

# 2010

# Instructions for Form 1042



Department of the Treasury  
Internal Revenue Service

## Annual Withholding Tax Return for U.S. Source Income of Foreign Persons

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

### General Instructions

#### What's New

**Federal tax deposits must be made by electronic funds transfer.** Beginning January 1, 2011, you must deposit all withheld taxes by electronic funds transfer. Forms 8109 and 8109-B, Federal Tax Deposit Coupon, cannot be used after December 31, 2010. Generally, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, or other trusted third party to make deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day tax wire payment on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, or other third party may have a fee. For more information on making federal tax deposits, see *Deposit Requirements* on page 2. To get more information about EFTPS or to enroll in EFTPS, visit [www.eftps.gov](http://www.eftps.gov) or call 1-800-555-4477. Additional information about EFTPS is also available in Pub. 966, *The Secure Way to Pay Your Federal Taxes*.

**Foreign partners.** Instructions are clarified on the time the tax liability arises for withholding tax on distributive shares of foreign partners of U.S. partnerships. See page 3.

**Substitute dividend payments.** If you made substitute dividend payments after September 13, 2010, the due date for the deposit of tax withheld on these payments is extended. See *Substitute dividend payments* in *Where and When To File* on page 2. Also, you may want to file for an extension of time to file Form 1042. See *Deposits of tax on substitute dividend payments* in *Deposit Requirements* on page 2.

**Distributions from certain regulated investment companies.** The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended the treatment of a regulated investment company (RIC) as a qualified investment entity (QIE), effective as of January 1, 2010. As a result, withholding under section 1445 continues to be required for certain distributions by a RIC that is a QIE. However, no withholding is required under section

1445 on such distributions made between January 1, 2010, and December 16, 2010. If a RIC that is a QIE made distributions during that time and you withheld and deposited tax under section 1445 with respect to such distributions, you are not required to refund the tax to the foreign person.

#### Purpose of Form

Use Form 1042 to report tax withheld on certain income of foreign persons, including nonresident aliens, foreign partnerships, foreign corporations, foreign estates, and foreign trusts.

**Publicly traded partnerships (section 1446 withholding tax).** For purposes of reporting on Form 1042, a publicly traded partnership (PTP) must withhold section 1446 tax on distributions of effectively connected income (ECI) to its foreign partners. A nominee that receives a distribution of ECI from a PTP and is treated as the withholding agent must use Form 1042 to report the tax withheld. For this purpose, a nominee is a domestic person holding an interest in the PTP on behalf of one or more foreign partners. For more information, see Regulations section 1.1446-4 and Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

#### Who Must File

Every withholding agent or intermediary (see definitions below) who receives, controls, has custody of, disposes of, or pays any fixed or determinable annual or periodical income must file an annual return for the preceding calendar year on Form 1042. Also, any PTP or nominee making a distribution of ECI under section 1446 must file Form 1042 for the preceding calendar year.

You must file Form 1042 if either of the following applies.

- You are required to file Form(s) 1042-S (whether or not any tax was withheld or was required to be withheld). File Form 1042 even if you file Forms 1042-S electronically.
- You pay gross investment income to foreign private foundations that are subject to tax under section 4948(a).

#### Withholding Agent

Any person required to withhold tax is a withholding agent. A withholding agent may be an individual, trust, estate, partnership, corporation, nominee (under section 1446), government agency, association, or tax-exempt foundation, whether domestic or foreign.

**Liability for tax.** As a withholding agent, you are personally liable for any tax required to be withheld. 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 are not liable for the tax but remain liable for any interest and penalties for failure to withhold.

#### Intermediary

An intermediary is a person who acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

**Qualified intermediary (QI).** A QI is an intermediary that is a party to a withholding agreement with the IRS. An entity must indicate its status as a QI on a Form W-8IMY submitted to a withholding agent.

For information on a QI withholding agreement, see:

- Rev. Proc. 2000-12, which is on page 387 of Internal Revenue Bulletin 2000-4 at [www.irs.gov/pub/irs-irbs/irb00-04.pdf](http://www.irs.gov/pub/irs-irbs/irb00-04.pdf);
- Notice 2001-4, which is on page 267 of Internal Revenue Bulletin 2001-2 at [www.irs.gov/pub/irs-irbs/irb01-02.pdf](http://www.irs.gov/pub/irs-irbs/irb01-02.pdf);
- Rev. Proc. 2003-64, Appendix 3, 2003-32 I.R.B. 306, available at [www.irs.gov/irb/2003-32\\_IRB/ar19.html](http://www.irs.gov/irb/2003-32_IRB/ar19.html);
- Rev. Proc. 2004-21, 2004-14 I.R.B. 702, available at [www.irs.gov/irb/2004-14\\_IRB/ar10.html](http://www.irs.gov/irb/2004-14_IRB/ar10.html); and
- Rev. Proc. 2005-77, 2005-51 I.R.B. 1176, available at [www.irs.gov/irb/2005-51\\_IRB/ar13.html](http://www.irs.gov/irb/2005-51_IRB/ar13.html).

**Withholding foreign partnership (WP) or withholding foreign trust (WT).** A WP or WT is a foreign partnership or trust that has entered into a withholding agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners. For information on these withholding agreements, see Rev. Proc. 2003-64, Appendix 1 and Appendix 2. Also see Rev. Proc. 2004-21 and Rev. Proc. 2005-77.

**Nonqualified intermediary (NQI).** An NQI is any intermediary that is not a U.S. person and that is not a QI.

**Qualified securities lender (QSL).** A QSL is a foreign financial institution that is a bank, custodian, broker-dealer, or clearing organization subject to regulatory supervision in its home jurisdiction and that is:

1. Regularly engaged in the business of borrowing securities of U.S. corporations and lending such securities to unrelated customers; and
2. Subject to audit by the IRS under section 7602 or, in the case of a QL, an external auditor.

For further information about QSL status and the withholding requirements for substitute dividend payments, see Notice 2010-46, 2010-24 I.R.B. 757, available at [www.irs.gov/irb/2010-24\\_IRB/ar09.html](http://www.irs.gov/irb/2010-24_IRB/ar09.html).

## Where and When To File

Mail Form 1042 by March 15, 2011, to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

Use Form 1042-T to transmit paper Forms 1042-S.

**Extension of time to file.** If you need more time to file Form 1042, you may submit Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

Form 7004 does not extend the time for payment of tax.

**Substitute dividend payments.** If you made substitute dividend payments after September 13, 2010, you have an automatic six-month extension to send Form 1042-S to any recipient of these payments and to file this Form 1042-S with the IRS. You must do one of the following.

1. File Form 7004 to request an extension of time to file Form 1042.
2. File Form 1042 by March 15, 2011, to report information for all Forms 1042-S that do not include substitute dividend payments and file an amended Form 1042 to include information from all Forms 1042-S.

See *Amended Returns* on page 5.

## Additional Information

For details on the withholding of tax, see Pub. 515. You can get Pub. 515 by calling 1-800-TAX-FORM (1-800-829-3676) or by downloading it from IRS.gov. Click on "Forms and Publications," and then on "Publication number."

## Need Assistance?

If you need help completing Form 1042, call 267-941-1000 (not a toll-free number) from 6:00 a.m. to 11:00 p.m., Eastern time, or write to:

Internal Revenue Service  
International Section  
Philadelphia, PA 19255-0525

## Income Tax Withholding on Wages, Pensions, Annuities, and Certain Other Deferred Income

Use Form 941, Employer's QUARTERLY Federal Tax Return, to report income tax withheld and social security and Medicare taxes on wages paid to a nonresident alien employee.

Use Form 945, Annual Return of Withheld Federal Income Tax, to report income tax withheld under section 3405 from pensions, annuities, and certain other deferred income paid to a nonresident alien individual. However, if the recipient has elected under section 3405(a)(2) or (b)(2) not to have withholding under section 3405, these payments are subject to withholding under section 1441 and the tax withheld must be reported using Forms 1042 and 1042-S.

Use Schedule H (Form 1040), Household Employment Taxes, to report income tax withheld and social security and Medicare taxes on wages paid to a nonresident alien household employee.

## Deposit Requirements

You are required to use the Electronic Federal Tax Payment System (EFTPS), discussed later on this page, to deposit the tax withheld and required to be shown on Form 1042.



*To avoid a penalty, do not mail your deposits directly to the IRS.*

The amount of tax you are required to withhold determines the frequency of your deposits. The following rules explain how often deposits must be made

1. 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 business 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.) A business day is any day other than a Saturday, Sunday, or legal holiday in the District of Columbia.

This deposit rule is considered met if:

- You deposit at least 90% of the actual tax liability for the deposit period, and
  - If the quarter-monthly period is in a month other than December, you deposit any underpayment with your first deposit that is required to be made after the 15th day of the following month. Any underpayment of \$200 or more for a quarter-monthly period ending in December must be deposited by January 31.
2. If at the end of any month the total amount of undeposited taxes is at least \$200 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 any month

except December under rule 1, earlier, carry over any end-of-the-month balance of less than \$2,000 to the next month. If you make 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 March 15, 2011.

3. 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 deposit the entire amount by March 15, 2011.

**Note.** If you are requesting an extension of time to file using Form 7004, follow these rules to see if you must make a deposit of any balance due or if you can pay it with Form 7004. See Form 7004 and its instructions for more information.

**Deposit of tax on substitute dividend payments.** If you made substitute dividend payments after September 13, 2010, you do not need to deposit the tax relating to such payments until January 31, 2011. See Notice 2010-46.

To report the tax liabilities associated with any deposits made with respect to substitute dividend payments after the date otherwise due in reliance on Notice 2010-46, report the tax liabilities associated with such deposits in the period(s) in which made. If you made any such deposit after December 31, 2010, for the 2010 tax year, report the associated tax liability on line 59.



*If you deposited any tax payments in reliance on Notice 2010-46 and updated your associated tax liabilities following the procedures outlined directly above, print or type in the upper right corner of Form 1042 "RELIED ON NOTICE 2010-46."*

**Electronic deposit requirement.** You must make electronic deposits of all depository tax liabilities using EFTPS. If you fail to use EFTPS, you may be subject to a 10% penalty. To enroll in or get more information about EFTPS, call 1-800-555-4477 or visit [www.eftps.gov/eftps](http://www.eftps.gov/eftps). Information is also available at [www.irs.gov/e-pay](http://www.irs.gov/e-pay).

**Depositing on time.** For deposits made by EFTPS to be on time, you must initiate the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If you use a third party to make deposits on your behalf, they may have different cutoff times.


**Same-day payment option.** If you fail to initiate a deposit transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, you still can make your deposit on time by using the Federal Tax Application. If you ever need the same-day payment method, you will need to make arrangements with your financial institution ahead of time. Check with your financial institution regarding availability, deadlines, and costs. Your financial institution may charge you a fee for payments made this way. To learn more about the information you will need to

provide to your financial institution to make a same-day wire payment, visit [www.eftps.gov](http://www.eftps.gov) to download the *Same-Day Payment Worksheet*.

**Note.** All payments should be made in U.S. dollars.

## Interest and Penalties

If you file Form 1042 late, or fail to pay or deposit the tax when due, you may be liable for penalties and interest unless you can show that the failure to file or pay was due to reasonable cause and not willful neglect.

 **TIP** You do not have to figure the amount of any interest or penalties you may owe. Because figuring these amounts can be complicated, we will do it for you if you want. We will send you a bill for any amount due.

If you include interest or penalties (other than the penalty for failure to deposit tax when due) with your payment, identify and enter the amount in the bottom margin of Form 1042. Do not include interest or penalties (other than the penalty for failure to deposit tax when due) in the balance due on line 68.

**Interest.** Interest is charged on taxes not paid by the due date, even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, and substantial understatements of tax from the due date (including extensions) to the date of payment. Interest is figured at a rate determined under section 6621.

**Late filing of Form 1042.** The penalty for not filing Form 1042 when due (including extensions) is 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax.


**Late payment of tax.** The penalty for not paying tax when due is usually 1/2 of 1% of the unpaid tax for each month or part of a month the tax is unpaid. The penalty cannot exceed 25% of the unpaid tax.

**Failure to deposit tax when due.** See the instructions for line 70 on page 4.

**Special rule for 2011.** Notice 2010-87, 2010-52 I.R.B. 908, available at [www.irs.gov/irb/2010-52\\_IRB/ar12.html](http://www.irs.gov/irb/2010-52_IRB/ar12.html), provides that the IRS will not assert penalties for deposits due during calendar year 2011 that are untimely only because you relied on a statewide legal holiday rather than a legal holiday in the District of Columbia.

**Other penalties.** Penalties may be imposed for negligence, substantial understatement of tax, and fraud. See sections 6662 and 6663.

## Specific Instructions

 **CAUTION** File only one Form 1042 consolidating all Form 1042-S recipient information, regardless of the number of different clients, branches,

divisions, or types of income for which you are the withholding agent. However, if you are acting in more than one capacity (for example, you are acting as a QI for certain designated accounts and as an NQI for other accounts), file a separate Form 1042 for each capacity in which you are acting.

**Rounding off to whole dollars.** You can round off cents to whole dollars. If you do round to whole dollars, you must round all amounts. To round, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. For example, \$1.39 becomes \$1 and \$2.50 becomes \$3. If you have to add two or more amounts to figure the amount to enter on a line, include cents when adding and only round off the total.

**Employer identification number (EIN).** You are generally required to enter your EIN. However, if you are filing Form 1042 as a QI, withholding foreign partnership, or withholding foreign trust, enter your QI-EIN, WP-EIN, or WT-EIN. Also, be sure to check the "QI/Withholding foreign partnership or trust" box. See *QI and NQI checkboxes* below.

If you do not have an EIN, you can apply for one online at [www.irs.gov/businesses](http://www.irs.gov/businesses). Click on "Employer ID Numbers (EINs)," and then on "Apply for an EIN Online." You can apply for an EIN by telephone at 1-800-829-4933. You also can file Form SS-4, Application for Employer Identification Number, by fax or mail. File amended Forms 1042-S when you receive your EIN.

To get a QI-EIN, WP-EIN, or WT-EIN, submit Form SS-4 with your application for that status. Do not send an application for a QI-EIN, WP-EIN, or WT-EIN to the addresses listed in the Instructions for Form SS-4. Send the application along with Form SS-4 to:

Internal Revenue Service  
LB & I: International: QI Group 1031  
290 Broadway, 12th floor  
New York, NY 10007-1867 USA

If you are a QSL that is also a QI, enter your QI-EIN. Otherwise enter the EIN you have been assigned.

**Address.** Include the suite, room, or other unit number after the street address. If your post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

**QI and NQI checkboxes.** See page 1 for definitions of intermediary, qualified intermediary (QI), withholding foreign partnership (WP), withholding foreign trust (WT), and nonqualified intermediary (NQI). See the Form 1042-S instructions for definitions of U.S. branch treated as a U.S. person and flow-through entity.

Check the "QI/Withholding foreign partnership or trust" box if you are a QI, WP, WT, or a U.S. branch treated as a U.S. person. Check the "NQI/

Flow-through entity" box if you are an NQI or a flow-through entity.

**Lines 1 through 60.** Except as otherwise provided in these instructions, include tax liability for the period in which the income was distributed. Do not enter any negative amounts on these lines.

**Foreign partners of U.S. partnerships.** To the extent that a domestic partnership has not distributed a foreign partner's distributive share of income subject to withholding under section 1441, it should not include any tax liability on lines 1 through 60 for tax relating to the partner's distributive share in the year the partnership earns the income. For distributive shares not actually distributed, the partnership must include any tax liability on lines 1 through 60 of the Form 1042 for the following year. Include the tax liability on the line that represents the earlier of the following dates.


- The date on which the Schedule K-1 (Form 1065) is sent or otherwise furnished to the foreign partner.
- The due date for furnishing Schedule K-1 (Form 1065) to the partner.

Include such tax liability for the period that includes the date the tax was required to be withheld.

**Example.** In 2009, USP, a U.S. partnership, has foreign partners. The withholding tax relating to the distributive shares of the foreign partners was \$120. USP made no distributions in 2009. On the 2009 Form 1042, USP did not enter any amount as tax liability on lines 1 through 60, because it did not distribute any amounts.

USP made a distribution on February 10, 2010, that related to the 2009 distributive shares of the foreign partners. USP withheld \$100 at the time of the distribution. USP sent the 2009 Schedules K-1 (Form 1065) to its partners on April 2, 2010.

On the 2010 Form 1042, USP entered \$100 on line 7. This is the tax liability for the period (February 8 through 15) during which it made a distribution. USP entered \$20 on line 16. This is the tax liability for the period (April 1 through 7) during which it furnished the Schedules K-1 (Form 1065) to the partners.

 **TIP** Use Form 8804 to report withholding tax liability on the partnership's income effectively connected with a U.S. trade or business.

**Corporate distributions.** Do not include on lines 1 through 60 any tax liability caused by adjustments of underwithheld tax on corporate distributions made in calendar year 2010 if the following apply.

- The distributing corporation made a reasonable estimate of accumulated and current earnings and profits under Regulations section 1.1441-3(c)(2)(ii)(A); and
- The distributing corporation or intermediary paid over the underwithheld tax by March 15, 2011.

Instead, include these payments of underwithheld tax on line 63b.

**Qualified intermediaries with no primary withholding responsibility.** If you are a QI that did not assume primary withholding responsibility, enter the total amount withheld by the U.S. withholding agent(s) on line 59. Report all other amounts (that is, amounts you actually withheld) on the line that corresponds with the date the liability was incurred.

**Overwithholding.** If you repaid the recipient for an amount overwithheld by reducing the amount withheld on a later payment, report the reduced amount on these lines. If you used the reimbursement procedure for overwithheld amounts, see *Adjustment for Overwithholding* on this page.

**Line 61.** Enter the number of Forms 1042-S filed on paper and electronically.

**Lines 62a and 62b.** Enter the amounts requested for all Forms 1042-S (regardless of whether the form was filed electronically or on paper) and for all Forms 1000, Ownership Certificate.



*Be sure to reconcile amounts on Form 1042 with amounts on Forms 1042-S (including Forms 1042-S filed electronically), to avoid unnecessary correspondence with the IRS.*

**Line 62a.** The amount on line 62a should equal the sum of all amounts shown on Forms 1042-S, box 2, and all amounts shown as gross interest paid on Forms 1000.

**Line 62b.** The amount on line 62b should equal:

- The sum of all Forms 1042-S, box 9 (box 7 plus box 8), less
- The sum of all Forms 1042-S, box 10, plus
- The tax assumed from Forms 1000.

If it does not, attach a statement to Form 1042 explaining the difference.

**Line 63a.** The amount on line 63a must equal the sum of the monthly totals as listed on the Record of Federal Tax Liability. Do not make any adjustments on this line. Except for adjustments described in the instructions for line 63b, you may only make adjustments on the appropriate entry line of the Record of Federal Tax Liability.

**Line 63b.** Include on line 63b any tax liability resulting from adjustments of underwithheld tax on corporate distributions made in calendar year 2010 if:

- The distributing corporation made a reasonable estimate of accumulated and current earnings and profits under Regulations section 1.1441-3(c)(2)(ii)(A), and
- The distributing corporation or intermediary paid over the underwithheld tax by March 15, 2011.

If you are a regulated investment company (RIC), real estate investment trust (REIT), or personal holding company (PHC) that paid a dividend subject to

section 852(b)(7), section 857(b)(9), or section 563(b) (relating to certain dividends declared in the preceding October, November, or December), enter your additional tax liability on those dividends declared in 2010 but paid no later than March 15, 2011, less any additional tax liability on those dividends declared in 2009 but paid no later than March 15, 2010. Show any negative amount in brackets. Attach a statement showing your calculation.

**Line 64.** Enter the total tax deposits you made (including amounts paid with an extension of time to file).

**Line 66.** You are permitted to take a credit for amounts withheld by other withholding agents that relate to the total net tax liability reported on line 63c. For example, you are a QI and the amount you entered on line 63c includes amounts withheld by a U.S. withholding agent. You may take a credit on line 66 for the amounts that were withheld by the U.S. withholding agent. The amount on line 66 should equal the sum of all Forms 1042-S, box 8, that you file for the year.

**Note.** All withholding agents (QIs and NQIs) must verify entries on Line 66 by attaching supporting Form(s) 1042-S, issued to you, to verify the credit amounts claimed.



*If you are a QI requesting a refund, you must attach the corresponding Form(s) 1042-S received to support the amount claimed on line 66. Failure to do so will result in the denial of the refund or credit being claimed. If you are a PTP or a nominee withholding under section 1446, the tax paid for a payee may only be claimed as a credit by the payee.*



*If you are a QSL or other withholding agent claiming a credit forward of prior withholding on substitute dividends as determined under Notice 2010-46 paid after September 13, 2010, you should attach Form(s) 1042-S issued to you to support such credits. If a credit is claimed with respect to any U.S. source substitute dividends paid to you from a withholding agent that has not issued a Form 1042-S to you for such payments, attach a supporting statement to Form 1042 indicating the following:*

- *The withholding agent's name, address, and EIN (if known);*
- *The amount of U.S. source substitute dividends received from the withholding agent after September 13, 2010; and*
- *The amount of credit forward you included on line 66 in connection with these substitute dividends.*

**Lines 69 and 71.** You may claim an overpayment shown on line 69 as a refund or a credit. Check the applicable box on line 71 to show which you are claiming. If you claim a credit, it can reduce your required deposits of withheld tax for 2011.

**Line 70.** The penalty for failure to deposit tax applies to the amount underpaid when the deposit was due. See

*Deposit Requirements* on page 2. The penalty rates are 2% for deposits made 1 to 5 days late, 5% for deposits made 6 to 15 days late, and 10% for deposits made 16 or more days late. However, the penalty is 15% if the tax is not deposited within 10 days after the IRS issues the first notice demanding payment. Add the penalty to any tax due and enter the total on line 68. If you are due a refund, subtract the penalty from the overpayment you show on line 69.

For information on other penalties, see *Interest and Penalties* on page 3.

## Adjustment For Overwithholding

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

**Overwithholding discovered by March 15 of the following calendar year.** If you discover that you overwithheld tax by March 15 of the following calendar year, you may use any undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. Repay the recipient and reduce the amount of your total deposit. Report the reduced tax liability on lines 1 through 60 for the period(s) for which you repaid the overwithheld tax.

If the undeposited amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, 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 beneficial owner or payee 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 overwithhold tax in 2010, you must repay the beneficial owner by March 15, 2011. You must keep a receipt showing the date and amount of the repayment and provide a copy of the receipt to the beneficial 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.

Report the reduced tax liability on lines 1 through 60 for the period for which you reimbursed the overwithheld tax. Report the total tax withheld as your total deposits. Indicate on line 71 whether you want a refund or a credit.

**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 was overwithheld, or
- March 15 of the year after the calendar year in which the amount was overwithheld.

Report the reduced tax liability on lines 1 through 60.

**Overwithholding discovered at a later date.** If you discover after March 15 of the following calendar year that you overwithheld tax for the prior year, do not adjust the amount of tax liability reported on 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, Form 1040NR-EZ, or Form 1120-F) or, if a tax return has already been filed, a claim for refund (Form 1040X or amended Form 1120-F) to recover the amount overwithheld.

## Third Party Designee

If you want to allow any individual, corporation, firm, organization, or partnership to discuss your 2010 Form 1042 with the IRS, check the "Yes" box in the Third Party Designee section of the return. Also, enter the designee's name, phone number, and any five digits the designee chooses as his or her personal identification number (PIN). The authorization applies only to the tax form upon which it appears.

If you check the "Yes" box, you are authorizing the IRS to call the designee to answer any questions relating to the information reported on your tax return. You also are authorizing the designee to:

- Exchange information concerning your tax return with the IRS, and
- Request and receive written tax return information relating to your tax return,

including copies of specific notices, correspondence, and account transcripts.

You are not authorizing the designee to receive any refund check, bind you to anything (including additional tax liability), or otherwise represent you before the IRS. If you want to expand the designee's authorization, see Pub. 947, Practice Before the IRS and Power of Attorney.

The authorization automatically expires one year from the due date (without any extensions) for filing your 2010 Form 1042. If you or your designee desires to terminate the authorization, a written statement conveying your wish to revoke the authorization should be submitted to the IRS service center where the return was processed.

## Amended Return

If you have to make changes to your Form 1042 after you submit it, file an amended Form 1042. Use a Form 1042 for the year you are amending. Check the "Amended Return" box at the top of the form. You must complete the entire form, including all filing information for the calendar year, and sign the return. Attach a statement explaining why you are filing an amended return (for example, you are filing because the tax liability for May was incorrectly reported due to a mathematical error).

If you also are amending Form(s) 1042-S, see *Amended Returns* in the Form 1042-S instructions.

Do not amend Form 1042 to recover taxes overwithheld in the prior year. For more information, see *Adjustment for Overwithholding* on page 4.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Sections 1441, 1442, and 1446 (for PTPs) require withholding agents to report and pay over to the IRS taxes withheld from certain U.S. source income of foreign persons. Form 1042 is used to report the amount of withholding that

must be paid over. Form 1042-S is used to report the amount of income and withholding to the payee. Section 6109 requires you to provide your identifying number on the return. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. If you fail to provide this information in a timely manner, you may be liable for penalties and interest.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file these forms will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 9 hr., 48 min.; **Learning about the law or the form**, 2 hr., 25 min.; **Preparing the form**, 4 hr., 33 min.; and **Copying, assembling, and sending the form to the IRS**, 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where and When To File* on page 1.

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