Publication 515
(Rev. January 2006)
Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Entities

For Withholding in 2006

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What's New

New procedure for calculating income tax withholding on wages. Beginning with wages paid after December 31, 2005, employers are required to calculate income tax withholding on wages of nonresident alien employees using a new procedure. Under this procedure, the employer adds an amount to the employee's wages solely for the purpose of calculating the amount to withhold. The employee is no longer required to have additional tax withheld. See Wages Paid to Employees—Graduated Withholding.

New rules for partnership withholding on effectively connected income (ECI). For partnership tax years beginning after May 18, 2005, new regulations under section 1446 provide the rules for a partnership to withhold tax on ECI allocated to a foreign partner. See Partnership Withholding on Effectively Connected Income. The appropriate Form W-8 can be used to inform the partnership that the partner is a foreign partner and its tax classification. A foreign partner that provides the partnership with a valid Form W-8 for purposes of withholding under sections 1441, 1442, and 1443 of the Internal Revenue Code will generally satisfy the documentation requirements for withholding by the partnership under section 1446 of the Code. See the regulations under section 1446 for more information.

New rules for publicly traded partnerships (PTP) withholding on distributions to foreign partners. For partnership tax years beginning after May 18, 2005, a PTP can no longer elect to withhold tax based on ECI allocated to its foreign partners. The PTP must withhold on the distribution of that income to its foreign partners. A nominee that receives a distribution of ECI from a PTP is treated as the withholding agent to the extent of the amount specified in the qualified notice received by the nominee. The withholding agent (PTP or nominee) must use Form 1042 and Form 1042-S to report withholding from distributions under section 1446 of the Code.

For more information, see Publicly Traded Partnerships under Partnership Withholding on Effectively Connected Income. Also see Regulations section 1.1446-4.

Voluntary Compliance Program (VCP). The IRS has initiated a “Section 1441 VCP.” This program is available to certain withholding agents with respect to the withholding, payment, and reporting of certain taxes due on payments to foreign persons. Submissions under this program had to be made before January 1, 2006. This deadline has been extended to April 1, 2006. For information on the VCP, see Revenue Procedure 2004-59, which is on page 678 of the Internal Revenue Bulletin 2004-42 at www.irs.gov/pub/irs-ibts/ibt04-42.pdf. Also see Revenue Procedure 2005-71 on page 985 of the Internal Revenue Bulletin 2005-47.

New rules for acceptance agents. New rules apply to acceptance agents. There are four major changes to the rules.

Acceptance agent agreements must be renewed every 4 years.

Agreements in effect under the old procedures will expire on December 31, 2006. Acceptance agents will need to apply under the new procedures to maintain their approved status.

Acceptance agents may request that their names be added to a public list of agents published periodically by the IRS.


Reminders

Note. This publication serves as the Small Entity Compliance Guide required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104-121. Form W-8. There are four forms in the W-8 series. The form to use depends on the type of certification being made. As used in this publication, the term “Form W-8” refers to the appropriate document. For more information, see Documentation, later.

Electronic deposit rules. You must use the Federal Tax Payment System (EFTPS) to make electronic deposits of all depository tax liabilities you incur after 2005, if you meet either of the following conditions.

You had to make electronic deposits in 2005.

You deposited more than $200,000 in federal depository taxes in 2004.

If you do not meet these conditions, electronic deposits are voluntary.

For more information about depositing electronically, see Publication 966, The Secure Way to Pay Your Federal Taxes.

Filing electronically. If you file Form 1042-S electronically, you will use the Filing Information Returns Electronically (FIRE) system. You get to the system through the Internet at fire.irs.gov.

IRS taxpayer identification numbers for aliens. The IRS will issue an individual taxpayer identification number (ITIN) to an alien who does not have and is not eligible to get a social security number (SSN). An ITIN is for tax use only. It does not entitle an alien to social security benefits or change his or her employment or immigration status under U.S. law.

For more information on ITINs, see U.S. Taxpayer Identification Numbers, later.

Hong Kong. Hong Kong and China continue to be treated as two separate countries for purposes of certain bilateral agreements, the Internal Revenue Code, and the Income Tax Regulations.

Japan. The new treaty with Japan is generally effective for tax periods beginning on or after January 1, 2005. However, an individual who claimed treaty benefits under Article 19 (teachers and researchers) or Article 20 (students and trainees) of the former treaty can continue to apply those provisions.

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.

Introduction

This publication is for withholding agents who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign estates and trusts, foreign governments, and international organizations. Specifically, it describes the persons responsible for withholding, the types of income subject to withholding, and the information return and tax return documentation requirements for withholding by the active conduct of a U.S. trade or business.

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:T14:SP
1111 Constitution Ave. NW, IR-6406
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.

Tax questions. If you have a tax question, visit www.irs.gov or call 1-800-829-1040. We cannot answer tax questions at either of the addresses listed above.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications, call 1-800-829-3678, or write to the National Distribution Center at the address above.

To Get Tax Help in the back of this publication.

Useful Items

You may want to see:

Publication

15 (Circular E), Employer’s Tax Guide
Withholding of Tax

Generally, a foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign person’s country of residence and the United States. The tax is generally withheld (NRA withholding) from the payment made to the foreign person.

The term “NRA withholding” is used in this publication descriptively to refer to withholding required under sections 1441, 1442, and 1443 of the Internal Revenue Code. Generally, NRA withholding describes the withholding regime that requires withholding on a payment of U.S. source income. Payments to foreign persons, including nonresident alien individuals, foreign entities, and governments, may be subject to NRA withholding.

The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.

W-2 Wage and Tax Statement
W-4 Employee’s Withholding Allowance Certificate
W-4P Withholding Certificate for Pension or Annuity Payments
W-7 Application for IRS Individual Taxpayer Identification Number
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-8EXP Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding
W-8IMY Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding
W-9 Employer’s Quarterly Federal Tax Return
1042-S Foreign Person’s U.S. Source Income Subject to Withholding
1042-T Annual Summary and Transmittal of Forms 1042-S

See How To Get Tax Help, near the end of this publication for information about getting publications and forms.

Withholding Agent

You are a withholding agent if you are a U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding. A withholding agent may be an individual, corporation, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Although several persons may be withholding agents for a single payment, the full tax is required to be withheld only once. Generally, the U.S. person who pays an amount subject to NRA withholding is the person responsible for withholding. However, other persons may be required to withhold. For example, a payment made by a flow-through entity or nonqualified intermediary that knows, or has reason to know, that the full amount of NRA withholding was not done by the person from which it receives a payment is required to do the appropriate withholding since it also falls within the definition of a withholding agent. In addition, withholding must be done by any qualified intermediary, withholding foreign partnership, or withholding foreign trust in accordance with the terms of its withholding agreement, discussed later.

Liability for tax. As a withholding agent, you are generally liable for any tax required to be withheld. This liability is independent of the tax liability of the foreign person to whom the payment is made. If you fail to withhold and the foreign payee fails to satisfy its U.S. tax liability, then both you and the foreign person are liable for tax, as well as interest and any applicable penalties. The applicable tax will be collected only once. If the foreign person satisfies its U.S. tax liability, you may still be held liable for interest and penalties for your failure to withhold.

Determination of amount to withhold. You must withhold on the gross amount subject to NRA withholding. You cannot reduce the gross amount by any deductions. However, see Scholarships and Fellowship Grants, and Pay for Personnel Services Performed, later, for when a deduction for a personal exemption may be allowed.

If the determination of the source of the income or the amount subject to tax depends on facts that are not known at the time of payment, you must withhold an amount sufficient to ensure that at least 30% of the amount subsequentially determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid.

When to withhold. Withholding is required at the time you make a payment of an amount subject to withholding. A payment is made to a person if that person realizes income whether or not there is an actual transfer of cash or other property. A payment is considered made to a person if it is paid for that person’s benefit. For example, a payment made to a creditor of a person in satisfaction of that person’s debt to the creditor is considered made to the person. A payment is also considered made to a person if it is made to that person’s agent.

A U.S. partnership should withhold when any distributions that include amounts subject to withholding are made. However, if a foreign partner’s distributive share of income subject to withholding is not actually distributed, the U.S. partnership must withhold on the foreign partner’s distributive share of the income on the earlier of the date that a Schedule K-1 (Form 1065) is provided or mailed to the partner or the due date for furnishing that schedule. If the distributable amount consists of effectively connected income, see Partnership Withholding on Effectively Connected Income, later.

A U.S. trust is required to withhold on the amount includible in the gross income of a foreign beneficiary to the extent the trust’s distributable net income consists of an amount subject to withholding. To the extent a U.S. trust is required to distribute an amount subject to withholding but does not actually distribute the amount, it must withhold on the foreign beneficiary’s allocable share at the time the income is required to be reported on Form 1042-S.

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-S and to file a tax return on Form 1042. (See Returns Required, later.) An exception from reporting may apply to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business.

Form 1099 reporting and backup withholding. You may also be responsible as a payer for reporting on Form 1099 payments made to a U.S. person. You must withhold 28% (backup withholding rate) from a reportable payment made to a U.S. person that is subject to Form 1099 reporting if (1) the U.S. person has not provided its taxpayer identification number (TIN) in the manner required, (2) the IRS notifies you that the TIN furnished is incorrect, (3) there has been a notified payee underreporting, or (4) there has been a payee certification failure. Generally, a TIN must be provided by a U.S. non-exempt recipient on Form W-9. A payer files a tax return on Form 945 for backup withholding.

You may be required to file Form 1099, and, if appropriate, backup withholding, even if you do...
not make the payments directly to that U.S. person. For example, you are required to report income paid to a foreign intermediary or flow-through entity that collects for a U.S. person subject to Form 1099 reporting. See Section O. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Foreign Flow-Through Entities on Form 1099 in the General Instructions for Forms 1099, 1098, 5498, and 2-WG.

Foreign persons who provide Form W-25EN, Form W-BECI, or Form W-BEXP (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting.

Wages paid to employees. If you are the employer of a nonresident alien, you may have to withhold tax at graduated rates. See Pay for Personal Services Performed, later.

Effectively connected income by partnersh ip. A withholding agent that is a partner (whether U.S. or foreign) is also responsible for withholding on its income efectively connected with a U.S. trade or business that is allocable to foreign partners. See Partner- ship Withholding on Effectively Connected Income, later, for more information.

U.S. real property interest. A withholding agent may also be responsible for withholding if a foreign person transfers a U.S. real property interest to the agent, or if it is a corporation, partnership, trust, or estate that distributes a U.S. real property interest to a shareholder, partner, or beneficiary that is a foreign person. See U.S. Real Property Interest, later.

Persons Subject to NRA Withholding

NRA withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons. Usually, you determine the payee’s status as a U.S. or foreign person based on the documentation that person provides. See Documentation, later. However, if you have received no documentation or you cannot reliably associate all or a portion of a payment with documentation, then you must apply certain presumption rules, discussed later.

Identifying the Payee

Generally, the payee is the person to whom you make the payment, regardless of whether that person is the beneficial owner of the income. However, there are situations in which the payee is a person other than the one to whom you actually made the payment.

U.S. agent of foreign person. If you make a payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an agent of a foreign person, you must treat the payment as made to the foreign person. However, if the U.S. person is a financial institution, you may treat the institution as the payee provided you have no reason to believe that the institution will not comply with its own obligation to withhold.

If the payment is not subject to NRA with- holding (for example, gross proceeds from the sales of securities), you must treat the payment as made to a U.S. person and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withhold.

Disregarded entities. A business entity that is not a corporation and that has a single owner may be disregarded as an entity separate from its owner (a disregarded entity) for federal tax purposes. The payee of a payment made to a disregarded entity is the owner of the entity.

If the owner of the entity is a foreign person, you must apply NRA withholding unless you can treat the foreign owner as a beneficial owner entitled to a reduced rate of withholding.

If the owner is a U.S. person, you do not apply NRA withholding. However, you may be required to report the payment on Form 1099 and, if applicable, backup withhold. You may assume that a foreign entity is not a disregarded entity if you can reliably associate the payment with documentation provided by the owner or you have actual knowledge or reason to know that the foreign entity is a disregarded entity.

Flow-Through Entities

The payees of payments (other than income effectively connected with a U.S. trade or business) made to a foreign flow-through entity are the owners or beneficiaries of the flow-through entity. This rule applies for purposes of NRA withholding and for Form 1099 reporting and backup withholding. Income that is, or is deemed to be, effectively connected with the conduct of a U.S. trade or business of a flow-through entity, is treated as paid to the entity.

All of the following are flow-through entities.

A foreign partnership (other than a withholding foreign partnership).

A foreign simple or foreign grantor trust (other than a withholding foreign trust).

A fiscally transparent entity receiving income for which treaty benefits are claimed. See Fiscally Transparent entity, later.

Generally, you treat a payee as a flow-through entity if it provides you with a Form W-8IMY (see Documentation, later) on which it claims treaty status. You may also be required to treat the entity as a flow-through entity under the presumption rules, discussed later.

You must determine whether the owners or beneficiaries of a flow-through entity are U.S. or foreign persons, how much of the payment relates to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a reduced rate of NRA withholding applies. You must make these determinations based on the documentation and other information (contained in a withholding statement) that is associated with the flow-through entity on Form W-8IMY. If you do not have all of the information that is required to reliably associate a payment with a specific payee, you must apply the presumption rules. See Documentation and Presumption Rules, later.

Withholding foreign partnerships and with- holding foreign trusts are not flow-through entities.

Foreign partnerships. A foreign partnership is any partnership that is not organized under the laws of any state of the United States or the District of Columbia or any partnership that is treated as foreign under the income tax regulations. If a foreign partnership is not a withholding foreign partnership, the payees of income are the partners of the partnership, provided the partners are not themselves a flow-through entity or a foreign intermediary. However, the payee is the partnership itself if the partnership is claiming treaty benefits on the basis that it is not fiscally transparent and that it meets all the other requirements for claiming treaty benefits. If a partner is a foreign flow-through entity or a foreign intermediary, you apply the payee determination rules to that partner to determine the payee.

Example 1. A nonwithholding foreign part- nership has three partners: a nonresident alien individual; a foreign corporation; and a U.S. cit-izen. You make a payment of U.S. source inter- est to the partnership. It gives you a Form W-8IMY with which it associates Forms W-25EN from the nonresident alien and the foreign corporation and a Form W-9 from the U.S. citizen. The partnership also has Form 1042-S, a complete withholding statement that enables you to associate a portion of the interest pay- ment to each partner.

You must treat all three partners as the payees of the interest payment as if the payment were made directly to them. Report the payment to the nonresident alien and the foreign corpora- tion on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT.

Example 2. A nonwithholding foreign part- nership has two partners: a foreign corporation, and a nonwithholding foreign partnership. The second partnership has two partners, both non- resident alien individuals. You make a payment to the foreign corporation and the second partnership. It gives you a valid Form W-8IMY with which it associates a Form W-25EN from the foreign corporation and a Form W-8IMY from the second partnership. The second partnership has complete withholding statements associated with them. Because you can reliably associate a por- tion of the interest payment with the Form W-25EN provided by the foreign corporation and the nonresident alien individual partners as a result of the withholding statements, you must treat them as the payees of the interest.

Example 3. You make a payment of U.S. source dividends to a withholding foreign part- nership. The partnership has two partners, both foreign corporations. You are not required to associate the payment with a valid Form W-8IMY from the partnership on which it represents that it is a withholding foreign partnership. You must treat the partnership as the payee of the dividends.

Foreign simple and grantor trust. A trust is foreign unless it meets both the following tests.

A court within the United States is able to exercise primary supervision over the administra- tion of the trust.

One or more U.S. persons have the au- thority to control all substantial decisions of the trust.
Generally, a foreign simple trust is a foreign trust that is required to distribute all of its income annually. A foreign grantor trust is a foreign trust that is treated as a grantor trust under sections 671 through 679 of the Code.

The payees of a payment made to a foreign simple trust are the beneficiaries of the trust. The payees of a payment made to a foreign grantor trust are the owners of the trust. However, the payee is the foreign trust itself if the trust is claiming treaty benefits on the basis that it is not fiscally transparent and that the foreign trust is acting through an intermediary. If the payee is the foreign trust itself, the character and source of the income is not distributed. The laws of country Z apply to the character and source of the income to B is determined as if the income was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent for that income under the laws of country Y, and B is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty. Country Z, on the other hand, treats A as a corporation and does not require C to take into account A’s share of B’s income on a current basis whether or not distributed. Therefore, A is not treated as fiscally transparent under the laws of country Z. Accordingly, C is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Z income tax treaty.

Foreign intermediaries

Generally, you make payments to a foreign intermediary; the payees are the persons for whom the foreign intermediary collects the payment, such as account holders or customers, not the intermediary itself. This rule applies for purposes of NRA withholding and for Form 1099 reporting and backup withholding. You may, however, treat a qualified intermediary that has been designated as not fiscally transparent for withholding purposes as a payee, you must apply the presumption rules. An intermediary is a custodian, broker, nominee, or any other person that acts as an agent for another person. A foreign intermediary is either a qualified intermediary or a nonqualified intermediary. Generally, you determine whether an entity is a qualified intermediary or a nonqualified intermediary based on the representations made on the intermediary’s Form W-8IMY.

You must determine whether the customers or account holders of a foreign intermediary are U.S. or foreign persons, and, if the account holder or customer is foreign, whether a reduced rate of NRA withholding applies. You make these determinations based on the foreign intermediary’s Form W-8IMY and associated information. If you do not have all of the information or documentation that is required to reliably associate a payment with a payee, you must apply the presumption rules. See Documentation and Presumption Rules, later.

Nonqualified intermediary. A nonqualified intermediary (NQI) is any intermediary that is a foreign person and that is not a qualified intermediary. The payees of a payment made to an NQI are the customers or account holders on whose behalf the NQI is acting.

Example. You make a payment of interest to a foreign bank that is a nonqualified intermediary. The bank gives you a Form W-8IMY of two foreign persons, and a Form W-9 from a U.S. person for whom the bank is collecting the payments. The bank also associates with its Form W-8IMY a withholding statement on which it allocates the interest payment to each account holder and provides all other information required to be on the withholding statement. The account holders are the payees of the interest payment. You should report the portion of the interest paid to the two foreign persons on Forms 1042-S and the portion paid to the U.S. person on Form 1099-INT.

Qualified intermediary. A qualified intermediary (QI) is any foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a qualified intermediary withholding agreement (discussed later) with the IRS. You may treat a QI as a payee to the extent the QI assumes primary withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for a payment. In this situation, the QI is required to withhold the tax. You can determine whether a QI has assumed responsibility from the Form W-8IMY provided by the QI. A payment to a QI to the extent it does not assume primary NRA withholding responsibility is considered made to the person on whose behalf the QI acts. If you report a payment on Form 1099 reporting and backup withholding responsibility, you must report on Form 1099 and, if applicable, backup withholding as if you were making the payment directly to the U.S. person.

QI withholding agreement. Foreign financial institutions and foreign branches of U.S. financial institutions can enter into an agreement with the IRS to be a qualified intermediary. A QI is entitled to certain simplified withholding and reporting rules. In general, there are three major areas where intermediaries with QI status are afforded such simplified treatment.


Documentation. A QI is not required to forward documentation obtained from foreign account holders to the U.S. withholding agent from whom the QI receives a payment of U.S. source income. The QI maintains such documentation at its location and provides the U.S. withholding agent with withholding responsibility pools. A withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding. A QI is required to provide the U.S. withholding agent with information regarding U.S. persons subject to Form 1099 information reporting unless the QI assumes the primary obligation to do Form 1099 reporting and backup withholding.
If a QI obtains documentary evidence under the "know your customer" rules that apply to the QI under local law, and the documentary evidence is of a type specified in an attachment to the QI agreement, the documentary evidence remains valid until there is a change in circumstances or the QI knows the information is incorrect. This indefinite validity period rule does not apply to Forms W-8-BI or W-8-BNO and is not of the type specified in the attachment to the agreement.

Form 1042-S reporting. A QI is permitted to report payments made to its direct foreign account holders on a pooled basis rather than reporting payments to each direct account holder specifically. Pooled basis reporting is not available for payments to certain account holders, such as a nonqualified intermediary or a flow-through entity (discussed earlier).

Collective refund procedures. A QI may seek a refund on behalf of its direct account holders. The direct account holders, therefore, are not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or to a foreign insurance company subject to state regulatory supervision. If you agree to treat the branch as a U.S. person, you may treat the branch as a U.S. payee for a payment subject to NRA withholding provided you receive a Form W-8IMY from the U.S. branch on which the agreement is evidenced. If you treat the branch as a U.S. payee, you are not required to withhold. Even though you agree to treat the branch as a U.S. person, you must report the payment on Form 1042-S.

A financial institution organized in a U.S. possession is treated as a U.S. branch. The special rules discussed in this section apply to the possessions financial institution.

If you are paying a U.S. branch an amount that is not subject to NRA withholding, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for amounts subject to NRA withholding. Consequently, amounts not subject to NRA withholding that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See Nonqualified Intermediaries under Documentation later.

If the U.S. branch does not provide you with a Form W-8IMY, then you should treat a payment subject to NRA withholding as made to the foreign person of which the branch is a part and the income as effectively connected with the conduct of a trade or business in the United States.

Withholding foreign partnership and foreign trust. A withholding foreign partnership (WP) or foreign trust (WT) is a foreign person of which the branch is a part and wages. Wages paid to these individuals are subject to NRA withholding as made to the foreign person.

A resident alien is an individual who is a U.S. citizen or a resident alien. A resident of a foreign country for purposes of withholding tax for the tax year if: is present in the possession for at least 183 days during the tax year, does not have a tax home outside the possession, and does not have a closer connection to the United States than to a foreign country than to the possession.

For more information, see Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.

Foreign corporations. A foreign corporation is one that does not fit the definition of a domestic corporation. A domestic corporation is one that was created or organized in the United States or under the laws of the United States, any of its states, or the District of Columbia.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the CNMI is not considered a foreign corporation for the purpose of withholding tax for the tax year if: it is a foreign corporation, foreign partnership, or foreign trust (WT) is a foreign simple or grantor trust that is not a passive flow-through entity (discussed earlier).

A QI may be permitted to report payments made to its direct foreign account holders on a pooled basis rather than reporting payments to each direct account holder specifically. Pooled basis reporting is not available for payments to certain account holders, such as a nonqualified intermediary or a flow-through entity (discussed earlier).

Collective refund procedures. A QI may seek a refund on behalf of its direct account holders. The direct account holders, therefore, are not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or to a foreign insurance company subject to state regulatory supervision. If you agree to treat the branch as a U.S. person, you may treat the branch as a U.S. payee for a payment subject to NRA withholding provided you receive a Form W-8IMY from the U.S. branch on which the agreement is evidenced. If you treat the branch as a U.S. payee, you are not required to withhold. Even though you agree to treat the branch as a U.S. person, you must report the payment on Form 1042-S.

A financial institution organized in a U.S. possession is treated as a U.S. branch. The special rules discussed in this section apply to the possessions financial institution.

If you are paying a U.S. branch an amount that is not subject to NRA withholding, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for amounts subject to NRA withholding. Consequently, amounts not subject to NRA withholding that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See Nonqualified Intermediaries under Documentation later.

If the U.S. branch does not provide you with a Form W-8IMY, then you should treat a payment subject to NRA withholding as made to the foreign person of which the branch is a part and the income as effectively connected with the conduct of a trade or business in the United States.

Withholding foreign partnership and foreign trust. A withholding foreign partnership (WP) or foreign trust (WT) is a foreign person of which the branch is a part and wages. Wages paid to these individuals are subject to NRA withholding as made to the foreign person.

A resident alien is an individual who is a U.S. citizen or a resident alien. A resident of a foreign country for purposes of withholding tax for the tax year if: is present in the possession for at least 183 days during the tax year, does not have a tax home outside the possession, and does not have a closer connection to the United States than to a foreign country than to the possession.

For more information, see Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.

Foreign corporations. A foreign corporation is one that does not fit the definition of a domestic corporation. A domestic corporation is one that was created or organized in the United States or under the laws of the United States, any of its states, or the District of Columbia.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the CNMI is not considered a foreign corporation for the purpose of withholding tax for the tax year if:
• At all times during the tax year less than 25% in value of the corporation’s stock is owned, directly or indirectly, by foreign persons, and
• At least 20% of the corporation’s gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Note. The provisions discussed under Virgin Islands and American Samoa corporations will apply to Guam or CNMI corporations when an implementing agreement is in effect between the United States and that possession.

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for income tax purposes. Virgin Islands and American Samoa are possessions of the United States. A corporation created or organized in, or under the laws of, these possessions is not considered a foreign corporation for purposes of withholding tax for income tax purposes.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to NRA withholding at a 4% rate (unless exempted by a treaty) rather than the ordinary statutory 30% rate.

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code even if it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations unless the IRS has determined that they are foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042-S, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, Tax on Unrelated Business Income of Exempt Organizations) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

U.S. branches of foreign persons. In general, a payment to a U.S. branch of a foreign person is a payment made to the foreign person. You may, however, treat payments to U.S. branches of foreign banks and foreign insurance companies (discussed earlier) that are subject to U.S. regulatory supervision as payments made to a U.S. person, if you and the U.S. branch have agreed to do so, and if their agreement is evidenced by a withholding certificate, Form W-8BNY. For this purpose, a financial institution organized under the laws of a U.S. possession is treated as a U.S. branch.

Documentation

Generally, you must withhold 30% from the gross amount paid to a foreign payee unless you can reliably associate the payment with valid documentation that establishes either of the following:

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

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

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

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

Section 1446 withholding. Under section 1446 of the Code, a partnership must withhold tax on its effectively connected income allocable to a foreign partner. Generally, a partnership determines if a partner is a foreign partner and the partner’s tax classification based on the withholding certificate provided by the partner. This is the same documentation that is filed for NRA withholding, but may require additional information as discussed under each of the forms in this section.

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

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

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

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

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

Beneficial Owners

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

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

• Establish foreign status;
• Claim that such person is the beneficial owner of the income for which the form is being furnished or a partner in a partnership subject to section 1446 withholding; and
• If applicable, claim a reduced rate of, or exemption from, withholding under an income tax treaty.

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

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

• It is a resident of a treaty country,
• It is the beneficial owner of the income,
• If it is an entity, it derives the income within the meaning of section 884 of the Internal Revenue Code (it is not fiscally transparent), and
• It meets any limitation on benefits provision contained in the treaty, if applicable.
If the foreign beneficial owner claiming a treaty benefit is related to you, the foreign benefi- cial owner must also certify on Form W-8BEN that it will file Form 8833, Treaty-Bound Return Position Disclosure Under Section 6114 or 7701(b), if the amount subject to NRA withhold- ing received during a calendar year exceeds, in the aggregate, $500,000.

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

Limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits under section 1446. For example, a beneficial owner in a treaty country may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemptions from, or reduced rates of, U.S. tax vary under each treaty. You must check the provisions of the treaty that apply. Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding that apply in cases where all conditions of the particular treaty articles are satisfied. If you know, or have reason to know, that an owner of income is not eligible for treaty benefits claimed, you must not apply the treaty rate. You are not, however, responsible for misstatements on a Form W-8, documentary evidence, or state- ments accompanying documentary evidence for which you did not have actual knowledge, or reason to know that the statements were incor- rect.

Exceptions to TIN requirement. A foreign person does not have to provide a TIN to claim a reduced rate of withholding under a treaty if the requirements for the following exceptions are met:

- Income from marketable securities (discussed next).
- Unexpected payments to an individual (discussed under U.S. Taxpayer Identifica- tion Numbers).

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

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

Offshore accounts. If a payment is made outside the United States to an offshore ac- count, a payee may give you documentary evi- dence, rather than Form W-8BEN.

Generally, a payment is made outside the United States if you complete the acts neces- sary to effect the payment outside the United States. However, an amount paid by a bank or other financial institution on a deposit or account will usually be treated as paid at the branch or office where the amount is credited. An offshore account is an account maintained at an office or branch of a U.S. or foreign bank or other finan- cial institution at any location outside the United States.

You may rely on documentary evidence given by you a nonqualified intermediary or a flow-through entity with its Form W-8IMY. This rule applies even though you make the payment to a nonqualified intermediary or flow-through entity in the United States. Generally, the non- qualified intermediary or flow-through entity that gives you documentary evidence will also have to give you a withholding statement, discussed later.

Documentary evidence. You may apply a reduced rate of withholding to income from mar- ketable securities (discussed earlier) paid outside the United States to an offshore account if the beneficial owner gives you documentary evidence in place of a Form W-8BEN. To claim treaty benefits, the documentary evidence must be one of the following:

1. A certificate of residence that:
   a. Is issued by a tax official of the treaty country of which the foreign beneficial owner claims to be a resident.
   b. States that the person has filed its most recent income tax return as a resident of that country, and
   c. Is issued within 3 years prior to being presented to you.

2. Documentation for an individual that:
   a. Includes the individual's name, address, and photograph.
   b. Is an official document issued by an au- thorized governmental body, and
   c. Is issued no more than 3 years prior to being presented to you.

3. Documentation for an entity that:
   a. Includes the name of the entity.
   b. Includes the address of its principal of- fice in the treaty country, and
   c. Is an official document issued by an au- thorized governmental body.

In addition to the documentary evidence, a for- eign beneficial owner must provide a statement that it derives the income for which it claims treaty benefits and that it meets one or more of the conditions set forth in a limitation on benefits article, if any, (or similar provision) contained in the applicable treaty.

Form W-8ECI, Certificate of Foreign Person’s Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States, is used by a foreign person to:

- Establish foreign status,
- Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- Claim that the income is effectively con- nected with the conduct of a trade or busi- ness in the United States. (See Effectively Connected Income, later.)

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

If a partner submits this form to a partner- ship, the income claimed to be effectively con- nected with the conduct of a U.S. trade or business is subject to withholding under section 1446. If the partner has made, or will make, an election under section 671(d) or 682(d), the part- ner must submit Form W-8ECI, and attach a copy of the election, or a statement of intent to elect, to the form.

If the partner’s only effectively con- nected income is the income allo- cated from the partnership and the partner is not making the election under section 671(d) or 682(d), the partner should provide Form W-8BEN to the partnership.

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

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

If the government or organization is a partner in a partnership carrying on a trade or business in the United States, the effectively connected income allocable to the partner is subject to withholding under section 1446. See Foreign Governments and Certain Other Foreign Organizations, later.

Foreign Intermediaries and Foreign Flow-Through Entities

Payments made to a foreign intermediary or foreign flow-through entity are treated as made to the payees on whose behalf the intermediary or entity acts. The Form W-8IMY provided by a foreign intermediary or flow-through entity must be accompanied by additional information for you to be able to reliably associate the payment with a payee. The additional information re- quired depends on the type of intermediary or flow-through entity and the extent of the with- holding responsibilities it assumes.

Form W-8IMY, Certificate of Foreign Interme- diary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withhold- ing, is used by foreign intermediaries and for- eign flow-through entities, as well as certain U.S. branches, to:

- Represent that a foreign person is a quali- fied intermediary or nonqualified interme- diary,
• Represent, if applicable, that the qualified intermediary is assuming primary NRA withholding responsibility and/or primary Form 1099 reporting and backup withholding responsibility, 
• Represent that a foreign partnership or a foreign simple or grantor trust is a withholding foreign partnership or a withholding foreign trust, 
• Represent that a foreign flow-through entity, or U.S. branch that is using Form W-8IMY to transmit a withholding statement must contain the following:
  a. It is a foreign partnership or foreign simple or grantor trust. 
  b. It is a direct account holder of the QI, or 
  c. It is a foreign partnership or foreign simple or grantor trust that has entered into a QI withholding agreement with the IRS. 
• Represent, if applicable, that the qualified intermediary has received a QI employer identification number (QI-EIN) and that the QI is before it receives a fully executed agreement. 
• Represent that the provider is a U.S. branch of a foreign bank or insurance company and either is agreeing to be treated as a direct account holder of the QI, or is transmitting documentation of the persons on whose behalf it is acting, or 
• Represent that, for purposes section 1446, it is an upper-tier foreign partnership or a foreign grantor trust and that the form is being used to transmit the required documentation. 
• Represent, if applicable, that the qualified intermediary has received a QI employer identification number (QI-EIN) and that the QI is before it receives a fully executed agreement. 
• Represent that the provider is a U.S. branch of a foreign bank or insurance company and either is agreeing to be treated as a direct account holder of the QI, or is transmitting documentation of the persons on whose behalf it is acting, or 
• Represent that, for purposes section 1446, it is an upper-tier foreign partnership or a foreign grantor trust and that the form is being used to transmit the required documentation. 
• Represent, if applicable, that the qualified intermediary has received a QI employer identification number (QI-EIN) and that the QI is before it receives a fully executed agreement. 
• Represent that the provider is a U.S. branch of a foreign bank or insurance company and either is agreeing to be treated as a direct account holder of the QI, or is transmitting documentation of the persons on whose behalf it is acting, or 
• Represent that, for purposes section 1446, it is an upper-tier foreign partnership or a foreign grantor trust and that the form is being used to transmit the required documentation. 

Qualified Intermediaries
Generally, a QI is any foreign intermediary that has entered into a QI withholding agreement (discussed earlier) with the IRS. A foreign intermediary that has received a QI employer identification number (QI-EIN) may represent on Form W-8IMY that it is a QI before it receives a fully executed agreement. The intermediary can assume primary NRA withholding responsibility and/or primary Form 1099 and backup withholding responsibility for the payment, you can reliably associate the payment with valid documentation only to the extent you can reliably determine the portion of the payment that relates to the withholding rate pool for foreign payees. Unless the alternative procedure applies, the qualified intermediary must provide you with a separate withholding rate pool for each U.S. person subject to Form 1099 reporting and/or backup withholding. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for each person.

Primary NRA withholding responsibility assumed. If you make a payment to a QI that assumes primary NRA withholding responsibility (but not primary Form 1099 reporting and backup withholding responsibility), you can reliably associate the payment with valid documentation only to the extent you can reliably determine the portion of the payment that relates to the withholding rate pool for which the QI assumes primary NRA withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. person subject to Form 1099 reporting and/or backup withholding. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for each person.

Primary NRA and Form 1099 responsibility assumed. If you make a payment to a QI that assumes primary NRA withholding responsibility and primary Form 1099 reporting and backup withholding responsibility, you can reliably associate a payment with valid documentation provided that you receive a valid Form W-8IMY. It is not necessary to associate the payment with withholding rate pools.

Example. You make a payment of dividends to a QI. It has five customers: two are foreign persons who have provided documentation entitling them to a 15% rate of withholding on dividends; two are foreign persons subject to a 30% rate of withholding on dividends; and one is a U.S. individual who provides it with a Form W-9. Each customer is entitled to 20% of the dividend payment. The QI does not assume primary NRA withholding responsibility. The QI gives you a Form W-8IMY with which it associates the Form W-9 and a withholding statement that allocates 40% of the dividend to a 15% withholding rate pool, 40% to a 30% withholding rate pool, and 20% to the U.S. individual. You should report on Forms 1042-S 40% of the payment as made to a 15% rate dividend pool and 40% of the payment as made to a 30% rate dividend pool. The portion of the payment allocable to the U.S. individual (20%) is reportable on Form 1099-DIV.

Smaller partnerships and trusts. A QI may apply special rules to a smaller partnership or trust. (Under the Account Provisions, only the partnership or trust meets the following conditions:
• It is a foreign partnership or foreign simple or grantor trust.
• It is a direct account holder of the QI.
• It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For information on these rules, see section 4A.01 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

Related partnerships and trusts. A QI may apply special rules to a related partnership or trust only if the partnership or trust meets the following conditions:
1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct account holder of the QI, or 
   b. An indirect account holder of the QI that is a direct partner, beneficiary, or owner of a partnership or trust to which the QI has applied this rule.

For information on these rules, see section 4A.02 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).

Nonqualified Intermediaries
If you are making a payment to a nonqualified intermediary, foreign flow-through entity, or U.S. branch that is using Form W-8IMY to transmit a withholding statement must contain the following:
• You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.
• You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.
• You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.
• You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.

The NQI, flow-through entity, or U.S. branch must give you certain information on a withholding statement that is subject to Form W-8IMY. A withholding statement must be updated to keep the information accurate prior to each payment.

Withholding statement. Generally, a withholding statement must contain the following information:
1. The name, address, and TIN (if any, or if required) of each person for whom documentation is provided.
2. Designate those accounts for which it acts as a qualified intermediary.
3. Designate those accounts for which it assumes primary NRA withholding responsibility and/or primary Form 1099 reporting and backup withholding responsibility, and provide sufficient information for you to allocate the payment to a withholding rate pool.
4. The extent to which you must have withholding rate pool information depends on the withholding and reporting obligations assumed by the QI.
5. The extent to which you must have withholding rate pool information depends on the withholding and reporting obligations assumed by the QI.
6. It is a foreign partnership or foreign simple or grantor trust.
7. It is a direct account holder of the QI.
8. It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For information on these rules, see section 4A.01 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

Related partnerships and trusts. A QI may apply special rules to a related partnership or trust only if the partnership or trust meets the following conditions:
1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct account holder of the QI, or 
   b. An indirect account holder of the QI that is a direct partner, beneficiary, or owner of a partnership or trust to which the QI has applied this rule.

For information on these rules, see section 4A.02 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).
2. The type of documentation (documentary evidence, Form W-8, or Form W-9) for every person for whom documentation has been provided.

3. The status of the person for whom the documentation has been provided, such as whether the person is a U.S. exempt recipient (U.S. person exempt from Form 1099 reporting), U.S. non-exempt recipient (U.S. person subject to Form 1099 reporting), or a foreign person. For a foreign person, the statement must indicate whether the person is a beneficial owner or a foreign intermediary, flow-through entity, or a U.S. branch.

4. The type of recipient the person is, based on the recipient codes used on Form 1042-S.

5. Information allocating each payment, by income type, to each payee (including U.S. exempt and U.S. non-exempt recipients) for whom documentation has been provided.

6. The rate of withholding that applies to each foreign person to whom a payment is allocated.

7. A foreign payee’s country of residence.

8. If a reduced rate of withholding is claimed, the basis for a reduced rate of withholding (for example, portfolio interest, treaty benefit, etc.).

9. In the case of treaty benefits claimed by entities, whether the applicable limitation on benefits statement and the statement that the foreign person derives the income for which treaty benefits are claimed, have been made.

10. The name, address, and TIN (if any) of any other NQI, flow-through entity, or U.S. branch from which the payee will directly receive a payment.

11. Any other information a withholding agent requests to fulfill its reporting and withholding obligations.

**Alternative procedure.** Under this alternative procedure the NQI can give you the information that allocates each payment to each foreign and U.S. exempt recipient by January 31 following the calendar year of payment, rather than prior to the payment being made as otherwise required. To take advantage of this procedure, the NQI must: (a) inform you, on its withholding statement, that it is using the alternative procedure; and (b) obtain your consent. You must receive the withholding statement with all the required information (other than item 5) prior to making the payment.

This alternative procedure cannot be used for payments to U.S. non-exempt recipients. Therefore, an NQI must always provide you with allocation information for all U.S. non-exempt recipients prior to a payment being made.

**Pooled withholding information.** If an NQI uses the alternative procedure, it must provide you with withholding rate pool information, prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income (as determined by the income categories on Form 1042-S) that is subject to a single rate of withholding. For example, an NQI that has foreign account holders receiving royalties and dividends, both subject to the 15% rate, will provide you with information for two withholding rate pools (one for royalties and one for dividends). The NQI must provide you with the payee specific allocation information (information allocating each payment to each payee) by January 31 following the calendar year of payment.

**Failure to provide allocation information.** If an NQI fails to provide you with the payee specific allocation information for a withholding rate pool by January 31, you must not apply the alternative procedure to any of the NQI’s withholding rate pools from that date forward. Unless the NQI provides all the required information, including account holder specific allocation information, prior to or if you make the payment, you must treat the payees as undocumented and apply the presumptions rules, discussed later. An NQI is deemed to have failed to provide specific allocation information if it does not give you such information for more than 10% of any one withholding rate pool.

If you receive such information by February 14, you may make the appropriate adjustments to repay any excess withholding incurred between February 1 and or before February 14.

If the NQI fails to allocate more than 10% of the payment to a withholding rate pool by February 14 following the calendar year of payment, you must file a Form 1042-S for each account holder in the pool on a pro-rata basis. For example, if you have four account holders in a withholding rate pool that receives a $100 payment and the NQI fails to allocate more than $10 of the payment to any one of them, you must file four Forms 1042-S, one for each account holder in the pool, showing $25 of income to each. You must also check the “Pro-rata Basis Reporting” box at the top of each form. If, however, the nonqualified intermediary provides allocation information for 90% or more of the payment to a withholding rate pool, the pro-rata reporting method is not required. Instead, you must file a Form 1042-S for each account holder for whom you have allocation information and report the unallocated portion of the payment on a Form 1042-S issued to “un-known recipient.”

**Withholding Foreign Partnerships**

If you are making payments to a WP, you do not have to withhold if the WP is acting in that capacity. The WP must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed to, or included in the distributive share of, any direct partner. The WP must withhold the amount required to be withheld. A WP must provide you with a Form W-8BIMY that certifies that the WP is acting in that capacity and a written statement identifying the amounts for which it is acting. The Form W-8BIMY must contain the WP’s EIN.

**Responsibilities of WP.** The WP must with- hold on the date it makes a distribution of an amount subject to NRA withholding to a direct foreign partner based on the Forms W-8 or W-9 it receives from its partners. If the partner’s distributive share has not been distributed, the WP must withhold on the partner’s distributive share on the earlier of the date that the partnership must mail or otherwise provide to the partner a Schedule K-1 (Form 1065) or the due date for furnishing the statement (whether or not the WP is required to furnish the statement).

The WP may determine the amount of withholding based on a reasonable estimate of the partner’s distributive share of income subject to withholding for the year. The WP must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date for filing the WP’s Forms 1042 and 1042-S (including extensions for the calendar year), the WP may withhold and report any adjustments in the following calendar year.

**Form 1042 filing.** The WP must file Form 1042 even if no amount was withheld. In addition to the information that is required for the Form 1042, the WP must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

**Form 1042-S reporting.** The WP can elect to report payments made to its direct partners on a pooled basis rather than reporting payments to each direct partner. This election can be made when the WP withholding agreement is exe- cuted. If the election was not made, the WP must file separate Forms 1042-S for each direct partner whose distributive share included an amount subject to NRA withholding.

**Smaller partnerships and trusts.** Under a special rule, a WP that has made a pooled reporting election can treat partners of certain smaller partnerships and beneficiaries or owners of certain smaller trusts (Joint Account Provi- sion) as direct partners. These rules only apply to a partnership or trust that meets the following conditions.

- It is a foreign partnership or foreign simple or grantor trust.
- It is a direct partner of the WP.
- It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For more information on applying these rules, see section 10.01 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

**Related partnerships and trusts.** Under a special rule, a WP that has made a pooled reporting election can treat direct partners of certain related partnerships and direct beneficiaries or owners of certain related trusts as direct partners. These rules only apply to a part- nership or trust that meets the following conditions.

1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   - A direct partner of the WP, or
   - An indirect partner of the WP that is a partner, beneficiary, or owner of a part- nership or trust to which the WP has applied this rule.
For more information on applying these rules see section 10.02 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).

Not acting as WP. A foreign partnership that is not acting as a WP is a nonwithholding foreign partnership. This occurs if a WP is not acting in that capacity for some or all of the amounts it receives from you. Also, a WP generally is a nonwithholding foreign partnership for amounts distributed to, or included in the distributive share of, passthrough partners or indirect partners. You must treat payments made to a nonwithholding foreign partnership as made to the partners of the partnership. The partnership must provide you with a Form W-8IMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the partners, and the information shown earlier under Withholding statement under Nonqualified Intermediaries.

Withholding Foreign Trusts

If you are making payments to a WT, you do not have to withhold if the WT is acting in that capacity. The WT must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed to, or included in the distributive share of, any direct beneficiary or owner. The WT must withhold the amount required to be withheld. A WT must provide you with a Form W-8IMY that certifies that the WT is acting in that capacity and a written statement identifying the amounts for which it is so acting. The Form W-8IMY must contain the WT-EIN. Responsibilities of WT. The WT must withhold on the date it makes a distribution of an amount subject to NRA withholding to a direct foreign beneficiary or owner. If the beneficiary’s or owner’s distributive share has not been distributed, the WT must withhold on the beneficiary’s or owner’s distributive share on the earlier of the date the trust must mail or otherwise provide to the beneficiary or owner a Schedule K-1 (Form 1041) or the due date for furnishing the statement (whether or not the WT is required to furnish the statement).

The WT may determine the amount of withholding based on a reasonable estimate of the beneficiary’s or owner’s distributive share of income subject to withholding for the calendar year. The WT must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date for filing the WT’s Forms 1042 and 1042-S (including extensions) for the calendar year, the WT may withhold and report any adjustments in the following calendar year.

Form 1042 Filing. The WT must file Form 1042 even if no amount was withheld. In addition to the information that is required for the Form 1042, the WT must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

Form 1042-S Reporting. A WT can elect to report payments made to its direct beneficiaries or owner on a pooled basis rather than reporting payments to each direct beneficiary or owner. This election must be made when the WT withholding agreement is executed. If the election was not made, the WT must file separate Forms 1042-S for each direct beneficiary or owner whose distributive share included an amount subject to NRA withholding. Smaller partnerships and trusts. Under a special rule, a WT that has made a pooled reporting election can treat partners of certain smaller partnerships and beneficiaries or owners of certain smaller trusts (Joint Account Provisi- sion) as direct beneficiaries or owners. These rules only apply to a partnership or trust that meets the following conditions:

• It is a foreign partnership or foreign simple or grantor trust.
• It is a direct partner, beneficiary, or owner of the WT.
• It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For more information on applying these rules, see section 10.01 of the WT agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

Related partnerships and trusts. Under a special rule, a WT that has made a pooled reporting election can treat direct partners of certain related partnerships and direct beneficiaries or owners of certain related trusts as direct benefi- ciaries or owners. These rules only apply to a partnership or trust that meets the following conditions:

1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct beneficiary or owner of the WT, or
   b. An indirect beneficiary or owner of the WT that is a partner, beneficiary, or owner of a partnership or trust to which the WP has applied this rule.

For more information on applying these rules, see section 10.02 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).

Not acting as WT. A foreign trust that is not acting as a WT is a nonwithholding foreign trust. This occurs if a WT is not acting in that capacity for some or all of the amounts it receives from you. Also, a WT generally is a nonwithholding foreign trust for amounts distributed to, or included in the distributive share of, passthrough beneficiaries or owners or indirect beneficiaries or owners.

Generally, you must treat payments made to a nonwithholding foreign trust as made to the beneficiaries of a simple trust or the owners of a grantor trust. The trust must provide you with a Form W-8IMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the beneficiaries or owners, and the information shown earlier under Withholding statement under Nonqualified Intermediaries.

Standards of Knowledge

You must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a Form W-8 or documentary evidence provided by a payee is unreliable or incorrect. If you rely on an agent to obtain documentation, you are considered to know, or have reason to know, the facts that are within the knowledge of your agent.

Reason To Know

Generally, you are considered to have reason to know that a claim of U.S. status or of a reduced rate of withholding is incorrect if statements contained in the withholding certificate or other documentation, or other relevant facts of which you have knowledge, would cause a reasonably prudent person in your position to question the claims made.

Financial institutions (including a regulated investment company) are treated as having reason to know documentation is unreliable or incorrect for payments on marketable securities only in the circumstances discussed next. If the documentation is considered unreliable or incorrect, you must get new documentation. How- ever, you may rely on the original documentation if you receive the additional statements and/or documentation discussed.

The circumstances, discussed next, also apply to a withholding agent that is not a financial institution or making a payment on marketable securities. However, these withholding agents are not limited to these circumstances in deter- mining if they have reason to know that docu- mentation is unreliable or incorrect. These withholding agents cannot base their determina- tion on the receipt of additional statements or documents. They need to get new documenta- tion.

Withholding Certificates

You have reason to know that a Form W-8 provided by a direct account holder that is a foreign person is unreliable or incorrect if:

• The Form W-8 is incomplete with respect to any item on the form that is relevant to the claims made by the account holder,
• The Form W-8 contains any information that is inconsistent with the account holder’s claim,
• The Form W-8 lacks information neces- sary to establish entitlement to a reduced rate of withholding, if a reduced rate is claimed, or
• You have information not contained on the form that is inconsistent with the claims made on the form.

Establishment of foreign status. You have reason to know that a Form W-8BEN or Form W-8EXP is unreliable or incorrect to establish a direct account holder’s status as a foreign per- son if:

1. The Form W-8 has a permanent residence address in the United States,
2. The Form W-8 has a mailing address in the United States,
3. You may treat an account holder that has provided standing instructions to make payments with respect to its offshore ac-
account to a U.S. account or U.S. address as a foreign person if the account holder pro-
vides a reasonable explanation in writing that supports the account holder’s foreign status.

Claim of reduced rate of withholding under treaty.

You have reason to know that a Form W-8BEN provided by a direct account holder to claim a reduced rate of withholding under a treaty is unreliable or incorrect for purposes of establishing the account holder’s residency in a treaty country if:

- The permanent residence address on the Form W-8BEN is not in the treaty country or the beneficial owner notifies you of a new permanent residence address that is not in the treaty country.
- The permanent residence address on the Form W-8BEN is in the treaty country but the withholding certificate (or your account information) contains a mailing address that is not in the treaty country.
- The account holder has standing instructions directing you to pay amounts from its account to an address or an account not in the treaty country.

You may, however, rely on a Form W-8 as establishing an account holder’s claim of a reduced rate of withholding under a treaty if any of the following apply:

1. The mailing or residence address is in the treaty country and:
   - The account holder provides a reasonable explanation for the permanent residence address outside the treaty country.
   - You possess or obtain documentary evidence that establishes residency in a treaty country.

2. The mailing address is not in the treaty country and:
   - You possess or obtain additional documentation that establishes residency in a treaty country.
   - The account holder has standing instructions directing you to pay amounts from its account to an address or an account not in the treaty country.

You may, however, rely on a Form W-8BEN as establishing an account holder’s claim of a reduced rate of withholding under a treaty if any of the following apply:

1. The permanent residence address is not in the treaty country and:
   - The account holder provides a reasonable explanation for the permanent residence address outside the treaty country.
   - You possess or obtain documentary evidence that establishes residency in a treaty country.

2. The mailing address is not in the treaty country and:
   - You possess or obtain additional documentation that does not contain an address outside the treaty country.
   - The account holder has standing instructions directing you to pay amounts from its account to an address or an account not in the treaty country.

For the presumption rules related to—

<table>
<thead>
<tr>
<th>For the presumption rules related to—</th>
<th>See regulation section—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payee’s status</td>
<td>1.1441-1(b)(3); 1.6049-5(d)</td>
</tr>
<tr>
<td>Effectively connected income</td>
<td>1.1441-4(a)(2)</td>
</tr>
<tr>
<td>Partnership and its partners</td>
<td>1.1441-5(d); 1.1446-1(c)(3)</td>
</tr>
<tr>
<td>Estate or trust and its beneficiaries or owner</td>
<td>1.1441-5(e)(6)</td>
</tr>
<tr>
<td>Foreign tax-exempt organizations (including private foundations)</td>
<td>1.1441-9(b)(3)</td>
</tr>
</tbody>
</table>

Note. Items (2) and (3) do not apply if the U.S. mailing address is provided on a Form W-8 received before December 31, 2001.

You may, however, rely on a Form W-8 as establishing the account holder’s foreign status if any of the following apply:

1. You receive the Form W-8 from an individ-ual and:
   a. You possess or obtain documentary ev-
   dence (that does not contain a U.S. address) that was provided within the last three years, was valid when pro-
   vided, supports the claim of foreign sta-
tus, and the beneficial owner provides you with a reasonable explanation in writing supporting the account holder’s foreign status, or
   b. If the account is maintained at your of-
   fice outside the United States, you are required to report annually a payment to the account holder on a tax information state-
   ment filed with the tax authority of the country in which your office is loc-
   ated and that country has an income tax treaty in effect with the United States.

2. You receive the Form W-8 from an entity that is not a flow-through entity and:
   a. You have in your possession or obtain documenta-
tion that substantiates that the entity is organized or created under foreign law, or
   b. If the account is maintained at your of-
   fice outside the United States, you are required to report annually a payment to the account holder on a tax information state-
   ment filed with the tax authority of the country in which your office is loc-
   ated and that country has an income tax treaty in effect with the United States.

3. You have in your possession or obtain documentary ev-
dence (that does not contain an address outside the treaty country) supporting the beneficial owner’s claim of residence in the treaty country.

4. If the Form W-8 is provided with respect to an off-
shore account, the account holder has standing instruc-
tions directing you to pay amounts from its account to an ad-
dress or account maintained in the United States.

5. You have a residence or mailing address as part of your account information that is an address in the United States, or
   - The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
   - The only mailing or residence address on a Form W-8BEN is in the treaty country but the account holder has standing instruc-
tions directing you to pay amounts from its account to a U.S. account or U.S. address as a foreign person if the account holder pro-
vides a reasonable explanation in writing that supports the account holder’s foreign status.

Documentary Evidence

You have reason to know that documentary evi-
dence provided by a direct account holder that is a foreign person is unreliable or incorrect if:

- The documentary evidence does not rea-
sonably establish the identity of the person presenting the documentary evidence,
- The documentary evidence contains infor-
mation that is inconsistent with the ac-
count holder’s claim of a reduced rate of withholding, or
- You have account information that is in-
consistent with the account holder’s claim of a reduced rate of withholding, or the documentary evidence lacks information necessary to establish a reduced rate of withholding. For example, the documentary evidence does not contain, or is not supplemented by, statements regarding the derivation of the income or compliance with limitations on benefits provisions in the case of an entity claiming treaty bene-
fits.

Establishment of foreign status. You have reason to know that documentary evidence is unreliable or incorrect to establish a direct ac-
count holder’s status as a foreign person if:

- The only mailing or residence address on documentary evidence provided after De-
cember 31, 2000, is an address at a finan-
cial institution (unless the financial institution is the beneficial owner), an in-care-of address, or a P.O. box,
- You have a mailing or residence address for the account holder in the United States or if the account holder notifies you of a new address in the United States, or
- The account holder has standing instruc-
tions directing you to pay amounts from the account to an address or account maintained in the United States.

You may, however, rely on documentary evi-
dence as establishing an account holder’s for-

3. You know that the address outside the treaty country is a branch of a bank or insurance company that is a resident of the treaty country, or
4. You obtain a written statement from the beneficiary owner that reasonably estab-
lishes its entitlement to treaty benefits.

3. You have instructions to pay amounts outside the treaty country, the account holder gives you a reasonable explanation, in writing, establishing residence in the ap-
plicable treaty country.
b. You possess or obtain a Form W-8 that contains a permanent residence address and mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation, in writing, supporting the account holder’s foreign status, or the Form W-8 was received before December 31, 2001), or
c. The account is maintained at your office outside the United States and you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.

2. The mailing or residence address is in the United States, you receive the documentary evidence from an entity (other than a flow-through entity) and:
   a. You possess or obtain documentation to substantiate that the entity is actually organized under the laws of a foreign country.
   b. You obtain a valid Form W-8 that contains a permanent residence address and mailing address outside the United States (or if a mailing address is inside the United States, the account holder provides additional documentary evidence sufficient to establish the account holder’s foreign status, or the Form W-8 was received before December 31, 2001), or
   c. The account is maintained at an office outside the United States and you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.

3. You have instructions to pay amounts to an address or an account in the United States and the account holder provides you with a reasonable explanation, in writing, that supports the account holder’s foreign status.

Claim of reduced rate of withholding under treaty. You have reason to know that documentary evidence provided by a direct account holder to claim a reduced rate of withholding under a treaty is unreliable or incorrect for purposes of establishing the account holder’s residency in a treaty country if:

- You have a mailing or residence address for the account holder that is outside the applicable treaty country,
- The only address that you have (whether in or outside the treaty country) is a P.O. box, an in-care-of address, or the address of a financial institution (that is not the beneficial owner of the income), or
- The account holder has standing instructions for you to pay amounts from its account to an address or account not in the treaty country.

You may, however, rely on documentary evidence as establishing an account holder’s claim of a reduced rate of withholding under a treaty if any of the following apply.

1. The mailing or residence address is outside the treaty country and:
   a. You possess or obtain additional documentary evidence supporting the account holder’s claim of residence in the treaty country (and the documentary evidence does not contain an address outside the treaty country, a P.O. box, an in-care-of address, or the address of a financial institution),
   b. You possess or obtain documentary evidence that establishes that the account holder is an entity organized in a treaty country,
   c. You obtain a valid Form W-BEN that contains a permanent residence address and a mailing address in the applicable treaty country.

2. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country.

Indirect Account Holders

A financial institution that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch of a foreign bank or insurance company subject to U.S. state regulatory supervision has reason to know that the documentary evidence is unreliable or incorrect if a reasonably prudent person in the financial institution’s position would question the claims made. This standard requires, but is not limited to, compliance with the following rules.

Withholding statement. You must review the withholding statement provided with Form W-BIMY and may not rely on information in the statement to the extent the information does not support the claims made for a payee. You may not treat a payee as a foreign person if a U.S. address is provided for the payee. You may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for the person is outside the treaty country.

You may, however, treat a payee as a foreign person and may treat a foreign person as a resident of a treaty country if a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch.

Withholding certificate. If you receive a Form W-8 for a payee in association with a Form W-BIMY, you must review each Form W-8 and verify that the information is consistent with the information on the withholding statement. If there is a discrepancy, you may rely on the Form W-8, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement, or, alternately, you may apply the presumption rules, discussed later, to the payee.

Documentary evidence. If you receive documentary evidence for a payee in association with a Form W-BIMY, you must review the documentary evidence provided by the nonqualified intermediary, flow-through entity or U.S. branch to determine that there is no obvious indication that the payee is a U.S. person subject to Form 1099 reporting or that the documentary evidence does not establish the identity of the person who provided the documentation (for example, the documentary evidence does not appear to be an identification document).

Presumption Rules

If you cannot reliably associate a payment with valid documentary evidence, you must apply certain presumption rules or you may be liable for tax, interest, and penalties. If you comply with the presumption rules, you are not liable for tax, interest, and penalties even if the rate of withholding that should have been applied based on the payee’s actual status is different from that presumed.

The presumption rules apply to determine the status of the person you pay as a U.S. or foreign person and other relevant characteristics, such as whether the payee is the beneficial owner or intermediary, and whether the payee is an individual, corporation, partnership, or trust. You are not permitted to apply a reduced rate of NRA withholding if it results in withholding an amount that would be subject to reporting under the presumption rules or in reporting an amount that would not be subject to reporting under the presumption rules.

The presumption rules, in the absence of documentary evidence for the subject matter are discussed in the regulation section indicated on Chart A.

Income Subject to NRA Withholding

This section explains how to determine if a payment is subject to NRA withholding.

A payment is subject to NRA withholding if it is from sources within the United States, and it is either:

- Fixed or determinable annual or periodical (FDAP) income, or
- Certain gains from the disposition of timber, coal, and iron ore, or from the sale or exchange of patents, copyrights, and similar intangible property.
In addition, a payment is subject to NRA withholding if withholding is specifically required, even though it may not constitute U.S. source income or FDAP income. For example, corporate distributions may be subject to NRA withholding even though a portion of the distribution may be a return of capital or capital gain not otherwise subject to NRA withholding.

Amounts not subject to NRA withholding. The following amounts are not subject to NRA withholding:

- Portfolio interest on bearer obligations or foreign-targeted registered obligations if those obligations meet certain require-
ments. See Interest, later.

- Original issue discount on obligations pay-able 183 days or less from the date of original issue. See Original issue discount, later.

- Nonbusiness gambling income of a non-resident alien earned on a voyage along the coast of the United States. See Gambling winnings, later.

- Amounts paid as part of the purchase price of an obligation sold between inter-
est payment dates. See Interest, later.

- Original issue discount paid on the sale of an obligation other than a redemption. See Original issue discount, later.

- Insurance premiums paid on a contract is-
sued by a foreign insurer.

Source of Income

Generally, income is from U.S. sources if it is paid by domestic corporations, U.S. citizens or resident aliens, or entities formed under the laws of the United States or a state. Income is also from U.S. sources if the property that produces the income is located in the United States or the services for which the income is paid were per-
formed in the United States. A payment is treated as being from sources within the United States if the source of the payment cannot be determined at the time of payment, such as fees for personal services paid before the services have been performed. In this situation, you are re-
quired to withhold the amount necessary to assure that the tax withheld will not be less than

Chart B. Summary of Source Rules for FDAP Income

<table>
<thead>
<tr>
<th>Type of Income:</th>
<th>Source Determined by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay for personal services</td>
<td>Where services are performed</td>
</tr>
<tr>
<td>Dividends</td>
<td>Type of corporation (U.S. or foreign)</td>
</tr>
<tr>
<td>Interest</td>
<td>Residence of payer</td>
</tr>
<tr>
<td>Rents</td>
<td>Where property is located</td>
</tr>
<tr>
<td>Royalties—Patents, copyrights, etc.</td>
<td>Where property is used</td>
</tr>
<tr>
<td>Royalties—Natural resources</td>
<td>Where property is located</td>
</tr>
<tr>
<td>Pensions due to personal services performed</td>
<td>Where services were performed while a nonresident alien</td>
</tr>
<tr>
<td>Scholarships and fellowship grants</td>
<td>Generally, residence of payer</td>
</tr>
</tbody>
</table>

30% of U.S. source income. Or, you may make a reasonable estimate of the amount from U.S. sources and put a corresponding portion of the amount due in escrow until the amount from U.S. sources can be determined, at which time withholding becomes due. Other source rules are summarized in Chart B and explained in detail in the separate discussions under With-
holding on Specific Income, later. Generally, interest on an obligation of a for-
eign corporation or foreign partnership is foreign-source income. If the entity is engaged in a trade or business in the United States during its tax year, interest paid by such entity is treated as from U.S. sources only if the interest paid by a U.S. trade or business conducted by the entity or is allocable to income that is treated as effectively connected with the conduct of a U.S. trade or business. This applies to a foreign part-
nership only if it is predominantly engaged in the active conduct of a trade or business outside the United States.

Personal service income. If the income is for personal services performed in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer. However, under certain circumstances, pay-
ment for personal services performed in the United States is not considered income from sources within the United States. For informa-
tion on this exception, see Pay for dependent personal services under Pay for Personal Serv-
ces Performed, later. If the income is for personal services per-
formed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services per-
formed in the United States based on the facts and circumstances. In most cases, you make this allocation on a time basis. That is, U.S. source income is the amount that results from multiplying the total amount of pay by the follow-

The total number of days of service for which compensation is paid Employees. If the services are performed partly in the United States and partly outside the United States by an employee, the allocation of pay, other than certain fringe benefits, is deter-
moved on a time basis. The following fringe ben-
efits are sourced on a geographical basis as shown in the following list:

- Housing – employee’s main job location.
- Education – employee’s main job location.
- Local transportation – employee’s main job location.
- Tax reimbursement – jurisdiction impos-
ing tax.
- Hazardous or hardship duty pay – loca-
tion of pay zone.
- Moving expense reimbursement – employee’s new main job location.

For information on what is included in these benefits, see section 1.861-4(b)(2)(iii)(D) of the regulations.

An employee’s main job location (principal place of work) is usually the place where the employee spends most of his or her working time. If there is no one place where most of the work time is spent, the main job location is the place where the work is done, such as where the employee reports for work or is otherwise required to base his or her work.

An employee can use an alternative basis based on facts and circumstances, rather than the time or geographical basis. The employee, not the employer, must demonstrate that the alternative basis more properly determines the source of the pay or fringe benefits.

Territorial limits. Wages received for serv-
ices rendered inside the territorial limits of the United States and wages of an alien seaman earned on a voyage along the coast of the United States are regarded as from sources in the United States. Wages or salaries for per-
sonal services performed in a mine or an oil or gas well located or being developed on the continental shelf of the United States are treated as from sources in the United States.

Income from the performance of services directly related to the use of a vessel or aircraft is treated as derived entirely from sources in the United States if the use begins and ends in the United States. This income is subject to NRA withholding if it is not effectively connected with a U.S. trade or business. If the use either begins or ends in the United States, see Transportation income, later.

Crew members. Income from the perform-
ance of services by a nonresident alien in con-
nection with the individual’s temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transporta-
tion between the United States and a foreign country or a U.S. possession is not income from U.S. sources.

Scholarships, fellowships, and grants. Scholarships, fellowships, and grants are sourced according to the residence of the payer. Those made by entities created or domiciled in the United States and generally treated as in-
come from sources within the United States. However, see Activities outside the United States, next. Those made by entities created or domiciled in a foreign country are treated as income from foreign sources.

Activities outside the United States. A scholar-
ship, fellowship, grant, or an award received by a nonresi-
dent alien for activities conducted outside the

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United States is treated as foreign source income.

Pension payments. The source of pension payments is determined by the portion of the distribution that constitutes the compensation element (employer contributions) and the portion that constitutes the earnings element (the investment income).

The compensation element is sourced the same as compensation from the performance of personal services. The portion attributable to services performed in the United States is U.S. source income, and the portion attributable to services performed outside the United States is foreign source income.

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the payment is from such a plan, you can use the method in Revenue Procedure 2004-37 to allocate the payment to sources in and out of the United States. You can find Revenue Procedure 2004-37 on page 1099 of Internal Revenue Bulletin 2004-26 at www.irs.gov/pub/irs-wb/p2004-26.pdf.

The earnings portion of a pension payment is U.S. source income if the trust is a U.S. trust.

Fixed or Determinable Annual or Periodical Income (FDAP)

FDAP income is all income except:

- Gains from the sale of property (including market discount and option premiums but not including original issue discount), and
- Items of income excluded from gross income without regard to U.S. or foreign status of the owner of the income, such as tax-exempt municipal bond interest and qualified scholarship income.

The following items are examples of FDAP income:

- Compensation for personal services.
- Dividends.
- Interest.
- Original issue discount.
- Pensions and annuities.
- Alimony.
- Real property income, such as rents, other than gains from the sale of real property.
- Royalties.
- Taxable scholarships and fellowship grants.
- Other taxable grants, prizes, and awards.
- A sales commission paid or credited monthly.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust that is FDAP income and must be distributed currently, or has been paid or credited during the tax year.
- FDAP income distributed by a partnership, that, or such an amount that, although not actually distributed, is includible in the gross income of a foreign partner.
- Taxes, mortgage interest, or insurance premiums paid to or for the account of, a nonresident alien landlord by a tenant under the terms of a lease.
- Publication rights.
- Prizes awarded to nonresident alien artists for pictures exhibited in the United States.
- Purses paid to nonresident alien boxers for prize fights in the United States.
- Prizes awarded to nonresident alien professional golfers in golfing tournaments in the United States.

Installment payments. Income can be FDAP income whether it is paid in a series of repeated payments or in a single lump sum. For example, $5,000 in royalty income would be FDAP income whether paid in 10 payments of $500 each or in one payment of $5,000.

Insurance proceeds. Income derived by an insured nonresident alien from U.S. sources under the surrender of, or at the maturity of, a life insurance policy, is FDAP income and is subject to NRA withholding. This includes income derived under a life insurance contract issued by a foreign branch of a U.S. life insurance company. The proceeds are income to the extent they exceed the cost of the policy.

However, certain payments received under a life insurance contract on the life of a terminally ill individual before death (accelerated death benefit) may not be subject to tax. This also applies to certain payments received for the sale or assignment of any portion of the death benefit under contract to a viatical settlement provider. See Publication 525, Taxable and Nontaxable Income, for more information.

Racing purses. Racing purses are FDAP income if it is paid to a nonresident alien racehorse owner in the absence of definite information contained in a statement filed together with a Form W-8BEN that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then the statement and Form W-8BEN filed for that year are ineffective. The owner may be exempt from withholding of tax at 30% on the purses if the owner gives you Form W-8ECI, which provides that the income is effectively connected with the conduct of a U.S. trade or business and that the income is includible in the owner's gross income.

Covenant not to compete. Payment received for a promise not to compete is FDAP income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to NRA withholding.

Withholding on Specific Income

Different kinds of income are subject to different withholding requirements.

Effectively Connected Income

Generally, when a foreign person engages in a trade or business in the United States, all income from sources in the United States connected with the conduct of that trade or business is considered effectively connected with a U.S. business. FDAP income may or may not be effectively connected with a U.S. business. For example, effectively connected income includes rents from real property if the alien chooses to treat that income as effectively connected with a U.S. trade or business.

The factors to be considered in establishing whether FDAP income and similar amounts are effectively connected with a U.S. trade or business include:

- Whether the income is from assets used in, or held for use in, the conduct of that trade or business.
- Whether the activities of that trade or business were a material factor in the realization of the income.

Income from securities. There is a special rule determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business.

If the foreign person’s U.S. office actively and materially participates in soliciting, negotiating, or performing other activities required to arrange the acquisition of securities, the U.S. source interest or dividend income from the securities, gain or loss from their sale or exchange, or income or gain economically equivalent to such amounts, is attributable to the U.S. office and is effectively connected income.

Withholding exemption. Generally, you do not need to withhold tax on income if you receive a Form W-8ECI on which a foreign payee represents that:

- The foreign payee is the beneficial owner of the income,
- The income is effectively connected with the conduct of a trade or business in the United States, and
- The income is includible in the payee’s gross income.

This withholding exemption applies to income for services performed by a foreign partnership or foreign corporation (unless item 4 below applies to the corporation). The exemption does not apply, however, to:

1. Pay for personal services performed by an individual,
2. Effectively connected taxable income of a partnership that is allocable to its foreign partners (see Partnership Withholding on Effectively Connected Income, later),
3. Income from the disposition of a U.S. real property interest (see U.S. Real Property Interest, later), or

4. Payments to a foreign corporation for personal services if all of the following apply:
   a. The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
   b. The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has no right to designate, and
   c. 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

Notional principal contract income. Payment of an amount attributable to a notional principal contract is not subject to NRA withholding regardless of whether a Form W-8BECI is provided. However, income from a notional principal contract is subject to reporting on Form 1042-S if it is effectively connected with the conduct of a trade or business in the United States. You must treat the income as effectively connected with a U.S. trade or business if you pay the income to, or to the account of, a qualified business unit (a branch) of a foreign person located in the United States, or a qualified business unit located outside the United States and you know, or have reason to know, the income is effectively connected with the conduct of a U.S. trade or business. You do not need to treat notional principal contract income as effectively connected if you receive a Form W-8BEN that represents that the income is not effectively connected with the conduct of a U.S. trade or business or if the payee provides a representation in a master agreement or in the confirmation on the particular notional principal contract transaction that the payee is a U.S. person or a non-U.S. branch of a foreign person.

Income paid to U.S. branch of foreign bank or insurance company. A payment to a U.S. branch of a foreign bank or a foreign insurance company that is subject to U.S. regulation by the Federal Reserve or state insurance authorities is presumed to be effectively connected with the conduct of a trade or business in the United States unless the branch provides a Form W-8BEN or Form W-8IMY for the income. If a U.S. branch of a foreign bank or insurance company receives income that the payer did not withhold upon because of the presumption that the income was effectively connected with the U.S. branch’s trade or business, the U.S. branch is required to withhold on the income if in fact not effectively connected with the conduct of its trade or business in the United States. Withholding is required whether the payment was collected on behalf of other persons or on behalf of another branch of the same entity.

Income Not Effectively Connected

This section discusses the specific types of income that are subject to NRA withholding. The income codes contained in this section correspond to the income codes used on Form 1042-S discussed later). and in most cases, on Tables 1 and 2 found at the end of this publication. You must withhold tax at the statutory rates shown in Chart C unless a reduced rate or exemption under a tax treaty applies. For U.S. source gross income that is not effectively connected with a U.S. trade or business, the rate is usually 30%. Generally, you must withhold the tax at the time you pay the income to the foreign person. See When to Withhold, earlier.

Interest

Interest from U.S. sources paid to foreign payees is subject to NRA withholding. When making a payment on an interest bearing obligation, you must withhold on the gross amount of stated interest payable on the interest payment date, even if the payment or a portion of the payment may be a return of capital rather than interest. A substitute interest payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as the interest on the transferred security. Use Income Code 33 to report these substitute payments.

Interest paid by U.S. obligations—general (Income Code 1). With specific exceptions, such as portfolio interest, you must withhold on interest paid or credited on bonds, debentures, notes, open account indebtedness, government obligations, certain deferred payment arrangements (as provided in section 483 of the Internal Revenue Code), and obligations of indebtedness of U.S. obligations. U.S. obligations include the U.S. Government or its agencies or instrumentalities, any U.S. citizen or resident, any U.S. corporation, and any U.S. partnership.

If, in a sale of a corporation’s property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation as if there had been no sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross amount of interest whether or not the payment is a return of capital or the payment of income.

A resident alien paying interest on a margin account maintained with a foreign brokerage firm must withhold from the interest whether the interest is paid in cash or by the transfer of property.

Interest on bonds of a U.S. corporation paid to a foreign corporation not engaged in a trade or business in the United States is subject to NRA withholding even if the interest is guaranteed by a foreign corporation that made payment outside the United States.

Domestic corporations must withhold on interest credited to foreign subsidiaries or foreign parents.

Original issue discount (Income Code 30). Original issue discount paid on the redemption of an obligation is subject to NRA withholding. Original issue discount paid as part of the purchase price of an obligation sold or exchanged, other than in a redemption, is not subject to NRA withholding unless the purchase is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of the plan. Withholding is required by a person other than the issuer of an obligation (or the issuer’s agent) only if the obligation is issued after December 31, 2000.

The original issue discount subject to NRA withholding is the taxable amount of original issue discount. The taxable amount is the original issue discount that accrued while the obligation was held by the foreign beneficial owner up
to the time the obligation was sold or exchanged or a payment was made, reduced by any original issue discount that was previously taxed. If a payment was made, the tax due on the original issue discount may not exceed the payment reduced by the tax imposed on the portion of the payment that is qualified stated interest.

If you cannot determine the taxable amount, you must withhold on the entire amount of original issue discount accrued from the date of issue until the date of redemption (or sale or exchange, if subject to NRA withholding) determined on the basis of the most recently published Publication 1212, List of Original Issue Discount Instruments.

Reduced Rates of Withholding on Interest

Certain interest is subject to a reduced rate of, or exemption from, withholding.

Portfolio interest. Interest and original issue discount on obligations paid, the proceeds of which are subject to NRA withholding. To qualify as portfolio interest, the interest must be otherwise subject to NRA withholding, must be paid on obligations issued after July 18, 1984, and must meet certain other requirements.

Obligations not in registered form. Interest on an obligation that is not in registered form (bearer obligation) is portfolio interest if the obligation is foreign-targeted. A bearer obligation is foreign-targeted if:

- There are arrangements to ensure that the obligation will be sold, or resold in connection with the original issue, only to a person who is not a United States person,
- Interest on the obligation is payable only outside the United States and its possessions, and
- The face of the obligation contains a statement that any United States person who holds the obligation will be subject to limits under the United States income tax laws.

Documentation is not required for interest on bearer obligations to qualify as portfolio interest. In some cases, however, you may need documentation for purposes of Form 1099 reporting and backup withholding.

Obligations in registered form. Portfolio interest includes interest paid on an obligation that is in registered form, and for which you have received documentation that the beneficial owner of the obligation is not a United States person.

If the registered obligation is not targeted to foreign markets, you must receive documentation on which you may rely to treat the payee as a foreign person that is the beneficial owner of the interest. The documentation required is a valid Form W-8BEN (a valid Form W-8EXP for other purposes is also acceptable) or, if allowable, valid documentary evidence. See Documentation, earlier.

A registered obligation is targeted to foreign markets if it is sold (or resold in connection with its original issuance) only to foreign persons or to foreign branches of U. S. financial institutions in accordance with procedures similar to those provided under section 1.163-5(c)(2)(i) of the regulations. However, the procedure that requires the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Also, the procedure that requires the obligation to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book entry system and the obligation is offered for sale through a public auction. The documentation needed depends on whether the interest is paid to a financial institution, a member of a clearing organization, or to some other foreign person.

Interest that does not qualify as portfolio interest. Payments to certain persons and payments of contingent interest do not qualify as portfolio interest. You must withhold at the statutory rate on such payments unless some other exception, such as a treaty provision applies.

Ten-percent owners. Interest paid to a foreign person that owns 10% or more of the total combined voting power of all classes of stock of a corporation, or 10% or more of the capital or profits interest in a partnership, that issued the obligation on which the interest is paid is not portfolio interest. Generally, the constructive ownership of stock rules apply in determining if a person is a 10% shareholder of a corporation.

Banks. Except in the case of interest paid on an obligation of the United States, interest paid to a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of the bank’s trade or business does not qualify as portfolio interest.

Controlled foreign corporations. Interest paid to a controlled foreign corporation from a person related to the controlled foreign corporation is not portfolio interest.

Contingent interest. Portfolio interest generally does not include contingent interest. Contingent interest is interest that is determined by reference to any of the following:

- Any receipts, sales, or other cash flow of the debtor or related person.
- Income or profits of the debtor or related person.
- Any change in value of any property of the debtor or a related person.
- Any dividend, partnership distributions, or similar payments made by the debtor or a related person.

The term “related person” is defined in section 871(h)(1)(B) of the Internal Revenue Code.

The contingent interest rule does not apply to any interest paid or accrued on any indebtedness 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 indebtedness was issued.

Interest on real property mortgages (Income Code 2). Certain treaties (see Table 1) permit a reduced rate or exemption for interest paid or credited on real property mortgages. This is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U. S. citizen or a U.S. business entity.

Interest paid to controlling foreign corporations (Income Code 3). A treaty may permit a reduced rate or exemption for interest paid by a domestic corporation to a controlling foreign corporation. The interest may be on any type of debt including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness.

Interest paid by foreign corporations (Income Code 4). If a foreign corporation is engaged in a U.S. trade or business, any interest paid by the foreign corporation’s trade or business in the United States (branch interest) is subject to NRA withholding as if paid by a domestic corporation (without considering the payer having income from abroad) exception. As a result, the interest paid to foreign payees is generally subject to NRA withholding. In addition, if “allowable interest” exceeds the branch interest paid, the excess interest is also subject to tax and reported on the foreign corporation’s income tax return, Form 1120-F. See Instruc-

In general, payees of interest from a U.S. trade or business of a foreign corporation are entitled to reduced rates of, or exemption from, tax under a treaty in the same manner and subject to the same conditions as if they had received the interest from a domestic corporation. However, a foreign corporation that receives interest paid by a U.S. trade or business of a foreign corporation must also be a qualified resident of its country of residence to be entitled to benefits under that country’s tax treaty. If the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for a reduced rate of tax.

Alternatively, a payee may be entitled to treaty benefits under the payer’s treaty if there is a provision in that treaty that applies specifically to interest paid by the payer foreign corporation. This provision may exempt all or a part of this interest. Some treaties provide for an exemption regardless of the payee’s residence or citizen- ship, while others provide for an exemption according to the payee’s status as a resident or citizen of the payer’s country.

A foreign corporation that pays interest must be a qualified resident (under section 884 of the Internal Revenue Code) of the country of resi- dence for the payer’s treaty to exempt payments from tax by the foreign corporation. However, if the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for the exemption.

Interest on deposits (Income Code 29). Foreign persons are not subject to withholding on
interest that is not connected with a U.S. trade or business if it is from:

- Deposits with persons carrying on the banking business,
- Deposits or withdrawable accounts with savings institutions chartered and super-
  vised under federal or state law as savings and
  loan or similar associations, such as
  credit unions, if the interest is or would be
  deductible by the institutions, or
- Amounts left with an insurance company under an agreement to pay interest on
  them.

Deposits include certificates of deposit, open account
time deposits, Eurodollar certificates of deposit, and other deposit arrangements.

The deposit interest exception does not re-
quire a Form W-8BEN. However, a Form
W-8BEN may be required for purposes of Form
1099 reporting and backup withholding.

You may have to file Form 1042-S to report
certain payments of interest on deposits.

**Interest from foreign business arrangements.** In general, interest received
from a resident alien individual or a
corporation is not subject to NRA withhold-
ing if at least 80% of the payer’s gross income from all
sources has been from active foreign business for the
3 tax years of the payer before the year in
which the interest is paid, or for the applicable
part of those 3 years. Active foreign business
income is gross income which is:

- Derived from sources outside the United
  States,
- Attributable to the active conduct of a
  trade or business in a foreign country or
  possession of the United States by
  the individual or corporation.

However, limits apply if the recipient is consid-
ered to be a related person (see section 861(c)
of the Code). A foreign beneficial owner does not
need to provide a Form W-8 or documentary
evidence for this exception. However, documen-
tation may be required for purposes of Form
1099 reporting and backup withholding.

Sales of bonds between interest dates.
Amounts paid as part of the purchase price of an
obligation sold or exchanged between interest
payment dates is not subject to NRA withhold-
ing. This does not apply if the sale or exchange is
part of a plan the principal purpose of which is
to avoid tax and you have actual knowledge or
reason to know of the plan. The exemption from
NRA withholding applies even if you do not have
any documentation from the payee. However,
documentation may be required for purposes of Form
1099 reporting and backup withholding.

Short-term obligations. Interest and original
issue discount paid on an obligation that was
issued at a discount and that payable 183
days or less from the date of its original issue
(without regard to the period held by the tax-
payer) is not subject to NRA withholding. This
exemption applies even if you do not have any
documentation from the payee. However, docu-
mentation may be required for purposes of Form
1099 reporting and backup withholding.

Income from U.S. Savings Bonds of re-
sidents of the Ryukyu Islands or the Trust
Territory of the Pacific Islands. Interest from

- A Series E, Series EE, Series H, or Series HH
  U.S. Savings Bond is not subject to NRA with-
  holding if the nonresident alien individual ac-
  quired the bond while a resident of the Ryuku
  Islands or the Trust Territory of the Pacific Is-
  lands.

**Dividends**

The following types of dividends paid to foreign
payees are generally subject to NRA withhold-
ing:

A substitute dividend payment made to the
transferor of a security in a securities lending transac-
tion or a sale-repurchase transaction is
treated as the same as a distribution on the
transfer.

Use Income Code 34 to report
these substitute payments.

Dividends paid to Puerto Rico corporation.
The tax rate on dividends paid to a corporation
created or organized in, or under the law of, the
Commonwealth of Puerto Rico is 10%, rather
than 30%.

- At all times during the tax year less than
  25% in value of the Puerto Rico
corporation’s stock is owned, directly or
  indirectly, by foreign persons;
- At least 65% of the Puerto Rico
corporation’s gross income is effectively
  connected with the conduct of a trade or
  business in Puerto Rico or the United
  States for the 3-year period ending with
  the close of the tax year of that corpora-
  tion (or the period the corporation or any
  predecessor has been in existence, if
  less); and
- No substantial part of the income of the
  Puerto Rico corporation is used, directly or
  indirectly, to satisfy obligations to a person
  who is not a bona fide resident of Puerto
  Rico or the United States.

Dividends paid by U.S. corporations — gen-
eral (Income Code 6).

This category includes all distributions of
domestic corporations (other than dividends qualifying for direct dividend rate—Income Code 7).

A corporation making a distribution with re-
spect to its stock or any intermediary making a
payment of such a distribution, is required to
withhold on the entire amount of the distribu-
tion. However, a distributing corporation or intermedi-
ary may elect to not withhold on the part of the
distribution that:

1. Represents a nontaxable distribution pay-
   able in stock or stock rights.
2. Represents a distribution in part or full pay-
   ment in exchange for stock.
3. Is not paid out of current or accumulated
   earnings and profits, based on a reasona-
   ble estimate of the anticipated amount of
   earnings and profits for the tax year of the
distribution made at a time reasonably
   close to the date of the distribution.
4. Represents a capital gain dividend (use
   Income Code 36) or an exempt interest
   dividend by a regulated investment com-
   pany, or
5. Is subject to withholding under section
   1445 of the Code (withholding on disposi-
   tions of U.S. real property interests) and the
distributing corporation is a U.S. real
property holding corporation or a qualified
investment entity.

The election is made by actually reducing the
amount of withholding at the time the distribution is
paid.

A qualified investment entity is any real es-
te investment trust (REIT) and any regulated
investment company (RIC).

**Dividends paid by a REIT.** A distribution by a
REIT is treated as a dividend and is not subject
to withholding under section 1445 as a gain from
the sale or exchange of a U.S. real property
interest if:

- The distribution is on stock regularly
  traded on a securities market in the United
  States, and
- The shareholder did not own more than
  5% of that stock at any time during the
  REIT’s tax year.

If these requirements are not met, item (5) in the
previous list applies to the distribution.

**Dividends paid by a domestic corporation**
an “80/20” company.

Generally, the percent-
age of any dividend paid by a domestic corpora-
tion that received at least 80% of its gross
income from the active conduct of a foreign
business for a testing period is not subject

withholding. The testing period is the 3 tax
years before the year in which the dividends
are declared, or shorter period if the corporation was
not in existence for 3 years. The percentage is
found by dividing the corporation’s foreign gross
income for the testing period by the corporation’s
total gross income for that period.

**Consent dividends.** If you receive a Form
972, Consent of Shareholder To Include Spec-
cific Amount in Gross Income, from a nonresi-
dent alien individual or other foreign shareholder
who agrees to treat the amount as a taxable
dividend, you must pay and report on Form 1042
and Form 1042-S any withholding tax you would
have withheld if the dividend had been actually paid.

**Dividends paid by a RIC.** Subject to certain
exceptions, no withholding is required on
interest-related dividends and short-term capital
gain dividends paid by a RIC.

To qualify for this treatment, the RIC must
designate any part of a dividend as an
interest-related dividend or a short-term capital
gain dividend in a written notice mailed to the
shareholder not later than 60 days after close of the
RIC’s tax year. The amount designated is subject
to dollar limitations.

The no withholding rule does not apply to
interest-related dividends:

- To the extent the dividend is attributable to
  interest on debt issued by the person (or a
  corporation or partnership of which that
  person is a 10% owner) who receives the
dividend,
- Unless documentation is received indicat-
  ing that the beneficial owner is a foreign
  person, or
- Paid to a person in a foreign country (or
  addressed to, or for the account of, per-
  sons in a foreign country) during a period
  specified for that country by the Commis-
  sioner.
The no withholding rule does not apply to short-term capital gain dividends paid to a non-resident alien present in the United States for 183 days or more during the tax year.

For more information on these dividends, see section 871(k) of the Code and, for amounts paid to a foreign corporation, section 881(e).

Dividends qualifying for direct dividend rate (Income Code 7). A treaty may reduce the rate of withholding on dividends from that which generally applies under the treaty if the shareholder owns a certain percentage of the voting stock of the corporation. Generally, this preference rate applies only if the shareholder directly owns the required percentage, although some treaties permit the percentage to be met by direct or indirect ownership. The preferential rate may apply to the payment of a deemed dividend under section 304(a)(1) of the Code. Under some treaties, the preferential rate for dividends qualifying for the direct dividend rate applies only if no more than a certain percentage of the paying corporation’s gross income for a certain period consists of dividends and interest other than dividends and interest from subsidiaries or from the active conduct of a banking, financing, or insurance business. A foreign person claiming the direct dividend rate should complete line 11 of Form W-8BEN regarding special rates and conditions.

Consent dividends. If you receive a Form 972 from a foreign shareholder qualifying for the direct dividend rate, you must pay and report on Form 1042 and Form 1042-S any withholding tax you would have withheld if the dividend had been actually paid.

Dividends paid by foreign corporations (Income Code 8). Dividends paid by a foreign corporation are generally not subject to NRA withholding. This exception does not require a Form W-8BEN. However, a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding. The payment to a foreign corporation by a foreign corporation of a deemed dividend under section 304(a)(1) of the Code is subject to NRA withholding except to the extent it can be clearly determined to be from foreign sources.

Corporation subject to branch profits tax. If a foreign corporation is subject to branch profits tax for any tax year, withholding is not required on any dividends paid by the corporation out of its earnings and profits for that tax year. Dividends may be subject to NRA withholding if they are attributable to any earnings and profits when the branch profits tax is prohibited by a treaty.

A foreign person may claim a treaty benefit on dividends paid by a foreign corporation to the extent the dividends are paid out of earnings and profits in a year in which the foreign corporation was not subject to the branch profits tax. However, you may apply a reduced rate of withholding under an income tax treaty only under rules similar to the rules that apply to treaty benefits claimed on branch interest paid by a foreign corporation. You should check the specific treaty provision.

Gains

You generally do not need to withhold on gains from the sale of real or personal property because it is not FDAP income. However, see U.S. Real Property Interest, later.

Capital gains (Income Code 9). You must withhold at 30%, or if applicable, a reduced treaty rate, on the gross amount of the following items:

- Gains on disposal of timber, coal, or domestic iron ore with a retained economic interest, unless an election is made to treat those gains as income effectively connected with a U.S. trade or business.
- Gains on contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, goodwill, trade-marks, trade brands, franchises, and other like property.
- Gains on certain transfers of all substantial rights to, or an undivided interest in, patents. The transfers were made before October 5, 1966, and
- Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. For more on withholding on original issue discount obligations, see Interest, earlier.

If you do not know the amount of the gain, you must withhold an amount necessary to assure that the tax withheld will not be less than 30% of the recognized gain. The amount to be withheld, however, must not be more than 30% of the amount payable because of the transaction.

Unless you have reason to believe otherwise, you may rely upon the written statement of the person entitled to the income as to the amount of the gain. The Form W-8 or documentary evidence must show the beneficial owner’s basis in the property giving rise to the gain.

Tax treaties. Many tax treaties exempt certain types of gains from U.S. income tax. Be sure to carefully check the provision of the treaty that applies before allowing an exemption from withholding.

Royalties

In general, you must withhold tax on the payment of royalties from sources in the United States. However, certain types of royalties are given reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are treated as separate categories for withholding purposes.

Industrial royalties (Income Code 10). This category of income includes royalties for the use of, or the right to use, patents, trademarks, secret processes and formulas, goodwill, franchises, “know-how,” and similar rights. It also may include rents for the use or lease of personal property. Under certain tax treaties, different rates may apply to royalties for information concerning industrial, commercial, and scientific know-how.

Motion picture or television copyright royalties (Income Code 11). This category refers to royalties paid for the use of motion picture and television copyrights.

Other royalties (for example, copyright, recording, publishing) (Income Code 12). This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc., except motion picture and television copyrights.

Real Property Income and Natural Resources Royalties (Income Code 13)

You must withhold tax on income (such as rents and royalties) from real property located in the United States and held for the production of income, unless the foreign payee elects to treat this income as effectively connected with a U.S. trade or business. If the foreign payee chooses to treat this income as effectively connected, the payee must give you Form W-8ECI (discussed earlier). This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. For withholding that applies to the disposition of U.S. real property interests, see U.S. Real Property Interest, later.

Pensions, Annuities, and Alimony (Income Code 14)

The following rules apply to withholding on pensions, annuities, and alimony of foreign payees.

Pensions and annuities. Generally, you must withhold tax on the gross amount of pensions and annuities that you pay that are from sources within the United States. This includes amounts paid under an annuity contract issued by a foreign branch of a U.S. life insurance company. However, most tax treaties provide that private pensions and annuities are exempt from withholding.

In the absence of a treaty exemption, you must withhold at the statutory rate of 30% on the entire distribution that is from sources within the United States. You may, however, apply withholding at graduated rates to the portion of a distribution that arises from the performance of services in the United States after December 31, 1986, provided you receive Form W-8ECI and can determine the portion of the distribution that constitutes income effectively connected with the conduct of a trade or business in the United States.

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the distribution is from such a plan, you can use the method in Revenue Procedure 2004-37 to allocate the distribution to sources in the United States. You can find Revenue Procedure 2004-37 on page 1099 of Internal Revenue Bulletin 2004-26 at www.irs.gov/pub/irs-ibd/ irb04-26.pdf.

The withholding rules that apply to payments to foreign persons generally take precedence over any other withholding rules that would apply to distributions from qualified plans and other qualified retirement arrangements.

No withholding. Do not withhold tax on an annuity payment to a nonresident alien if at the time of the first payment from the plan, 90% or more of the employer’s income is subject under the plan are citizens or residents of the United States and the payment is:
1. For the nonresident’s personal services performed outside the United States, or
2. For personal services by a nonresident individual present in the United States for 90 days or less during each tax year, whose pay for those services does not exceed $3,000, and the personal services are performed for:
   a. A nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States, or
   b. An office or place of business of a U.S. resident or citizen which is maintained outside the United States.

If the payment otherwise qualifies under these rules, but less than 90% of the employees eligible for benefits are citizens or residents of the United States, you still need not withhold tax on the payment if:
   • The recipient is a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
   • The recipient is a resident of a beneficiary developing country under the Trade Act of 1974.

The foreign person entitled to the payments must provide you with a Form W-8BEN that contains the TIN of the foreign person.

Alimony payments. Generally, alimony payments made by U.S. resident aliens to nonresident aliens are taxable and subject to NRA withholding whether the recipients are residing abroad or are temporarily present in the United States.

Many tax treaties, however, provide for an exemption from withholding for alimony payments. These treaties are shown in Table 1, by a footnote reference under Income Code number 14.

Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding.

Scholarships and Fellowship Grants (Income Code 15)
A scholarship or fellowship grant is an amount given to an individual for study, training, or research, and which does not constitute compensation for personal services. Whether a fellowship grant from U.S. sources is subject to NRA withholding depends on the nature of the payments and whether the recipient is a candidate for a degree. See Scholarships, fellowships, and grants under Source of Income, earlier.

Candidate for a degree. Do not withhold on a qualified scholarship from U.S. sources granted and paid to a candidate for a degree. A qualified scholarship means any amount paid to an individual as a scholarship or fellowship grant to the extent that, in accordance with the conditions of the grant, the amount is to be used for the following expenses:
   • Tuition and fees required for enrollment or attendance at an educational organization, and
   • Fees, books, supplies, and equipment required for courses of instruction at the educational organization.

The payment of a qualified scholarship to a nonresident alien is not reportable and is not subject to NRA withholding. However, the portion of a scholarship or fellowship paid to a nonresident alien which does not constitute a qualified scholarship is reportable on Form 1042-S and is subject to NRA withholding. For example, those portions of a scholarship devoted to room, board and personal living expenses are subject to NRA withholding and are reported on Form 1042-S. The withholding rate is 14% on taxable scholarship and fellowship grants paid to nonresident aliens temporarily present in the United States in “F,” “J,” “M,” or “O” nonimmigrant status. Payments made to nonresident alien individuals in other immigration status are subject to 30% withholding.

Nondegree candidate. If the person receiving the scholarship or fellowship grant is not a candidate for a degree, and is present in the United States in “F,” “J,” “M,” or “O” nonimmigrant status, you must withhold tax at 14% on the total amount of the grant that is from U.S. sources if the following requirements are met:
   1. The grant must be for study, training, or research at an educational organization in the United States.
   2. The grant must be made by:
      a. A tax-exempt organization operated for charitable, religious, educational, etc., purposes,
      b. A foreign government,
      c. A federal, state, or local government agency, or
      d. An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright-Hays Act).

If the grant does not meet both (1) and (2) above, you must withhold at 30% on the amount of the grant that is from U.S. sources.

Alternate withholding procedure. You may choose to treat the taxable part of a U.S. source grant or scholarship as wages. The student or grantee must have been admitted into the United States on an “F,” “J,” “M,” or “O” visa. The student or grantee will know that you are using this alternate withholding procedure when you ask for a Form W-4.

The student or grantee must complete Form W-4 annually following the instructions given here and forward it to you, the payer of the scholarship, or your designated withholding agent. You may rely on the information on Form W-4 unless you know or have reason to know it is incorrect. You must file a Form 1042-S (discussed later) for each student or grantee who gives you, or your withholding agent, a Form W-4.

Each student or grantee who files a Form W-4 must file an annual U.S. income tax return to be allowed the exemptions and deductions claimed on that form. If the individual is in the United States during more than one tax year, he or she must attach a statement to the annual Form W-4 indicating that the individual has filed a U.S. income tax return for the previous year. If he or she has not been in the United States long enough to have to file a return, the individual must attach a statement to the Form W-4 saying that a timely U.S. income tax return will be filed. A prorated portion of allowable personal exemptions based on the projected number of days he or she was in this country is allowed. This is figured by multiplying the daily exemption amount ($9.04 for 2006) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should be shown on line A of the Personal Allowances Worksheet that comes with Form W-4.

Generally, zero (-0-) should be shown on line B of the worksheet. But, a student or grantee who is subject to NRA withholding and is eligible for the United States-India income tax treaty can enter the standard deduction if he or she does not claim allowable personal exemptions and itemized deductions (discussed later).

Generally, zero (-0-) should be shown on lines C and D of the worksheet. But, an additional daily exemption amount may be allowed for the spouse and each dependent if the student or grantee is:
   • A resident of Canada, Mexico, or South Korea,
   • A U.S. national (a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national), or
   • Eligible for the benefits of Article 21(2) of the United States-India income tax treaty.

These additional amounts should be entered on lines C and D, as appropriate.

As lines E, F, and G of the worksheet do not apply to nonresident aliens subject to this procedure, there should be no entries on those lines.

The nonresident alien student or grantee may deduct away-from-home expenses (meals, lodging, and transportation) on Form W-4 if he or she expects to be away from his or her tax home for 1 year or less. The amount of the claimed expenses should be the anticipated actual amount, if known. If the amount of the expenses is not known at the time the Form W-4 is filed with you, the current per diem allowance in effect for participants in the Career Education Program under the Federal Travel Regulations may be claimed on Form W-4. The allowable amount is $18.00 per day.

The actual expenses or the per diem allowance should be shown on line A of the worksheet in addition to the personal exemption amount.

The student or grantee can claim other expenses that will be deductible on Form 1040NR, U.S. Nonresident Alien Income Tax Return. These include student loan interest, certain state and local income taxes, charitable contributions, casualty losses, and moving expenses. He or she should include these anticipated amounts on line A of the worksheet.

The student or grantee can also enter on line A of the worksheet, the part of the grant or scholarship that is tax exempt under the statute or a tax treaty.

Lines A through D of the Personal Allowances Worksheet are added and the total should be shown on line H.

The payer of the grant or scholarship must review the Form W-4 to make sure all the neces-
sary and required information is provided. If the withholding agent knows or has reason to know that the amounts shown on the Form W-4 may be false, the withholding agent must reject the Form W-4 and withhold at the appropriate statutory rate. If no correct information is that the student or grantee’s stay in the United States has extended beyond 12 months, the withholding agent may withhold under these rules, but without a deduction for away-from-home expenses.

After receipt and acceptance of the Form W-4, the payer must withhold at the graduated rates in Publication 15 (Circular E) as if the grant or scholarship income were wages. The gross amount of the income is reduced by the total amount of exemptions and deductions on the Form W-4 and the withholding tax is figured on the rest.

When completing Form 1042-S for the student or grantee, enter the taxable part (gross amount less qualified scholarship) of the scholar- ship or fellowship grant in box 2, enter the withholding allowance amount from line H of the Personal Allowances Table of Form W-4, and show the net of these two amounts in box 4.

Pay for services rendered. Pay for services rendered as an employee by an alien who also is the recipient of a scholarship or fellowship grant is usually subject to graduated withholding according to the rules discussed later in Wages Paid to Employees – Graduated Withholding. This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and carrying out other part-time employment required as a condition for receiving the scholarship or fellowship grant.

Grants given to students, trainees, or re- searchers which require the performance of personal services as a necessary condition for disbursing the grant do not qualify as scholar- ship or fellowship grants. Instead, they are compensation for personal services considered to be wages. It does not matter what term is used to describe the grant (for example, stipend, scholarship, fellowship, etc.).

Withholding agents who pay grants that are in fact wages must report the amounts received on Forms 941 and W-2 and withhold income tax on them at the gradu- ated rates. Withholding agents may not allow tax treaties exemptions that apply to scholarships and fellowships to be applied to grants which are really wages. It is the responsibility of the with- holding agent to determine whether a grant is “wages” or a “scholarship or fellowship,” and to report and withhold on the grant accordingly. An alien student, trainee, or researcher may not claim a scholarship or fellowship treaty exemp- tion against income which has been reported to him on Form W-2 as wages.

Per diem paid by the U.S. Government. Per diem for subsistence paid by the U.S. Govern- ment (directly or by contract) to a nonresident alien engaged in a training program in the United States under the Mutual Security Act of 1954 (grants funded by the U.S. Agency for Interna- tional Development) are not subject to 14% or 30% withholding. This is true even if the alien is subject to income tax on those amounts.

Tax treaties. Many treaties contain exemp- tions from U.S. taxation for scholarships and fellowships. Although usually found in the stu- dent articles of the tax treaties, many of these exemptions also apply to research grants re- ceived by researchers who are not students. Table 2 of this publication shows a line entry entitled “Scholarship or fellowship grant” for those treaties which have such an exemption. The treaty provision usually exempts the entire scholarship or fellowship amount, regardless of whether the grant is a “qualified scholarship” under U.S. law.

An alien student, trainee, or researcher may claim a treaty exemption for a scholarship or fellowship by submitting Form W-8BEN to the payer of the grant. However, a scholarship or fellowship recipient who receives both wages and a scholarship or fellowship from the same institution can claim treaty exemptions on both kinds of income on Form 8233.

The scholarship or fellowship recipient who is entitled to a treaty exemption must provide the payer with his or her TIN on Form W-8BEN or on Form 8233 or you cannot allow the treaty exemption. The payer must complete Form W-7, showing the TIN has been applied for, can be given to you with a Form 8233. See Form 8233, later under Pay for Personal Services Performed.

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien indi- vidual may use the terms a tax treaty to reduce or eliminate U.S. tax on income from a scholarship or fellowship grant. A student (in- cluding a trainee or business apprentice) or re- searcher who has become a resident alien for U.S. tax purposes may be able to claim benefits under a tax treaty that apply to reduce or elimi- nate U.S. tax on scholarship or fellowship grant income. Most treaties contain a provision known as a “saving clause.” An exception to the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant in- come even after the recipient has otherwise become a U.S. resident alien for tax purposes. In this situation, the individual must give you a Form W-9 and an attachment that includes all the following information.

- The treaty country.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty arti- cle.

Example. Article 20 of the U.S.-China in- come tax treaty allows an exemption from tax for scholarship income received by a Chinese stu- dent temporarily present in the United States. Under the Internal Revenue Code, a student may become a resident alien for tax purposes if he or her stay in the United States exceeds 5 calendar years. However, the treaty allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States.

Other Grants, Prizes, and Awards

Other grants, prizes, and awards made by grant- ors which reside in the United States are treated as income from sources within the United States. Those made for activities conducted outside the United States by a foreign person or by grantors which reside outside the United States are treated as income from foreign sources. These provisions do not apply to sala- ries or other pay for services.

Grant. The purpose of a grant must be to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee. A grant must also be an amount which does not qualify as a scholarship or fellowship.

The grantor must not intend to the amount to be given to the grantee for the purpose of aiding the grantee to perform study, training, research.

Prizes and awards. Prizes and awards are amounts received primarily in recognition of re- ligious, charitable, scientific, educational, artis- tic, literary, or civic achievement, or are received as the result of entering a contest. A prize or award is taxable to the recipient unless all of the following conditions are met:

- The recipient was selected without any ac- tion on his or her part to enter the contest or proceeding.
- The recipient is not required to render sub- stantial services in performing the activity in condition to receive the prize or award, and
- The prize or award is transferred by the payer to a governmental unit or tax-ex- empt charitable organization as design- nated by the recipient.

Targeted grants and achievement awards. Targeted grants and achievement awards re- ceived by nonresident aliens for activities con- ducted outside the United States are treated as income from foreign sources. Targeted grants and achievement awards are issued by exempt organizations or by the United States (or one of its instruments or agencies), a state (or a politi- cal subdivision of a state), or the District of Columbia for an activity (or past activity in the case of an achievement award) undertaken in the public interest.

Pay for Personal Services Performed

This section explains the rules for withholding tax from pay for personal services. You gener- ally must withhold tax at the 30% rate on com- pensation you pay to a nonresident alien individual for labor or personal services per- formed in the United States, unless the payee is specifically exempted from withholding or sub- ject to graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

Illegal aliens. Foreign workers who are illegal aliens are subject to U.S. taxes in spite of their illegal status. U.S. employers or payers who hire illegal aliens may be subject to various fines, penalties, and sanctions imposed by U.S. Immig- ration and Customs Enforcement. If such em- ployers or payers choose to hire illegal aliens, the payments made to those aliens are subject to the same tax withholding and reporting obliga- tions that apply to other classes of aliens. Illegal aliens who are nonresident aliens and
who receive income from performing independent personal services are subject to 30% withholding unless exempt under some provision of law or a tax treaty. Illegal aliens who are resident aliens and who receive income from performing personal services are subject to the same reporting and withholding obligations which apply to U.S. citizens who receive the same kind of income.

Form 8233. Exemption From Withholding on Compensations to Resident for Certain Dependent Personal Services of a Nonresident Alien Individual, is used by a nonresident alien individual to claim a tax treaty exemption from withholding on some or all compensation paid for:

- Independent personal services (self-employment),
- Dependent personal services, or
- Personal services income and noncompensatory scholarship or fellowship income from the same withholding agent.

Persons providing independent personal services can use Form 8233 to claim the personal exemption amount.

A U.S. TIN must be shown on Form 8233. An individual with a visa that is valid for employment should first apply for a social security number (SSN) with the Social Security Administration (SSA). An individual that does not have, and is not eligible for, an SSN must apply for an ITIN by using Form W-7. The individual must provide proof that he or she applied for an SSN and was rejected by the SSA and include a copy of a completed Form 8233 with the Form W-7.

Form W-4. Employee’s Withholding Allowance Certificate, is used by a person providing dependent personal services to claim the personal exemption amount, but not a tax treaty exemption. Nonresident alien individuals are subject to special instructions for completing the Form W-4. See the discussion under Wages Paid to Employees—Graduated Withholding later.

Pay for independent personal services (Income Code 16). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers.

Pay for independent personal services is subject to NRA withholding and reporting as follows:

30% rate. You must withhold at the statutory rate of 30% on all payments unless the alien enters into a withholding agreement or receives a final payment exemption (discussed later).

The amount of pay subject to 30% withholding may be reduced by the personal exemption amount ($3,300 for 2006) if the alien gives you a properly completed Form W-7. A nonresident alien is allowed only one personal exemption. However, individuals who are residents of Canada, Mexico, or South Korea, or are U.S. nationals (defined below) are generally entitled to the same exemptions as U.S. citizens.

Students and business apprentices covered by Article 21(2) of the United States-India income tax treaty may claim an additional exemption for their spouse if a joint return is not filed, and if the spouse has no gross income for the year and is not the dependent of another tax payer. They may also claim additional exemptions for children who reside with them in the United States at any time during the year, but if the dependents are U.S. citizens or nationals or residents of the United States, Canada, or Mexico. They may not claim exemptions for dependents who are admitted to the United States on “F-2,” “J-2,” or “M-2” visas unless such dependents have become resident aliens.

Each allowable exemption must be prorated according to the number of days during the tax year in which the alien performs services in the United States. Multiply the number of these days by $9.04 (the daily exemption amount for 2006) to figure the prorated amount. Residents of South Korea must make a further proration of their additional exemptions based on their gross income effectively connected with a U.S. trade or business. The rules for this proration are discussed in detail in Publication 515.

A U.S. national is an individual who owes his sole allegiance to the United States, but who is not a U.S. citizen. Such an individual is usually a citizen of American Samoa, or a Northern Mariana Islands who chose to become a U.S. national.

Example 1. Hans Schmidt, who is a resident of Germany, worked (not as an employee) for a U.S. company in the United States for 100 days during 2006 before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife did not work and had no income subject to U.S. tax. Hans is allowed $904 as a deduction against the payments for his personal services performed in the United States (2006 days × $9.04. Tax must be withheld at 30% on the rest of his earnings, $5,096 ($6,000 − $904). Example 2. If, in Example 1, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, $4,520 (100 days × $9.04 per day for each of his dependents) would be allowed against the payments for personal services performed in the United States. Tax must be withheld at 30% on the rest of his earnings, $5,480 ($5,096 + $384). Withholding agreements. Pay for personal services of a nonresident alien who is engaged during the tax year in the conduct of a U.S. trade or business may be wholly or partially exempt from withholding at the statutory rate if an agreement has been reached between the Commissioner or his delegate and the alien and the amount of withholding required. This agreement will be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien must agree to timely file an income tax return for the current tax year.

Final payment exemption. The final pay-amount of compensation for independent personal services may be wholly or partially exempt from withholding at the statutory rate. This exemption does not apply to wages paid to an employee. The nonresident alien must have been engaged during the tax year in the conduct of a U.S. trade or business. This exemption is available only once during an alien’s tax year. It applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the alien expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the alien, or the alien’s agent, must file the forms and provide the information required by the Commissioner or his delegate. This information includes, but is not limited to, the following items.

- A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a U.S. trade or business have been received by the alien during the tax year. It must show the amount of income paid and the amount of tax withheld. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.

- A statement by the withholding agent from whom the final payment of compensation for personal services will be received showing the amount of final payment and the amount that would be withheld if a final payment exemption is not granted. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.

- A statement by the alien that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a U.S. trade or business during the current tax year.

- The amount of tax that has been withheld (or paid) under any other provision of the Code or regulations for any income effectively connected with the conduct of a U.S. trade or business during the current tax year.

- The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.

- The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the alien’s residence, and a statement of sufficient facts to justify an exemption under that treaty.

The alien must give a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true, and that to his or her knowledge no relevant information has been omitted.

If satisfied with the information provided, the Commissioner or his delegate will determine the amount of the alien’s tentative income tax for the tax year on gross income effectively connected with the conduct of a U.S. trade or business. Ordinary and necessary business expenses may be taken into account if proved to the satisfaction of the Commissioner or his delegate. The Commissioner or his delegate will provide the alien with a letter to you, the withholding agent, stating the amount of final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld that may be paid to the alien due to the exemption. The amount of pay exempt from withholding cannot be more
than $5,000. The alien must give two copies of the letter to you and must also attach a copy of the letter to his or her income tax return for the tax year for which the exemption is effective.

Travel expenses. If you pay or reimburse the travel expenses of a nonresident alien, the payment is not wages if it does not subject the nonresident alien to NRA withholding if the payments are made under an accountable plan as described in section 1.62-2 of the regulations. This treatment applies only to that portion of a payment that represents the payment of travel and lodging expenses and not to that portion that represents compensation for independent personal services.

Tax treaties. Under most tax treaties, pay for independent personal services performed in the United States is exempt from U.S. income tax only if the independent nonresident alien contractor performs the services during a period of temporary presence in the United States (usually not more than 183 days) and is a resident of the treaty country.

Independent nonresident alien contractors use Form 8233 to claim an exemption from withholding under a tax treaty. For more information, see Form 8233, earlier.

Often, you must withhold under the statutory rules on payments made to a treaty country resident contractor for services performed in the United States. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. The contractor must then file a U.S. income tax return (Form 1040NR) to recover any overwithheld tax by providing the IRS with proof that he or she is entitled to a treaty exemption.

Wages Paid to Employees—Graduated Withholding

Salaries, wages, bonuses, or any other pay for personal services (referred to collectively as wages) paid to nonresident alien employees are subject to withholding in the same way as for U.S. citizens and residents if the wages are effectively connected with the conduct of a U.S. trade or business. Any wages paid to a nonresident alien for personal services performed as an employee for an employer are generally exempt from the 30% withholding if the wages are subject to graduated withholding.

Also exempt from the 30% withholding is pay for services performed as an employee for an employer if it is effectively connected with the conduct of a U.S. trade or business and is specifically excluded from wages. See Pay that is not wages, later.

Employer-employee relationship. For pay for personal services to qualify as wages, there must be an employer-employee relationship.

Under the common law rules, every individual who performs services subject to the will and control of an employer, both as to what shall be done and how it shall be done, is an employee. It does not matter that the employer allows the employee considerable discretion and freedom of action, as long as the employer has the legal right to control both the method and the result of the services.

If an employer-employee relationship exists, it does not matter what the parties call the relationship. It does not matter if the employee is called a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual works full-time or part-time.

The existence of the employer-employee relationship under the usual common law rules will be determined, in doubtful cases, by an examination of the facts of each case.

Employee. An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This includes an individual who receives a supplemental unemployment pay benefit that is treated as wages.

No distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee, but a director acting in this capacity is not. An officer who does not perform any services, or only minor services, and neither receives nor is entitled to receive any pay is not considered an employee.

Employer. An employer is any person or organization for whom an individual performs or has performed any service, of whatever nature, as an employee. The term "employer" includes not only individuals and organizations in a trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer that may have considerable application to nonresident aliens are:

• An employer includes any person paying wages for a nonresident alien individual, for an American partner, or for foreign employment not engaged in trade or business in the United States (including Puerto Rico as if a part of the United States), and

• An employer includes any person who has control of the payment of wages for services that are performed for another person who does not have that control.

For example, if a trust pays wages, such as certain types of pensions, supplemental unemployment pay, or retired pay, and the person for whom the services were performed has no legal control over the payment of the wages, the trust is the employer.

These special definitions have no effect upon the relationship between an alien employee and the actual employer when determining whether the pay received is considered to be wages.

If an employer-employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage bracket tables as shown in Publication 15 (Circular E).

Pay that is not wages. Employment for which the pay is not considered wages (for graduated income tax withholding) includes, but is not limited to, the following items:

• Agricultural labor if the total cash wages paid to an individual worker during the year is less than $150 and the total paid to all workers during the year is less than $2,500. But even if the total amount paid to all workers is $2,500 or more, wages of less than $150 per year paid to a worker are not subject to income tax withholding if certain conditions are met. For these conditions, see Publication 51 (Circular A).

• Services of a household nature performed in or about the private home of an employer, or in or about the clubrooms or house of a local college club, fraternity, or sorority. A local college club, fraternity, or sorority does not include an alumni club or chapter and may not be operated primarily as a business enterprise. Examples of these services include those performed as a cook, janitor, housekeeper, gardener, or houseparent.

• Certain services performed outside the course of the employer’s trade or business for which cash payment is less than $50 for the calendar quarter.

• Services performed as an employee of a foreign government, without regard to citizenship, residence, or where services are performed. These include services performed by ambassadors, other diplomatic and consular officers and employees, and nondiplomatic representatives. They do not include services for a U.S. or Puerto Rican corporation owned by a foreign government.

• Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an international organization designated under the International Organizations Immunities Act.

• Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These services also include services performed by a member of a religious order in carrying out duties required by that order.

• Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than $20 in any calendar month in the course of employment.

Services performed outside the United States. Compensation paid to a nonresident alien (other than a resident of Puerto Rico, discussed later) for services performed outside the United States is not considered wages and is not subject to withholding.

Withholding exemptions. The amount of wages subject to graduated withholding may be reduced by the personal exemption amount ($3,300 for 2006). The personal exemptions allowed in figuring wages subject to graduated withholding are the same as those discussed earlier. Pay for independent personal services, except that an employee must claim them on Form W-4.
Determining amount to withhold. A nonresident alien subject to wage withholding must give the employer a completed Form W-4 to enable the employer to figure how much income tax to withhold. 

A nonresident alien cannot claim exemption from withholding on Form W-4. Use Form W-233 to claim a tax treaty exemption from withholding. See Form W-233, earlier.

In completing Form W-4, nonresident aliens should use the following instructions instead of the instructions on Form W-4.

1. Check "Single" on line 3 (regardless of actual marital status).

2. Claim only one withholding allowance on line 5, unless a resident of Canada, Mexico, or South Korea, or a U.S. national.

3. Write "Nonresident Alien" or "NRA" above the dotted line on line 6.

TIP
Monthly $ 221

Weekly $ 51

Biweekly $ 102

Semimonthly $ 110

Monthly $ 221

Quarterly $ 663

Semianually $ 1,325

Annually $ 2,650

Daily or Miscellaneous (each day of the payroll period) $ 10.20

Do not include the additional amount on the employee's Form W-2, Wage and Tax Statement.

Reporting requirements for wages and withheld taxes paid to nonresident aliens. The employer must report the amount of wages and deposits of withheld income and social security and Medicare taxes by filing Form 941. House- hold employers should see Publication 926, Household Employer's Tax Guide, for information on reporting and paying employment taxes on wages paid to household employees.

Form W-2. The employer must also report on Form W-2 the subject to NRA withholding and the withheld taxes. You must give copies of this form to the employee. Wages exempt from tax under a tax treaty are reported on Form 1042-S and not in block 1 of Form W-2. Wages exempt under a tax treaty may still be reported in the state and local wages blocks of Form W-2 if such wages are subject to state and local taxation. For more information, see the instructions for these forms.

Trust fund recovery penalty. If you are a person responsible for withholding, accounting for, or depositing or paying employment taxes, and willfully fail to do so, you can be held liable for a penalty equal to the full amount of the unpaid trust fund tax, plus interest. A responsible person for this purpose can be an officer of a corporation, a partner, a sole proprietor, or an employee of any form of business. A trustee or agent with authority over the funds of the business can also be held responsible for the penalty.

"Willfully" in this case means voluntarily, consciously, and intentionally. You are acting willfully if you pay other expenses of the business instead of the withholding taxes.

Federal unemployment tax (FUTA). The employer must pay FUTA and file Form 940 or 940-EZ, Employer’s Annual Federal Unemployment (FUTA) Tax Return. Only the employer pays this tax; it is not deducted from the employee's wages. In certain cases, wages paid to students and railroad and agricultural workers are exempt from FUTA tax. For more information, see the instructions for these forms.

Wages paid to nonresident alien students, teachers, researchers, trainees, and other nonresidents in "F-1," "J-1," "M-1," or "Q" nonimmigrant status are not subject to FUTA tax.

Pay for dependent personal services (Income Code 17). Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee rather than as an independent contractor.

Pay for dependent personal services is subject to NRA withholding and reporting as follows.

Graded rates. Ordinarily, you must withhold on pay (wages) for dependent personal services using graduated rates. The nonresident alien must complete Form W-4 as discussed earlier under Special instructions for Form W-4, and you must report wages and income tax withheld on Form W-2. However, you do not have to withhold if any of the following four exceptions applies.

Exception 1. Compensation paid for labor or personal services performed in the United States is deemed not to be income from sources within the United States and is exempt from U.S. income tax if:

1. The labor or services are performed by a nonresident alien temporarily present in the United States for a period or periods not exceeding a total of 90 days during the tax year.

2. The total pay does not exceed $3,000, and

3. The pay is for labor or services performed as an employee of, or under a contract with:

a. A nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in a trade or business in the United States, or

b. A U.S. citizen or resident alien individual, a domestic partnership, or a domestic corporation, if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by this individual, partner, or corporation.

If the total pay is more than $3,000, the entire amount is income from sources in the United States and is subject to U.S. tax.

Also, compensation paid for labor or services performed in the United States by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is not income from sources within the United States.

Exception 2. Compensation paid by a foreign employer to a nonresident alien for the period the alien is temporarily present in the United States on an "F," "J," or "Q" visa is exempt from U.S. income tax. For this purpose, a foreign employer means:

- A nonresident alien individual, foreign partnership, or foreign corporation;

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

You can exempt the payment from withhold- ing if you can reliably associate the payment with a Form W-8BEN containing the taxpayer identification number of the payee.

Exception 3. Compensation paid to certain residents of Canada or Mexico who enter or leave the United States at frequent intervals is not subject to withholding. These aliens must either:

- Perform duties in transportation services (such as a railroad, bus, truck, ferry, steamboat, aircraft, or other type) between the United States and Canada or Mexico, or

- Perform duties connected with an international project, relating to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mex- ico.

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resi- dent must give the employer a statement with name, address, and identification number, and certifying that the resident:

- Is not a U.S. citizen or resident,
• Is a resident of Canada or Mexico, which ever applies, and
• Expects to perform the described duties during the tax year in question.

The statement can be in any form, but it must be dated and signed by the employee, and it must include a written declaration that it is made under penalties of perjury.

Canadian and Mexican residents em ployed entirely within the United States

Neither the transportation service exception nor the international projects exception applies to the pay of a resident of Canada or Mexico who is employed entirely within the United States and who commutes from a home in Canada or Mexico to work in the United States. If an individual works entirely within the United States (such as a factory, store, office, or designated area or areas), the wages for services performed as an employee for an employer are subject to graduated withholding.

**Exception 4.** Compensation paid for services performed in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer (other than the United States or one of its agencies) is not subject to withholding.

Compensation paid for either of the following types of services is not subject to withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.

• Services performed outside the United States but not in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer other than the United States or one of its agencies, or
• Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies.

To qualify for the exemption from withholding for any tax year, the employee must give the employer a statement showing the employee’s name and address and certifying that the employee:

• Is not a citizen or resident of the United States, and
• Is a resident of Puerto Rico who does not expect to be a resident for that entire tax year.

The statement must be signed and dated by the employee. The employer must make and retain a written declaration that it is made under penalties of perjury.

**Tax treaties.** Many tax treaties provide an exemption from U.S. income tax and from withholding on compensation paid to nonresident aliens for personal services performed to carry out the purpose for which the alien was admitted to the United States or for services performed in the United States. Under most tax treaties, pay for personal services performed to carry out the purpose for which the alien was admitted to the United States or for services performed in the United States is exempt from U.S. income tax and from withholding on a rate determined under the treaty.

**Disclaimer:** The information on this page is not intended to be legal or tax advice. It is provided for general information purposes only. Always consult with a tax professional for your specific situation.
agreement with the IRS for reduced withholding provided certain requirements are met. Under no circumstances will a nonresident agreement reduce taxes withheld to less than the alien’s anticipated income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement must provide 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 or events 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 catering,
   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 by 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 request, 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 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 have 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-S. 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:

Chief, Special Programs (International) Internal Revenue Service S:SE:CLD:SL:HQ:SP
111 Constitution Ave. NW
NCBF C2--233
Washington, DC 20224.

Tax treaties. Under many tax treaties, compensation paid to public entertainers or athletes for services performed in the United States is exempt from U.S. income tax only when the alien is present for a limited period of time and the pay is within limits provided in the tax treaty (see Table 2).

Employers and independent contractors may claim an exemption from withholding under a tax treaty by filing Form 8233. Often, however, you will have to withhold at the statutory rates on the total payments to the aliens covered by the agreement. This is because the exemption may be based upon factors that cannot be determined until after the end of the year.

Other Income

For the discussion of Income Codes 24, 25, and 26, see U.S. Real Property Interest, later. For the discussion of Income Code 27, see Publicly Traded Partnerships, later.

Gambling winnings (Income Code 28).

In general, nonresident aliens are subject to NRA withholding at 30% 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. The tax withheld and winnings are reportable on Forms 1042 and 1042-S.

No tax is imposed on nonbusiness gambling income a nonresident alien wins playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. A Form W-8BEN is not required to obtain the exemption from withholding, but a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding. Gambling income that is not subject to NRA withholding is not subject to reporting on Form 1042-S.

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

Taxes treaties. Gambling income of residents (as defined by treaty) of the following foreign countries is not taxable by the United States: Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Russian Federation, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, and the United Kingdom.

Claimants must give you a Form W-8BEN (with a TIN) to claim treaty benefits on gambling income that is not effectively connected with a U.S. trade or business. See U.S. Taxpayer Identification Numbers, later, for when you can accept a Form W-8BEN without a TIN.

Transportation income. U.S. source gross transportation income is generally not subject to NRA withholding.

Transportation income is income from the use of a vessel or aircraft, whether owned, hired, or leased, or from the performance of services directly related to the use of a vessel or aircraft. U.S. source gross transportation income includes 50% of all transportation income from transportation that either begins or ends in the United States. For personal service income other than transportation income, the U.S. source is considered derived directly from the use of a vessel or aircraft, the vessel, the use of a vessel, or a U.S. possession.

The recipient of U.S. source gross transportation income must pay tax at the rate of 4% unless the income is effectively connected with the conduct of a U.S. trade or business. If the income is effectively connected with a U.S. trade or business, it is taxed on a net basis at a graduated rate of tax.

Other income (Income Code 50).

Use this category to report U.S. source FDAP income that is not reportable under any of the other income categories. Examples of income that may be reportable under this category are commissions, insurance proceeds, patronage distributions, prizes, and racing purses.

As discussed earlier under Income Subject to NRA Withholding, every kind of FDAP income from U.S. sources that is not effectively connected with a U.S. trade or business is subject to NRA withholding unless the income is specifically exempt under the Code or a tax treaty. You generally must withhold at the 30% rate on this income.

Foreign Governments and Certain Other Foreign Organizations

Investment income earned by a foreign government is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on money deposited by a foreign government in banks in the United States. A foreign government must provide a Form W-8BEN or, in the case of a payment made outside the United States to a foreign government, documentation evidencing that the withholding agent did not pay the tax.

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:
A government of a U.S. possession is exempt from U.S. tax on all U.S. source income. This income is not subject to NRA withholding. These governments should use Form W-8EXP to get this exemption.

International organizations. International organizations are exempt from U.S. tax on all U.S. source income. This income is not subject to withholding. International organizations are not required to provide a Form W-8 or documentary evidence to receive the exemption if the name of the payee is one that is designated as an international organization by executive order.

Foreign tax-exempt organizations. A foreign organization that is a tax-exempt organization under section 501(c) of the Internal Revenue Code is not subject to a withholding tax on amounts that are not income includible under section 512 of the Internal Revenue Code as unrelated business taxable income. However, if a foreign organization is a foreign private foundation, it is subject to a 4% withholding tax on all U.S. source investment income. For a foreign tax-exempt organization to claim an exemption from withholding because of its tax-exempt status under section 501(c), or to claim withholding at a 4% rate, it must provide you with a Form W-8EXP. However, if a foreign organization is claiming an exemption from withholding under an income tax treaty, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN or W-8ECI.

To get the ITIN because the IRS of effectively connected income of a foreign and get an ITIN for Mary because an expedited claim of an exemption from withholding does not need a U.S. TIN if the beneficial owner is claiming any of the following exceptions are met.

- Income from marketable securities (discussed earlier under Form W-8BEN).
- Unexpected payment to an individual (discussed next).

Unexpected payment. A Form W-8BEN or a Form 8233 provided by a nonresident alien to get treaty benefits does not need a U.S. TIN if you, the withholding agent, meet all the following requirements.

- You are an acceptance agent.
- You can request an ITIN for a payee on an expedited basis.
- You are required to make an unexpected payment to the nonresident alien.
- You cannot get the ITIN because the IRS is not issuing ITINs at the time you make the payment or at any earlier time after you know you have to make the payment.
- You cannot reasonably delay making the unexpected payment.
- You submit a completed Form W-7 for the payee, with a certification that you have reviewed the required documentation and have no actual knowledge or reason to know that the documentation is not complete or accurate, to the IRS during the first business day after you made the payment.

An unexpected payment to an individual (discussed next).

A payment is unexpected if you or the beneficial owner could not have reasonably anticipated the payment during a time when an ITIN could be obtained. This could be due to the nature of the payment or the circumstances in which the payment is made. A payment is not considered unexpected solely because the amount of the payment is not fixed.

Example. Mary, a citizen and resident of Ireland, visits the United States and wins $5,000 playing a slot machine in a casino. Under the treaty with Ireland, the winnings are not subject to U.S. tax. Mary claims the treaty benefits by providing a Form W-8BEN to the casino upon winning at the slot machine. However, she does not have an ITIN. The casino is an acceptance agent that can request an ITIN on an expedited basis.

Situation 1. Assume that Mary won the money on Sunday. Since the IRS does not issue ITINs on Sunday, the casino can pay $5,000 to Mary without withholding U.S. tax. The casino must, on the following Monday, fax a completed Form W-7 for Mary, including the required certification, to the IRS for an expedited ITIN.

Situation 2. Assume that Mary won the money on Monday. To pay the winnings without withholding U.S. tax, the casino must apply for and get an ITIN for Mary because an expedited ITIN is available from the IRS at the time of the payment.

Depositing Withheld Taxes

This section discusses the rules for depositing income tax withheld on FDAP income. The deposit rules discussed here do not apply to the following items.

- Taxes on pay subject to graduated withholding as discussed earlier. (See Form 941 for the deposit rules.)
- Tax withheld on pensions and annuities subject to graduated withholding or the 10% tax on nondiscretionary distributions. (See Form 5497.)
- Tax withheld on a foreign partner’s share of effectively connected income of a partnership. See Partnership Withholding on Effectively Connected Income, later.
- Tax withheld on dispositions of U.S. real property interests by foreign persons. See U.S. Real Property Interest, later.
- Taxes on household employee. See Schedule H (Form 1040), Household Employment Taxes, to report social security and Medicare taxes, and any income tax withheld, on wages paid to a nonresident alien household employee.

When Deposits Are Required

A deposit required for any period occurring in one calendar year must be made separately from a deposit for any period occurring in another calendar year. A deposit of this tax must be made separately from a deposit of any other type of tax.
The amount of tax you are required to withhold determines the frequency of your deposits. The following rules show how often deposits must be made.

1. If at the end of a calendar year the total amount of undeposited taxes is less than $200, you may either pay the taxes with your Form 1042 or apply the entire amount by the due date of your Form 1042.

2. If at the end of any month the total amount of undeposited taxes is $200 or more but less than $2,000, you must deposit the taxes within 15 days after the end of the month. If you make a deposit of $2,000 or more during the month (except December) under rule 3 below, carry over any end of the month balance of less than $2,000 to the next month. If you made a deposit of $2,000 or more during December, any end of December balance of less than $2,000 should be remitted with your Form 1042 by the due date.

3. If at the end of any quarter-monthly period the total amount of undeposited taxes is $2,000 or more, you must deposit the taxes within 3 banking days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) In figuring banking days, exclude any local holidays observed by authorized financial institutions, as well as Saturdays, Sundays, and legal holidays.

You are considered to meet the deposit requirements in (3) if:

- You deposit at least 90% of the actual tax liability for the deposit period, and
- You deposit any underpayment with the first deposit that you must make after the 15th day of the following month, if the quarter-monthly period is in a month other than December. You must deposit any underpayment of $200 or more for a quarter-monthly period that occurs during December by January 31.

Electronic deposit requirement. You must use the Electronic Federal Tax Payment System (EFTPS) to make electronic deposits of all depository tax liabilities you incur after 2005, if you meet either of the following conditions:

- You had to make electronic deposits in 2005.
- You deposited more than $200,000 in federal depository taxes in 2004.

If you do not meet these conditions, you may choose to make electronic deposits. To participate in EFTPS, you must first enroll. To request an enrollment form, call 1-800-316-6591 (individual), 1-800-555-4477 (business), or you can enroll online at www.eftps.gov. Get Publication 966, The Secure Way to Pay Your Federal Taxes, for more information.

Qualified business taxpayers that request an EIN will automatically be enrolled in EFTPS. They will receive information on how to activate their account or get federal deposit coupons, discussed next.

Federal tax deposit coupons. If you do not make electronic deposits, you must deposit the income tax withheld on fixed or determinable annual or periodic income using Form 8109, Federal Tax Deposit Coupon, according to the instructions provided with the form. If you do not have your coupons when a deposit is due, call 1-800-829-4933 or contact your local IRS office.

To eliminate any penalty for failure to make deposits on time, be prepared to show that the deposit was mailed by the second day before the due date.

Deposits made by foreign corporations. If you use a Form 8109, show the “Amount of Deposit” in U.S. dollars. Send the completed coupon with a bank draft in U.S. dollars to: Financial Agent Federal Tax Deposit Processing P.O. Box 970030 St. Louis, MO 63197 U.S.A.

Obtaining coupon book. A preinscribed book of Federal Tax Deposit Coupons (Form 8109) automatically will be sent to you after you apply for an employer identification number (EIN). Apply completely Form SS-4, available from the IRS. If you have not received the coupon book, call 1-800-829-4933.

If you are a qualified business taxpayer, you will automatically be enrolled in EFTPS (discussed earlier) when you apply for your EIN. You will receive information on how to get your coupons.

Record of deposit. Before making a deposit, enter the amount of payment on the coupon and in your records. The coupon will not be returned to you, but will be used to credit your tax account as identified by your employer identification number. Penalties for failure to make deposits on time. If you fail to make a required deposit within the time prescribed, a penalty is imposed on the underpayment (the excess of the required deposit over any actual timely deposit for a period). You can avoid the penalty if you can show that the failure to deposit was for reasonable cause and not because of willful neglect. Also, the IRS may waive the penalty if certain requirements are met.

Penalty rate. If the deposit is:

- 1 to 5 days late, the penalty is 2% of the underpayment,
- 6 to 15 days late, the penalty is 5%, or
- 16 or more days late, the penalty is 10%.

However, if the deposit is not made within 10 days after the IRS issues the first notice describing the failure to deposit, enter the amount of payment as follows:

- 1 to 5 days late, the penalty is 2% of the underpayment,
- 6 to 15 days late, the penalty is 5%, or
- 16 or more days late, the penalty is 10%.

If you owe a penalty for failing to deposit tax for more than one deposit period, and you make a deposit, your deposit is applied to the most recent period to which the deposit relates unless you designate the deposit period or periods to which your deposit is to be applied. You can make this designation only during a 90 day period that begins on the date of the penalty notice. The notice contains instructions on how to make this designation.

Adjustment for Overwithholding

What to do if you overwithheld tax depends on when you discover the overwithholding.

Overwithholding discovered by March 15 of following calendar year. If you discover that you overwithheld tax by March 15 of the following calendar year, you must use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undisputed amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been remitted, you can use either the reimbursement or the set-off procedure to adjust the overwithholding.

If March 15 is a Saturday, Sunday, or legal holiday, the next business day is the final date for these actions.

Reimbursement procedure. Under the reimbursement procedure, you repay the beneficiary owner or payer the amount overwithheld. You use your own funds for this repayment. You must make the repayment by March 15 of the year after the calendar year in which the amount was overwithheld. For example, if you overwithheld tax in 2006, you must repay the beneficiary owner by March 15, 2007. You must keep a receipt showing the date and amount of the repayment and provide a copy of the receipt to the beneficiary owner.

You may reimburse yourself by reducing any subsequent deposits you make before the end of the year after the calendar year in which the amount was overwithheld. The reduction cannot be more than the amount you actually repaid. If you will reduce a deposit due in that later year, you must show the total tax withheld and the amount actually repaid on a timely filed (not including extensions) Form 1042 rather than refunded.

Example. James Smith is a resident of the United Kingdom. In December 2006, domestic corporation M paid a dividend of $100 to James, at which time M Corporation withheld $30 and paid the balance of $70 to him. In February 2007, James gave M Corporation a valid Form W-8BEN. He advised M Corporation that he was an income tax treaty with the United Kingdom, only $15 tax should have been withheld from the dividend and required the $15 overwithheld. Although M Corporation had already deposited the $30, the corporation repaid James $15 before the end of February.

During 2006, M Corporation made no other payments from which tax had to be withheld. On its timely filed 2006 Form 1042, M Corporation reports $15 as its total tax liability and $30 as its total deposits. M Corporation requests that the $15 overpayment be credited to its 2007 Form 1042 rather than refunded.

The Form 1042-S that M Corporation files for the dividend paid to James in 2006 must show a tax withheld of $20 in box 7 and $15 as an amount repaid in box 8.

In June 2007, M Corporation made payments from which it withheld tax of $200. On July 16, 2007, M Corporation deposited $185, that is, $200 less the $15 credit claimed on its
Form 1042 for 2006. M Corporation timely filed its Form 1042 for 2007, showing tax liability of $200, $185 deposited, and $15 credit from 2006.

Set-off procedure. Under the set-off procedure, you repay the beneficial owner or payee the amount overwithheld by reducing the amount you would have been required to withhold on later payments you make to that person. These later payments must be made before the earlier of:

- The date you actually file Form 1042-S for the calendar year in which the amount overwithheld was reported
- March 15 of the year after the calendar year in which the amount was overwithheld.

On Form 1042 and Form 1042-S for the calendar year in which the amount was overwithheld, show the reduced amount as the amount required to be withheld.

Overwithholding discovered at a later date. If you discover after March 15 of the following calendar year that you overwithheld tax for that prior year, do not adjust the amount of tax reported on Forms 1042-S (and Form 1042) or on any deposit or payment for that prior year. Do not repay the beneficial owner or payee the amount overwithheld.

In this situation, the recipient will have to file a U.S. income tax return (Form 1040NR or Form 1040NR-EZ or Form 1120-F) if, at a tax return printed has already been filed, a claim for refund (Form 1040X or amended Form 1120-F) to recover the amount overwithheld.

Every withholding agent, whether U.S. or foreign, must file Forms 1042 and 1042-S to report payments of amounts subject to NRA withholding unless an exception applies. Do not use Forms 1042 and 1042-S to report tax withheld on later payments you make to that person.

The Forms 1042 and 1042-S must be filed by March 15 of the year following the calendar year in which the income subject to reporting was paid. If March 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

Form 1042. Every U.S. and foreign withholding agent is required to file a Form 1042-S. You must file an annual return on Form 1042. You must file Form 1042 even if you were not required to withhold any income tax.

You must file Form 1042 with the Internal Revenue Service Center, Philadelphia, PA 19255-0607.

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to NRA withholding unless an exception applies. The form can be filed electronically, magnetically, or on paper. A separate Form 1042-S is required for each recipient of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. You may use a separate Form 1042-S for each type of income that you paid to the same recipient.

You must furnish a Form 1042-S for each recipient even if you did not withhold tax because you repaid the tax withheld to the recipient or because the income payment was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty.

You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. If a Forms 1042-S was issued for a single payment, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains.

Joint owners. If you pay deposit interest of $10 or more to a nonresident alien who resides in Canada and is not a U.S. citizen, you may have to report it on Form 1042. If you pay deposit interest of $10 or more to a nonresident alien who resides in Canada after March 15 of the following year, you must file Form 1042-S by the due date of the return for the calendar year in which the interest was paid.

You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. If a Form 1042-S was issued for a single payment, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains.

Electronic/magnetic media reporting. Withholding agents or their agents generally must use electronic or magnetic media to file 250 or more Forms 1042-S with the IRS. You may file electronically on a quarterly basis. If you discover after March 15 of the following year that you overwithheld tax for that prior year, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. The due date for the return to which the Form 1042-S pertains is based on the date that the Form 1042-S was issued.

You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. If a Form 1042-S was issued for a single payment, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains.

Form 1042-T. If Form 1042-S is filed on paper, it must be filed with Form 1042-T. You must file Form 1042-T electronically on a quarterly basis. If you discover after March 15 of the following year that you overwithheld tax for that prior year, you must file Form 1042-T electronically on a quarterly basis. If you discover after March 15 of the following year that you overwithheld tax for that prior year, you must file Form 1042-T electronically on a quarterly basis.

You must file Form 1042-T by the due date of the return to which the Form 1042-T pertains. If a Form 1042-T was issued for a single payment, you must file Form 1042-T by the due date of the return to which the Form 1042-T pertains.

Determining residency. You determine whether a payee is a Canadian resident based on the permanent residence address required to be provided on the Form W-BBN. If you have actual knowledge that the payee is a U.S. person, you must report the payment on Form 1099-INT.

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to NRA withholding unless an exception applies. You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. The Forms 1042 and 1042-S must be filed by the IRS. You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. If a Form 1042-S was issued for a single payment, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains.

You must file Form 1042-S by the due date of the return to which the Form 1042-S pertains. If a Form 1042-S was issued for a single payment, you must file Form 1042-S by the due date of the return to which the Form 1042-S pertains.

Extension of time to file. You may request an extension of time to file Form 1042 by filing Form 2758, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns. You must file Form 2758 at least 30 days before the date due of the return. Returns may not be filed electronically or magnetically until the application has been approved by the IRS.

For information and instructions on filing Forms 1042 and 1042-S electronically, see Publication 1187, Specifications for Filing Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, Electronically or Magnetically. If you file electronically, you will use the Filing Information Returns Electronically (FIRE) system. You get to the system through the Internet at fire.irs.gov.
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on its foreign partners’ share of effectively con-
nected taxable income whether or not distribu-
tions are made during the partnership’s tax year.

The amount of a partnership’s installment pay-
ment is the sum of the installment payments for
each of its foreign partners. The amount of each
installment payment can be figured by using
Form 8804-W.

Date payments are due. Payments of withholding tax must be made dur-
ing the partnership’s tax year in which the
effectively connected taxable income is de-
duced. A partnership must pay the IRS a portion of the
annual withholding tax for its foreign part-
ners by the 15th day of the 4th, 6th, 9th, and 12th
months of its tax year for U.S. income tax pur-
purs. Any additional amounts due are to be paid
with Form 8804, the annual partnership
withholding tax return.

A foreign partner’s share of withholding tax
paid by a partnership is treated as distributed to
the partner on the earliest of:

• The day on which the tax was paid by the
  partnership,

• The last day of the partnership’s tax year
  for which the tax was paid, or

• The last day on which the partner owned
  an interest in the partnership during that

The amount treated as distributed to the partner is generally treated as an advance or draw
under section 1.731-1(a)(1)(i) of the regulations to the extent of the partner’s share of income
for the partnership year.

Notification to partners. Generally, a part-
nership must notify each foreign partner of the
tax withheld on its behalf within 10 days of the
installment payment date. No particular form is
required for this notification. For more informa-
tion on the substance of the notification and
exceptions, see section 1.1446-3(d)(1)(ii) of the
regulations.

Real property gains. If a domestic partner-
ship disposes of a U.S. real property interest, the
gain is treated as effectively connected income
and the partnership or withholding agent must
withhold following the rules discussed here. A
domestic partnership’s compliance with these
rules satisfies the requirements for withholding
on the disposition of U.S. real property interests
(discussed later).

Reporting and Paying the Tax

Three forms are required for reporting and pay-
ing over tax withheld on effectively connected
income allocable to foreign partners. This does not
apply to publicly traded partnerships, dis-
cussed later.

Form 8804, Annual Return for Partnership
Withholding Tax (Section 1446). The withhold-
ing tax liability of the partnership for its tax year
is reported on Form 8804. Form 8804 is also a
transmittal form for Forms 8805.

Any additional withholding tax owed for the
partnership’s tax year is paid (in U.S. currency) by
Form 8804. A Form 8805 for each foreign partner
must be attached to Form 8804, whether or not any withholding tax was paid.

File Form 8804 by the 15th day of the
4th month after the close of the
partnership’s tax year. However, a
partnership that keeps its books and records
outside the United States and Puerto Rico has
until the 15th day of the 6th month after the close of
the partnership’s tax year to file. If you need more
time to file Form 8804, you may file Form
7004 to request an extension. Form 7004 does
not extend the time to pay the tax.

Form 8805, Foreign Partner’s Information
Statement of Section 1446 Withholding Tax.
Form 8805 is used to show the amount of effec-
tively connected taxable income and any with-
holding tax payments allocated to a foreign
partner for the partnership’s tax year. At the end of
the partnership’s tax year, Form 8805 must be
sent to each foreign partner whether or not any
withholding tax is paid. It must be delivered to
the foreign partner by the due date of the part-
nership return (including extensions). A copy of
Form 8805 for each foreign partner must also be
attached to Form 8804 when it is filed.

A copy of Form 8805 must be attached to the foreign partner’s U.S. income tax return to take a
credit on its Form 1040NR or Form 1120-F.

Form 8813, Partnership Withholding Tax Pay-
ment Agreement (Section 1446). This form is
used to make payments of withheld tax to the United
States Treasury. Payments must be made in U.S.
currency by the payment dates (see Date
payments are due, earlier).

Penalties. A penalty may be imposed for fail-
ure to file Form 8804 when due (including exten-
sions). It is the same as the penalty for not filing
Form 1042 discussed earlier under Returns Re-
quired.

A penalty may be imposed for failure to file
Form 8805 when due (including extensions) or
for failure to provide complete and correct infor-
mation. The amount of the penalty depends on
whether a correct Form 8805 is filed.

The penalty for each Form 8805 is:

$15 if you file a correct form within 30
days, with a maximum penalty of $75,000
per year ($25,000 for a small business), or

$50 if you file after 30 days or do not file a
correct form, with a maximum penalty of
$250,000 per year ($100,000 for a small business).

A small business is a business that has aver-
age annual gross receipts of not more than $5
million for the most recent 3 tax years (or for the
period of its existence, if shorter) ending before
the calendar year in which the Forms 8805 are
due.

If you fail to provide a complete and correct
Form 8805 to each partner, a penalty of $50 for
each failure may be imposed. The maximum
penalty is $100,000 per year.

If you intentionally disregarded the require-
ment to report correct information, the
penalty for each Form 8805 is the greater of $100 or 10% of the total amount of the items that must be
reported, with no maximum penalty.

Identification numbers. A partnership that has not been assigned a U.S. TIN must obtain
one. If a number has not been assigned by the
due date of the first withholding tax payment, the
partnership should refer to the date the number
was applied for on Form 8813 when making its
payment. As soon as the partnership receives
its TIN, it must immediately provide that number to
the IRS.

To ensure proper crediting of the withholding
when reporting to the IRS, the partnership
must include each partner’s U.S. TIN on Form
8805. If there are partners in the partnership
without identification numbers, the partnership
should inform them of the need to get a number.

See U.S. Taxpayer Identification Numbers, ear-
lier.

Publicly Traded Partnerships

A publicly traded partnership (PTP) that has
effectively connected income, gain, or loss must
pay withholding tax on any distributions of that
income made to its foreign partners. A PTP must
file Forms 1042 and 1042-S (Income Code 27)
to report withholding from distributions. The rate
of withholding is 35%.

A PTP is any partnership an interest in which is
regularly traded on an established securities
market. These rules do not apply to a PTP
treated as a corporation under section 7704 of
the Code.

Foreign partner. The partnership determines
whether a partner is a foreign partner using the
rules discussed earlier under Foreign Partner.

Nominee. The withholding agent under this
section can be the PTP or a nominee. For this
purpose, a nominee is a domestic person that
holds an interest in a PTP on behalf of a foreign
person. The nominee does not apply to the withhold-
ing agent only to the extent of the amount speci-
fied in the qualified notice given to the nominee
by the PTP. If a nominee is designated as the
withholding agent, the obligation to withhold is
imposed solely on the nominee. The nominee must
report the distributions and withheld amounts
on Forms 1042 and 1042-S. For more information,
see section 1.1446-4(b) and (d) of the
regulations.

Distributions subject to withholding. The
partnership or nominee must withhold tax on any
actual distributions of money or property to
foreign partners. The amount of the distribution
includes the amount of any section 1446 tax
required to be withheld. In the case of a partner-
ship that receives a partnership distribution from
another partnership (a tiered partnership), the
distribution also includes the tax withheld from
that distribution.

If the distribution is in property other than
money, the partnership cannot release the prop-
erty until it has enough funds to pay over the
withholding tax.

A publicly traded partnership that complies
with these withholding requirements satisfies
the requirements discussed later under U.S.
Real Property Interest. Distributions subject to
withholding include:

• Amounts subject to withholding under sec-
  tion 1446(e)(1) of the Code and on
  a secondary market. Inclusion in these
distributions pursuant to an election under section
  1.1445-5(c)(3) of the regulations, and

• Amounts not subject to withholding under
  section 1445 of the Code because the dis-
  tribute is a partnership or is a foreign
corporation that has made an election to be
  treated as a domestic corporation.
U.S. Real Property Interest

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding. If you are the transferee, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

Foreign person. A foreign person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a U.S. corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

Transferor. A transferor is any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. A transfer includes distributions to shareholders of a corporation, beneficiaries of a trust or estate, and dispositions of real property interests. The owner of a disregarded entity is treated as the transferor of the property, not the entity.

Transferee. A transferee is any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

U.S. real property interest. A U.S. real property interest is an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the 5-year period ending on the date of disposition. If on the date of disposition, the corporation did not hold any U.S. real property interests, and all the interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then any interest in the corporation is not a U.S. real property interest.

The sale of an interest in a domestically controlled qualified investment entity (real estate investment trust (REIT) or regulated investment company (RIC)) 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 the disposition, or (b) the period during which the entity was in existence.

Amount to withhold. The transferee must deduct and withhold a tax equal to 10% (or other amount) of the total amount realized by the foreign person on the disposition (for example, 10% of the purchase price).

The amount realized is the sum of:

- The cash paid, or to be paid (principal only).
- The fair market value of other property transferred, or to be transferred, and
- The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

If the property transferred was owned jointly by U.S. and foreign persons, the amount realized is allocated between the transferees based on the capital contribution of each transferee.

Foreign corporations. A foreign corporation that distributes a U.S. real property interest must withhold a tax equal to 35% of the gain it recognizes on the distribution to its shareholder.

Domestic corporations. A domestic corporation that distributes a U.S. real property interest must withhold a tax equal to 10% of the fair market value of the property distributed to a foreign shareholder if:

- The shareholder’s interest in the corporation is a U.S. real property interest, and
- The property distributed is either in re- dition of stock or in liquidation of the corporation.

U.S. real property holding corporations. A distribution from a domestic corporation that is a U.S. real property holding corporation (USRPHC) is generally subject to NRA withholding and withholding under the U.S. real property interest provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition. A USRPHC can satisfy both withholding provisions if it withheld under one of the following procedures:

- Apply NRA withholding on the full amount of the distribution, whether or not any portion of the distribution represents a return of capital or capital gain. If a reduced tax rate applies under an income tax treaty, then the rate of withholding must not be less than 10%, unless the treaty specifies a lower rate for distributions from a USRPHC.
- Apply NRA withholding to the portion of the distribution that the USRPHC estimates is a dividend. Then, withhold 10% on the remainder of the distribution (or on a smaller amount if a withholding certifi- cate is obtained and the amount of the distribution that is a return of capital is established).

The same procedure must be used for all distributions made during the year. A different procedure may be used each year.

Partnerships. If a partnership disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income and is subject to the rules explained under Partnership Withholding on Effectively Connected Income.

Partnerships. A U.S. real property interest is subject to income tax withholding if it is sold or exchanged. A U.S. real property interest is not more than $300,000.

Domestic corporations. For more information about this election, see section 1.1445-5(c) of the regulations.

Partnerships. Generally, any distribution from a qualified investment entity attributable to gain from the sale of real property interests, and all the interests held by the shareholder did not own more than 5% of any other transfer. A U.S. real property interest is treated as such gain by the nonresident alien individual or foreign corporation receiving the distribution. A distribution by a REIT on stock regularly traded on a securities market in the United States is not the gain from the sale or exchange of a U.S. real property interest if the shareholder did not own more than 5% of that stock at any time during the REIT’s tax year. These distributions are included in the shareholder’s gross income as a dividend from the REIT, not as long-term capital gain.

Additional information. For additional information on the withholding rules that apply to corporations, trusts, estates, and qualified investment entities, see section 1.1446-8 of the related regulations. For additional information on the withholding rules that apply to partnerships, see the previ- ous discussion.

You may also write to the:

Director, Philadelphia Service Center
FRPTA Unit
P.O. Box 21086
Philadelphia, PA 19114-0586

Exceptions. You do not have to withhold if any of the following apply:

1. You (the transferee) acquire the property for use as a home and the amount realized (sales price) is not more than $300,000.
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You or a member of your family must have publicly traded partnerships or trusts. However, if an interest in a publicly traded partnership or trust was owned by a foreign person with a greater than 5% interest at any time during the previous 5-year period, then that interest is a U.S. real property interest if the partnership or trust would otherwise qualify as a USRPHC if it were a corporation, and you must withhold on it.

2. The property disposed of (other than certain dispositions of nonpublicly traded interests) is an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. However, if the class of stock had been held by a foreign person who beneficially owned more than 5% of the fair market value of that class at any time during the previous 5-year period, then that interest is a U.S. real property interest if the corporation qualifies as a USRPHC, and you must withhold on it.

3. The disposition is of an interest in a domestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest. Generally, the corporation can make this certification only if the corporation was not a USRPHC during the previous 5 years (or, if shorter, the period the interest was held by its present owner), or as of the date of disposition, the interest in the corporation is not a U.S. real property interest by reason of section 897(c)(1)(B) of the Code. The certification must be dated not more than 30 days before the date of transfer.

4. The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person and containing the transferor’s name, U.S. tax payer identification number, and home address (or office address, in the case of an entity).

5. You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See Withholding Certificates, later.

6. The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. You must file a copy of the notice by the 20th day after the date of transfer with the Director, Philadelphia Service Center, FIRPTA Unit, P.O. Box 21086, Philadelphia, PA 19114-0586.

7. The amount the transferor realizes on the transfer of a U.S. real property interest is zero.

8. The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia.

9. The grantor realizes an amount on the grant or lapse of an option to acquire a U.S. real property interest. However, you must withhold on the sale, exchange, or exercise of that option.

10. The disposition (other than certain dispositions of nonpublicly traded interests) is of foreign person is reported and paid over using Form 8288. Form 8288 also serves as the trans fer form for contacs A and B of Form 8288-A. Generally, you must file Form 8288 by the 20th day after the date of transfer.

If an application for a withholding certificate (discussed later) is submitted to the IRS before or on the date of a transfer and the application is still pending with the IRS on the date of transfer, the correct withholding tax must be withheld, but does not have to be reported and paid over immediately. The amount withheld (or lesser amount as determined by the IRS) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS.

If the principal purpose of applying for a withholding certificate is to delay paying the withheld tax, the transferee must be subject to interest and penalties. The interest and penalties will be assessed on that interest as of the 21st day after the date of transfer and on ending on the day the payment is made.

Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. The withholding agent must prepare a Form 8288-A for each person from whom tax has been withheld. Attach copies A and B of Form 8288-A to Form 8288. Keep Copy C for your records.

IRS will stamp Copy B and send it to the person subject to withholding. That person must file a U.S. income tax return and attach the stamped Form 8288-A to receive credit for any tax withheld.

A stamped copy of Form 8288-A will not be provided to the transferee if the transferor’s TIN is not included on that form. In this case, to get credit for the withheld amount, the transferee must attach to its U.S. income tax return substantial evidence of withholding (for example, closing documents) and a statement that contains all the required information shown on Forms 8288 and 8288-A including the transferee’s TIN.

Form 1099-S, Proceeds From Real Estate Transactions. Generally, the real estate broker or other person responsible for closing the transaction must report the sale of the property to the IRS using Form 1099-S. For more information about Form 1099-S, see the Instructions for Form 1099-S and the General Instructions for Forms 1099, 1098, 5498, and W-2G.

Withholding Certificates

The amount that must be withheld from the disposition of a U.S. real property interest can be adjusted by a withholding certificate issued by the IRS. The transferee, the transferor’s agent, or the transferor may request a withholding certificate. The IRS will generally act on these requests within 90 days after receipt of a complete application including the amount withheld (or less than the amount withheld) if it is advisable for payment on the day of or the day prior to the transfer.

A withholding certificate may be issued due to:
1. A determination by the IRS that reduced withholding is appropriate because either:
   a. The amount that must be withheld would be more than the transferor’s maximum tax liability, or
   b. Withholding of the reduced amount would not jeopardize collection of the tax.
2. The exemption from U.S. tax of all gain realized by the transferee, or
3. An agreement for the payment of tax providing for the security tax, entered into by the transferee or transferor.

Applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

1. Applications based on a claim that the transfer is entitled to nonrecognition treatment or is exempt from tax,
2. Applications based solely on a calculation of the transferor’s maximum tax liability,
3. Applications under special installment sale rules,
4. Applications based on an agreement for the payment of tax with conforming security,
5. Applications for blanket withholding certificates, and
6. Applications on any other basis.

The applicant must make available to the IRS, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly will usually result in rejection of the application, unless the IRS grants an extension of the target date.

Categories (1), (2), and (3). Use Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, to apply for a withholding certificate. Follow the instructions for the form.

Categories (4), (5), and (6). Do not use Form 8288-B for applications under categories (4), (5), and (6). For these categories follow the instructions given here and under the specific category.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested does not apply, place “N/A” in the relevant space.

1. Information on the application category:
   a. State which category (4, 5, or 6) describes the application,
   b. If a category (4) application:
      i. State whether the proposed agreement secures (A) the transferor’s maximum tax liability, or (B) the amount that would otherwise have to be withheld, and
      ii. State whether the proposed agreement and security instrument conform to the standard formats.

2. Information on the transferee or transferor:
   a. State the name, address, and TIN of the person applying for the withholding certificate (if this person does not have a TIN and is eligible for an ITIN, he or she can apply for the ITIN by attaching the application to a completed Form W-7 and forwarding the package to the address given in the Form W-7 instructions),
   b. State whether that person is the transferee or transferor, and
   c. State the name, address, and TIN of all other transferees and transferors of the U.S. real property interest for which the withholding certificate is sought.

3. Information on the U.S. real property interest for which the withholding certificate is sought, state the:
   a. Type of interest (such as interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation),
   b. Contract price,
   c. Date of transfer,
   d. Location and general description (if an interest in real property),
   e. Class or type and amount of the interest in a U.S. real property holding corporation, and
   f. Whether in the 3 preceding tax years:
      (1) U.S. income tax returns were filed relating to the U.S. real property interest, and if so, when and where those returns were filed, and if not, why returns were not filed, and (2) U.S. income taxes were paid relating to the U.S. real property interest, and if so, the amount of tax paid.

4. Provide full information concerning the basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the rules shown under the specific category provide general guidelines for the inclusion of appropriate information for that category.

The application must be signed by the individual or a duly authorized agent (with a copy of the power of attorney, such as Form 2848, attached), a responsible officer in the case of a corporation, a general partner in the case of a partnership, or a trustee, executor, or equivalent fiduciary in the case of a trust or estate. The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person’s knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

You may also write to the:

Director, Philadelphia Service Center
FIRPTA Unit
P.O. Box 21086
Philadelphia, PA 19114-0586.

Category (4) applications. If the application is based on an agreement for the payment of tax, the application must include:

• Information establishing the transferor’s maximum tax liability, or the amount that otherwise has to be withheld,
• A signed copy of the agreement proposed by the applicant,
• A copy of the security instrument proposed by the applicant.

Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the IRS and any other person and consists of two necessary elements. Those elements are:

• A detailed description of the rights and obligations of each, and
• A security instrument or other form of security acceptable to the Commissioner or his delegate.

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 2000-35. Revenue Procedure 2000-35 is in Cumulative Bulletin 2000-2, or it can be found on page 211 of Internal Revenue Bulletin 2000-35 at www.irs.gov/pub/irs-irbs/irb00-35.pdf.

There are four major types of security acceptable to the IRS. They are:

• Bond with surety or guarantor,
• Bond with collateral,
• Letter of credit, and
• Guarantee (corporate transferees).

The IRS may, in unusual circumstances and at its discretion, accept any additional form of security that it finds to be adequate.

For more information on acceptable security instruments, including sample forms of these instruments, see section 6 of Revenue Procedure 2000-35.

Category (5) applications. A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides an irrevocable letter of credit or a guarantee and enters into a tax payment and security agreement with the IRS. A blanket withholding certificate excuses withholding concerning multiple dispositions of those property interests by the transferor or the transferor’s legal representatives during a period of no more than 12 months.

For more information, see section 9 of Revenue Procedure 2000-35.

Category (6) applications. These are non-standard applications and may be of the following types.

Agreement for payment of tax with non-conforming security. An applicant seeking to enter into an agreement for the payment of tax
but wanting to provide a nonconforming type of security must include the following in the application:

1. The information required for Category (4) applications, discussed earlier,
2. A description of the nonconforming security proposed by the applicant, and
3. A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government’s interest.

**Other nonstandard applications.** An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

**Amendments to Applications**

An applicant for a withholding certificate may amend an otherwise complete application by sending an amending statement to the Director, Philadelphia Service Center, at the address shown earlier. There is no particular form required, but the amending statement must provide the following information:

- The name, address, and TIN of the person providing the amending statement specifying whether that person is the transferee or transferor,
- The date of the original application for a withholding certificate that is being amended,
- A brief description of the real property interest for which the original application for a withholding certificate was provided, and
- The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

The statement must be signed and accompanied by a penalties of perjury statement.

If an amending statement is provided, the time in which the IRS must act upon the application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application is extended by 60 days. If an amending statement is received after the withholding certificate has been signed by the Director, Philadelphia Service Center, but has not been mailed to the applicant, the IRS will have a 90-day extension of time in which to act.

**Tax Treaty Tables**

The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from U.S. income taxes on certain income received from within the United States.

Income that is exempt under a treaty is not subject to withholding at source under the statutory rules discussed in this publication.

Three tables follow:

**Table 1** lists the withholding rates on income other than personal service income.

**Table 2** lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

**Table 3** shows where the full text of each treaty and protocol may be found in the Cumulative Bulletins if it has been published.

These tables are not meant to be a complete guide to all provisions of every income tax treaty. For detailed information, you must consult the provisions of the tax treaty that apply to the country of the nonresident alien to whom you are making payment.

You can obtain the full text of these treaties on the Internet at www.irs.gov.
### Table 1. Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2005

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<th>Interest paid to controlling foreign corporations</th>
<th>Paid by U.S. corporations—general</th>
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<th>Capital Gains</th>
<th>Industrial Royalties</th>
<th>Motion Picture and Television</th>
<th>Real Property Income and Natural Resources Royalties</th>
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</table>

I Contains a Business Profits article.

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Annuities paid in return for other than the recipient's personal services are exempt. Generally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.

The reduced rate for royalties with respect to tangible personal property is 7%. Does not apply to annuities. For Denmark, annuities are exempt.

Withholding at a special rate may be required on the disposition of U.S. real property interests. See U.S. Real Property Interest earlier in this publication.

The reduced rate for royalties with respect to tangible personal property is 7%. Does not apply to annuities. For Denmark, annuities are exempt.

Withholding at a special rate may be required on the disposition of U.S. real property interests. See U.S. Real Property Interest earlier in this publication.

Tax imposed on 70% of gross royalties for rentals of industrial or scientific equipment.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, Spain, Thailand, and Tunisia) in the REIT.

The rate is 5% for royalties on the use of any copyright of literary, artistic, or scientific work, including software.

Exemption is not available when paid from a fund, under an employee's pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

The rate is 15% for interest determined with reference to the profits of the issuer or one of its associated enterprises.

Annuities that were purchased while the annuitant was not a resident of the United States are not taxable in the United States. The reduced rate applies if the distribution is not subject to a penalty for early withdrawal.

Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under income codes 6 and 7, as appropriate.

The rate is 5% for royalties on the use of any copyright of literary, artistic, or scientific work, including software.

Exemption is not available when paid from a fund, under an employee's pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

The rate is 15% for interest determined with reference to the profits of the issuer or one of its associated enterprises.

Annuities that were purchased while the annuitant was not a resident of the United States are not taxable in the United States. The reduced rate applies if the distribution is not subject to a penalty for early withdrawal.

Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under income codes 6 and 7, as appropriate.

The rate is 5% for royalties on the use of any copyright of literary, artistic, or scientific work, including software.

Exemption is not available when paid from a fund, under an employee's pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

The rate is 15% for interest determined with reference to the profits of the issuer or one of its associated enterprises.

Annuities that were purchased while the annuitant was not a resident of the United States are not taxable in the United States. The reduced rate applies if the distribution is not subject to a penalty for early withdrawal.

Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under income codes 6 and 7, as appropriate.
Under some treaties, the reduced rates of withholding may not apply to a foreign corporation unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemption does not apply to cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC). Dividends paid by a real estate investment trust (REIT) are subject to a 30% rate.

Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the U.S. and the income is effectively connected with this permanent establishment. Instead, tax is not withheld at source and the provisions of Article 8 (Business Profits) apply. Additionally, even if interest income is not effectively connected with a U.S. permanent establishment, the recipient may choose to treat net interest income as industrial or commercial profits subject to Article 8 of the treaty.

The rate is 4.9% for interest derived from (1) loans granted by banks and insurance companies and (2) bonds or securities that are regularly and substantially traded on a recognized securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.

Of the interest based on receipts, sales, income, or changes in the value of property.

The rate is 15% for interest determined with reference to (a) receipts, sales, income, profits or other cash flow of the debtor or a related person, (b) any change in the value of any property of the debtor or a related person, or (c) any dividend, partnership, distribution or similar payment made by the debtor to a related party.

The rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual holding not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT’s stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified. Dividends paid to a pension fund from a REIT, or a REIT that meets the above conditions, are exempt.

The exemption does not apply to a sale of a U.S. company’s stock representing ownership of 50% or more.

The rate is 5% for the rental of tangible personal property.

The rate applies to dividends paid by a real estate investment trust (REIT) only if the beneficial owner of the dividends is (a) an individual holding less than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT’s stock and the dividend is paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

Interest paid to a financial institution is exempt.

Dividends paid by an 80%-owned corporate subsidiary are exempt if certain conditions are met.

Dividends paid to a trust, company, or other organization operated exclusively to administer or provide pension, retirement, or other employee benefits generally are exempt if certain conditions are met.

Exemption or reduced rate does not apply to amount paid under, or as part of, a conduit arrangement.

Interest is exempt if (a) paid to certain financial institutions, or (b) paid on indebtedness from the sale on credit of equipment or merchandise.

Amounts paid to a pension fund that are not derived from the carrying on of a business by the fund are exempt.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual or a pension fund holding not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT’s stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT) only if the beneficial owner of the dividends is (a) an individual holding not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT’s stock and the dividend is paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.
<table>
<thead>
<tr>
<th>Country</th>
<th>Codea</th>
<th>Tax Treaties</th>
<th>Purpose</th>
<th>Maximum Presence Required in U.S.</th>
<th>Presence of Contractor</th>
<th>Required Employee or Payer</th>
<th>Maximum Amount of Compensation</th>
<th>Treaties Article Citation</th>
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<td>No limit</td>
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*Note: The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.*
Table 2. (Continued)

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<tr>
<th>Country</th>
<th>Code (1)</th>
<th>Category of Personal Services</th>
<th>Maximum Presence in U.S. (2)</th>
<th>Required Employer or Payer (3)</th>
<th>Maximum Amount of Compensation (4)</th>
<th>Treaty Article Citation (5)</th>
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<td>VI(1)</td>
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<td>Dependent personal services</td>
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Table 2. (Continued)

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<th>Maximum Presence in U.S.</th>
<th>Required Employer or Payer</th>
<th>Maximum Amount of Compensation</th>
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<td>Any contractor</td>
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<td>Maximum Amount of Compensation</td>
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<td>Any foreign contractor</td>
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<td>Any foreign resident</td>
<td>No limit</td>
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<tr>
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<td>20</td>
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<td>Government program</td>
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<td>Any foreign resident</td>
<td>No limit</td>
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<tr>
<td></td>
<td>20</td>
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<td>Any resident contractor</td>
<td>No limit</td>
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<td>No limit</td>
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<td>Compensation while gaining experience</td>
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<td></td>
<td>U.S. Government or its contractor</td>
<td>$10,000</td>
</tr>
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<td>Turkey</td>
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<td>5 years</td>
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<td>Any foreign resident</td>
<td>No limit</td>
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<td>No limit</td>
<td>Any resident</td>
<td>No limit</td>
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<td>Any foreign resident</td>
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<td>Compensation during professional training</td>
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<td></td>
<td>Compensation while gaining experience</td>
<td>Any foreign resident</td>
<td>No limit</td>
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<td></td>
<td></td>
<td></td>
<td>Government program</td>
<td>$7,500 p.a.</td>
</tr>
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<td>Any U.S. or foreign resident</td>
<td>No limit</td>
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<td></td>
<td>16</td>
<td>Independent personal services</td>
<td>No limit</td>
<td>Any resident</td>
<td>No limit</td>
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<td></td>
<td>17</td>
<td>Dependent personal services</td>
<td>183 days</td>
<td>Any foreign resident</td>
<td>No limit</td>
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<td>No limit</td>
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<td></td>
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<td>Compensation during professional training</td>
<td>Any foreign resident</td>
<td>No limit</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>Compensation while gaining experience</td>
<td>Any foreign resident</td>
<td>No limit</td>
</tr>
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<td></td>
<td></td>
<td>Compensation while gaining experience</td>
<td>U.S. educational institution or U.S. Government</td>
<td>No limit</td>
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<tr>
<td></td>
<td></td>
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<td>Government program</td>
<td>$7,500 p.a.</td>
</tr>
<tr>
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<td>U.S. Government or its contractor</td>
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<td>No limit</td>
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<td></td>
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<td>No limit</td>
<td>Any foreign resident</td>
<td>No limit</td>
</tr>
<tr>
<td></td>
<td>18</td>
<td>Teaching or research</td>
<td>2 years</td>
<td>Any foreign resident</td>
<td>No limit</td>
</tr>
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<td></td>
<td>19</td>
<td>Staying and training</td>
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</table>
Table 2. (Continued)

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<th>Country</th>
<th>Code</th>
<th>Category of Personal Services</th>
<th>Maximum Presence in U.S.</th>
<th>Required Employer or Payer</th>
<th>Maximum Amount of Compensation</th>
<th>Treaty Article Citation</th>
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</thead>
<tbody>
<tr>
<td>Venezuela</td>
<td>15</td>
<td>Scholarship or fellowship grants</td>
<td>5 years^3</td>
<td>Any U.S. or foreign resident^2</td>
<td>No limit</td>
<td>21(1)</td>
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<td>Any contractor</td>
<td>No limit</td>
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<td>Public entertainment^4</td>
<td>168 days</td>
<td>Any contractor</td>
<td>$6,000^*</td>
<td>18</td>
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<td>Any foreign resident</td>
<td>No limit</td>
<td>18</td>
</tr>
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<td></td>
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<td>2 years^5</td>
<td>Any U.S. or foreign contractor</td>
<td>$6,000^*</td>
<td>18</td>
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<td>Teaching</td>
<td>2 years^5</td>
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<td>No limit</td>
<td>21(2)</td>
</tr>
<tr>
<td></td>
<td>19</td>
<td>Studying and training</td>
<td>5 years^3</td>
<td>Any foreign resident</td>
<td>No limit</td>
<td>21(1)</td>
</tr>
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<td></td>
<td>Remittances or allowances</td>
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<td>Venezuelan resident</td>
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<td>21(2)</td>
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<td>Venezuelan resident</td>
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<td>21(2)</td>
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<tr>
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<td></td>
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<td>5 years</td>
<td>Other foreign or U.S. resident</td>
<td>$5,000 p.a.</td>
<td>21(1)</td>
</tr>
</tbody>
</table>

^1: Treaty Article citation may vary depending on the specific treaty agreement.
^2: Maximum limit specified in treaty.
^3: Presence required for full-time status.
^4: No compensation limit.
^5: Presence required for beneficial status.

Note: Must be removed before printing.
Exemption does not apply if the individual either (a) claimed the benefit of Article 21(1) previously, or (b) during the immediately preceding period, claimed the benefit of Article 21(1), (5), or (8).

Exemption applies only to compensation for personal services performed in connection with, or incidental to, the individual’s study, research, or training.

If the compensation exceeds $400 per day, the entertainer may be taxed on the full amount. If the individual receives a fixed amount for more than one performance, the amount is prorated over the number of days the individual performs the services (including rehearsals).

Exemption can also apply if, during the immediately preceding period, the individual derived any benefits of Article 22(1).

Exemption does not apply if during the immediately preceding period, the individual claimed the benefit of Article 22(1). The benefits under Articles 22 and 23 cannot be claimed at the same time.

If the compensation exceeds $400 per day, the entertainer may be taxed on the full amount. If the individual receives a fixed amount for more than one performance, the amount is prorated over the number of days the individual performs the services (including rehearsals).

Exemption can also apply if, during the immediately preceding period, the individual derived any benefits of Article 22(1).

Exemption does not apply if during the immediately preceding period, the individual claimed the benefit of Article 22(1). The benefits under Articles 22 and 23 cannot be claimed at the same time.

The combined period of benefits for teaching cannot exceed 5 tax years.

Exemption applies also to a participant in a program sponsored by the United States or foreign government, or its political subdivisions or local authorities.

Apply to grants, allowances, and other similar payments received for studying or doing research.

Exemption applies to amounts received in excess of reasonable fees payable to all directors of the company for attending meetings in the United States.

Exemption does not apply if gross receipts (including reimbursements) exceed this amount during the year (or during any 12-month period for Sweden).

Exemption does not apply if net income exceeds this amount.

Exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident or the federal, state, or local government.

Exemption does not apply if compensation exceeds this amount.

The exemption applies only to income from activities performed under special cultural exchange programs agreed to by the U.S. and Chinese governments.

Exemption does not apply if gross receipts (or compensation for Portugal including reimbursements, exceed this amount during the year. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.

A $10,000 limit applies if the expense is borne by a permanent establishment or a fixed base in the United States.

This provision does not apply if these activities are substantially supported by a nonprofit organization of the treaty country or by public funds of the treaty country or its political subdivisions or local authorities.

Exemption does not apply if gross receipts, including reimbursements, exceed this amount during the year. Income is fully exempt if visit is wholly or mainly supported by public funds of one or both of the treaty countries or their political subdivisions or local authorities.

Exemption applies to an athlete employed by a team that is in a league with regularly scheduled games in both countries.
### Table 3. List of Tax Treaties (Updated through December 31, 2004)

<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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<td>TIAS</td>
<td>Jan. 1, 2004</td>
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<tr>
<td>Belgium</td>
<td>TIAS</td>
<td>Jan. 1, 2005</td>
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<td>Canada1</td>
<td>TIAS 11087</td>
<td>Jan. 1, 1985</td>
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<td>Denmark</td>
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<td>Jan. 1, 2001</td>
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<td>Estonia</td>
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<td>Finland</td>
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<td>Jan. 1, 1991</td>
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<td>France5</td>
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<td>Jan. 1, 1996</td>
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<td>Japan</td>
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<td>Jan. 1, 2005</td>
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1 (TIAS) — Treaties and Other International Act Series.
2 The U.S.-Australia income tax treaty covers Ashmore and Cartier Islands, Christmas Island (Indian Ocean), the Cocos (Keeling) Islands, the Coral Sea Islands Territory, and Norfolk Island.
3 Information on the treaty can be found in Publication 597, Information on the United States-Canada Income Tax Treaty.
4 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.
5 The U.S.-France income tax treaty covers French Guiana, Guadeloupe, Martinique, and Reunion.
6 The U.S.-U.K. income tax treaty covers Northern Ireland.
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.

Contacting your Taxpayer Advocate. If you have a problem unresolved with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate is an individual who represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. The Taxpayer Advocate can help you if your complaint is unresolved. The Taxpayer Advocate can help you if your complaint is unresolved.

To contact your Taxpayer Advocate:
• Call the Taxpayer Advocate toll free at 1-877-777-4778.
• Call, write, or fax the Taxpayer Advocate office in your area.
• Call 1-800-829-4059 if you are a TTY/TDD user.
• Visit www.irs.gov/advocate.

For more information, see Publication 1546, How To Get Help With Unresolved Tax Problems (now available in Chinese, Korean, Russian, and Vietnamese, in addition to English and Spanish).

Free tax services. To find out what services are available, get a free 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 e-file tax preparation and e-file services free to eligible taxpayers.
• Check the status of your 2005 refund. Click on Check My 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 2005 tax return available because you 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 five 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. 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 rules, request adjustments to your account, or help you set up a payment plan. Call your local IRS 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.

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• Current-year forms, instructions, and publications.
• Prior-year forms, instructions, and publications.
• Tax Map: an electronic research tool and dictionary of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.
• Walk-in. 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 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 phone book under United States Government, Internal Revenue Service.

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See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.