Income Tax Return
• 1040NR-EZ U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
• 8833 Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
Treaty Income

A nonresident alien’s treaty income is the gross income on which the tax is limited by a tax treaty. Treaty income includes, for example, dividends from sources in the United States that are subject to tax at a tax treaty rate not to exceed 15%. Nontreaty income is the gross income of a nonresident alien on which the tax is not limited by a tax treaty.

To determine tax on nontreaty income, figure the tax at either the flat 30% rate or the graduated rate, depending upon whether or not the income is effectively connected with your trade or business in the United States.

Your tax liability is the sum of the tax on treaty income plus the tax on nontreaty income, but cannot be more than the tax liability figured as if the tax treaty had not come into effect.

Example. Arthur Banks is a nonresident alien who is single and a resident of a foreign country that has a tax treaty with the United States. He received gross income of $25,500 during the tax year from sources within the United States, consisting of the following items:

- Dividends on which the tax is limited to a 15% rate by the tax treaty ........ $1,400
- Compensation for personal services on which the tax is not limited by the tax treaty ........ 24,100
- Total gross income ........ $25,500

Arthur was engaged in business in the United States during the tax year. His dividends are not effectively connected with that business. He has no deductions other than his own personal exemption.

His tax liability, figured as though the tax treaty had not come into effect, is $3,138 determined as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total compensation</td>
<td>$24,100</td>
</tr>
<tr>
<td>Less: Personal exemption</td>
<td>3,400</td>
</tr>
<tr>
<td>Taxable income</td>
<td>$20,700</td>
</tr>
<tr>
<td>Tax determined by graduated rate</td>
<td>$3,138</td>
</tr>
<tr>
<td>Plus: Tax on gross dividends (1,400 × 30%)</td>
<td>420</td>
</tr>
<tr>
<td>Tax determined as though treaty had not come into effect</td>
<td>$3,138</td>
</tr>
</tbody>
</table>

Arthur’s tax liability, figured by taking into account the reduced rate on dividend income as provided by the tax treaty, is $2,928 determined as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax determined by graduated rate (same as figured above)</td>
<td>$2,928</td>
</tr>
<tr>
<td>Plus: Tax on gross dividends ($1,400 × 15%)</td>
<td>210</td>
</tr>
<tr>
<td>Tax on compensation and dividends</td>
<td>$3,138</td>
</tr>
</tbody>
</table>

Some Typical Tax Treaty Benefits

The following paragraphs briefly explain the exemptions that are available under tax treaties for personal services income, remittances, scholarships, fellowships, and capital gain income. The conditions for claiming the exemptions vary under each tax treaty. For more information about the conditions under a particular tax treaty, see Publication 901. Or, you may download the complete text of most U.S. tax treaties at www.irs.gov. Technical explanations for many of those treaties are also available at that site.

Tax treaty benefits also cover income such as dividends, interest, rentals, royalties, pensions, and annuities. These types of income may be exempt from U.S. tax or may be subject to a reduced rate of tax. For more information, see Publication 901 or the applicable tax treaty.

Personal Services

Nonresident aliens from treaty countries who are in the United States for a short stay and also meet certain other requirements may be exempt from tax on their compensation received for personal services performed in the United States.

Many tax treaties require that the nonresident alien claiming this exemption be present in the United States for a total of not more than 183 days during the tax year. Other tax treaties specify different periods of maximum presence in the United States, such as 180 days or 90 days. Spending part of a day in the United States counts as a day of presence.

Tax treaties may also require that:
- The compensation cannot be more than a specific amount (frequently $3,000), and
- The individual have a foreign employer; that is, an individual, corporation, or entity of a foreign country.

Teachers, Professors, and Researchers

Under many income tax treaties, nonresident alien teachers or professors who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for teaching for the first 2 or 3 years after their arrival in the United States. Many treaties also provide an exemption for engaging in research.

Generally, the teacher or professor must be in the United States primarily to teach, lecture, instruct, or engage in research. A substantial part of that person’s time must be devoted to those duties. The normal duties of a teacher or professor include not only formal classroom work involving regularly scheduled lectures, demonstrations, or other student-participation activities, but also the less formal method of presenting ideas in seminars or other informal groups and in joint efforts in the laboratory.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens later under Resident Aliens.

Employees of Foreign Governments

All treaties have provisions for the exemption of income earned by certain employees of foreign governments. However, a difference exists among treaties as to who qualifies for this benefit. Under many treaties, aliens admitted to the United States for permanent residence do not qualify. Under most treaties, aliens who are not nationals or subjects of the foreign country do not qualify. Employees of foreign governments should read the pertinent treaty carefully to determine whether they qualify for benefits. Chapter 10 of this publication also has information for employees of foreign governments.

Students, Apprentices, and Trainees

Under income tax treaties, students, apprentices, and trainees are exempt from tax on remittances received from abroad for study and maintenance. Also, under some treaties, scholarship and fellowship grants, and a limited amount of compensation received by students, apprentices, and trainees may be exempt from tax.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens later under Resident Aliens.

Capital Gains

Most treaties provide for the exemption of gains from the sale or exchange of personal property. Generally, gains from the sale or exchange of real property located in the United States are taxable.

Resident Aliens

Resident aliens may qualify for tax treaty benefits in the situations discussed below.

U.S. Residency Under Tax Treaty “Tie-Breaker” Rule

In certain circumstances, individuals who are treated as residents of the United States under an income tax treaty (after application of the so-called “tie-breaker” rule) will be entitled to...
treaty benefits. (The "tie-breaker" rule is explained in chapter 1 under Effect of Tax Treaties.) If this applies to you, you generally will not need to file a Form 8833 for the income for which treaty benefits are claimed. This is because the income will typically be of a category for which disclosure on a Form 8833 is waived. See Reporting Treaty Benefits Claimed.

In most cases, you also will not need to report the income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2, Form W-3, Form 1042-S, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 (for example, Line 7 in the case of wages or salaries). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Also follow the above procedure for income that is subject to a reduced rate of tax, instead of an exemption, under the treaty. Attach a statement to Form 1040 showing a computation of the tax at the reduced rate, the name of the treaty country, and the treaty article that provides the exemption. On Form 1040, line 63. On the dotted line next to line 63, write "Tax from attached statement" and the amount of the tax.

Example. Jacques Dubois, who is a resident of the United States under Article 4 of the U.S.-France income tax treaty, receives French social security benefits. Under Article 18(1) of the treaty, French social security benefits are not taxable by the United States. Mr. Dubois is not required to file a Form 8833 for his French social security benefits or report the benefits on Form 1040.

Special Rule for Canadian and German Social Security Benefits

Under income tax treaties with Canada and Germany, if a U.S. resident receives social security benefits from Canada or Germany, those benefits are treated for U.S. income tax purposes as if they were received under the social security legislation of the United States. If you receive social security benefits from Canada or Germany, include them on line 1 of your Social Security Benefits Worksheet for purposes of determining the taxable amount to be reported on Form 1040, line 22b or Form 1040A, line 1b. You are not required to file a Form 8833 for those benefits.

Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens

Generally, you must be a nonresident alien student, apprentice, trainee, teacher, professor, or researcher in order to claim a tax treaty exemption for remittances from abroad for study and maintenance in the United States, for scholarship, fellowship, and research grants, and for wages or other personal service compensation. Once you become a resident alien, you generally can no longer claim a tax treaty exemption for this income.

However, if you entered the United States as a nonresident alien but you are now a resident alien for U.S. tax purposes, the treaty exemption will continue to apply if the tax treaty’s saving clause (explained later) provides an exception for it and you otherwise meet the requirements for the treaty exemption (including any time limit, explained later). This is true even if you are a nonresident alien electing to file a joint return as explained in chapter 1.

Some exceptions to the saving clause apply to resident aliens (for example, under the U.S.-People’s Republic of China treaty); others apply only to resident aliens who are not lawful permanent residents of the United States (green card holders). If you qualify under an exception to the treaty’s saving clause, you can avoid income tax withholding by giving the payor a Form W-9 with the statement required by the Form W-9 instructions.

Saving clause. Most tax treaties have a saving clause. A saving clause preserves or “saves” the right of each country to tax its own residents as if no tax treaty were in effect. Thus, once you become a resident alien of the United States under Article 4 of the treaty, French social security benefits are not taxable by the United States. Mr. Dubois is the beneficiary of an estate or trust and the income will be exempt from U.S. tax under a treaty on interest, dividends, salaries, scholarships, or fellowships.

Time limit for claiming treaty exemptions. Many treaties limit the number of years you can claim a treaty exemption. For students, apprentices, and trainees, the limit is usually 4–5 years; for teachers, professors, and researchers, the limit is usually 2–3 years. Once you reach this limit, you can no longer claim the treaty exemption. See the treaty or Publication 970 for the time limits that apply.

How to report income on your tax return. In most cases, you also will not need to report the income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2, Form W-3, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 (for example, Line 7 in the case of wages, salaries, scholarships, or fellowships). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Example. Mr. Yu, a citizen of the People’s Republic of China, entered the United States as a nonresident alien student on January 1, 2003. His income was $50,000 for the calendar year 2003. Mr. Yu met the requirements to claim treaty exemption. He reported the income on Form 1040, line 22.

Because the treaty benefits are claimed in parentheses on Form 1040, line 22, Mr. Yu has the following tax benefits:

1. You claim a reduction or modification in the tax on income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers.
2. You claim a reduction or modification in the tax on income from employment or other fixed or determinable annual or periodic income ordinarily subject to the U.S. tax.
3. You claim a reduction or modification in the tax on income from employment or other fixed or determinable annual or periodic income ordinarily subject to the U.S. tax.

Reporting Treaty Benefits Claimed

If you claim treaty benefits that override or modify any provision of the Internal Revenue Code, and by claiming these benefits your tax is, or might be, reduced, you must attach a fully completed Form 8833 to your tax return. See Exceptions, below, for the situations where you are not required to file Form 8833.

You must file a U.S. tax return and Form 8833 if you claim the following treaty benefits:

• You claim a reduction or modification in the tax on income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers. This includes taxable scholarship and fellowship grants.
• You claim a reduction or modification in the tax on income from an International Social Security Agreement or a Diplomatic or Consular Agreement.
• You are a partner in a partnership or a beneficiary of an estate or trust and the partnership, estate, or trust reports the required information on its return.
• The payments or items of income that are otherwise required to be disclosed total no more than $10,000.

You are claiming treaty benefits for amounts that are:

• Reported to you on Form 1042-S and
• Received by you:

These are the more common situations for which Form 8833 is required.

Exceptions. You do not have to file Form 8833 for any of the following situations:

1. You claim a reduced rate of withholding tax under a treaty on interest, dividends, rents, royalties, or other fixed or determinable annual or periodic income ordinarily subject to the 30% rate.
2. You claim a treaty reduction or modifies the taxation of income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers. This includes taxable scholarship and fellowship grants.
3. You claim a reduction or modification in the tax on income from an International Social Security Agreement or a Diplomatic or Consular Agreement.
4. You are a partner in a partnership or a beneficiary of an estate or trust and the partnership, estate, or trust reports the required information on its return.
5. The payments or items of income that are otherwise required to be disclosed total no more than $10,000.

You are claiming treaty benefits for amounts that are:

• Reported to you on Form 1042-S and
• Received by you:
The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.

Penalty for failure to provide required information on Form 8833. If you are required to report the treaty benefits but do not, you may be subject to a penalty of $1,000 for each failure.

Additional information. For additional information, see section 301.6114-1(c) of the Income Tax Regulations.

Table 9-1. **Table of Tax Treaties** (Updated through January 1, 2008)

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
<th>Citation</th>
<th>Applicable Treasury Explanations or Treasury Decision (T.D.)</th>
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<tr>
<td>Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1999</td>
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<td><strong>Austria</strong></td>
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<td>Jan. 1, 2005</td>
<td></td>
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</tr>
<tr>
<td><strong>Belgium (new treaty)</strong></td>
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</table>
### 1. Exemption Under Tax Treaty

**Employees of Foreign Governments and International Organizations**

If you are from a country that has a tax treaty with the United States, you should first look at the treaty to see if there is a provision that exempts your income. The income of U.S. citizens and resident aliens working for foreign governments usually is not exempt. However, in a few instances, the income of a U.S. citizen with dual citizenship may qualify. Often the exemption is limited to the income of persons who also are nationals of the foreign country involved. Resident aliens from France. The United States and France have an agreement to relieve double taxation of U.S. permanent residents who receive wages and pensions for governmental services performed for the government of France. Generally, this income is taxable in the United States and France. However, the United States will allow a credit for taxes paid to France on this income.

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### 2. Exemption Under U.S. Tax Law

Employees of foreign governments who do not qualify under a tax treaty provision and employees of international organizations may qualify for exemption by meeting the following requirements of U.S. tax law.

The exemption under U.S. tax law applies only to current employees and not to former employees. Pensions received by former employees living in this country do not qualify for exemption.

Employees of foreign governments. If you are not a U.S. citizen, or if you are a U.S. citizen but also a citizen of the Philippines, and you work for a foreign government in the United States, your foreign government salary is exempt from U.S. tax if you perform services similar to those performed by U.S. Government employees in that foreign country and that foreign government grants an equivalent exemption.

Certification. To qualify for the exemption under U.S. tax law, the foreign government for which you work must certify to the Department of State that you are their employee and that you perform services similar to those performed by employees of the United States in your country. However, see Aliens who keep immigrant status, later, for a special rule that may affect your qualifying for this exemption.

Employees of international organizations. If you work for an international organization in the United States and you are not a U.S. citizen (or you are a U.S. citizen but are also a citizen of the Philippines), your salary from that organization is exempt from U.S. tax. However, see Aliens who keep immigrant status, later, for a special rule that may affect your qualifying for this exemption.

An international organization is an organization designated by the President of the United States through Executive Order to qualify for the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

You should find out if you have been made known to, and have been accepted by, the Secretary of State as an officer or employee of that organization, or if you have been designated by the Secretary of State, before formal notification and acceptance, as a prospective officer or employee.

If you are claiming exemption, you should know the number of the Executive Order covering the international organization and should have some written evidence of your acceptance or designation by the Secretary of State.

The exemption is denied when, because the Secretary of State determines your presence in

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### Employees of Foreign Governments

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
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<tr>
<td>Ukraine</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
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<tr>
<td>United Kingdom²</td>
<td>TIAS</td>
<td>Jan. 1, 2004</td>
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<tr>
<td>Venezuela</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
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</tr>
</tbody>
</table>

¹ TIAS = Treaties and Other International Act Series
² Includes the special rule that may affect your qualifying for this exemption.
³ The U.S.-U.K. income tax treaty covers Ashmore and Cartier Islands, Christmas Island (Indian Ocean), the Cocos (Keeling) Islands, the Coral Sea Islands Territory and Norfolk Island.
⁴ Information on the United States-Canada Income Tax Treaty.
⁵ The U.S.-U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
⁶ The general effective date for the area that was the German Democratic Republic is January 1, 1991.
CAUTION

departure, it may then require the alien to obtain Sailing or Departure Permits. If you do not fall into one of the categories in that discussion, you must obtain Sailing or Departure Permits. If you file the waiver provided by section 247(b) of the Immigration and Nationality Act to keep your immigrant status, you no longer qualify for the exemption from U.S. tax under U.S. tax law from the date of filing the waiver with the Attorney General. However, you do not lose the exemption if you file the waiver, you are exempt from U.S. tax under an income tax treaty, consular agreement, or international agreement, and the exemption is not dependent upon U.S. internal revenue laws.

For more information about a specific foreign country or international organization, send an email to embassy@irs.gov.

11. Departing Aliens and the Sailing or Departure Permit

Introduction

Before leaving the United States, all aliens (except those listed under Aliens Not Required To Obtain Sailing or Departure Permits) must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040-C or Form 2063. These forms are discussed in this chapter.

To find out if you need a sailing or departure permit, first read Aliens Not Required To Obtain Sailing or Departure Permits. If you do not fall into one of the categories in that discussion, you must obtain a sailing or departure permit. Read Aliens Required To Obtain Sailing or Departure Permits.

Topics

This chapter discusses:

• Who needs a sailing permit,
• How to get a sailing permit, and
• Forms you file to get a sailing permit.

Useful Items
You may want to see:

Form (and Instructions)

1040-C U.S. Departing Alien Income Tax Return
2063 U.S. Departing Alien Income Tax Statement

See chapter 12 for information about getting these forms.

Aliens Not Required To Obtain Sailing or Departure Permits

If you are included in one of the following categories, you do not have to get a sailing or departure permit before leaving the United States:

1. Alien military trainees who enter the United States on official military orders, travel orders, or leave the United States on official military office.
2. Alien visitors for business on a “B-1” visa, or on a “B-1” visa and a “B-2” visa, who do not remain in the United States or any of its possessions on a “C-1” visa, or under a contract, such as a bond agreement, between a transportation line and the Attorney General, and for whom passports, visas, and border-crossing identification cards are not required, if they are:

Category 3. Alien students, industrial trainees, and exchange visitors, including their spouses and children, who enter on an “F-1,” “F-2,” “H-3,” “H-4,” “J-1,” “J-2,” or “Q” visa only and who receive no income from U.S. sources while in the United States under those visas other than:

• Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition,
• The value of any services or food and lodging connected with this study or training,
• Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS), or
• Interest income on deposits that is not effectively connected with a U.S. trade or business. (See Interest Income in chapter 3.)

Category 4. Alien students, including their spouses and children, who enter on an “M-1” or “M-2” visa and who receive no income from U.S. sources while in the United States under those visas, other than:

• Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS), or
• Interest income on deposits that is not effectively connected with a U.S. trade or business. (See Interest Income in chapter 3.)

Category 5. Certain other aliens temporarily in the United States who have received no taxable income during the tax year up to and including the date of departure or during the preceding tax year. If the IRS has reason to believe that an alien has received income subject to tax and that the collection of income tax is jeopardized by departure, it may then require the alien to obtain a sailing or departure permit. Aliens in this category are:

1. Alien military trainees who enter the United States for training under the sponsorship of the Department of Defense and who leave the United States on official military travel orders.
2. Alien visitors for business on a “B-1” visa, or on a “B-1” visa and a “B-2” visa, who do not remain in the United States or a U.S. possession for more than 90 days during the tax year.
3. Alien visitors for pleasure on a “B-2” visa.
4. Aliens in transit through the United States or any of its possessions on a “C-1” visa, or under a contract, such as a bond agreement, between a transportation line and the Attorney General, and
5. Aliens who enter the United States on a border-crossing identification card or for whom passports, visas, and border-crossing identification cards are not required, if they are:

a. Visitors for pleasure,
b. Visitors for business who do not remain in the United States or a U.S. possession for more than 90 days during the tax year, or
c. In transit through the United States or any of its possessions.

Category 6. Alien residents of Canada or Mexico who frequently commute between that country and the United States for employment, and whose wages are subject to the withholding of U.S. tax.

Aliens Required To Obtain Sailing or Departure Permits

If you do not fall into one of the categories listed under Aliens Not Required To Obtain Sailing or Departure Permits, you must obtain a sailing or departure permit. To obtain a permit, file Form 1040-C or Form 2063 (whichever applies) with your local IRS office before you leave the United States. See Forms To File, later. You must also pay all the tax shown as due on Form 1040-C and any taxes due for past years. See Paying Taxes and Obtaining Refunds, later.

Getting a Sailing or Departure Permit

The following discussion covers when and where to get your sailing permit.

Where to get a sailing or departure permit. If you have been working in the United States, you should get the permit from an IRS office in the area of your employment, or you may obtain one from an IRS office in the area of your departure.

When to get a sailing or departure permit. You should get your sailing or departure permit at least 2 weeks before you plan to leave. You cannot apply earlier than 30 days before your planned departure date. Do not wait until the last minute in case there are unexpected problems.

Papers to submit. Getting your sailing or departure permit will go faster if you bring to the IRS office papers and documents related to your income and your stay in the United States. Bring the following records with you if they apply:

1. Your passport and alien registration card or visa.
2. Copies of your U.S. income tax returns filed for the past 2 years. If you were in the United States for less than 2 years, bring the income tax returns you filed for that period.
3. Receipts for income taxes paid on these returns.
4. Receipts, bank records, canceled checks, and other documents that prove your deductions, business expenses, and dependents claimed on your returns.
5. A statement from each employer showing wages paid and tax withheld from January 1 of the current year to the date of departure if you were an employee. If you were self-employed, you must bring a statement of income and expenses up to the date you plan to leave.
6. Proof of estimated tax payments for the past year and this year.
7. Documents showing any gain or loss from the sale of personal property and/or real property, including capital assets and merchandise.
8. Documents relating to scholarship or fellowship grants including:
   a. Verification of the grantor, source, and purpose of the grant.
   b. Copies of the application for, and approval of, the grant.
   c. A statement of the amount paid, and your duties and obligations under the grant.
   d. A list of any previous grants.
9. Documents indicating you qualify for any special tax treaty benefits claimed.
10. Document verifying your date of departure from the United States, such as an airline ticket.
11. Document verifying your U.S. taxpayer identification number, such as a social security card or an IRS issued CP 565 showing your individual taxpayer identification number (ITIN).

Note. If you are married and reside in a community property state, also bring the above-listed documents for your spouse. This applies whether or not your spouse requires a permit.

Forms To File

If you must get a sailing or departure permit and you do not qualify to file Form 2063, you must file Form 1040-C. Ordinarily, all income received or reasonably expected to be received during the tax year up to and including the date of departure must be reported on Form 1040-C and the tax on it must be paid. When you pay any tax shown as due on the Form 1040-C, and you file all returns and pay all tax due for previous years, you will receive a sailing or departure permit. However, the IRS may allow you to furnish a bond or an employer letter guaranteeing payment instead of paying the taxes for certain years. See Bond or Employer Letter To Ensure Payment, discussed later. The sailing or departure permit issued under the conditions in this paragraph is only for the specific departure for which it is issued.

If you submit an employer letter guaranteeing payment of tax with your Form 1040-C, you do not need to fill out the form in detail. Just fill out the identifying information on the form, check the “Yes” box on line 1, sign it, and attach the letter. The IRS office where you submit the form will then issue your sailing or departure permit.

Returning to the United States. If you furnish the IRS with information showing, to the satisfaction of the IRS, that you intend to return to the United States and that your departure does not jeopardize the collection of income tax, you can get a sailing or departure permit by filing Form 1040-C without having to pay the tax shown on it. You must, however, file all income tax returns that have not yet been filed as required, and pay all income tax that is due on these returns.

Your Form 1040-C must include all income received and reasonably expected to be received during the entire year of departure. The sailing or departure permit issued with this Form 1040-C can be used for all departures during the current year. However, the Service may cancel the sailing or departure permit for any later departure if it believes the collection of income tax is jeopardized by that later departure.

Form 1040-C

If you must get a sailing or departure permit and you do not qualify to file Form 2063, you must file Form 1040-C.

• Resident aliens who have received taxable income during the tax year or preceding year and whose departure will not hinder the collection of any tax. However, if the IRS has information indicating that the aliens are leaving to avoid paying the income tax, they must file a Form 1040-C.

Aliens in either of these categories who have not filed an income tax return or paid income tax for any tax year must file the return and pay the income tax before they can be issued a sailing or departure permit on Form 2063. The sailing or departure permit detached from Form 2063 can be used for all departures during the current year. However, the IRS may cancel the sailing or departure permit for any later departure if it believes the collection of income tax is jeopardized by that later departure.

Form 1040-C

If you must get a sailing or departure permit and you do not qualify to file Form 2063, you must file Form 1040-C.

• Ordinary, all income received or reasonably expected to be received during the tax year up to and including the date of departure must be reported on Form 1040-C and the tax on it must be paid. When you pay any tax shown as due on the Form 1040-C, and you file all returns and pay all tax due for previous years, you will receive a sailing or departure permit. However, the IRS may allow you to furnish a bond or an employer letter guaranteeing payment instead of paying the taxes for certain years. See Bond or Employer Letter To Ensure Payment, discussed later. The sailing or departure permit issued under the conditions in this paragraph is only for the specific departure for which it is issued.

If you submit an employer letter guaranteeing payment of tax with your Form 1040-C, you do not need to fill out the form in detail. Just fill out the identifying information on the form, check the “Yes” box on line 1, sign it, and attach the letter. The IRS office where you submit the form will then issue your sailing or departure permit.

Returning to the United States. If you furnish the IRS with information showing, to the satisfaction of the IRS, that you intend to return to the United States and that your departure does not jeopardize the collection of income tax, you can get a sailing or departure permit by filing Form 1040-C without having to pay the tax shown on it. You must, however, file all income tax returns that have not yet been filed as required, and pay all income tax that is due on these returns.

Your Form 1040-C must include all income received and reasonably expected to be received during the entire year of departure. The sailing or departure permit issued with this Form 1040-C can be used for all departures during the current year. However, the Service may cancel the sailing or departure permit for any later departure if the payment of income tax appears to be in jeopardy.

Joint return on Form 1040-C. Departing husbands and wives who are nonresident aliens cannot file joint returns. However, if both
spouses are resident aliens, they can file a joint return on Form 1040-C if:

- Both spouses can reasonably be expected to qualify to file a joint return at the normal close of their tax year, and
- The tax years of the spouses end at the same time.

**Paying Taxes and Obtaining Refunds**

You must pay all tax shown as due on the Form 1040-C at the time of filing it, except when a bond or an employer letter is furnished, or the IRS is satisfied that your departure does not jeopardize the collection of income tax. You must also pay any taxes due for prior years. If the tax computation on Form 1040-C results in a overpayment, there is no tax to pay at the time you file that return. However, the IRS cannot provide a refund at the time of departure. If you are due a refund, you must file either Form 1040NR or Form 1040NR-EZ at the end of the tax year.

**Bond or Employer Letter To Ensure Payment**

Usually, you must pay the tax shown as due on Form 1040-C when you file it. However, if you pay all taxes due that you owe for prior years, you can furnish a bond or an employer letter guaranteeing payment instead of paying the income taxes shown as due on the Form 1040-C or the tax return for the preceding year if the period for filing that return has not expired.

The bond must equal the tax due plus interest to the date of payment as figured by the IRS. Information about the form of bond and security on it can be obtained from your IRS office.

**Filing Annual U.S. Income Tax Returns**

Form 1040-C is not an annual U.S. income tax return. If an income tax return is required by law, that return must be filed even though a Form 1040-C has already been filed. Chapters 5 and 7 discuss filing an annual U.S. income tax return. The tax paid with Form 1040-C should be taken as a credit against the tax liability for the entire tax year on your annual U.S. income tax return.
12. How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help. Access to some of these services depends on whether you are inside or outside of the United States.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

To contact your Taxpayer Advocate:
- If you are in the United States, call the Taxpayer Advocate toll free at 1-877-777-4778. Persons living outside the United States can call the Taxpayer Advocate at (787) 622-8940 in English or (787) 622-8930 in Spanish.
- Call, write, or fax the Taxpayer Advocate office in your area. Persons living outside the United States can fax the Taxpayer Advocate at (787) 622-8933 or contact the Taxpayer Advocate at:
  - Internal Revenue Service
  - Taxpayer Advocate
  - P.O. Box 193479
  - San Juan, PR 00919-3479
- Call 1-800-829-4059 if you are a TTY/TDD user and you are in the United States.

For more information, see Publication 1546, The Taxpayer Advocate Service of the IRS—How To Get Help With Unresolved Tax Problems.

Free tax services. To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Internet. You can access the IRS website 24 hours a day, 7 days a week, at www.irs.gov.
- E-file your return. Find out about commercial tax preparation and e-file services available free to eligible taxpayers.
- Check the status of your 2006 refund. Click on Where's My Refund? Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2006 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using our Form W-4 calculator.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Phone. If you are in the United States, many services are available by phone.
- Ordering forms, instructions, and publications. Call 1-800-829-3676 to order current-year forms, instructions, and publications and prior-year forms and instructions. You should receive your order within 10 days.
- Asking tax questions. Call the IRS with your tax questions at 1-800-829-1040.
- Solving problems. You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.
- TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- TeleTax topics. Call 1-800-829-4477 and press 2 to listen to pre-recorded messages covering various tax topics.
- Refund information. If you would like to check the status of your 2006 refund, call 1-800-829-4477 and press 1 for automated refund information or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2006 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.

If you are outside the United States, you can call your nearest U.S. Embassy, consulate, or IRS office listed below to find out when and where assistance will be available. These IRS telephone numbers include the country and city codes required if you are outside the local dialing area.

Frankfurt, Germany (49) (69) 7535-3834
London, England (44) (20) 7894-0477
Paris, France (33) (1) 4312-2555

Overseas taxpayers can also call the United States for help at (215) 516-2000.

If you are in Guam, the Bahamas, U.S. Virgin Islands, or Puerto Rico, you can call 1-800-829-1040.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. If you are in the United States, many products and services are available on a walk-in basis.
- Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- Services. You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you're more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, but if you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to www.irs.gov/localcontacts or look in the...
If you are outside the United States during the filing period (January to mid-June), you can get the necessary federal tax forms and publications from U.S. Embassies and consulates. Also during the filing season, the IRS conducts an overseas taxpayer assistance program. To find out if IRS personnel will be in your area, you should contact the consular office at the nearest U.S. Embassy.

**Mail.** You can send your order for forms, instructions, and publications to the address below and receive a response within 10 business days after your request is received.

National Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903

If you are outside the United States, for answers to technical or account questions, you can write to:

Internal Revenue Service
International Section
P.O. Box 920
Bensalem, PA 19020-8518

**CD for tax products.** You can order Publication 1796, IRS Tax Products CD, and obtain:

- A CD that is released twice so you have the latest products. The first release ships in late December and the final release ships in late February.
- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Bonus: Historical Tax Products DVD - Ships with the final release.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

Buy the CD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for $25 (no handling fee) or call 1-877-CDFORMS (1-877-233-6767) toll free to buy the CD for $25 (plus a $5 handling fee). Price is subject to change.

**CD for small businesses.** Publication 3207, The Small Business Resource Guide CD for 2006, is a must for every small business owner or any taxpayer about to start a business. This year’s CD includes:

- Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
- All the business tax forms, instructions, and publications needed to successfully manage a business.
- Tax law changes for 2006.
- Tax Map: an electronic research tool and finding aid.
- Web links to various government agencies, business associations, and IRS organizations.
- “Rate the Product” survey—your opportunity to suggest changes for future editions.
- A site map of the CD to help you navigate the pages of the CD with ease.
- An interactive “Teens in Biz” module that gives practical tips for teens about starting their own business, creating a business plan, and filing taxes.

An updated version of this CD is available each year in early April. You can get a free copy by calling 1-800-829-3676 or by visiting www.irs.gov/smallbiz.
Questions and Answers

This section answers tax-related questions commonly asked by aliens.

What is the difference between a resident alien and a nonresident alien for tax purposes?

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as resident aliens and nonresident aliens. Resident aliens are taxed on their worldwide income, the same as U.S. citizens. Nonresident aliens are taxed only on their U.S. source income.

What is the difference between the taxation of income that is effectively connected with a trade or business in the United States and income that is not effectively connected with a trade or business in the United States?

The difference between these two categories is that effectively connected income, after allowable deductions, is taxed at graduated rates. These are the same rates that apply to U.S. citizens and residents. Income that is not effectively connected is taxed at a flat 30% (or lower treaty rate).

I am a student with an F-1 Visa. I was told that I was an exempt individual. Does this mean I am exempt from paying U.S. tax?

The term “exempt individual” does not refer to someone exempt from U.S. tax. You were referred to as an exempt individual because as a student temporarily in the United States on an F Visa, you do not have to count the days you were present in the United States as a student during the first 5 years in determining if you are a resident alien under the substantial presence test. See chapter 1.

I am a resident alien. Can I claim any treaty benefits?

Generally, you cannot claim tax treaty benefits as a resident alien. However, there are exceptions. See Effect of Tax Treaties in chapter 1. Also see Resident Aliens Under Some Typical Tax Treaty Benefits in chapter 9.

I am a nonresident alien with no dependents. I am working temporarily for a U.S. company. What return do I file?

You must file Form 1040NR if you are engaged in a trade or business in the United States, or have any other U.S. source income on which tax was not fully paid by the amount withheld.

You can use Form 1040NR-EZ income tax withholding. If you file Form 1040NR-EZ, you must meet all 11 conditions listed under Form 1040NR-EZ in chapter 7.

I came to the United States on June 30th of last year. I have an H-1B Visa. What is my tax status, resident alien or nonresident alien? What tax return do I file?

You were a dual-status alien last year. As a general rule, because you were in the United States for 183 days or more, you have met the substantial presence test and you are taxed as a resident. However, if you were not present in the United States, you are a nonresident. File Form 1040. Print “Dual-Status Return” across the top. Attach a statement showing your U.S. source income for the part of the year you were a nonresident. You may use Form 1040NR as the statement. Print “Dual-Status Statement” across the top. See First Year of Residency in chapter 1 for rules on determining your residency starting date. An example of a dual-status return is in chapter 6.

When is my Form 1040NR due?

If you are an employee and you receive wages subject to U.S. income tax withholding, you must generally file by the 15th day of the 4th month after your tax year ends. If you file for the 2007 calendar year, your return is due April 15, 2008. If you are not an employee who receives wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 2007 calendar year, file your return by June 16, 2008. For more information on when and where to file, see chapter 7.

My spouse is a nonresident alien. Does he need a social security number?

A social security number (SSN) must be furnished on returns, statements, and other tax-related documents. If your spouse does not have a SSN and is not eligible to get an SSN, he must apply for an individual taxpayer identification number (ITIN). If you are a U.S. citizen or resident and you choose to treat your nonresident spouse as a resident and file a joint tax return, your nonresident spouse needs an SSN or an ITIN. Alien spouses who are claimed as exemptions or dependents are also required to furnish an SSN or an ITIN.

See Identification Number in chapter 5 for more information.

I am a nonresident alien. Can I file a joint return with my spouse?

Generally, you cannot file as married filing jointly if either spouse was a nonresident alien at any time during the tax year.

However, nonresident aliens married to U.S. citizens or residents can choose to be treated as U.S. residents and file joint returns. For more information on this choice, see Nonresident Spouse Treated as a Resident in chapter 1.

I have an H-1B Visa and my husband has an F-1 Visa. We both lived in the United States all of last year and had income. What kind of form should we file? Do we file separate returns or a joint return?

Assuming both of you had these visas for all of last year, you are a resident alien. Your husband is a nonresident alien if he has not been in the United States as a student for more than 5 years. You and your husband can file a joint tax return on Form 1040, 1040A, or 1040EZ if he makes the choice to be treated as a resident for the entire year. See Nonresident Spouse Treated as a Resident in chapter 1. If your husband does not make this choice, you must file a separate return on Form 1040 or Form 1040A. Your husband must file Form 1040NR or 1040NR-EZ.

Is a “dual-resident taxpayer” the same as a “dual-status taxpayer”?

No. A dual-resident taxpayer is one who is a resident of both the United States and another country under each country’s tax laws. See Effect of Tax Treaties in chapter 1. You are a dual-status taxpayer when you are both a resident alien and a nonresident alien in the same year. See chapter 6.

I am a nonresident alien and invested money in the U.S. stock market through a U.S. brokerage company. Are the dividends and the capital gains taxable? If yes, how are they taxed?

The following rules apply if the dividends and capital gains are not effectively connected with a U.S. trade or business.

• Capital gains are generally not taxed if they were in the United States for less than 183 days during the year. See Sales or Exchanges of Capital Assets in chapter 4 for more information and exceptions.

• Dividends are generally taxed at a 30% (or lower treaty rate). The brokerage company or payer of the dividends should withhold this tax at the correct rate, you must file Form 1040NR and pay any additional tax due.

If the capital gains and dividends are effectively connected with a U.S. trade or business, they are taxed according to the same rules and at the same rates that apply to U.S. citizens and residents.

I am a nonresident alien. I receive U.S. social security benefits. Are my benefits taxable?

If you are a nonresident alien, 85% of any U.S. social security benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the flat 30% tax, unless exempt, or subject to a lower treaty rate. See The 30% Tax in chapter 4.

Do I have to pay taxes on my scholarship?

If you are a nonresident alien and the scholarship is not from U.S. sources, it is not subject to U.S. tax. See Scholarships, Prizes, and Awards in chapter 2 to determine whether your scholarship is from U.S. sources.

If your scholarship is from U.S. sources or you are a resident alien, your scholarship is subject to U.S. tax according to the following rules.

• If you are a candidate for a degree, you may be able to exclude from your income the part of the scholarship you use to pay for tuition, fees, books, supplies, and equipment required by the educational institution. However, the part of the scholarship you use to pay for other expenses, such as room and board, is taxable. See Scholarships and Fellowships.
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Grants in chapter 3 for more information.

- If you are not a candidate for a degree, your scholarship is taxable.

I am a nonresident alien. Can I claim the standard deduction?

Nonresident aliens cannot claim the standard deduction. However, see Students and business apprentices from India, under Itemized Deductions in chapter 5 for an exception.

I am a dual-status taxpayer. Can I claim the standard deduction?

You cannot claim the standard deduction allowed on Form 1040. However, you can itemize any allowable deductions.

I am filing Form 1040NR. Can I claim itemized deductions?

Nonresident aliens can claim some of the same itemized deductions that resident aliens can claim. However, nonresident aliens can claim itemized deductions only if they have income effectively connected with their U.S. trade or business. See Itemized Deductions in chapter 5.

I am not a U.S. citizen. What exemptions can I claim?

Resident aliens can claim personal exemptions and exemptions for dependents in the same way as U.S. citizens. However, nonresident aliens generally can claim only a personal exemption for themselves on their U.S. tax return. There are special rules for residents of Mexico, Canada, and the Republic of Korea (South Korea); for U.S. nationals; and for students and business apprentices from India. See Exemptions in chapter 5.

What exemptions can I claim as a dual-status taxpayer?

As a dual-status taxpayer, you usually will be able to claim your own personal exemption. Subject to the general rules for qualification, you can claim exemptions for your spouse and dependents when you figure taxable income for the part of the year you are a resident alien. The amount you can claim for these exemptions is limited to your taxable income (figured before subtracting exemptions) for the part of the year you are a resident alien. You cannot use exemptions (other than your own) to reduce taxable income to less than zero for that period.

I am single with a dependent child. I was a dual-status alien in 2007. Can I claim the earned income credit on my 2007 tax return?

If you are a nonresident alien for any part of the year, you cannot claim the earned income credit. See chapter 6 for more information on dual-status aliens.

I am a nonresident alien student. Can I claim an education credit on my Form 1040NR?

If you are a nonresident alien for any part of the year, you generally cannot claim the education credits. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse, you may be eligible for these credits. See Nonresident Spouse Treated as a Resident in chapter 1.

I am a nonresident alien, temporarily working in the U.S. under a J visa. Am I subject to social security and Medicare taxes?

Generally, services you perform as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if you perform the services to carry out the purpose for which you were admitted to the United States. See Social Security and Medicare Taxes in chapter 8.

I am a nonresident alien student. Social security taxes were withheld from my pay in error. How do I get a refund of these taxes?

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. See Refund of Taxes Withheld in Error in chapter 8.

I am an alien who will be leaving the United States. What forms do I have to file before I leave?

Before leaving the United States, aliens generally must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040-C or Form 2063. These forms are discussed in chapter 11.

I filed a Form 1040-C when I left the United States. Do I still have to file an annual U.S. tax return?

Form 1040-C is not an annual U.S. income tax return. If an income tax return is required by law, you must file that return even though you already filed a Form 1040-C. Chapters 5 and 7 discuss filing an annual U.S. income tax return.
Appendix A—Tax Treaty Exemption Procedure for Students

This appendix contains the statements for nonresident alien students. The statements are available only if they are continuing to apply for personal services in the United States. Exempt from withholding of tax on compensation for personal services performed in the United States only for such period of time as is reasonably necessary to complete the education or training.
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Indonesia

1. I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States solely for the purpose of study at _______ [insert the name of the university or other recognized educational institution at which you study].

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Indonesia in an amount not in excess of $3,000 for any tax year, I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

5. I arrived in the United States on ______ [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years.

Germany

Note.

The following statement includes the change made by the new protocol, which is generally effective for tax years beginning on or after January 1, 2008. Residents of Germany who want to apply the unmodified treaty (that is, unmodified by the new protocol) in its entirety for 2008 must substitute “$5,000” for “$9,000” in paragraph (3) below.

1. I was a resident of Germany on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States as a student for the primary purpose of studying at an accredited university, college, school or other educational institution.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Germany in an amount not in excess of $9,000 for any tax year, provided such services are performed in connection with my studies or are necessary for my maintenance, education, or training.

4. I arrived in the United States on _______ [insert the date of your last arrival in the United States before beginning study at the accredited university, college, school or other educational institution] and am a resident of Germany.

5. I was a resident of Germany for five tax years beginning with the tax year that includes my arrival date.

France

1. I was a resident of France on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of studying at ________ [insert the name of the accredited university, college, school or other educational institution].

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and France in an amount not in excess of $5,000 for any taxable year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

5. I arrived in the United States on ______ [insert the date of your last arrival in the United States before beginning study at the accredited university, college, school or other educational institution].

6. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Morocco

1. I was a resident of Morocco on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of studying at _______ [insert the name of the university or other recognized educational institution at which you study].

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Morocco in an amount not in excess of $2,000 for any tax year.

4. I was a resident of the country under whose treaty you claim exemption on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

5. I arrived in the United States on ______ [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of four tax years beginning with the tax year that includes my arrival date.

6. I am temporarily present in the United States for the primary purpose of studying at ________ [insert the name of the university or other recognized educational institution at which you study].

7. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Morocco in an amount not in excess of $2,000 for any tax year.
4. I arrived in the United States on ______[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

Netherlands

1. I was a resident of the Netherlands on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of full-time study at the U.S. educational institution at which you study.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and the Netherlands in an amount not in excess of $5,000 for any tax year.

Pakistan

1. I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States solely as a student at the recognized university, college, or school in the United States at which you study.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Pakistan in an amount not in excess of $5,000 for any tax year.

4. I will be present in the United States only for such period of time as may be reasonably required to effectuate the purpose of this visit.

Trinidad and Tobago

1. I was a resident of Trinidad and Tobago on ______[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date, and for such period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

2. I am temporarily present in the United States for the purpose of studying or training at the U.S. educational institution at which you study, train, or perform research.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Trinidad and Tobago in an amount not in excess of $2,000 for any taxable year.

4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

Tunisia

1. I was a resident of Tunisia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the purpose of full-time study, training, or research at the University or other accredited educational institution at which you study, train, or perform research.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Tunisia in an amount not in excess of $4,000 for any taxable year.

4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.
This appendix contains the statements nonresident alien teachers and researchers must file with Form 8233, Exempt Individual Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, to claim a tax treaty exemption from withholding of tax on compensation for dependent personal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See chapter 8 for more information on withholding.

Belgium

Note. Residents of Belgium should use the following statement only if they are electing to have the old treaty apply in its entirety during 2008. Otherwise, they should attach a statement that follows Article 19(2) of the U.S.–Belgium treaty that entered into force on December 28, 2007.

1. I was a resident of Belgium on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution, to reside in the United States to perform teaching or research activities.

3. I am a resident of [insert the name of the educational institution], which is an accredited educational or scientific institution in the United States, or an organization, governmental agency or institution, or a university or other recognized educational or scientific institution, to which I am regularly returning to reside permanently.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States before beginning teaching, lecturing, or research activities]. The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Appendix B—Tax Treaty Exemption Procedure for Teachers and Researchers

Commonwealth of Independent States

The treaty with former Union of Soviet Socialist Republics remains in effect for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

1. I am a resident of [insert the name of country]. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I have accepted an invitation by a governmental agency or institution in the United States, or by an educational or scientific research institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in scientific, technical, or professional conferences at [insert the name of governmental agency or institution, educational or scientific institution, or organization sponsoring professional conference], which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

3. The teaching, research, or conference compensation I receive is paid on the basis of a treaty exemption from withholding of federal tax under the tax treaty between the United States and the Commonwealth of Independent States nonresident alien teachers and researchers must file with Form 8233, Exempt Individual Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, to claim a tax treaty exemption from withholding of tax on compensation for dependent personal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See chapter 8 for more information on withholding.

The treaty exemption is available only for compensation received during a period of two years beginning on that date.

People's Republic of China

1. I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching, giving lectures, or conducting research at [insert the name of the educational institution], which is an accredited educational or scientific research institution in the United States. I will receive compensation for my teaching, lecturing, or research activities.

3. The teaching, lecturing, or research compensation I receive is paid on the basis of a treaty exemption from withholding of federal tax under the tax treaty between the United States and the People's Republic of China. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, lecturer, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States before beginning teaching, lecturing, or research activities]. The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Czech Republic and Slovak Republic

1. I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching, giving lectures, or conducting research at [insert the name of educational or scientific institution], which is a recognized educational or scientific institution in the United States, or at [insert the name of the university or other recognized educational or scientific institution], which is a recognized educational or scientific institution, to which I was regularly returning to reside permanently.

3. The teaching, lecturing, or research compensation I receive is paid on the basis of a treaty exemption from withholding of federal tax under the tax treaty between the United States and the People's Republic of China. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, lecturer, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States before beginning teaching, lecturing, or research activities]. The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on ___________ and not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

6. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

Germany
1. I am a resident of Germany. I am not a U.S. citizen. I have not previously claimed the privilege of residing permanently in the United States as an immigrant.

2. I am a professor or teacher visiting the United States for the purpose of teaching at ___________. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

France
1. I was a resident of France on the date of my arrival in the United States. I am not a U.S. citizen. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

2. I have accepted an invitation to the United States as a teacher, researcher, or student from ___________. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

3. The teaching or research compensation received during the entire tax year (or during the period from ___________ to ___________ for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Germany. I have not previously claimed an income tax exemption under this treaty for income received as a student, apprentice, or trainee during the immediately preceding period. (If, however, following the period in which the alien claimed benefits as a student, apprentice, or trainee, that person returned to Germany and resumed residence and physical presence before returning to the United States as a teacher or researcher, that person may claim the benefits of this treaty.)

Iceland and Norway
1. I was a resident of _________. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

2. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

3. The teaching or research compensation received during the entire tax year (or during the period from ___________ to ___________ for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Iraq. I have not previously claimed an income tax exemption under this treaty for income received as a student, apprentice, or trainee during the immediately preceding period. (If, however, following the period in which the alien claimed benefits as a student, apprentice, or trainee, that person returned to the United States as a teacher or researcher, that person may claim the benefits of this treaty.)
treaty between the United States and [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption for which exemption is claimed. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

**India**

1. I was a resident of India on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States and India.

2. I am visiting the United States for the purpose of teaching or conducting research at [insert the name of the university, college, or other recognized educational institution]. I will receive compensation for my teaching or study activities.

3. The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and India. I have not previously claimed an income tax exemption under that treaty for income received during the entire tax year (or for the portion of the year from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]). The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

4. Any research I perform will not be undertaken primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States] and I am not primarily for the personal benefit of a specific person or persons.

**Indonesia**

1. I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States and Indonesia.

2. I have accepted an invitation from [insert the name of the university, college, school, or other similar educational institution] to come to the United States solely for the purpose of teaching or engaging in research at that educational institution. I will receive compensation for my teaching or research activities.

3. The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Indonesia. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States] and I am not primarily for the private benefit of a specific person or persons.

**Italy**

1. I was a resident of Italy on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching or conducting research at [insert the name of the university, college, or other recognized educational institution]. I will receive compensation for my teaching or study activities.

3. The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Italy. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States] and I am not primarily for the private benefit of a specific person or persons.

**Jamaica**

1. I was a resident of Jamaica on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching or conducting research for a period not expected to exceed two years at [insert the name of the university, college, or other recognized educational institution]. I will receive compensation for my teaching or research activities.

3. The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Jamaica. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival in the United States] and I am not primarily for the private benefit of a specific person or persons.
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The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and another country, or for the purpose of teaching or research at an educational institution. I will receive compensation for my teaching or research activities.

The treaty exemption is available only for compensation received during a period of two years beginning on that date.

Slovenia and Venezuela

1. I was a resident of ________ (insert the name of the country, whose treaty you claim exemption) at the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the purpose of teaching or carrying on research at ________ (insert the name of the educational or research institution), which is a recognized educational or research institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and______ (insert the name of the country, whose treaty you claim exemption) for the purpose of teaching or research at an educational institution. I will receive compensation for my teaching or research activities.

Pakistan

1. I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am professor or teacher for income received as a teacher, researcher, or student before the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

3. The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and ________ (insert the name of the country, whose treaty you claim exemption) for the purpose of teaching or research at an educational institution. I will receive compensation for my teaching or research activities.

Netherlands

1. I am a resident of the Netherlands. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching or research at ________ (insert the name of the educational institution at which you teach or perform research), which is a recognized educational institution, to come to the United States for the purpose of teaching or engaging in research at that institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and ________ (insert the name of the country, whose treaty you claim exemption) for the purpose of teaching or research at ________ (insert the name of the educational institution). I will receive compensation for my teaching or research activities.

Portugal

1. I was a resident of Portugal at the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I accepted an invitation to come to the United States to engage in research at ________ (insert the name of the educational institution) for the purpose of teaching or research at an educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and ________ (insert the name of the country, whose treaty you claim exemption) for the purpose of teaching or research at an educational institution. I will receive compensation for my teaching or research activities.

The treaty exemption is available only for compensation received during a period of two years beginning on that date.

Thailand

1. I was resident of Thailand on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
citizen. I have not been law-fully accorded the privilege of residing permanently in the United States as an immi-grant.

2. I am visiting the United States for the purpose of teaching or engaging in research at [insert the name of the educational or research institution at which you teach or perform research] for a pe-riod not exceeding two years. I will receive compensation for my teaching or research activ-ities.

3. The compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]) for these ac-tivities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Thai-land. I have not previously claimed an income tax ex-emption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemp-tion is available only for compen-sation received during a period of two years beginning on that date.

Trinidad and Tobago

1. I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing per-manently in the United States as an immigrant.

2. I have accepted an invitation by the U.S. government, or by a university or other educa-tional institution in the United States, to come to the United States for the purpose of teaching or engaging in re-search at [insert the name of the educational insti-tution], which is an educa-tional institution approved by an appropriate governmental education authority. No agree-ment exists between the gov-ernment of the United States and the government of Trini dad and Tobago for the provi-sion of my services. I will receive compensation for my teaching or research services.

3. The teaching or research compensation received during the entire tax year (or for the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Trini dad and Tobago. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or stu-dent before the date of my ar-rival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemp-tion is available only for compen-sation received during a period of two years beginning on that date.

United Kingdom

1. I was a resident of the United Kingdom on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privi-lege of residing permanently in the United States as an immi-grant.

2. I am a professor or teacher visiting the United States for a period of not more than two years for the purpose of teaching or engaging in re-search at [insert the name of the educational insti-tution], which is a recognized educational institution. I will receive compensation for my teaching or research activi-ties.

3. The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the United Kingdom. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, re-searcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the benefit of any private person or persons.

5. I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemp-tion is available only for compen-sation received during a period of two years beginning on that date. The entire treaty exemption is lost retroactively if my stay in the United States exceeds two years.
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