

Publication 519

U.S. Tax Guide for Aliens

For use in preparing
2023 Returns

Volume 2 of 7



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Residents of American Samoa or Puerto Rico
in chapter 5.

If you are a nonresident alien from American Samoa or Puerto Rico who does not qualify as a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you are taxed as a nonresident alien.

Resident aliens who formerly were bona fide residents of American Samoa or Puerto Rico are taxed according to the rules for resident aliens.

2.

Source of Income

Introduction

After you have determined your alien status, you must determine the source of your income. This chapter will help you determine the source of different types of income you may receive during the tax year.

Topics

This chapter discusses:

- Income source rules, and
- Community income.

This chapter also discusses special rules for married individuals who are domiciled in a country with community property laws.

Resident Aliens

A resident alien's income is generally subject to tax in the same manner as a U.S. citizen. If you are a resident alien, you must report all interest, dividends, wages, or other compensation for services, income from rental property or royalties, and other types of income on your U.S. tax return. You must report these amounts from sources within and outside the United States.

Nonresident Aliens

Nonresident aliens are taxed only on their income from

sources within the United States and on certain income connected with the conduct of a trade or business in the United States (see chapter 4).

The general rules for determining U.S. source income that apply to most nonresident aliens are shown in Table 2-1. The following discussions cover the general rules as well as the exceptions to these rules.



Not all items of U.S. source income are taxable. See chapter 3.

Interest Income

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

- Interest on bonds, notes, or other interest-bearing obligations of U.S. residents or domestic corporations.

- Interest paid by a domestic or foreign partnership or foreign corporation engaged in a U.S. trade or business at any time during the tax year.
- Original issue discount (OID).
- Interest from a state, the District of Columbia, or the U.S. Government.

The place or manner of payment is immaterial in determining the source of the income.

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

Table 2-1. Summary of Source Rules for Income of Nonresident Aliens

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income: Personal services Sale of inventory—purchased Sale of inventory—produced	Where services performed Where sold Where produced
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties: Natural resources Patents, copyrights, etc.	Location of property Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but see Personal Property , later, for exceptions)
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.
* Exceptions include: Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared. Special rules apply for dividend equivalent payments .	

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

1. Interest paid by a resident alien or a domestic corporation on obligations issued before August 10, 2010, if for the 3-year period ending with the close of the payer's tax year preceding the interest payment, at least 80% (0.80) of the payer's total gross income:
 - a. Is from sources outside the United States, and
 - b. Is attributable to the active conduct of a trade or business by the individual or corporation in a foreign country or a U.S. territory.

However, the interest will be considered U.S. source interest income if either of the following applies.

- a. The recipient of the interest is related to the resident alien or domestic corporation. See section 954(d)(3) for the definition of “related person.”
 - b. The terms of the obligation are significantly modified after August 9, 2010. Any extension of the term of the obligation is considered a significant modification.
- 2. Interest paid by a foreign branch of a domestic corporation or a domestic partnership on deposits or withdrawable accounts with mutual savings banks, cooperative banks, credit unions, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under federal or state law

if the interest paid or credited can be deducted by the association.

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

Dividends

In most cases, dividend income received from domestic corporations is U.S. source income. Dividend income from foreign corporations is usually foreign source income. An exception to the second rule is discussed later.

A substitute dividend payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is sourced in the same manner as a distribution on the transferred security.

Exception. Part of the dividends received from a foreign corporation is U.S. source income if 25% or more of its total gross

income for the 3-year period ending with the close of its tax year preceding the declaration of dividends was effectively connected with a trade or business in the United States. If the corporation was formed less than 3 years before the declaration, use its total gross income from the time it was formed.

Determine the part that is U.S. source income by multiplying the dividend by the following fraction.

$$\frac{\text{Foreign corporation's gross income connected with a U.S. trade or business for the 3-year period}}{\text{Foreign corporation's gross income from all sources for that period}}$$

Dividend equivalent payments. U.S. source dividends also include dividend equivalent payments. Dividend equivalent payments include:

- Substitute dividends paid pursuant to a securities lending transaction, sale-repurchase transaction, or substantially similar transaction;
- A payment that references a U.S. source dividend made pursuant to a specified notional principal contract (NPC); or
- A payment that references a U.S. source dividend made pursuant to a specified equity-linked instrument (ELI).

A payment of a dividend equivalent amount includes any gross amount that references a U.S. source dividend and that is used to compute any net amount transferred to or from the taxpayer under a contract, if the taxpayer is the long party under the contract. As a result, a taxpayer may be treated as having received a dividend equivalent payment even if the taxpayer makes a net payment or no amount is paid because the net amount is zero.

In 2023, an NPC or ELI will generally be a specified NPC or specified ELI, respectively, if the contract is a delta one transaction.

Generally, delta is the ratio of change in the fair market value of an NPC or ELI to a small change in the fair market value of the number of shares of the stock referenced by the contract. Generally, the amount of a dividend equivalent for a specified NPC or specified ELI is the per share dividend amount multiplied by the number of shares of stock referenced by the contract multiplied by the delta of the contract. Special rules apply to complex contracts. See Regulations section 1.871-15 and Notice 2020-03, for additional information.

Guarantee of Indebtedness

Amounts received directly or indirectly, for the provision of a guarantee of indebtedness issued after September 27, 2010, are U.S. source income if they are paid by:

1. A noncorporate resident or U.S. corporation, or
2. Any foreign person if the amounts are effectively connected with the conduct of a U.S. trade or business.

For more information, see section 861(a)(9).

Personal Services

All wages and any other compensation for services performed in the United States are considered to be from sources in the United States. The only exceptions to this rule are discussed in *Employees of foreign persons, organizations, or offices*, later, and in *Crew members*, earlier.

If you are an employee and receive compensation for labor or personal services performed both inside and outside the United States, special rules apply in determining the source of the compensation. Compensation (other than certain fringe benefits) is sourced on a time basis. Certain fringe benefits (such

as housing and education) are sourced on a geographical basis.

Or, you may be permitted to use an alternative basis to determine the source of compensation. See Alternative Basis, later.

Multilevel marketing. Certain companies sell products through a multilevel marketing arrangement, such that an upper-tier distributor, who has sponsored a lower-tier distributor, is entitled to a payment from the company based on certain activities of that lower-tier distributor. Generally, depending on the facts, payments from such multilevel marketing companies to independent (nonemployee) distributors (upper-tier distributors) that are based on the sales or purchases of persons whom they have sponsored (lower-tier distributors) constitute income for the performance of personal services in recruiting, training, and supporting the lower-tier distributors. The source of such income is generally based on where the

services of the upper-tier distributor are performed and may, depending on the facts, be considered multiyear compensation, with the source of income determined over the period to which such compensation is attributable.

Self-employed individuals. If you are self-employed, you determine the source of compensation for labor or personal services from self-employment on the basis that most correctly reflects the proper source of that income under the facts and circumstances of your particular case. In many cases, the facts and circumstances will call for an apportionment on a time basis, as explained next.

Time Basis

Use a time basis to figure your U.S. source compensation (other than the fringe benefits discussed in *Geographical Basis*). Do this by multiplying your total compensation (other

than the fringe benefits sourced on a geographical basis) by the following fraction.

Number of days you performed services in
the United States during the year

Total number of days you performed
services during the year

You can use a unit of time less than a day in the above fraction, if appropriate. The time period for which the compensation is made does not have to be a year. Instead, you can use another distinct, separate, and continuous time period if you can establish to the satisfaction of the IRS that this other period is more appropriate.

Example 1. Christina Brooks, a resident of the Netherlands, worked 240 days for a U.S. company during the tax year. Christina received \$80,000 in compensation. None of it was for fringe benefits. Christina performed services in the United States for 60 days and

performed services in the Netherlands for 180 days. Using the time basis for determining the source of compensation, \$20,000 ($\$80,000 \times 60/240$) is Christina's U.S. source income.

Example 2. Rob Waters, a resident of South Africa, is employed by a corporation. Rob's annual salary is \$100,000. None of it is for fringe benefits. During the first quarter of the year, Rob worked entirely within the United States. On April 1, Rob was transferred to Singapore for the remainder of the year. Rob is able to establish that the first quarter of the year and the last 3 quarters of the year are two separate, distinct, and continuous periods of time. Accordingly, \$25,000 of Rob's annual salary is attributable to the first quarter of the year ($0.25 \times \$100,000$). All of it is U.S. source income because Rob worked entirely within the United States during that quarter. The remaining \$75,000 is attributable to the last 3 quarters of the year. During those quarters, Rob worked 150 days in Singapore

and 30 days in the United States. Rob's periodic performance of services in the United States did not result in distinct, separate, and continuous periods of time. Of this \$75,000, \$12,500 ($\$75,000 \times 30/180$) is U.S. source income.

Multiyear compensation. The source of multiyear compensation is generally determined on a time basis over the period to which the compensation is attributable.

Multiyear compensation is compensation that is included in your income in 1 tax year but that is attributable to a period that includes 2 or more tax years.

You determine the period to which the compensation is attributable based on the facts and circumstances of your case. For example, an amount of compensation that specifically relates to a period of time that includes several calendar years is attributable to the entire multiyear period.

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

Geographical Basis

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

- Housing.
- Education.
- Local transportation.
- Tax reimbursement.

- Hazardous or hardship duty pay, as defined in Regulations section 1.861-4(b)(2)(ii)(D)(5).
- Moving expense reimbursement.

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

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

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

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

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

- Rent.
- Utilities (except telephone charges).
- Real and personal property insurance.
- Occupancy taxes not deductible under section 164 or 216(a).

- Nonrefundable fees for securing a leasehold.
- Rental of furniture and accessories.
- Household repairs.
- Residential parking.
- Fair rental value of housing provided in kind by your employer.

A housing fringe benefit does not include:

- Deductible interest and taxes (including deductible interest and taxes of a tenant-stockholder in a cooperative housing corporation);
- The cost of buying property, including principal payments on a mortgage;
- The cost of domestic labor (maids, gardeners, etc.);
- Pay television subscriptions;

- Improvements and other expenses that increase the value or appreciably prolong the life of property;
- Purchased furniture or accessories;
- Depreciation or amortization of property or improvements;
- The value of meals or lodging that you exclude from gross income; or
- The value of meals or lodging that you deduct as moving expenses.

The deduction for moving expenses is available only if you are a member of the U.S. Armed Forces on active duty and move due to a permanent change of duty station.

Education. The source of an education fringe benefit for the education expenses of your dependents is determined based on the location of your principal place of work. An education fringe benefit includes payments

only for the following expenses for education at an elementary or secondary school.

- Tuition, fees, academic tutoring, special needs services for a special needs student, books, supplies, and other equipment.
- Room and board and uniforms that are required or provided by the school in connection with enrollment or attendance.

Local transportation. The source of a local transportation fringe benefit is determined based on the location of your principal place of work. Your local transportation fringe benefit is the amount that you receive as compensation for local transportation for you or your spouse or dependents at the location of your principal place of work. The amount treated as a local transportation fringe benefit is limited to actual expenses incurred for local transportation and the fair rental value of any employer-provided vehicle used predominantly by you, your spouse, or your

dependents for local transportation. Actual expenses do not include the cost (including interest) of any vehicle purchased by you or on your behalf.

Tax reimbursement. The source of a tax reimbursement fringe benefit is determined based on the location of the jurisdiction that imposed the tax for which you are reimbursed.

Moving expense reimbursement. The source of a moving expense reimbursement is generally based on the location of your new principal place of work. However, the source is determined based on the location of your former principal place of work if you provide sufficient evidence that such determination of source is more appropriate under the facts and circumstances of your case. Sufficient evidence generally requires an agreement between you and your employer, or a written statement of company policy, which is reduced to writing before the move and which

is entered into or established to induce you or other employees to move to another country. The written statement or agreement must state that your employer will reimburse you for moving expenses that you incur to return to your former principal place of work regardless of whether you continue to work for your employer after returning to that location. It may contain certain conditions upon which the right to reimbursement is determined as long as those conditions set forth standards that are definitely ascertainable and can only be fulfilled prior to, or through completion of, your return move to your former principal place of work.

Alternative Basis

If you are an employee, you can determine the source of your compensation under an alternative basis if you establish to the satisfaction of the IRS that, under the facts and circumstances of your case, the alternative basis more properly determines

the source of your compensation than the time or geographical basis. If you use an alternative basis, you must keep (and have available for inspection) records to document why the alternative basis more properly determines the source of your compensation. Also, if your total compensation from all sources is \$250,000 or more, check "Yes" to both questions on line K of Schedule OI (Form 1040-NR), and attach a written statement to your tax return that sets forth all of the following.

1. Your name and SSN (entered across the top of the statement).
2. The specific compensation income, or the specific fringe benefit, for which you are using the alternative basis.
3. For each item in (2), the alternative basis of allocation of source used.

4. For each item in (2), a computation showing how the alternative allocation was computed.
5. A comparison of the dollar amount of the U.S. compensation and foreign compensation sourced under both the alternative basis and the time or geographical basis, discussed earlier.

Transportation Income

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

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

United States, 50% of the transportation income is treated as derived from sources in the United States.

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

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

Scholarships, Grants, Prizes, and Awards

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

For example, payments for research or study in the United States made by the United States, a noncorporate U.S. resident, or a domestic corporation are from U.S. sources. Similar payments from a foreign government or foreign corporation are foreign source payments even though the funds may be disbursed through a U.S. agent.

Payments made by an entity designated as a public international organization under the International Organizations Immunities Act are from foreign sources.

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



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

Pensions and Annuities

If you receive a pension from a domestic trust for services performed both in and outside the United States, part of the pension payment is from U.S. sources. That part is the amount attributable to earnings of the pension plan and the employer contributions made for services performed in the United States. This applies whether the distribution is made under a qualified or nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded).

If you performed services as an employee of the United States, you may receive a distribution from the U.S. Government under a plan, such as the Civil Service Retirement System, that is treated as a qualified pension plan. Your U.S. source income is the

otherwise taxable amount of the distribution that is attributable to your total U.S.

Government basic pay other than tax-exempt pay for services performed outside the United States.

Disaster tax relief. If you are required to file a U.S. federal income tax return, you may be entitled to some special disaster-related rules regarding the use of retirement funds. For more information, see [*Pub. 590-B*](#). Also, go to [*IRS.gov/DisasterTaxRelief*](https://www.irs.gov/DisasterTaxRelief).

Tax relief for qualified disaster distributions and repayments. Special rules provide for tax-favored withdrawals and repayments to certain retirement plans (including IRAs) for taxpayers who suffered economic losses because of certain major disasters. For information about reporting qualified disaster distributions and repayments, see Form 8915-F, Qualified Disaster Retirement Plan Distributions and Repayments, and its instructions.

Rents or Royalties

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

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

Real Property

Real property is land and buildings and generally anything built on, growing on, or attached to land.

Gross income from sources in the United States includes gains, profits, and income from the sale or other disposition of real property located in the United States.

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

Personal Property

Personal property is property, such as machinery, equipment, or furniture, that is not real property.

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

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

Inventory property. Inventory property is personal property that is stock in trade or that is held primarily for sale to customers in the ordinary course of your trade or business. Income from the sale of inventory that you purchased is sourced where the property is sold. Generally, this is where title to the property passes to the buyer. For example, income from the sale of inventory in the

United States is U.S. source income, whether you purchased it in the United States or in a foreign country.

Income from the sale of inventory property that you produced in the United States and sold outside the United States (or vice versa) is sourced where the property is produced.

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

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

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

Gain from the sale of depreciable property that is more than the total depreciation adjustments on the property is sourced as if the property were inventory property, as discussed above.

A loss is sourced in the same way as the depreciation deductions were sourced. However, if the property was used predominantly in the United States, the entire loss reduces U.S. source income.

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

Intangible property. Intangible property includes patents, copyrights, secret processes or formulas, goodwill, trademarks, trade names, or other like property. The gain from the sale of amortizable or depreciable intangible property, up to the previously allowable amortization or depreciation deductions, is sourced in the same way as the

original deductions were sourced. This is the same as the source rule for gain from the sale of depreciable property. See Depreciable property, earlier, for details on how to apply this rule.

Gain in excess of the amortization or depreciation deductions is sourced in the country where the property is used if the income from the sale is contingent on the productivity, use, or disposition of that property. If the income is not contingent on the productivity, use, or disposition of the property, the income is sourced according to your tax home (discussed earlier). If payments for goodwill do not depend on its productivity, use, or disposition, their source is the country in which the goodwill was generated.

Sales through offices or fixed places of business. Despite any of the earlier rules, if you do not have a tax home in the United States, but you maintain an office or other

fixed place of business in the United States, treat the income from any sale of personal property (including inventory property) that is attributable to that office or place of business as U.S. source income. However, this rule does not apply to sales of inventory property for use, disposition, or consumption outside the United States if your office or other fixed place of business outside the United States materially participated in the sale.

If you have a tax home in the United States but maintain an office or other fixed place of business outside the United States, income from sales of personal property, other than inventory, depreciable property, or intangibles, that is attributable to that foreign office or place of business may be treated as U.S. source income. The income is treated as U.S. source income if an income tax of less than 10% of the income from the sale is paid to a foreign country. This rule also applies to losses if the foreign country would have

imposed an income tax of less than 10% had the sale resulted in a gain.

Community Income

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

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

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

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

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

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

Separate property income. Income derived from the separate property of one spouse (and which is not earned income, trade or business income, or partnership distributive

share income) is treated as the income of that spouse. That spouse must report all of it on their separate return. Use the appropriate community property law to determine what is separate property.

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

3.

Exclusions From Gross Income

Introduction

Resident and nonresident aliens are allowed exclusions from gross income if they meet certain conditions. An exclusion from gross income is generally income you receive that is not included in your U.S. income and is not subject to U.S. tax. This chapter covers some

of the more common exclusions allowed to resident and nonresident aliens.

Topics

This chapter discusses:

- Nontaxable interest,
- Nontaxable dividends,
- Certain compensation paid by a foreign employer,
- Gain from sale of home, and
- Scholarships and fellowship grants.

Useful Items

You may want to see:

Publication

- ☐ **54** Tax Guide for U.S. Citizens and Resident Aliens Abroad
- ☐ **523** Selling Your Home

See chapter 12 for information about getting these publications.

Resident Aliens

Resident aliens may be able to exclude the following items from their gross income.

Foreign Earned Income and Housing Amount

If you are physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months, you may qualify for the foreign earned income exclusion. The exclusion is \$120,000 in 2023. In addition, you may be able to exclude or deduct certain foreign housing amounts. You may also qualify if you are a bona fide resident of a foreign country and you are a citizen or national of a country with which the United States has an income tax treaty. For more information, see [Pub. 54.](#)

Foreign country. A foreign country is any territory under the sovereignty of a government other than that of the United States.

The term “foreign country” includes the country's territorial waters and airspace, but not international waters and the airspace above them. It also includes the seabed and subsoil of those submarine areas adjacent to the country's territorial waters over which it has exclusive rights under international law to explore and exploit the natural resources.

The term “foreign country” does not include U.S. territories. It does not include the Antarctic region.

Nonresident Aliens

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

Interest Income

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

- Deposits (including certificates of deposit) with persons in the banking business;

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

State and local government obligations.

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

Portfolio interest. Interest and OID that qualifies as portfolio interest is not subject to chapter 3 (of the Internal Revenue Code)

withholding under sections 1441 through 1443. However, such interest may be subject to withholding if it is a withholdable payment, and there is no exception to chapter 4 (of the Internal Revenue Code) withholding under sections 1471 through 1474. For more information, see the discussion of portfolio interest under *Withholding on Specific Income* in [Pub. 515](#).

To qualify as portfolio interest, the interest must be paid on obligations issued after July 18, 1984, and otherwise subject to withholding. For obligations issued after March 18, 2012, portfolio interest does not include interest paid on debt that is not in registered form. Before March 19, 2012, portfolio interest included interest on certain registered and nonregistered (bearer) bonds if the obligations meet the requirements described below.

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 U.S. person. Generally, an obligation is in registered form if:

- The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and any transfer of the obligation may be effected only by surrender of the old obligation and reissuance to the new holder;
- The right to principal and stated interest with respect to the obligation may be transferred only through a book entry system maintained by the issuer or its agent; or
- The obligation is registered as to both principal and stated interest with the issuer or its agent and can be transferred

both by surrender and reissuance and through a book entry system.

An obligation that would otherwise be considered to be in registered form is not considered to be in registered form as of a particular time if it can be converted at any time in the future into an obligation that is not in registered form. For more information on whether obligations are considered to be in registered form, see the discussion of portfolio interest under *Withholding on Specific Income* in [Pub. 515](#).

Obligations not in registered form. For obligations issued before March 19, 2012, 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 U.S. person;

- Interest on the obligation is payable only outside the United States and its territories; and
- The face of the obligation contains a statement that any U.S. person who holds the obligation will be subject to limits under the U.S. 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.

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.

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

1. Interest that is determined by reference to:
 - 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; or
 - Any dividend, partnership distributions, or similar payments made by the debtor or a related person. For exceptions, see section 871(h)(4)(C).
2. Any other type of contingent interest that is identified by the Secretary of the Treasury in regulations.

Related persons. Related persons include the following.

- Members of a family, including only brothers, sisters, half brothers, half sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- Any person who is a party to any arrangement undertaken for the purpose of avoiding the contingent interest rules.
- Certain corporations, partnerships, and other entities. For details, see *Nondeductible Loss* in chapter 2 of [Pub. 544](#).

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

- On or before April 7, 1993; or

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

Dividend Income

The following dividend income is exempt from the 30% tax.

Certain dividends paid by foreign corporations. There is no 30% tax on U.S. source dividends you receive from a foreign corporation. See *Exception* under *Dividends* in chapter 2 for how to figure the amount of U.S. source dividends. This exemption does not apply to dividend equivalent payments.

Certain interest-related dividends. There is no 30% tax on interest-related dividends from sources within the United States that you receive from a mutual fund or other regulated investment company (RIC). The mutual fund will designate in writing which dividends are interest-related dividends.

Certain short-term capital gain

dividends. There may not be any 30% tax on certain short-term capital gain dividends from sources within the United States that you receive from a mutual fund or other RIC. The mutual fund will designate in writing which dividends are short-term capital gain dividends. This tax relief will not apply to you if you are present in the United States for 183 days or more during your tax year.

Services Performed for Foreign Employer

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

Employees of foreign persons, organizations, or offices. Income for personal services performed in the United States as a nonresident alien is not considered to be from U.S. sources and is tax

exempt if you meet all three of the following conditions.

1. You perform personal services as an employee of or under a contract with a nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or territory of the United States by a U.S. corporation, U.S. partnership, or U.S. citizen or resident.
2. You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year.
3. Your pay for these services is not more than \$3,000.

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

If your pay for these services is more than \$3,000, the entire amount is income from a trade or business within the United States. To find if your pay is more than \$3,000, do not include any amounts you get from your employer for advances or reimbursements of business travel expenses, if you were required to and did account to your employer for those expenses. If the advances or reimbursements are more than your expenses, include the excess in your pay for these services.

A “day” means a calendar day during any part of which you are physically present in the United States.

Example 1. During 2023, Henry Smythe, a nonresident alien from a nontreaty country, worked for an overseas office of a U.S.

partnership. Henry, who uses the calendar year as Henry's tax year, was temporarily present in the United States for 60 days during 2023 performing personal services for the overseas office of the partnership. That office paid Henry a total gross salary of \$2,800 for those services. During 2023, Henry was not engaged in a trade or business in the United States. The salary is not considered U.S. source income and is exempt from U.S. tax.

Example 2. The facts are the same as in *Example 1*, except that Henry's total gross salary for the services performed in the United States during 2023 was \$4,500. Henry received \$2,875 in 2023, and \$1,625 in 2024. During 2023, Henry was engaged in a trade or business in the United States because the compensation for Henry's personal services in the United States was more than \$3,000. Henry's salary is U.S. source income and is taxed under the rules in chapter 4.

Crew members. Compensation for services performed by a nonresident alien in connection with the individual's temporary presence in the United States as a regular crew member of a foreign vessel (for example, a boat or ship) engaged in transportation between the United States and a foreign country or U.S. territory is not U.S. source income and is exempt from U.S. tax. This exemption does not apply to compensation for services performed on foreign aircraft.

Students and exchange visitors.

Nonresident alien students and exchange visitors present in the United States under "F," "J," "M," or "Q" visas can exclude from gross income pay received from a foreign employer.

This group includes bona fide students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in a field of specialized knowledge or skill, or

persons of similar description. It also includes the alien's spouse and minor children if they come with the alien or come later to join the alien.

A nonresident alien temporarily present in the United

States under a "J" visa includes an alien individual entering the United States as an exchange visitor under the Mutual Educational and Cultural Exchange Act of 1961.

Foreign employer. A foreign employer is:

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

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

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

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

2. At the time the first amount is paid as an annuity under the plan (or by the trust), 90% or more of the employees for whom contributions or benefits are provided under the annuity plan (or under the plan of which the trust is a part) are U.S. citizens or residents.

If the annuity qualifies under condition (1) but not condition (2) above, you do not have to include the amount in income if:

- You are a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
- You are a resident of a beneficiary developing country under Title V of the Trade Act of 1974.

If you are not sure whether the annuity is from a qualified annuity plan or qualified trust, ask the person who made the payment.

Income affected by treaties. Income of any kind that is exempt from U.S. tax under a treaty to which the United States is a party is excluded from your gross income. Income on which the tax is only limited by treaty, however, is included in gross income. See chapter 9.

Gambling Winnings From Dog or Horse Racing

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

Gain From the Sale of Your Main Home

If you sold your main home, you may be able to exclude up to \$250,000 of the gain on the sale of your home. If you

are married and file a joint return, you may be able to exclude up to \$500,000. For information on the requirements for this exclusion, see [Pub. 523](#).



This exclusion does not apply if you are subject to the expatriation tax rules discussed in chapter 4.

Scholarships and Fellowship Grants

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



If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax.

See Scholarships, Grants, Prizes, and Awards in chapter 2 to determine whether your grant is from U.S. sources.

A scholarship or fellowship is excludable from income only if:

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

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

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

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

Qualified education expenses. These are expenses for:

- Tuition and fees required to enroll at or attend an eligible educational institution; and
- Course-related expenses, such as fees, books, supplies, and equipment that are required for the courses at the eligible educational institution. These items must be required of all students in your course of instruction.

However, in order for these to be qualified education expenses, the terms of the scholarship or fellowship cannot require that it be used for other purposes, such as room

and board, or specify that it cannot be used for tuition or course-related expenses.

Expenses that do not qualify. Qualified education expenses do not include the cost of:

- Room and board,
- Travel,
- Research,
- Clerical help, or
- Equipment and other expenses that are not required for enrollment in or attendance at an eligible educational institution.

This is true even if the fee must be paid to the institution as a condition of enrollment or attendance. Scholarship or fellowship amounts used to pay these costs are taxable.

Amounts used to pay expenses that do not qualify. A scholarship amount used to pay any expense that does not qualify is taxable, even if the expense is a fee that must be paid to the institution as a condition of enrollment or attendance.

Payment for services. You cannot exclude from income the portion of any scholarship, fellowship, or tuition reduction that represents payment for past, present, or future teaching, research, or other services. This is true even if all candidates for a degree are required to perform the services as a condition for receiving the degree.

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

more than \$1,500 from income as a qualified scholarship.

4.

How Income of Aliens Is Taxed

Introduction

Resident and nonresident aliens are taxed in different ways. Resident aliens are generally taxed in the same way as U.S. citizens.

Nonresident aliens are taxed based on the source of their income and whether or not their income is effectively connected with a U.S. trade or business. The following discussions will help you determine if income you receive during the tax year is effectively connected with a U.S. trade or business and how it is taxed.

Topics

This chapter discusses:

- Income that is effectively connected with a U.S. trade or business,
- Income that is not effectively connected with a U.S.
- trade or business,
- Interrupted period of residence, and
- Expatriation tax.

Useful Items

You may want to see:

Publication

- ☐ **1212** Guide to Original Issue (OID) Instruments

Form (and Instructions)

- ☐ **6251** Alternative Minimum Tax—Individuals

❑ **Schedule D (Form 1040)** Capital Gains and Losses

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

Resident Aliens

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

Nonresident Aliens

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

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

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



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

Trade or Business in the United States

Generally, you must be engaged in a trade or business during the tax year to be able to

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

Personal Services

If you perform personal services in the United States at any time during the tax year, you are usually considered engaged in a trade or business in the United States.



Certain compensation paid to a nonresident alien by a foreign employer is not included in gross income. For more information, see Services Performed for Foreign Employer in chapter 3.

Other Trade or Business Activities

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

Students and trainees. If you are temporarily present in the United States as a nonimmigrant under an “F,” “J,” “M,” or “Q” visa, and not otherwise engaged in a trade or business, you are considered to be engaged in a trade or business in the United States if you have taxable income from participation in a scholarship or fellowship described in section 1441(b). The taxable part of any scholarship or fellowship grant that is U.S. source income is treated as effectively connected with a trade or business in the United States.

Note. A nonresident alien temporarily present in the United States under a “J” visa includes a nonresident alien individual admitted to the United States as an exchange visitor under the Mutual Educational and Cultural Exchange Act of 1961.

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

with certain exceptions, engaged in a trade or business in the United States.

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

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

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

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

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

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

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

States or is done by your employee or your broker or other agent.

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

Effectively Connected Income

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

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

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

Investment Income

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

1. Fixed or determinable income (interest, dividends, rents, royalties, premiums, annuities, etc.).
2. Gains (some of which are considered capital gains) from the sale or

exchange of the following types of property.

- Timber, coal, or domestic iron ore with a retained economic interest.
- Patents, copyrights, and similar property on which you receive contingent payments after October 4, 1966.
- Patents transferred before October 5, 1966.
- OID obligations.

3. Capital gains (and losses).

Use the two tests described next to determine whether an item of U.S. source income falling in one of the three categories above and received during the tax year is effectively connected with your U.S. trade or business. If the tests indicate that the item of income is effectively connected, you must include it with your other effectively connected income.

If the item of income is not effectively connected, include it with all other income discussed under The 30% Tax, later, in this chapter.

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

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

- Held for the principal purpose of promoting the conduct of a trade or business in the United States;
- Acquired and held in the ordinary course of the trade or business conducted in the United States (for example, an account

receivable or note receivable arising from that trade or business); or

- Otherwise held to meet the present needs of the trade or business in the United States and not its anticipated future needs.

Generally, stock of a corporation is not treated as an asset used in, or held for use in, a trade or business in the United States.

Business-activities test. This test usually applies when income, gain, or loss comes directly from the active conduct of the trade or business. The business-activities test is most important when:

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

- Service fees are earned by a servicing business.

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

Personal Service Income

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

income may be paid to you in the form of cash, services, or property.

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

Pensions. If you performed personal services in the United States after 1986, and in a later tax year, you receive pension or retirement distributions attributable to these services when you are a nonresident alien, such distributions are effectively connected income to the extent attributable to contributions. This is true whether or not you are engaged in a U.S. trade or business in the year you

receive the pension or retirement distributions.

Transportation Income

Transportation income (defined in chapter 2) is effectively connected if you meet both of the following conditions.

1. You had a fixed place of business in the United States involved in earning the income.
2. At least 90% of your U.S. source transportation income is attributable to regularly scheduled transportation.

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

definition applies to both scheduled and chartered air transportation.

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

Business Profits and Losses and Sales Transactions

All profits or losses from U.S. sources that are from the operation of a business in the United States are effectively connected with a trade or business in the United States. For example, profit from the sale in the United States of inventory property purchased either in this country or in a foreign country is effectively connected trade or business income. A share of U.S. source profits or losses of a partnership that is engaged in a trade or business in the United States is also effectively connected with a trade or business in the United States.

Real Property Gain or Loss

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

U.S. real property interest. This is any interest in real property located in the United States or the U.S. Virgin Islands or any interest (other than as a creditor) in a domestic corporation that is a U.S. real property holding corporation. Real property includes the following.

1. Land and unsevered natural products of the land, such as growing crops and timber, and mines, wells, and other natural deposits.

2. Improvements on land, including buildings, other permanent structures, and their structural components.
3. Personal property associated with the use of real property, such as equipment used in farming, mining, forestry, or construction or property used in lodging facilities or rented office space, unless the personal property is:
 - a. Disposed of more than 1 year before or after the disposition of the real property, or
 - b. Separately sold to persons unrelated either to the seller or to the buyer of the real property.

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

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

Stock in any domestic corporation is treated as stock in a U.S. real property holding corporation unless you establish that the corporation is not a U.S. real property holding corporation.