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U.S. Tax Guide for Aliens  
For use in preparing 2003 Returns

Introduction

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

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

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Answers to frequently asked questions are presented in the back of the publication. The information in this publication is not as comprehensive for resident aliens as it is for nonresident aliens. Resident aliens are generally treated the same as U.S. citizens and can find more information in other IRS publications.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions. You can e-mail us at *taxforms@irs.gov*. Please put "Publications Comment" on the subject line. You can write to us at the following address:

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

Important Changes for 2003

Reduced tax rates. The tax rates of 27%, 30%, 35%, and 38.6% have been reduced to 25%, 28%, 33%, and 35% respectively. The 10% tax rate applies to the first $7,000 of taxable income (the first $10,000 of taxable income if head of household; the first $14,000 of taxable income if married filing jointly or qualifying widow(er)). These changes are reflected in the tax tables and tax rate schedules in your tax form instructions.

Married people — increased tax benefits. The standard deduction for most joint filers has increased to $9,500 (twice that of single filers). For most resident aliens filing a separate return, the standard deduction has increased to $4,750 (the same amount as single filers).

Also, the 15% tax bracket for joint filers has been expanded to cover twice the income range as that of single filers. For people filing a separate return, the 15% tax bracket is the same as that of single filers. These changes are reflected in the tax table and Tax Rate schedules found in your tax package.

Qualifying widow(er) — increased tax benefits. For most resident aliens, the standard deduction has been increased to $9,500 (twice that of single filers).

Also, the 15% tax bracket has been expanded to cover twice the income range as that of single filers. This change is reflected in the Tax table and Tax Rate Schedules found in your tax package.

Child tax credits increased. You may be able to take credits of up to $1,000 for each qualifying child. However, see Advance child tax credit payment, next.
Advance child tax credit payment. You must reduce your 2003 child tax credits by any advance child tax credit payment you received in 2003. The amount of your advance payment (before offset) is shown on Notice 1319. This notice was mailed to you in 2003. If you do not have this notice, you can check the amount of your advance payment (before offset) on the IRS website at www.irs.gov or call us at 1–800–829–1040. See your tax form instructions for more information.

Dividends—new tax rate. The maximum tax rate for qualified dividends is 15% (5% for people whose other income is taxed at the 10% or 15% rate). For nonresident aliens, this rate applies only to dividends that are effectively connected with a U.S. trade or business. See your form instructions for more information.

Capital gains—maximum tax rate reduced. The maximum tax rate for most net capital gain after May 5, 2003 is 15% (5% for people whose other income is taxed at the 10% or 15% rate). For nonresident aliens, this rate applies only to capital gains that are effectively connected with a U.S. trade or business. Use Schedule D (Form 1040), the Schedule D Tax Worksheet, or the Qualified Dividends and Capital Gain Tax Worksheet in your tax form instructions, whichever applies, to figure your tax.

Child and dependent care credit increased. You may be able to take a credit of up to $1,050 for the expenses you paid for the care of one qualifying person; $2,100 if you paid for the care of two or more qualifying persons. See the instructions for Form 2441, Child and Dependent Care Expenses.

Adoption benefits increased. The maximum credit and exclusion of employer-provided adoption benefits has increased to $10,160 for each eligible child. If you adopted a child with special needs, you may be able to take the maximum credit and exclusion regardless of the amount of expenses. See Publication 966, Tax Benefits for Adoption.

IRA deduction allowed to more people covered by retirement plans. You may be able to take an IRA deduction if you were covered by a retirement plan and your 2003 modified AGI is less than $50,000 ($70,000 if a qualifying widow(er)).

Third party designee. A third party designee can ask the IRS for copies of notices or transcripts related to your return. Also, the authorization can be revoked. See your income tax package for details.

Important Change for 2004

IRA deduction allowed to more people covered by retirement plans. You may be able to take an IRA deduction if you were covered by a retirement plan and your 2004 modified AGI is less than $55,000 ($75,000 if a qualifying widow(er)).

Important Reminders

Individual taxpayer identification number (ITIN). If you are a nonresident or resident alien and you do not have and are not eligible to get a social security number, you must apply for an ITIN. For details on how to do so, see Form W–7, Application for IRS Individual Taxpayer Identification Number, and its instructions. If you already have an ITIN, enter it wherever an SSN is requested on your tax return.

An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law. See Identification Number in chapter 5.

Disclosure of a treaty-based position that reduces your tax. If you take the position that any U.S. tax is overruled or otherwise reduced by a U.S. treaty (a treaty-based position), you generally must disclose that position on your return. Failure to disclose a treaty-based position may result in a $1,000 penalty for each failure. See Reporting Treaty Benefits Claimed in chapter 9.

Form 1040NR–EZ. You may be able to use Form 1040NR–EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents. This form is shorter and easier to prepare than Form 1040NR. To see if you meet the conditions for filing this form, see Form 1040NR–EZ in chapter 7.

Earned income credit for nonresident aliens. If you are a nonresident alien for any part of the year, you cannot claim the earned income credit unless you are married and choose to be treated as a resident alien for the entire year. See Choosing Resident Alien Status and Nonresident Spouse Treated as a Resident in chapter 1.

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

Leaving the United States. Generally, aliens must obtain a sailing permit or departure permit before leaving the United States. See chapter 11 for more information.

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

Nonresident aliens who filed Form 1040NR or Form 1040NR–EZ with the Internal Revenue Service Center, Philadelphia, PA 19255, should send the form there. Resident aliens should send the form to the Internal Revenue Service Center for their old address (addresses for the Service Centers are on the back of the form).

Expatriation tax. If you are a former U.S. citizen or former long-term U.S. resident, special tax rules may apply to you. See Expatriation Tax in chapter 4.

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

**Introduction**

You should first determine whether, for income tax purposes, you are a nonresident alien or a resident alien. Figure 1–A will help you make this determination.

If you are both a nonresident and resident in the same year, you have a dual status. Dual status is explained later. Also explained later are a choice to treat your nonresident spouse as a resident and some other special situations.

**Topics**

This chapter discusses:

- How to determine if you are a nonresident, resident, or dual-status alien, and
- How to treat a nonresident spouse as a resident alien.

**Useful Items**

You may want to see:

- USCIS, or a U.S. consular officer.

**Form (and Instructions)**

- 1040 U.S. Individual Income Tax Return
- 1040A U.S. Individual Income Tax Return
- 1040NR U.S. Nonresident Alien Income Tax Return
- 8833 Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
- 8840 Closer Connection Exception Statement for Aliens
- 8843 Statement for Exempt Individuals and Individuals With a Medical Condition

See chapter 12 for information about getting these forms.

**Nonresident Aliens**

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

**Resident Aliens**

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

**Green Card Test**

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

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

**Resident status abandoned.** An administrative or judicial determination of abandonment of resident status may be initiated by you, the USCIS, or a U.S. consular officer.

If you initiate the determination, your resident status is considered to be abandoned when you file **either** of the following with the USCIS or a U.S. consular officer:

1. Your application for abandonment.
2. Your Alien Registration Receipt Card attached to a letter stating your intent to abandon your resident status.

You must file the letter by certified mail, return receipt requested. You must keep a copy of the letter and proof that it was mailed and received.

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

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

**Substantial Presence Test**

You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
   a) All the days you were present in the current year.
   b) ½ of the days you were present in the first year before the current year.
   c) ¼ of the days you were present in the second year before the current year.

**Example.** You were physically present in the United States on 120 days in each of the years 2001, 2002, and 2003. To determine if you meet the substantial presence test for 2003, count the full 120 days of presence in 2003, 40 days in 2002 (½ of 120), and 20 days in 2001 (¼ of 120). Since the total for the 3-year period is 180 days, you are considered resident under the substantial presence test for 2003.

The term **United States** includes the following areas:

1. All 50 states and the District of Columbia.
2. The territorial waters of the United States.
3. The seabed and subsoil of those submersible areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

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

**Days of Presence in the United States**

You are treated as present in the United States on any day you are physically present in the country at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the United States for the substantial presence test:

- Days you commute to work in the United States from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.
- Days you are in the United States for less than 24 hours while you are in transit between two places outside the United States.
- Days you are in the United States as a crew member of a foreign vessel.
- Days you are unable to leave the United States because of a medical condition that develops while you are in the United States.
- Days you are an exempt individual.

The specific rules that apply to each of these categories are discussed next.

**Regular commuters from Canada or Mexico.** Do not count the days on which you commute to work in the United States from your residence in Canada or Mexico if you regularly commute from Canada or Mexico. You are considered to commute regularly if you commute to work in the
Figure 1-A. **Nonresident Alien or Resident Alien?**

**Start here to determine your status for 2003**

- Were you a lawful permanent resident of the United States (had a "green card") at any time during 2003?  
  - Yes  
  - No  

- Were you physically present in the United States on at least 31 days during 2003?  
  - Yes  
  - No

- Were you physically present in the United States on at least 183 days during the 3-year period consisting of 2001, 2002, and 2003, counting all days of presence in 2003, ⅓ the days of presence in 2002, and ⅙ the days of presence in 2001?  
  - Yes  
  - No

- Can you show that for 2003 you have a tax home in a foreign country and have a closer connection to that country than to the United States?  
  - No  
  - Yes

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1. If this is your first or last year of residency, you may have a dual status for the year. See Dual-Status Aliens in chapter 1.
2. If you meet the substantial presence test for 2004, you may be able to choose treatment as a U.S. resident alien for part of 2003. For details, see Substantial Presence Test under Resident Aliens and First-Year Choice under Dual-Status Aliens in chapter 1.
United States on more than 75% of the workdays during your working period.

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

Example. Maria Perez lives in Mexico and works for Compañía ABC in its office in Mexico. She was assigned to her firm’s office in the United States from February 1 through June 1. On June 2, she resumed her employment in Mexico. On 63 days, Maria commuted each morning from her home in Mexico to work in Compañía ABC’s U.S. office. She returned to her home in Mexico on each of those evenings. On 7 days, she worked in her firm’s Mexico office. For purposes of the substantial presence test, Maria does not count the days she commuted to work in the United States because those days equal more than 75% of the workdays during the working period (69 workdays in the working period divided by 76 workdays in the working period equals 90.8%).

Days in transit. Do not count the days you are in the United States for less than 24 hours and you are in transit between two places outside the United States. You are considered to be in transit if you engage in activities that are substantially related to completing travel to your foreign destination. For example, if you travel between airports in the United States to change planes en route to your foreign destination, you are considered to be in transit. However, you are not considered to be in transit if you attend a business meeting while in the United States. This is true even if the meeting is held at the airport.

Crew members. Do not count the days you are temporarily present in the United States as a regular crew member of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession. However, this exception does not apply if you otherwise engage in any trade or business in the United States on those days.

Medical condition. Do not count the days you intended to leave, but could not leave the United States because of a medical condition or problem that developed while you were in the United States. Whether you intended to leave the United States on a particular day is determined based on all the facts and circumstances. For example, you may be able to establish that you intended to leave if your purpose for visiting the United States could be accomplished during a period that is not long enough to qualify you for the substantial presence test. However, if you need an extended period of time to accomplish the purpose of your visit and that period would qualify you for the substantial presence test, you would not be able to establish an intent to leave the United States before the end of that extended period.

In the case of an individual who is judged mentally incompetent, proof of intent to leave the United States can be determined by analyzing the individual’s pattern of behavior before he or she was judged mentally incompetent. If you qualify to exclude days of presence because of a medical condition, you must file a fully completed Form 8843 with the IRS. See Form 8843 later.

You cannot exclude any days of presence in the United States under the following circumstances:

1) You were initially prevented from leaving, were then able to leave, but remained in the United States beyond a reasonable period for making arrangements to leave.
2) You returned to the United States for treatment of a medical condition that developed during a prior stay.
3) The condition existed before your arrival in the United States and you were aware of the condition. It does not matter whether you needed treatment for the condition when you entered the United States.

Exempt individual. Do not count days for which you are an exempt individual. The term “exempt individual” does not refer to someone who is an exempt individual. It refers to someone who is an exempt individual for the purpose of this test. "Exempt individual” includes an employee, a teacher, a trainee, or a student for any part of the work period in a calendar year.

A foreign employer includes an office or place of business in the United States of an American entity in a foreign country or a U.S. possession. A foreign employer includes an office or place of business of an American entity in a foreign country or a U.S. possession. In an international organization an individual is considered to have full-time diplomatic or consular status if he or she:

1) Has been accredited by a foreign government that is recognized by the United States,
2) Intends to engage primarily in official activities for that foreign government while in the United States, and
3) Has been recognized by the President, Secretary of State, or a consular officer as being entitled to that status.

Members of the immediate family include the individual’s spouse and unmarried children (whether by blood or adoption) but only if the spouse’s or unmarried children’s visa statuses are derived from and dependent on the exempt individual’s visa classification. Unmarried children are included only if they:

1) Are under 21 years of age,
2) Reside regularly in the exempt individual’s household, and
3) Are not members of another household.

The immediate family of an exempt individual does not include attendants, servants, or personal employees.

Teachers and trainees. A teacher or trainee is an individual, other than a student, who is temporarily in the United States under an “F,” “J,” “M,” or “Q” visa, and substantially complies with the requirements of that visa. If you qualify to exclude days of presence as a teacher or trainee, you must file a fully completed Form 8843 with the IRS. See Form 8843 later.

In the case of an individual who is judged mentally incompetent, proof of intent to leave the United States can be determined by analyzing the individual’s pattern of behavior before he or she was judged mentally incompetent. If you qualify to exclude days of presence because of a medical condition, you must file a fully completed Form 8843 with the IRS. See Form 8843 later.
Example. Carla was temporarily in the United States during the year as a teacher on a "J" visa. Her compensation was paid by a foreign employer. Carla was treated as an exempt teacher for the past 2 years but her compensation was not paid by a foreign employer. She will not be considered an exempt individual for the current year because she was exempt as a teacher for at least 2 of the past 6 years.

If her compensation for the past 2 years had been paid by a foreign employer, she would be an exempt individual for the current year.

Students. A student is any individual who is temporarily in the United States on an "F," "J," "M," or "Q" visa and who substantially complies with the requirements of that visa. You are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status.

Also included are immediate family members of exempt students. See the definition of immediate family, earlier, under Foreign government-related individuals.

You will not be an exempt individual as a student if you have been exempt as a teacher, trainee, or student for any part of more than 5 calendar years unless you establish that you do not intend to reside permanently in the United States and you have substantially complied with the requirements of your visa. The facts and circumstances to be considered in determining if you have demonstrated an intent to reside permanently in the United States include, but are not limited to, the following:

1) Whether you have maintained a closer connection to a foreign country (discussed later).

2) Whether you have taken affirmative steps to change your status from nonimmigrant to lawful permanent resident as discussed later under Closer Connection to a Foreign Country.

If you qualify to exclude days of presence as a student, you must file a fully completed Form 8843 with the IRS. See Form 8843, later.

Professional athletes. A professional athlete who is temporarily in the United States to compete in a charitable sports event is an exempt individual. A charitable sports event is one that meets the following conditions:

1) The main purpose is to benefit a qualified charitable organization.

2) The entire net proceeds go to charity.

3) Volunteers perform substantially all the work.

In figuring the days of presence in the United States you can exclude only the days on which you actually competed in a sports event. You cannot exclude the days on which you were in the United States to practice for the event, to perform promotional or other activities related to the event, or to travel between events.

If you qualify to exclude days of presence as a professional athlete, you must file a fully completed Form 8843 with the IRS. See Form 8843, next.

Form 8843. If you exclude days of presence in the United States because you fall into any of the following categories, you must file a fully completed Form 8843.

1) You were unable to leave the United States as planned because of a medical condition or problem.

2) You were temporarily in the United States as a teacher or trainee on a "J" or "Q" visa.

3) You were temporarily in the United States as a student on an "F," "J," "M," or "Q" visa.

4) You were a professional athlete competing in a charitable sports event.

Attach Form 8843 to your 2003 income tax return. If you do not have to file a return, send Form 8843 to the Internal Revenue Service Center, Philadelphia, PA 19255, by the due date for filing Form 1040NR or Form 1040NR-EZ. The due date for filing is discussed in chapter 7.

If you do not timely file Form 8843, you cannot exclude the days you were present in the United States as a professional athlete or because of a medical condition that arose while you were in the United States. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Establishing a closer connection. You will be considered to have a closer connection to a foreign country if your tax home for the current year must also be in existence for the entire current year, and must be located in the same foreign country to which you are claiming to have a closer connection.

Foreign country. In determining whether you have a closer connection to a foreign country, the term "foreign country" means:

1) Any territory under the sovereignty of the United Nations or a government other than that of the United States.

2) The territorial waters of the foreign country (determined under U.S. law).

3) The seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights under international law to explore and exploit natural resources.

4) Possessions and territories of the United States.

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

1) The country of residence you designate on forms and documents.

2) The types of official forms and documents you file, such as Form W–9, Form W–8BEN, or Form W–8ECI.

3) The location of:

a) Your permanent home,

b) Your family,

c) Your personal belongings, such as cars, furniture, clothing, and jewelry,

d) Your current social, political, cultural, or religious affiliations,

e) Your business activities (other than those that constitute your tax home),

f) The jurisdiction in which you hold a driver’s license, and

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

You cannot claim you have a closer connection to a foreign country if either of the following applies:

1) You personally applied, or took other steps during the year, to change your status to that of a permanent resident, or
2) You had an application pending for adjustment of status during the current year.

Steps to change your status to that of a permanent resident include, but are not limited to, the filing of the following forms:

Form I–508, Waiver of Rights, Privileges, Exceptions and Immunities
Form I–485, Application to Register Permanent Residence or Adjust Status
Form I–130, Petition for Alien Relative, on your behalf
Form I–134, Immigrant Petition for Alien Worker, on your behalf
Form ETA–755, Application for Alien Employment Certification, on your behalf
Form DS–230, Application for Immigrant Visa and Alien Registration

Form 8840. You must attach a fully completed Form 8840 to your income tax return to claim you have a closer connection to a foreign country or countries.

If you do not have to file a return, send the form to the Internal Revenue Service Center, Philadelphia, PA 19255, by the due date for filing Form 1040NR or Form 1040NR–EZ. The due date for filing is discussed later in chapter 7.

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

Effect of Tax Treaties
The rules given here to determine if you are a U.S. resident do not override tax treaty definitions of residency. If you are a dual-resident taxpayer, you can still claim the benefits under an income tax treaty. A dual-resident taxpayer is one who is a resident of both the United States and another country under each country’s tax laws. The income tax treaty between the two countries must contain a provision that provides for resolution of conflicting claims of residency (tie-breaker rule). If you are treated as a resident of a foreign country under a tax treaty, you are treated as a nonresident alien in figuring your U.S. income tax. For purposes other than figuring your tax, you will be treated as a U.S. resident. For example, the rules discussed here do not affect your residency time periods as discussed later under Dual-Status Aliens.

Information to be reported. If you are a dual-resident taxpayer and you claim treaty benefits, you must file a return by the due date (including extensions) using Form 1040NR or Form 1040NR–EZ, and compute your tax as a nonresident alien. You must also attach a fully completed Form 8833 if you determine your residency under a tax treaty and receive payments or income items totaling more than $100,000. See Reporting Treaty Benefits in chapter 9 for more information on reporting treaty benefits.

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

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

Residency starting date under substantial presence test. If you meet the substantial presence test for a calendar year, your residency starting date is generally the first day you are present in the United States during that calendar year. However, you do not have to count up to 10 days of actual presence in the United States if on those days you establish that:
1) You had a closer connection to a foreign country than to the United States, and
2) Your tax home was in that foreign country.

See Closer Connection to a Foreign Country, earlier.

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

Example. Ivan Ivanovich is a citizen of Russia. He came to the United States for the first time on January 6, 2003, to attend a business meeting and returned to Russia on January 10, 2003. His tax home remained in Russia. On March 1, 2003, he moved to the United States and resided here for the rest of the year. Ivan is able to establish a closer connection to Russia for the period January 6–10. Thus, his residency starting date is March 1.

Statement required to exclude up to 10 days of presence. You must file a statement with the IRS if you are excluding up to 10 days of presence in the United States for purposes of your residency starting date. You must sign and date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable):
1) Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
2) Your passport number and the name of the country that issued your passport.
3) The tax year for which the statement applies.
4) The first day that you were present in the United States during the year.
5) The dates of the days you are excluding in figuring your first day of residency.
6) Sufficient facts to establish that you have maintained your tax home in and a closer connection to a foreign country during the period you are excluding.

Attach the required statement to your income tax return. If you are not required to file a return, send the statement to the Internal Revenue Service Center, Philadelphia, PA 19255, or on before the due date for filing Form 1040NR or Form 1040NR–EZ. The due date for filing is discussed in chapter 7.

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

Residency starting date under green card test. If you meet both the substantial presence test and the green card test, your residency starting date is the first day in the calendar year on which you are present in the United States as a lawful permanent resident.

If you meet both the substantial presence test and the green card test, your residency starting date is the earlier of the first day during the year you are present in the United States under the substantial presence test or as a lawful permanent resident.

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

Example. Robert Bach is a citizen of Switzerland. He came to the United States as a U.S. resident for the first time on May 1, 2002, and remained until November 5, 2002, when he returned to Switzerland. Robert came back to the United States on March 5, 2003, as a lawful permanent resident and still resides here. In calendar year 2003, Robert’s U.S. residency is...
deemed to begin on January 1, 2003, because he qualified as a resident in calendar year 2002.

First-Year Choice

If you do not meet either the green card test or the substantial presence test for 2002 or 2003 and you did not choose to be treated as a resident for part of 2002, but you meet the substantial presence test for 2004, you can choose to be treated as a U.S. resident for part of 2003. To make this choice, you must:

1) Be present in the United States for at least 31 days in a row in 2003, and
2) Be present in the United States for at least 75% of the number of days beginning with the first day of the 31-day period and ending with the last day of 2003. For purposes of this 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.

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

If you make the first-year choice, your residency starting date for 2003 is the first day of the earliest 31-day period (described in (1) above) that you use to qualify for the choice. You are treated as a U.S. resident for the rest of the year.

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

Example 1. Juan DaSilva is a citizen of the Philippines. He came to the United States for the first time on November 1, 2003, and was here on 31 consecutive days (from November 1 through December 1, 2003). Juan returned to the Philippines on December 1 and came back to the United States on December 17, 2003. He stayed in the United States for the rest of the year. During 2004, Juan was a resident of the United States under the substantial presence test. Juan can make the first-year choice for 2003 because he was in the United States in 2003 for a period of 31 days in a row (November 1 through December 1) and for at least 75% of the days following (including) the first day of his 31-day period (46 total days of presence in the United States divided by 61 days in the period from November 1 through December 31 equals 75.4%). If Juan makes the first-year choice, his residency starting date will be November 1, 2003.

Example 2. The facts are the same as in Example 1, except that Juan was also absent from the United States on December 24, 25, 29, 30, and 31. He can make the first-year choice for 2003 because up to 5 days of absence are considered days of presence for purposes of the 75% requirement.

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

1) That you are making the first-year choice.
2) That you were not a resident in 2002.
3) That you are a resident under the substantial presence test in 2004.
4) The number of days of presence in the United States during 2004.
5) The date or dates of your 31-day period of presence and the period of continuous presence in the United States during 2004.
6) The date or dates of absence from the United States during 2003 that you are treating as days of presence.

You cannot file Form 1040 or the statement until you meet the substantial presence test for 2004. If you have not met the test for 2004 as of April 15, 2004, you can request an extension of time for filing your 2003 Form 1040 until a reasonable period after you have met that test. To request an extension to file until August 16, 2004, use Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return. You can file the paper form or use one of the electronic filing options explained in the Form 4868 instructions. You should pay with this extension the amount of tax you expect to owe for 2003 figured as if you were a nonresident alien the entire year. You can use Form 1040NR or Form 1040NR-EZ to figure the tax. Enter the tax on Form 4868. If you do not pay the tax due, you will be charged interest on any tax not paid by the regular due date of your return, and you may be charged a penalty on the late payment. If you need more time after filing Form 4868, file Form 2888, Application for Additional Extension of Time To File U.S. Individual Income Tax Return.

Once you make the first-year choice, you may not revoke it without the approval of the Internal Revenue Service. If you do not follow the procedures discussed here for making the first-year choice, you will be treated as a nonresident alien for all of 2003. However, this does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing procedures and significant steps to comply with the procedures.

Choosing Resident Alien Status

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

1) You were a nonresident alien at the beginning of the year.
2) You are a resident alien or U.S. citizen at the end of the year.
3) You are married to a U.S. citizen or resident alien at the end of the year.
4) Your spouse joins you in making the choice.

This includes situations in which both you and your spouse were nonresident aliens at the beginning of the tax year and both of you are resident aliens at the end of the tax year.

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

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

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

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

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

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

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

Last Year of Residency

If you were a U.S. resident in 2003 but are not a U.S. resident during any part of 2004, you cease to be a U.S. resident on your residency termination date. Your residency termination date is...
December 31, 2003 unless you qualify for an earlier date as discussed next.

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

1) The last day in 2003 that you are physically present in the United States, if you met the substantial presence test,
2) The first day in 2003 that you are no longer a lawful permanent resident of the United States, if you met the green card test, or
3) The later of (1) or (2), if you met both tests.

You can use this date only if, for the remainder of 2003, your tax home was in a foreign country and you had a closer connection to that foreign country. See Closer Connection to a Foreign Country.

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

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

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

Example. Lola Bovary is a citizen of Malta. She came to the United States for the first time on March 1, 2003, and resided there until August 25, 2003. On December 12, 2003, Lola came to the United States for vacation and stayed there until December 16, 2003, when she returned to Malta. She is able to establish a closer connection to Malta for the period December 12–16. Lola is not a U.S. resident for tax purposes during 2003 and can establish a closer connection to Malta for the rest of calendar year 2003. Lola is a U.S. resident under the substantial presence test for 2003 because she was present in the United States for 183 days (178 days for the period March 1 to August 25 plus 5 days in December). Lola’s residency termination date is August 25, 2003.

Residency during the next year. If you are a U.S. resident during any part of 2004 and you are a resident during any part of 2003, you will be taxed as a resident through the end of 2003. This applies whether you have a closer connection to a foreign country than the United States during 2003, and whether you are a resident under the substantial presence test or green card test.

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

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

Attach the required statement to your income tax return. If you are not required to file a return, send the statement to the Internal Revenue Service Center, Philadelphia, PA 19255, on or before the due date for filing Form 1040NR or Form 1040NR-EZ. The due date for filing is discussed in chapter 7.

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

Nonresident Spouse Treated as a Resident

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

If you make this choice, you and your spouse are treated for income tax purposes as residents for your entire tax year. Generally, neither you nor your spouse can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect and you are both taxed on worldwide income. You must file a joint income tax return for the year they make the choice, but you and your spouse can file joint or separate returns in later years.

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

How To Make the Choice

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

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

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

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

SUSPENDING THE CHOICE

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

Example. Dick Brown was a resident alien on December 31, 2000, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed joint 2000 and 2001 income tax returns. On January 10, 2002, Dick became a nonresident alien. Judy had remained a nonresident alien throughout the period. Dick and Judy could have filed joint or separate returns for 2002 because Dick was a resident alien for part of that year. However, since neither Dick nor Judy is a resident alien at any time during 2003, their choice is suspended for that year. If either meets the filing requirements for nonresident aliens discussed in chapter 7, they must file separate returns as nonresident aliens for 2003. If Dick becomes a resident alien again in 2004, their choice is no longer suspended.

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained earlier under Suspending the Choice) or ended in one of the following ways:

If the choice is ended in one of the following ways, neither spouse can make this choice in any later tax year.

1) Revocation. Either spouse can revoke the choice for any tax year, provided he or she makes the revocation by the due date for filing the tax return for that tax year. The spouse who revokes the choice must attach a signed statement declaring that the choice is being revoked. The statement must include the name, address, and identification number of each spouse. (If one spouse dies, include the name and address of the person who is revoking the choice for the deceased spouse.) The statement also must include a list of any states, foreign countries, and possessions that have community property laws in which either spouse is domiciled or where real property is located from which either spouse receives income. File the statement as follows:

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

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

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

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

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

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

Special Situations

If you are a nonresident alien from American Samoa or Puerto Rico, you may be treated as a resident alien.

If you are a nonresident alien in the United States and a bona fide resident of American Samoa or Puerto Rico during the entire tax year, you are taxed 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 whether from sources within or outside the United States.

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 whether from sources within or outside the United States.

Nonresident Aliens

A nonresident alien usually is subject to U.S. income tax only on U.S. source income. Under limited circumstances, certain foreign source income is subject to U.S. tax. See Foreign Income in 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.

Interest Income

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

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

• Interest paid by a domestic or foreign partnership or foreign corporation engaged in a U.S. trade or business at any time during the tax year.

• Original issue discount.

• Interest from a state, the District of Columbia, or the U.S. Government.

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

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

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

1) Interest paid by a resident alien or a domestic corporation if for the 3-year period ending with the close of the payer’s tax year preceding the interest payment, at least 80% of the payer’s total gross income:

a) Is from sources outside the United States, and

b) Is attributable to the active conduct of a trade or business by the individual or corporation in a foreign country or a U.S. possession.

Chapter 2. Source of Income
2) Interest paid by a foreign branch of a domes-
tic corporation or a domestic partner-
ship 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 par-
tnership, 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.
However, income from foreign corporations is
usually foreign source income. Exceptions to
both of these rules are discussed below.

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

First exception. Dividends received from a
domestic corporation are not U.S. source in-
come if the corporation elects to take the Puerto
Rico economic activity credit or the possession tax
credit.

Second exception. Part of the dividends re-
ceived 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 busi-
ness 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 follow-
ing fraction.

Foreign corporation’s gross income
connected with a U.S. trade or
business for the 3-year period

Foreign corporation’s gross income
from all sources for that period

Personal Services

All wages and any other compensation for serv-
ces performed in the United States are consid-
ered to be from sources in the United States.
The only exception to this rule is discussed in
chapter 3 under Employees of foreign persons,
organizations, or offices.

If your compensation is for personal services
performed both inside and outside the United
States, you must figure the amount of income
that is for services performed in the United
States. You usually do this on a time basis. That
is, you must include in gross income as U.S. source
income the amount that results from mul-
tiplying the total amount of compensation by the
following fraction.

Number of days you performed
services in the United States

Total number of days of service for
which you receive payment

Example. Jean Blanc, a nonresident alien,
is a professional hockey player with a U.S.
hockey club. Under Jean’s contract, he received
$98,500 for 242 days of play during the year.
This includes days spent at pre-season training
camp, days during the regular season, and play-
off game days. Of the 242 days, Jean spent 194
days performing services in the United States and
48 days playing hockey in Canada. Jean’s
U.S. source income is $78,963, figured as fol-

\[
\frac{194}{242} \times \$98,500 = \$78,963
\]

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 engaged in transportation be-
 tween the United States and a foreign country or
U.S. possession is not U.S. source income.

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
defined 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 in-
come if the transportation is between the United
States and a U.S. possession. For nonresident
aliens, this only applies to income derived from,
or in connection with, an aircraft.

For information on how U.S. source transpor-
tation income is taxed, see chapter 4.

Scholarships, Grants, Prizes, and Awards

Generally, the source of scholarships, fellow-
ship grants, grants, prizes, and awards is the
residence of the payer regardless of who actu-
ally 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 nonprofit U.S. resident, or a domestic
organization, are from U.S. sources. Similar pay-
mements from a foreign government or foreign cor-
poration are foreign source payments even
though the funds may be disbursed through a
U.S. agent.

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

<table>
<thead>
<tr>
<th>Item of Income</th>
<th>Factor Determining Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries, wages, other compensation</td>
<td>Where services performed</td>
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<tr>
<td>Business income:</td>
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<td>Personal services</td>
<td>Where services performed</td>
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<tr>
<td>Sale of inventory—purchased</td>
<td></td>
</tr>
<tr>
<td>Sale of inventory—produced</td>
<td>Allocation</td>
</tr>
<tr>
<td>Interest</td>
<td>Residence of payer</td>
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<tr>
<td>Dividends</td>
<td>Whether a U.S. or foreign corporation*</td>
</tr>
<tr>
<td>Rents</td>
<td>Location of property</td>
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<td>Royalties:</td>
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<tr>
<td>Natural resources</td>
<td>Location of property</td>
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<td>Patents, copyrights, etc.</td>
<td>Where property is used</td>
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<tr>
<td>Sale of real property</td>
<td>Location of property</td>
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<tr>
<td>Sale of personal property</td>
<td>Seller’s tax home (but see Personal Property, later, for exceptions)</td>
</tr>
<tr>
<td>Pensions</td>
<td>Where services were performed that earned the pension</td>
</tr>
<tr>
<td>Sale of natural resources</td>
<td>Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.</td>
</tr>
</tbody>
</table>

*Exceptions include:

a) Dividends paid by a U.S. corporation are foreign source if the corporation elects
the Puerto Rico economic activity credit or possessions tax credit.

b) Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the
company’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.
Personal Property

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

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

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

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

Real Property

Real property is land and buildings and gener-ally anything built on, growing on, or attached to land.

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

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

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

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

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

Pensions and Annuities

When 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 attributed to earnings and employment and the em-ployer contributions made for services performed in the United States. This applies whether the distribution is made under a quali-fied or nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded).

If you performed services as an employee of the United States, you may receive a distribution from the U.S. Government under a plan, such as the Civil Service Retirement System, that is treated as a qualified pension plan. Your U.S. source income is the otherwise taxable amount of the distribution that is attributable to your total U.S. Government basic pay other than tax-ex-empt pay for services performed outside the United States.

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.

Intangible property. Intangible property in-cludes goodwill, licenses, royalties, trademarks, franchises, and similar property.

CAUTION

! Pay attention to the source of any gain from the sale of inventory that you purchased.

Depreciation. Depreciation is an amount deducted to recover the cost of an asset. The amount you can deduct depends on the cost or other basis of a trade or business asset, whether or not you recover the cost, and which depreciation method you use. A depreciation deduction is an amount deducted for de-preciation or amortization or any other allowable deduction that treats a capital expenditure as a deductible expense.

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

Sales through offices or fixed places of busi-ness. Despite any of the above rules, if you do not have a tax home in the United States, but you maintain an office or other fixed place of business in the United States, treat the income from any sale of personal property (including inventory property) that is attributable to that office or place of business as U.S. source income. If you do not have a tax home in the United States, the gain or loss generally is considered to be from sources outside the United States.

For this purpose, “U.S. depreciation adjust-ments” are the depreciation adjustments to the basis of the property that are attributable to it in the United States. However, if the property is used predominantly in the United States during a tax year, all depreciation adjustments allowable for that year are treated as U.S. depreciation adjustments. But there are some exceptions for certain transportation, communication, and other property used inter-na-tionally.

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

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

The basis of property generally 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 an amount deducted for de-preciation or amortization or any other allowable deduction that treats a capital expenditure as a deductible expense.

Intangible property. Intangible property in-cludes goodwill, licenses, royalties, trademarks, franchises, and similar property.

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

Sales through offices or fixed places of busi-ness. Despite any of the above rules, if you do not have a tax home in the United States, but you maintain an office or other fixed place of business in the United States, treat the income from any sale of personal property (including inventory property) that is attributable to that office or place of business as U.S. source income. If you do not have a tax home in the United States, the gain or loss generally is considered to be from sources outside the United States.

For this purpose, “U.S. depreciation adjust-ments” are the depreciation adjustments to the basis of the property that are attributable to it in the United States. However, if the property is used predominantly in the United States during a tax year, all depreciation adjustments allowable for that year are treated as U.S. depreciation adjustments. But there are some exceptions for certain transportation, communication, and other property used inter-na-tionally.

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

A loss recognized after January 7, 2002, is sourced in the same way as the depreciation deductions were sourced. However, if the prop-
Community Income

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

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

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

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

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

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

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

U.S. tax. This chapter covers some of the more common exclusions allowed to resident and nonresident aliens.

Topics

This chapter discusses:

- Nontaxable interest,
- 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.

1) Interest that is determined by reference to:
   - The partnership distribution of income or loss
   - The capital or profits interests
   - The original issue discount that is paid on obligations issued after July 18, 1984, is excluded from income.
   - In these cases, you and your spouse must report the income of yourself and your spouse.

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 $80,000. 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 Publication 54.

Foreign country. The term “foreign country” means any territory under the sovereignty of a government other than that of the United States. The term also includes territorial waters of the foreign country, the airspace over the foreign country, and the seabed and subsoil of submarine areas adjacent to the territorial waters of the foreign country.

Nonresident Aliens

Nonresident aliens can exclude the following items from their 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.

Interest Income

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

1) Deposits (including certificates of deposit) with persons in the banking business,
2) 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 is includible in your U.S. income and is not subject to income tax laws),
3) Contingent interest.

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

1) Interest that is determined by reference to:
Fellowship Grants
Scholarships and

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.

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

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

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

1) On or before April 7, 1993, or
2) 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.

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 dis- cussed next.

Employees of foreign persons, organiza- tions, 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 em- ployee of or under a contract with a non- resident alien individual, foreign partner- ship, or foreign corporation, not en- gaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident.
2) You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year.
3) Your pay for these services is not more than $3,000.

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

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 you pay is more than $3,000, do not include any amounts you get from your employer for ad- vances or reimbursements of business travel expenses, if you were required to and did ac- count 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 2003, Henry Smythe, a nonresident alien from a nontreaty country, worked for an overseas office of a U.S. partner- ship. Henry, who uses the calendar year as his tax year, was temporarily present in the United States for 60 days during 2003 performing per- sonal services for the overseas office of the partnership. That office paid him a total gross salary of $2,800 for those services. During 2003, he 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 sal- ary for the services performed in the United States during 2003 was $4,250. He received $2,875 in 2003, and $1,625 in 2004. During 2003, he was engaged in a trade or business in the United States because the compensation for his 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 engaged in transportation be- tween the United States and a foreign country or U.S. possession is not U.S. source income and is exempt from U.S. tax.

Students and exchange visitors. Nonresi- dent alien students and exchange visitors pres- ent in the United States under “F,” “J,” or “Q” visas can exclude from gross income pay re- ceived from a foreign employer.

This group includes bona fide students, scholars, trainees, teachers, professors, re- search assistants, specialists, or leaders in a field of specialized knowledge or skill, or per- sons 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:

1) A nonresident alien individual, foreign part- nership, or foreign corporation, or
2) An office or place of business maintained in a foreign country or in a U.S. posses- sion by a U.S. corporation, a U.S. partner- ship, 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 gov- ernment that is exempt from U.S. income tax is discussed in chapter 10.

Income from certain annuities. Do not in- clude 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, organi- zations, 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. citi- zens 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:

1) You are a resident of a country that gives a substantially equal exclusion to U.S. citi- zens and residents, or
2) You are a resident of a beneficiary devel- oping country under 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.

Gain From the Sale of Your Main Home

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

This exclusion does not apply to non- resident aliens who 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 scholar- ship. The rules discussed here apply to both resident and nonresident aliens.
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 and how it is taxed.

Useful Items

You may want to see:

- Publication
- 544 Sales and Other Dispositions of Assets
- 1212 List of Original Issue Discount 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.

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 usually are considered engaged in a trade or business in the United States.

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

Other Trade or Business Activities

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

Students and trainees.

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

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

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

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

For transactions in stocks or securities, this applies to any nonresident alien, including a dealer or broker in stocks and securities. For transactions in commodities, this applies to commodities that are usually traded on an organized commodity exchange and to transactions that are usually carried out at such an exchange.

This discussion does not apply 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 employer or by another 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, determine whether certain items of investment income (such as interest, dividends, and royalties) are treated as effectively connected income.

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

Investment Income

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

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

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:

1) Held for the principal purpose of promoting the conduct of a trade or business in the United States,
2) 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),
3) 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:

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

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

Personal Service Income

You usually are engaged in a U.S. trade or business when you perform personal services in the United States. Personal service income is not considered income that is not directly produced if you engaged in a U.S. trade or business in the year you performed the services. Service income includes wages, salaries, commissions, fees, per diem allowances, and employee allowances and bonuses. The income may be paid to you in the form of cash, services, or property.

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

Pensions. If you were a nonresident alien engaged in a U.S. trade or business after 1986 because you performed personal services in the United States, and you later receive a pension or retirement payment attributable to these services, such payments are effectively connected income in each year you receive them. This is true whether or not you are engaged in a U.S. trade or business in the year you receive the retirement payment.

Transportation Income

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

A “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 voy-
Real Property Gain or Loss

Gains and losses from the sale or exchange of U.S. real property interests 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 that is located outside the United States, plus transferred security.

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

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

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

Foreign Income

Under limited circumstances, you must treat three kinds of foreign source income as effectively connected with a trade or business in the United States. These circumstances are:

1) You have an office or other fixed place of business in the United States to which the income can be attributed,
2) That office or place of business is a material factor in the sale or exchange of the stock or property,
3) The income is produced in the ordinary course of the trade or business carried on through that office or other fixed place of business.

Income you receive during the tax year that is effectively connected with your U.S. trade or business is not included in chapter 8 and is an essential economic element in, the earning of the income. The three kinds of foreign source income are listed below.

1) Income from real property.
2) Business profits and losses.
3) Real property gains and losses.

Real Property Gain or Loss

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

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

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

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

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

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

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

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

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

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

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

Report on your return the amount of OID shown on Form 1042–S, Foreign Person’s U.S. Source Income Subject to Withholding, if you bought the debt instrument at original issue. However, you must recalculate your proper share of OID shown on Form 1042–S if any of the following apply.

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

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

3) The debt instrument is a contingent payment or inflation-indexed debt instrument. For the definition of premium and acquisition premium and instructions on how to recompute OID, get Publication 1212.

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

Social Security Benefits

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

Sales or Exchanges of Capital Assets

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

A capital asset is everything you own except:

- Inventory.
- Business accounts or notes receivable.
- Depreciable property used in a trade or business.
- Real property used in a trade or business.
- Supplies regularly used in a trade or business.
- Certain copyrights, literary or artistic compositions, letters or memo-
  randa, or similar property.
- Certain U.S. government publications.
- Certain commodities derivative financial instruments held by a commodities deriva-
  tives dealer.
- Hedging transactions.

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

If the sale is in foreign currency, for the purpose of determining gain, the cost and selling price of the property should be expressed in U.S. currency at the rate of exchange prevailing as of the date of the purchase and date of the sale, respectively.

You may want to read Publication 544. However, use Publication 544 only to determine what is a sale or exchange of a capital asset, or what is treated as such. Specific tax treatment that applies to U.S. citizens or residents generally does not apply to you.

The following gains are subject to the 30% (or lower treaty) rate without regard to the 183-day rule, discussed later.

1) Gains on the disposal of timber, coal, or domestic iron ore with a retained economic interest.

2) Gains on contingent payments received from the sale or exchange of patents, copyrights, and similar property after October 4, 1966.

3) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966.

4) Gains on the sale or exchange of original issue discount obligations.

Gains in (1) are not subject to the 30% (or lower treaty) rate if you choose to treat the gains as effectively connected with a U.S. trade or business. See Income From Real Property later.

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

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

In arriving at your net gain, do not take the following into consideration.

- The four types of gains listed earlier.
- The deduction for a capital loss carryover.
- Capital losses in excess of capital gains.
- Exclusion for gain from the sale or exchange of qualified small business stock (section 1202 exclusion).
- Losses from the sale or exchange of property held for personal use. However, losses resulting from casualties or thefts may be deductible on Schedule A (Form 1040NR). See Itemized Deductions in chapter 5.

If you are not engaged in a trade or business in the United States and have not established a trade or business in the United States for less than 183 days during the tax year, capital gains (other than gains listed earlier) are tax exempt unless they are effectively connected with a trade or business in the United States during your tax year.

Reporting. Report your gains and losses from the sales or exchanges of capital assets that are not effectively connected with a trade or business in the United States on page 4 of Form 1040NR.Report gains and losses from sales or exchanges of capital assets (including real prop-
Ruling request.

Former U.S. citizen.

plies to all income from real property located in must request this ruling within one year from the

9) Details of any previous choices and revo-

Income From Real Property

erty) that are effectively connected with a trade 6) A description of any major improvements

sions attributable to the real property income and 5) Total amount of U.S. source transportation

all your U.S. sources in- ber, and tax year. 4) You lost your U.S. citizenship before

intervals of U.S. tim- cast in and hold for the production of income, you tax avoidance as a principal purpose because

the 10-year period follow- In determining if you meet the 8-year require-

expatriation tax applies to the 10-year period follow-

for information on rental ex-

5) Extent of your business in the United States. The choice ap-

expatriation tax provisions apply to U.S. citizens who have renounced their citizenship and long-term residents who have ended their residency, if one of the principal purposes of the action is the avoidance of U.S. taxes. The expan-

1) Your average annual net income tax for the last five tax years ending before the date of the action is more than $122,000, or

1) You became at birth a U.S. citizen and a citizen of another country and continue to be a citizen of that other country.

2) You become (within a reasonable period after loss of U.S. citizenship) a citizen of the country in which you, your spouse, or one of your parents were born.

3) You were present in the United States for no more than 30 days during each year of the 10-year period ending on the date of expatriation.

4) You lost your U.S. citizenship before reaching age 18½.

Former long-term resident.

are not engaged in a U.S. trade or business. You own a single family house in the United States that you rent out. Your rental income for the year is $10,000. This is your only U.S. source in-

As discussed earlier under The 30% Tax, the rental income is subject to a tax at a 30% (or lower treaty) rate. You received a Form 1042–S showing that your tenants properly withheld this tax from the rental income. You do not have to file a U.S. tax return (Form 1040NR) because your U.S. tax liability is satisfied by the witholding of tax.

If you make the choice discussed above, you can offset the $10,000 income by certain rental expenses. (See Publication 527, Residential Rental Property, for information on rental ex-

Expatriation Tax

The expatriation tax provisions apply to U.S. citizens who have renounced their citizenship and long-term residents who have ended their residency, if one of the principal purposes of

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Your U.S. residency is considered to have ended when you cease to be a lawful permanent resident or you begin to be treated as a resident of another country under a tax treaty and do not waive treaty benefits.

Tax. If the expatriation tax applies to you, you are generally subject to tax on your U.S. source gross income and gains on a net basis at the graduated rates applicable to individuals (with allowable deductions), unless you would be subject to a higher tax under the 30% tax (discussed earlier) on income not connected with a U.S. trade or business. In making this determination, you may not claim that an income tax treaty in effect on August 21, 1996, reduces your tax liability under the 30% tax on any items of U.S. source income.

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

- Property (other than stock or debt obligations) located in the United States,
- Stock issued by a U.S. domestic corporation, and
- Debt obligations of U.S. persons or of the United States, a state or political subdivision thereof, or the District of Columbia.

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

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

The income or gain is considered U.S. source income only to the extent of your share of earnings and profits earned or accumulated before the date of expatriation. If you are a nonresident alien during the periods you met the ownership requirements discussed above.

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

Other information. For more information on the expatriation tax provisions, including exceptions to the tax and special U.S. source rules, see section 877 of the Internal Revenue Code.

Reporting Requirements

If you lost your U.S. citizenship, you must file Form 8854, Expatriation Initial Information Statement, with a consular office or a federal court at the time of loss of citizenship. If you end your long-term residency, you must file Form 8854 with the Internal Revenue Service when you file your dual-status tax return for the year your residency ends.

Penalties. If you fail to file Form 8854, you may have to pay a penalty equal to the greater of 5% of the expatriation tax or $1,000. The penalty will be assessed for each year during which your failure to file continues for the 10-year period. The penalty will not be imposed if you can show that the failure is due to reasonable cause and not willful neglect.

Expatriation tax return. If you are subject to the expatriation tax, you must file Form 1040NR for each year of the 10-year period following expatriation. Complete line “P” on page 5 of Form 1040NR. See Special Rules for Former U.S. Citizens and Former U.S. Long-Term Residents in the instructions for Form 1040NR.

You must attach a statement to Form 1040NR listing, by category (dividends, interest, etc.), all items of U.S. and foreign source income, whether or not taxable in the United States.

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

Interrupted Period of Residence

You or your spouse or both must file a dual-status tax return for each year of the 10-year period following your expatriation. The return is due by the due date for your return for the year you again become a U.S. resident. If you already filed returns for that period, you must file amended returns. You must attach a statement to your return that identifies the source of all of your U.S. and foreign gross income and the items of income subject to this special rule.

5. Figuring Your Tax

Introduction

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

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

Topics

This chapter discusses:

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

Useful Items

You may want to see:

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

Form (and Instructions)

- W–7 Application for IRS Individual Taxpayer Identification Number
- 1040 U.S. Individual Income Tax Return

Chapter 5 Figuring Your Tax
Tax Year

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

Identification Number

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

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

Social security number (SSN). Generally, you can get an SSN if you have been lawfully admitted to the United States for permanent residence or under other immigration categories that authorize U.S. employment. To apply for this number, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or call the SSA at 1–800–772–1213. Return the completed form to the SSA. It usually takes about 2 weeks to get an SSN.

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

An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law. In addition to those aliens who are required to file a tax return, the taxpayer identification number and are not eligible for an SSN, a Form W–7 should be filed for:

- Alien individuals who are claimed as dependents and are not eligible for an SSN, and
- Alien spouses who are claimed as dependents and are not eligible for an SSN.

Employer identification number (EIN). An individual may use an SSN (or ITIN) for individual taxes and an EIN for business taxes. To apply for an EIN, file Form SS–4, Application for Employer Identification Number, with the IRS.

Filing Status

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

Resident Aliens

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

Married filing jointly. Generally, you can file as married filing jointly only if both you and your spouse were resident aliens for the entire tax year, or if you make one of the choices discussed in chapter 1 to treat your spouse as a resident alien for the entire tax year.

Qualifying widow(er). If your spouse died in 2001 or 2002, you did not remarry before the end of 2003, and you have a dependent child living with you, you may qualify to file as a qualifying widow(er) and use the joint return tax rates. This applies only if you could have filed a joint return with your spouse for the year your spouse died.

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

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

Note. Even if you are considered unmarried for head of household purposes because you are married to a nonresident alien, you may still be considered married for purposes of the earned income credit. In that case, you will not be entitled to the credit. See Publication 501 for more information.

Nonresident Aliens

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

Married filing jointly. Generally, you cannot file as married filing jointly if either spouse was a nonresident alien at any time during the tax year. However, nonresident aliens married to U.S. citizens or residents can choose to be treated as U.S. residents and file joint returns. For more information on these choices, see chapter 1.

Qualifying widow(er). You may be eligible to file as a qualifying widow(er) and use the joint return tax rates if:

1) You were a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), or a U.S. national (defined below),
2) Your spouse died in 2001 or 2002 and you did not remarry before the end of 2003, and
3) You have a dependent child living with you.

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

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

Head of household. You cannot file as head of household if you are a nonresident alien at any time during the tax year. However, if you are married, your spouse can qualify as a head of household if:

1) Your spouse is a resident alien or U.S. citizen for the entire tax year,
2) You do not choose to be treated as a resident alien, and
3) Your spouse meets the other requirements for this filing status, as discussed earlier under Resident Aliens.

Note. Even if your spouse is considered unmarried for head of household purposes because you are married to a resident alien, you may still be considered married for purposes of the earned income credit. In that case, your spouse will not be entitled to the credit. See Publication 501 for more information.

Married filing separately. Married nonresident aliens who are not married to U.S. citizens or residents generally must use the Tax Table.
column or the Tax Rate Schedule for married filing separate returns when determining the tax on income effectively connected with a U.S. trade or business. They normally cannot use the Tax Table column or the Tax Rate Schedule for single individuals. However, if you are a married resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), or are a married U.S. national, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year. See the instructions for Form 1040NR or Form 1040NR-EZ to see if you qualify. U.S. national was defined earlier in this chapter under General Qualifying Widow(er).

Nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident and file a joint return. For information on these choices, see chapter 1. If you do not make the choice to file jointly, use the Tax Table column or the Tax Rate Schedule for married individuals filing separately.

A nonresident alien estate or trust using Form 1040NR must use Tax Rate Schedule W in the Form 1040NR instructions when determining the tax on income effectively connected with a U.S. trade or business.

Nonresident Aliens

You can claim deductions to figure your effectively connected taxable income. You generally cannot claim deductions related to income that is not connected with your U.S. business activities. Except for personal exemptions, and certain itemized deductions, discussed later, you can claim deductions only to the extent they are connected with your effectively connected income.

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

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

Educator expenses. If you were an eligible educator in 2003, you can deduct as an adjustment to income up to $250 in unreimbursed qualified expenses you paid or incurred during 2003 for books, supplies (other than nonacademic supplies for courses of instruction in health or physical education), computer equipment, and other similar equipment and materials used in the classroom. For more information, see your tax form instructions.

Individual retirement arrangement (IRA). If you made contributions to a traditional IRA for 2003, you may be able to take an IRA deduction. But you must have a taxable compensation effective connected with a U.S. trade or business for this purpose. For a statement should be sent to you by June 1, 2004, that shows all contributions to your traditional IRA for 2003. If you were covered by a retirement plan (qualified pension, profit-sharing (including 401(k)s), annuity, SEP, SIMPLE, etc.) at work or through self-employment, your IRA deduction may be reduced or eliminated. But you can still make contributions to an IRA even if you cannot deduct them. If you made nondeductible contributions to a traditional IRA for 2003, you must report them on Form 8606, Nondeductible IRAs.

Individual Retirement Arrangements (IRAs)

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

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

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

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

Figure your deductible moving expenses to the United States by using Form 8606, Nondeductible IRAs, and deduct them on line 27 of Form 1040NR.

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

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

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

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

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

Penalty on early withdrawal of savings. You must include in income all effectively connected interest income you receive or that is credited to your account during the year. Do not reduce it by any penalty you must pay on an early withdrawal from a time savings account. However, if the interest income is effectively connected with your U.S. trade or business during the year, you can deduct on line 30 of Form 1040NR the amount of the early withdrawal penalty that the banking institution charged.

Student loan interest expense. If you paid interest on a student loan in 2003, you may be able to deduct up to $2,500 of the interest you paid. Generally, you can claim the deduction if all of the following requirements are met.

1) Your filing status is a filing status except married filing separately.
2) Your modified adjusted gross income is less than $65,000.
3) No one else is claiming an exception for you on their 2003 tax return.
4) You paid interest on a loan taken out only to pay tuition and other qualified higher education expenses for yourself, your spouse, or someone who was your dependent when the loan was taken out.

Reporting Your Income

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

Deductions

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

Resident Aliens

You can claim the same deductions allowed to U.S. citizens if you are a resident alien for the entire tax year. While the discussion that follows contains some of the same general rules and guidelines that apply to you, it is specifically directed toward nonresident aliens. You should get Form 1040 and instructions for more information on how to claim your allowable deductions.
5) The loan is not from a related person or a qualified employer plan.
6) The education expenses were paid or incurred within a reasonable period of time before or after the loan was taken out.
7) The person for whom the expenses were paid or incurred was an eligible student.

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

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

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

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

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

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

- $104,625, if married filing separately
- $139,500, if single
- $174,400, if head of household
- $209,250, if married filing jointly or a qualifying widow(er) with dependent child

Nonresident Aliens
Generally, if you are a nonresident alien engaged in a trade or business in the United States, you can claim only one personal exemption ($3,050 for 2003). You may be able to claim an exemption for a spouse and a dependent if you are described in any of the following discussions.

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

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

Residents of Japan or the Republic of Korea (South Korea). Nonresident aliens who are residents of Japan or the Republic of Korea (South Korea) may be able to claim exemptions for a spouse and children. The treaties with Japan and the Republic of Korea (South Korea) impose two additional requirements on Japanese or Korean residents:
1) The spouse and all children claimed must live with the alien in the United States at some time during the tax year.
2) The additional deduction for the exemptions must be prorated based on the ratio of the alien’s U.S. source gross income effectively connected with a U.S. trade or business for the tax year to the alien’s entire income from all sources during the tax year.

Example. Mr. Sato, a nonresident alien who is a resident of Japan, lives temporarily in the United States with his wife and two children. During the tax year he receives U.S. compensation of $9,000. He also receives $3,000 of income from sources outside the United States that is effectively connected with his U.S. trade or business. Thus, his total income for the year is $12,000. Mr. Sato meets all requirements for claiming exemptions for his spouse and two children. The additional deduction for 2003 is $6,863 figured as follows:

$9,000 × $9,150 = $6,863
   12,000

$12,000

Students and business apprentices from India. Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty may be able to claim exemptions for their spouse and dependents.

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

You can claim exemptions for each of your dependents not admitted to the United States on “F–2,” “J–2,” or “M–2” visas if they meet the same rules that apply to U.S. citizens. See Publication 501 for these rules.

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

Phase-out of exemptions. If the adjusted gross income shown on line 34 of Form 1040NR is more than the amount shown below for your filing status, your deduction for exemptions may be reduced or eliminated. Use the worksheet in the Form 1040NR–EZ instructions to figure the amount, if any, you can deduct.

- $140,625, if married filing separately
- $179,500, if single
- $209,250, if a qualifying widow(er) with dependent child

Itemized Deductions
Nonresident aliens can claim some of the same itemized deductions that resident aliens can claim. However, nonresident aliens can claim itemized deductions only if they have income effectively connected with their U.S. trade or business.

Resident and nonresident aliens may not be able to claim all of their itemized deductions. If your adjusted gross income is more than $139,500 ($69,750 if married filing separately), use the worksheet in your income tax return instructions to figure the amount you can deduct.

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

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

Nonresident Aliens
You can deduct certain itemized deductions if you receive income effectively connected with your U.S. trade or business. These deductions include state and local income taxes, charitable contributions to U.S. organizations, casualty and theft losses, and miscellaneous deductions. Use Schedule A of Form 1040NR to claim itemized deductions.

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

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

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

Use Table 7, 8, or 9 in Publication 501 to figure your standard deduction. If you are mar-
mshed and your spouse files a return and itemizes deductions, you cannot take the standard de-

gression. If you are filing Form 1040NR, enter the standard deduction on line 35 of Form 1040NR. In the space to the left of line 35, print, “Standard Deduction Allowed Under U.S.—India Income Tax Treaty.” If you are filing Form 1040NR—EZ, enter the amount on line 11.

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

Charitable contributions. You can deduct your charitable contributions or gifts to qualified organizations subject to certain limits. Qualified organizations include organizations that are reli-
gious, charitable, educational, scientific, or lit-
erary in nature, or that work to prevent cruelty to children or animals. Certain organizations that promote national or international amateur sports temporary stay in the United States, you can business. The property can be personal use
properties or with a trade or business in the United States, your charitable contribution generally is the fair market value of the property

Subscriptions to professional journals, • Tax return preparation fees, and • Casualty and theft losses of property used

Most miscellaneous itemized deductions are deductible only if they are more than 2% of your adjusted gross income (line 34, Form 1040NR). For more information on miscellaneous deduc-
tions, see the instructions for Form 1040NR.

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

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

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

1) Transportation—airfare, local transporta-
tion, including train, bus, etc.,
2) Lodging—rent paid, utilities (do not in-
clude telephone), hotel or motel room ex-
penses, and
3) Meal expenses—actual expenses allowed

Charitable Contributions

Contributions from which you benefit. If you receive a benefit as a result of making a contribution to a qualified organization, you can deduct only the amount of your charity that is not more than the value of the benefit you receive.

If you pay more than the fair market value to a qualified organization for merchandise, goods, or services, the amount you pay that is more than the value of the item can be a charitable contribution. For the excess amount to qualify, you must pay it with the intent to make a charita-
ble contribution.

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

1) The amount of any money contributed and a description (but not value) of any prop-
erty donated,
2) Whether the organization gave you any goods or services in return for your contri-
bution, and
3) A description and estimate of the value of any goods or services described in (2).

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

Contributions of appreciated property. If you contribute property to a qualified organiza-
tion, the amount of your charitable contribution generally is the fair market value of the property

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

You can only deduct property subject to the limitations on charitable contributions and other information, get Publication 526.

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

Casualty and theft losses. You can deduct your losses from fire, storm, shipwreck, or other casualty, or theft of property even though your property is not connected with a U.S. trade or business. The property can be personal property used in your ordinary and necessary travel expenses

You can only deduct travel expenses for

Deduction Allowed Under U.S.—India Income Tax Treaty. If you are filing Form 1040NR—EZ, enter the amount on line 11.

Chapter 5 Figuring Your Tax Page 25


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Tax Credits and Payments

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

Resident Aliens

Resident aliens generally claim tax credits and report tax payments, including withholding, using the same rules that apply to U.S. citizens. The following items are some of the credits you may be able to claim.

Foreign tax credit. You can claim a credit, subject to certain limits, for income tax you paid or accrued to a foreign country on foreign source income. You cannot claim a credit for taxes paid or accrued on excluded foreign earned income. To claim a credit for income taxes paid or accrued to a foreign country, you generally will file Form 1116, Foreign Tax Credit (Individual, Estate, or Trust), with your Form 1040.

For more information, get Publication 514, Foreign Tax Credit for Individuals.

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

For more information, get Publication 503, Child and Dependent Care Expenses, and Form 2441, Child and Dependent Care Expenses.

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

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

Retirement savings contributions credit. You may qualify for this credit if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2003. You cannot claim this credit if:

1) You were born after January 1, 1986,
2) You are a full-time student,
3) Your exemption is claimed by someone else on his or her tax return, or
4) Your adjusted gross income is more than:
   a) $50,000, if your filing status is married filing jointly,
   b) $37,500, if your filing status is head of household, or
   c) $25,000, if your filing status is single, married filing separately, or qualifying widow(er).

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

Child tax credit. You may be able to take this credit if you have a qualifying child. For this credit, a qualifying child:
1) Is a U.S. citizen, national, or resident alien,
2) Is claimed as a dependent on your tax return,
3) Is:
   a) Your son, daughter, adopted child, a descendant of any of them (for example, your grandchild), stepchild,
   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your niece or nephew), whom you cared for as your own child, or
   c) Your foster child (any child placed with you by an authorized placement agency whom you cared for as you would your own child),
4) Was under age 17 at the end of the year.

Use the Child Tax Credit Worksheet in your tax instructions to figure the amount of your credit.

Adoption credit. You may qualify to take a tax credit of up to $10,160 for qualifying expenses paid to adopt an eligible child. This amount may be allowed for the adoption of a child with special needs regardless of whether you have qualifying expenses. To claim the adoption credit, file Form 8839, Qualified Adoption Expenses, with your Form 1040 or Form 1040A. For more information, get Publication 968, Tax Benefits for Adoption.

Earned income credit. You may qualify for an earned income credit of up to $2,547 if your child lived with you in the United States and your earned income and adjusted gross income were each less than $29,666 ($30,666 if married filing jointly). If you or more children lived with you in the United States and your earned income and adjusted gross income were each less than $33,692 ($34,692 if married filing jointly), your credit could be as much as $382. You cannot claim the earned income credit if your filing status is married filing separately.

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

Advance earned income credit. You may be able to get advance payments of part of the credit for one child in 2004 instead of waiting until you file your 2004 tax return. Fill out the Form W–2, Earned Income Credit Advance Payment Certificate. If you expect to qualify for the credit in 2004, give the bottom part of the form to your employer. Your employer will include part of the credit regularly in your pay during 2004.

If you received advance payments of the earned income credit in 2003, you must file a 2003 tax return to report the payments. Your Form W–2 will show the amount you received.

Other information. There are other eligibility rules that are not discussed here. For more information, get Publication 596, Earned Income Credit.

Nonresident Aliens

You can claim some of the same credits that resident aliens can claim. You can also report certain taxes you paid, are considered to have paid, or that were withheld from your income.

Credits

Credits are allowed only if you receive effectively connected income. You may be able to claim some of the following credits.

Foreign tax credit. If you receive foreign source income that is effectively connected with a trade or business in the United States, you can claim a credit for any income taxes paid or accrued to any foreign country or U.S. possession on that income.

If you do not have foreign source income effectively connected with a U.S. trade or business, you cannot claim credits against your U.S. tax for taxes paid or accrued to a foreign country or U.S. possession.

You cannot take any credit for taxes imposed by a foreign country or U.S. possession on U.S. source income if those taxes were imposed only because you are a citizen or resident of the foreign country.

If you claim a foreign tax credit, you generally will have to attach to your return a Form 1116. See Publication 514 for more information.

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

Married nonresident aliens can claim the credit only if they choose to file a joint return with a U.S. citizen or resident spouse as discussed in chapter 1, or if they qualify as certain married individuals living apart (see Joint Return Test in Publication 503).

The amount of your child and dependent care expense that qualifies for the credit in any tax year cannot be more than your earned income from the United States for that tax year. Earned income includes salaries, wages, tips, professional fees for personal services performed.

For more information, get Publication 503.

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

Retirement savings contributions credit. You may qualify for this credit if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2003. You cannot claim this credit if:

1) You were born after January 1, 1986,
2) You are a full-time student,
3) Your exemption is claimed by someone else either on your return or on your spouse's return at:
4) Your adjusted gross income is more than $25,000.

Use Form 8880 to figure the credit. For more information, see Publication 960.

Child tax credit. You may be able to take this credit if you have a qualifying child. For this credit, a qualifying child:

1) Is a U.S. citizen, national, or resident alien,
2) Is claimed as a dependent on your tax return,
3) Is:
   a) Your son, daughter, adopted child, stepchild, or a descendent of any of them (for example, your grandchild),
   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your niece or nephew),
   c) Your foster child (any child placed with you by an authorized placement agency who cared for as your own child), or
   d) Was under age 17 at the end of the year.

Use the Child Tax Credit Worksheet in the Form 1040NR instructions to figure the amount of your credit.

Adoption credit. You may qualify to take a tax credit of up to $10,160 for qualifying expenses paid to adopt an eligible child. This amount may be allowed for the adoption of a child with special needs regardless of whether you qualify for Long-Term Capital Gains, which you must attach to your return.

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

Tax withheld on partnership income. If you are a foreign partner in a partnership, the partnership will withhold tax on your share of effectively connected taxable income from the partnership. The partnership will give you a statement on Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax, showing the tax withheld. A partnership is taxable on your share of any tax withheld on your actual distributions of effectively connected income. In this case, the partnership will give you a statement on Form 1042–S. Claim the tax withheld as a payment on line 65a or 65b of Form 1040NR, as appropriate.

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

<table>
<thead>
<tr>
<th>Location of Tax Withheld</th>
<th>Form Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>RR–1042S ..................</td>
<td>Box 12</td>
</tr>
<tr>
<td>SSA–1042S .................</td>
<td>Box 9</td>
</tr>
<tr>
<td>W–2 ......................</td>
<td>Box 2</td>
</tr>
<tr>
<td>W–2c ........................</td>
<td>Box 2</td>
</tr>
<tr>
<td>1042–S ....................</td>
<td>Box 7</td>
</tr>
<tr>
<td>8805 ........................</td>
<td>Line 10</td>
</tr>
<tr>
<td>6288–A ....................</td>
<td>Box 2</td>
</tr>
</tbody>
</table>

Bona Fide Residents of American Samoa or Puerto Rico

If you are a nonresident alien who is a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you generally are taxed the same as resident aliens. You should file Form 1040 and report all income from sources both in and outside the United States.

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

If you report income on a calendar year basis and you do not have wages subject to withholding,
ing, file your return and pay your tax by June 15. You must also make your first payment of es-
imated tax by June 15. You cannot file a joint income tax return or make joint payments of esti-
mated tax. However, if you are married to a U.S. citizen or resident, see Nonresident Spouse Treated as a Resident in chapter 1. If you earn wages subject to withholding, your U.S. income tax return is due on April 15. Your first payment of estimated tax is due also by April 15. For information on withholding and estimated tax, see chapter 8. You cannot claim exemptions for dependents who are residents of Puerto Rico unless the dependents are citizens of the United States.

Residents of American Samoa. If you are a bona fide resident of American Samoa for the entire year, you can exclude from gross income all income from sources in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (other than amounts for serv-
ces performed as an employee of the U.S. gov-
ernment or any of its agencies). For more information about this exclusion, get Form 4563 and Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.

Useful Items
You may want to see:

Publication

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

Form (and Instructions)

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

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

6. Dual-Status Tax Year

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

The most common dual-status tax years are the years of arrival and departure. See Dual-Status Aliens in chapter 1. If you are married and choose to be treated as a U.S. resident for the entire year, as explained in chapter 1, the rules of this chapter do not apply to you for that year.

Topics
This chapter discusses:

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

Income Subject to Tax
For the part of the year you are a resident alien, you are taxed on income from all sources. In-
come from sources outside the United States is taxable if you receive it while you are a resident alien. The income is taxable even if you earned it while you were a nonresident alien. The income is not taxable even if you

became a resident alien or a U.S. citizen after receiving it and before the end of the year.

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

When determining what income is taxed in the United States, you cannot claim exemp-
tions under U.S. tax law as well as the reduced tax rates and exemptions provided by tax trea-
ties between the United States and certain for-
eign countries. For a further discussion of tax treaties, see chapter 9.

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

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

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

3) Head of household. You cannot use the head of household Tax Table column or Tax Rate Schedule.

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

5) Tax rates. If you are married and a nonresi-
dent of the United States for all or part of the tax year and you do not choose to file jointly as discussed in chapter 1, you must use the Tax Table column or Tax Rate Schedule for married filing separately to figure your tax on income effectively connected with a U.S. trade or busi-
tness. You cannot use the Tax Table column or Tax Rate Schedule for married filing jointly or single. However, if you are a married resident of Canada, Mexico, Japan, or the Republic of Ko-
tea (South Korea), or are a married U.S. na-
tional, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year. See the instructions for Form 1040NR to see if you qualify.

A U.S. national is an individual who, al-
though not a U.S. citizen, owes his or her alle-
giance to the United States. U.S. nationals include American Samoans and Northern Mari-
ana Islanders who choose to become U.S. na-
tionals instead of U.S. citizens.

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

- 1) You are married, and
- 2) You choose to be treated as a resident for all of 2003 by filing a joint return with your
spouse who is a U.S. citizen or resident, as discussed in chapter 1.

Exemptions

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

Special rules apply to exemptions for the part of the tax year you are a nonresident if you are a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), are a U.S. national, or are a student or business apprentice from India. For more information, see Exemptions in chapter 5.

How To Figure Tax

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

Income

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

Social security and railroad retirement benefits.

During the part of the year you are a nonresident alien, 85% of any U.S. social security benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the 30% tax, unless exempt, or subject to a lower treaty rate. (See The 30% Tax in chapter 4.)

During the part of the year you are a resident alien, part of the social security and the equivalent portion of tier 1 railroad retirement benefits will be taxed at graduated rates if your modified adjusted gross income plus half these benefits is more than a certain base amount.

Use the Social Security Benefits Worksheet in the Form 1040 instructions to help you figure the taxable part of your social security and equivalent tier 1 railroad retirement benefits for the part of the year you were a resident alien.

If you received U.S. social security benefits while you were a nonresident alien, the Social Security Administration will send you Form SSA–1042G showing your combined benefits for the entire year and the amount of tax withheld. You will not receive separate statements for the benefits received during your periods of U.S. residence and nonresidence. Therefore, it is important for you to keep careful records of these amounts. You will need this information to properly complete your return and determine your tax liability.

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

Child tax credit.

You may be able to take this credit if you have a qualifying child. For this credit, a qualifying child:

1) Is a U.S. citizen, national, or resident alien,
2) Is claimed as a dependent on your tax return, and
3) Is:
   a) Your son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandson),
   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example your niece or nephew),
   c) Your foster child (any child placed with you by an authorized placement agency whom you cared for as your own child), or
   d) Your own child (you must be able to claim your own personal exemption). If you need more information, see Publication 590.

Adoption credit.

You may be able to take this credit if you pay someone to care for a dependent that qualifies for the credit in any tax year and the credit is not more than your earned income for that tax year.

Retirement savings contributions credit.

If you make eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA), you may be able to take a tax credit. However, you cannot claim the credit if any of the following apply.

1) You were born after January 1, 1986.
2) You are a full-time student.
3) Someone else claims an exemption for you on his or her tax return.
4) Your adjusted gross income is more than $25,000.

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

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You may be able to take this credit if you have a qualifying child. For this credit, a qualifying child:

1) Is a U.S. citizen, national, or resident alien,
2) Is claimed as a dependent on your tax return, and
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   a) Your son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandson),
   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example your niece or nephew),
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   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example your niece or nephew),
   c) Your foster child (any child placed with you by an authorized placement agency whom you cared for as your own child), or
   d) Your own child (you must be able to claim your own personal exemption).

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1) You were born after January 1, 1986.
2) You are a full-time student.
3) Someone else claims an exemption for you on his or her tax return.
4) Your adjusted gross income is more than $25,000.

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

Child tax credit.

You may be able to take this credit if you have a qualifying child. For this credit, a qualifying child:

1) Is a U.S. citizen, national, or resident alien,
2) Is claimed as a dependent on your tax return, and
3) Is:
   a) Your son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandson),
   b) Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example your niece or nephew),
   c) Your foster child (any child placed with you by an authorized placement agency whom you cared for as your own child), or
   d) Your own child (you must be able to claim your own personal exemption).

Adoption credit.

You may be able to take this credit if you pay someone to care for a dependent that qualifies for the credit in any tax year and the credit is not more than your earned income for that tax year.

Retirement savings contributions credit.

If you make eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA), you may be able to take a tax credit. However, you cannot claim the credit if any of the following apply.

1) You were born after January 1, 1986.
2) You are a full-time student.
3) Someone else claims an exemption for you on his or her tax return.
4) Your adjusted gross income is more than $25,000.

Use Form 8880, Credit for Qualified Retirement Savings Contributions, to figure the credit. For more information, see Publication 590.
Resident at end of year. You must file Form 1040 if you are a dual-status taxpayer who be- comes a resident after the end of the tax year and who is a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a statement to your return to show the income for the part of the year you are a nonresident. You may use Form 1040NR or Form 1040NR–EZ as the statement, but be sure to mark "Dual-Status Statement" across the top.

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

Former long-term residents are required to file Form 8854 with their dual-status return for the last year of U.S. residency. To determine if you are a former long-term resident, see Expa- triation Tax in chapter 4. Statement. Any statement must have your name, address, and taxpayer identification num- ber on it. You do not need to sign a separate statement or schedule accompanying your return, since your signature on the return also applies to the supporting statements and sched- ules.

When and Where To File

If you are a resident alien on the last day of your tax year and report your income on a calendar year basis, you must file no later than April 15 of the year following the close of your tax year. If you file your income on other than a calendar year basis, file your return no later than the 15th day of the 4th month following the close of your tax year. In either case, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

If you are a nonresident alien on the last day of your tax year and you report your income on a calendar year basis, you must file no later than April 15 of the year following the close of your tax year if you receive wages subject to withholding. If you report your income on other than a calendar year basis, file your return no later than the 15th day of the 4th month following the close of your tax year. If you did not receive wages subject to withholding and you report your income on a calendar year basis, you must file no later than June 15 of the year following the close of your tax year. If you report your income on other than a calendar year basis, file your return no later than the 15th day of the 6th month following the close of your tax year. In any case, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

Illustration of Dual-Status Return


The Major Product Co. later offered Sam a permanent job, and he returned to the United States with a permanent visa on September 10, 2003.

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

After Sam became permanently employed, he was paid wages for the rest of the year were $21,800, including reimbursement of his moving ex- penses. He received a separate Form W–2 for this period. His other income received in 2003 was:

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

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

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

- Sam paid the following expenses while he was in the United States:
  Moving expenses incurred and paid in September ............... $8,300
  VA State income tax ............... $612
  Contributions to U.S. charities .......... $310

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

Form 1040NR

Sam completes Form 1040NR as follows.

Pages 1, 2, and 3. Sam prints his name, ad- dress, and social security number on page 1 of Form 1040NR. He prints "Dual-Status State- ment" across the top of the form.

On line 8, Sam enters his salary while a nonresident. He enters the state income tax withheld from his salary on line 35 (carried from page 3, line 17, Schedule A) and the federal income tax withheld ($536) from his salary on line 57. He also carries these amounts to Form 1040 (discussed later).
business and, therefore, not taxed at the graduated rates. Sam completes Form 3903 (not illustrated) to figure his moving expense deduction and reports the total on line 27, Form 1040. Schedule A (Form 1040). Sam cannot claim the standard deduction because he has a dual-status tax year. He reports his itemized deductions on Schedule A (Form 1040). The only itemized deduction he had while he was a nonresident alien was the state income tax withheld from his pay. For information purposes, he lists this amount on line 1, Schedule A, Form 1040NR, in addition to including it on Schedule A, Form 1040. Sam totals his itemized deductions on line 28, Schedule A (Form 1040).

Page 2. Sam checks box 36b and reports the amount from line 28 of Schedule A (Form 1040) on line 37, Form 1040.

Sam enters $3,050 for one personal exemption on line 39, Form 1040. He subtracts the amount on line 39 from the amount on line 38 to figure his taxable income, line 40.

Sam is now ready to figure the tax on his income taxed at the graduated rates. He uses the column in the Tax Table for single individuals. He enters $2,129 on line 43. Since he had no credits to subtract, he enters $2,129 again on line 54.

To this tax he must add the tax on the income taxed at the 30% or lower treaty rate. Since there is no line on Form 1040 for this tax, he reports the amount ($36) on the dotted line next to line 60 and includes it in the total tax on line 60.

Sam reports the total amount of tax withheld ($2,700) from his wages on line 61, Form 1040. He includes in this amount the tax withheld at source ($36 from line 64, Form 1040NR) on dividends paid to him while he was a nonresident alien. He also writes a brief explanation.

Sam compares the total tax on line 60, Form 1040, to the total payments on line 68, to see if he has overpaid his tax or if he owes an additional amount. Since the amount of tax withheld and the amount of tax paid at source are more than his total tax, he has overpaid his tax. He subtracts the amount on line 60 from the amount on line 68 to figure his refund. He draws a line through the boxes on lines 70b and 70d because he does not want his refund directly deposited into his account.

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

Sam mails the return to the following address.

Internal Revenue Service Center
Philadelphia, PA 19255

Chapter 6  Dual-Status Tax Year  Page 31
**Form 1040 (2003)**

**Dual-Status Tax Year**

**Page 32 Chapter 6**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>36a</td>
<td>Amount from line 34 (adjusted gross income)</td>
</tr>
<tr>
<td>36b</td>
<td>Subtotal line 37 from line 35.</td>
</tr>
<tr>
<td>37</td>
<td>Itemized deductions (from Schedule A) or standard deduction (see below)</td>
</tr>
<tr>
<td>40</td>
<td>Taxable income. Subtract line 37 from line 35. If line 35 is over $104,625, see the worksheet on page 35.</td>
</tr>
<tr>
<td>41</td>
<td>Tax liability. Subtract line 38 from line 39. If line 39 is over line 41, see Form 8962.</td>
</tr>
<tr>
<td>42a</td>
<td>Alternative minimum tax. See page 36.</td>
</tr>
<tr>
<td>42b</td>
<td>Add lines 41 and 42.</td>
</tr>
<tr>
<td>43</td>
<td>Tax due. Subtract line 42 from line 43. If line 42 is more than line 43, enter -0-.</td>
</tr>
<tr>
<td>44</td>
<td>Add lines 43 and 44.</td>
</tr>
<tr>
<td>45</td>
<td>Total income. Add all amounts in the far right column for lines 7 through 21.</td>
</tr>
<tr>
<td>46</td>
<td>Add lines 45 and 46.</td>
</tr>
<tr>
<td>47</td>
<td>Total tax. Line 46 plus line 47.</td>
</tr>
<tr>
<td>48</td>
<td>Line 61 through 67. These are your total credits.</td>
</tr>
<tr>
<td>49</td>
<td>Subtract line 48 from line 47. If line 48 is more than line 49, enter -0-.</td>
</tr>
<tr>
<td>50</td>
<td>Add lines 49 and 50.</td>
</tr>
<tr>
<td>51</td>
<td>Total credit. Line 50 plus line 51.</td>
</tr>
<tr>
<td>52a</td>
<td>Add lines 51 and 52.</td>
</tr>
<tr>
<td>52b</td>
<td>Total tax liability. Line 52 less any line 44.</td>
</tr>
<tr>
<td>53</td>
<td>Amount of line 52 you want.</td>
</tr>
<tr>
<td>54</td>
<td>Amount of line 54 you want.</td>
</tr>
<tr>
<td>55</td>
<td>Add lines 54 through 57.</td>
</tr>
<tr>
<td>56</td>
<td>Add lines 55 and 56.</td>
</tr>
<tr>
<td>57</td>
<td>Add lines 56 and 57.</td>
</tr>
<tr>
<td>58</td>
<td>Add lines 57 and 58.</td>
</tr>
<tr>
<td>59</td>
<td>Add lines 58 and 59.</td>
</tr>
<tr>
<td>60</td>
<td>Total tax credit. Line 59 plus line 60.</td>
</tr>
<tr>
<td>61</td>
<td>Add lines 60 and 61.</td>
</tr>
<tr>
<td>62</td>
<td>Add lines 61 and 62.</td>
</tr>
<tr>
<td>63</td>
<td>Add lines 62 and 63.</td>
</tr>
<tr>
<td>64</td>
<td>Add lines 63 and 64.</td>
</tr>
<tr>
<td>65</td>
<td>Add lines 64 and 65.</td>
</tr>
<tr>
<td>66</td>
<td>Add lines 65 and 66.</td>
</tr>
<tr>
<td>67</td>
<td>Add lines 66 and 67.</td>
</tr>
<tr>
<td>68</td>
<td>Add lines 67 and 68.</td>
</tr>
<tr>
<td>69</td>
<td>Add lines 68 and 69.</td>
</tr>
<tr>
<td>70a</td>
<td>Add lines 70a and 70b.</td>
</tr>
<tr>
<td>70b</td>
<td>Add lines 70b and 70c.</td>
</tr>
<tr>
<td>71</td>
<td>Add lines 70c and 71.</td>
</tr>
</tbody>
</table>

**Adjust Gross Income**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>Adjust gross income.</td>
</tr>
<tr>
<td>24</td>
<td>Add lines 23 through 24.</td>
</tr>
<tr>
<td>25</td>
<td>Add lines 24 through 25.</td>
</tr>
<tr>
<td>26</td>
<td>Add lines 25 through 26.</td>
</tr>
</tbody>
</table>

**Exemptions**

- **Single**: Head of household (with qualifying person). See page 22 if the qualifying person is not your dependent, or see page 34 if the qualifying person is your dependent.
- **Married filing jointly (even if only one had income)**: See page 22 if you are not married filing jointly.
- **Married filing separately** (if married before 2003): See page 22 if you are not married filing separately.
- **Qualifying child** (if under 19 or over 18 and full-time student): See page 22 if you are not a qualifying child.
- **Qualifying widow(er) or surviving spouse** (if married before 2003): See page 22 if you are not a qualifying widow(er) or surviving spouse.

**Rental* Real Estate**

- **Line 11**: Rental and royalty income (from Schedule E or Schedule K-2 or K-3). If you are not a partner in a partnership or a shareholder in an S corporation, see page 22.

**Other* Income**

- **Line 12**: Other income. List type and amount. See page 22 if you are not other income.

**Social Security Benefits**

- **Line 13**: Social security benefits. Add lines 13a and 13b. See page 22 if you are not social security benefits.

**Self-Employed Taxes**

- **Line 14**: Self-employed FICA and self-employed Medicare taxes (see page 22 if you are not self-employed).

**Other* Taxes**

- **Line 15**: Other taxes. List type and amount (see page 22 if you are not other taxes).

**Signature**

- **Line 16**: Sign and date. If a joint return, sign and date for each spouse. See page 22 if you are not sign and date.

**Sign Here**

- **Line 17**: Amounts to be included on Form 2021, line 1. See page 22 if you are not amounts to be included on Form 2021.
Schedule A—Itemized Deductions

<table>
<thead>
<tr>
<th>Category</th>
<th>Line 1</th>
<th>Line 2</th>
<th>Line 3</th>
<th>Line 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical and Dental Expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes You Paid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real estate taxes (see page A-2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal property taxes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other taxes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home mortgage interest and points reported to you on Form 1098</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal use of home mortgage interest and points reported to you on Form 1098</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gifts to Charity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other than by cash or check</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Casualty and Theft Losses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unreimbursed employment expenses, job travel, union dues, job education, etc. (see Form 2106 or 2106-EZ)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous deductions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other expenses—investment, safe deposit box, etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other—other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Itemized Deductions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For Paperwork Reduction Act Notices, see Form 8829 Instructions.

For Schedule A (Form 1040) 2003

Schedule A (Form 1040) 2003

For the tax year beginning December 31, 2003, or other tax year

Plan Ahead for Next Year—Itemized Deductions

Dual-status Alien—July 20, 2003

Printed in U.S.A.
Schedule A—Itemized Deductions (See pages 21, 22, and 23)

<table>
<thead>
<tr>
<th>Itemized Deductions</th>
<th>Amount from line 33 (adjusted gross income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>State and Local Income Taxes</td>
<td></td>
</tr>
<tr>
<td>State income taxes</td>
<td>1</td>
</tr>
<tr>
<td>Local income taxes</td>
<td></td>
</tr>
<tr>
<td>Add lines 1 and 2</td>
<td></td>
</tr>
</tbody>
</table>

Gifts to U.S. Charities

Gifts by cash or check. If you made any gift of $500 or more, see page 21.

Alternative minimum tax

Alternative minimum tax is more than $500. Enter on Form 6251.

Social security and Medicare tax on prior year's income reported to employer. Attach Form 8885.

Retirement savings contributions credit. Attach Form 8880.

Gifts by cash or check. If you made any gift of $250 or more, see page 21.

Child tax credit (see page 17)

Form 1040NR, line 34, over $139,500 (over $69,750 if you checked filing status box 1, enter -0-).

Excess social security and tier 1 RRTA tax withheld (see page 19)

Other credits. Check applicable box(es):

Casualty and Theft Losses

Add lines 4 through 6.

Subtract line 14 from line 12. If line 14 is more than line 12, enter -0-.

Unreimbursed employee expenses—job travel, union dues, job education, etc. You must attach Form 2106.

Credit for amount paid with Form 1040-C

Unreimbursed employee expenses—job travel, union dues, job education, etc. You must attach Form 2106.

Excess social security and tier 1 RRTA tax withheld (see page 19)

Credit for amount paid with Form 1040-C

Form 1040NR, line 34.
### Tax on Income Not Effectively Connected With a U.S. Trade or Business

#### Attach Forms 1042-S, SSA-1042S, RRB-1042S, or similar form.

<table>
<thead>
<tr>
<th>Nature of income</th>
<th>(a) U.S. tax withheld at source</th>
<th>Enter amount of income under the appropriate rate of tax (see pages 23 and 24)</th>
<th>(b) 10%</th>
<th>(c) 15%</th>
<th>(d) 30%</th>
<th>(e) Other (specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td>73 Dividends paid by:</td>
<td>73a 36</td>
<td>240</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a U.S. corporations</td>
<td>73b</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b Foreign corporations</td>
<td>73c</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>74 Interest:</td>
<td>74a</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a Mortgage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b Paid by foreign corporations</td>
<td>74b</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c Other</td>
<td>74c</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>75 Industrial royalties (patents, trademarks, etc.)</td>
<td>75</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>76 Motion picture or T.V. copyright royalties</td>
<td>76</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77 Other royalties (copyrights, recording, publishing, etc.)</td>
<td>77</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>78 Real property income and natural resources royalties</td>
<td>78</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>79 Pensions and annuities</td>
<td>79</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>80 Social security benefits</td>
<td>80</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>81 Gains (include capital gain from line 89 below)</td>
<td>81</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>82 Other (specify)</td>
<td>82</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>83 Total U.S. tax withheld at source. Add column (a) of lines 73a through 82. Enter the total here and on Form 1040NR, line 64</td>
<td>83 36</td>
<td>240</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>84 Add lines 73a through 82 in columns (b)–(e)</td>
<td>84</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>85 Multiply line 84 by rate of tax at top of each column</td>
<td>85 36</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>86 Tax on income not effectively connected with a U.S. trade or business. Add columns (b)–(e) of line 85. Enter the total here and on Form 1040NR, line 51</td>
<td>86</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

Enter the capital gains and losses from property sales or exchanges that are effectively connected with a U.S. business on Schedule D (Form 1040), Form 4797, or both.

<table>
<thead>
<tr>
<th>(a) Kind of property and description (if necessary, attach statement of descriptive details not shown below)</th>
<th>(b) Date acquired (mo., day, yr.)</th>
<th>(c) Date sold (mo., day, yr.)</th>
<th>(d) Sales price</th>
<th>(e) Cost or other basis</th>
<th>(f) LOSS if (d) is more than (e) subtract (d) from (e)</th>
<th>(g) GAIN if (d) is more than (e) subtract (e) from (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>87 Add columns (f) and (g) of line 87</td>
<td>88 89</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>89 Capital gain. Combine columns (f) and (g) of line 88. Enter the net gain here and on line 81 above (if a loss, enter -0-)</td>
<td>89</td>
<td>89</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Other Information (If an item does not apply to you, enter “N/A.”)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>What country issued your passport?</td>
<td>United Kingdom</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Were you ever a U.S. citizen?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>C</td>
<td>Give the purpose of your visit to the United States</td>
<td>Permanent assignment</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Type of entry visa</td>
<td>H-1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and current nonimmigrant status and date of change (see page 24)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Date you entered the United States (see page 24)</td>
<td>3-18-03</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>Did you give up your permanent residence as an immigrant in the United States this year?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>G</td>
<td>Dates you entered and left the United States during the year. Residents of Canada or Mexico entering and leaving the United States at frequent intervals, give name of country only.</td>
<td>Entered — March 12, 2002</td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>Give number of days (including vacation and nonworkdays) you were present in the United States during:</td>
<td>2001</td>
<td>0</td>
</tr>
<tr>
<td>I</td>
<td>If you are a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), or a U.S. national, did your spouse contribute to the support of any child claimed on Form 1040NR, line 7c?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>J</td>
<td>Did you file a U.S. income tax return for any year before 2003?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>K</td>
<td>To which Internal Revenue office did you pay any amounts claimed on Form 1040NR, lines 58, 61, and 63?</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>L</td>
<td>Have you excluded any gross income other than foreign source income not effectively connected with a U.S. trade or business?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>M</td>
<td>If you are claiming the benefits of a U.S. income tax treaty with a foreign country, give the following information. See page 24 for additional information.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>United Kingdom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Type and amount of effectively connected income exempt from tax</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Type and amount of income not effectively connected that is exempt from or subject to a reduced rate of tax. Also, identify the applicable tax treaty article</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>United Kingdom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Type and amount of effectively connected income exempt from tax</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Type and amount of income not effectively connected that is exempt from or subject to a reduced rate of tax. Also, identify the applicable tax treaty article</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>If you file this return to report community income, give your spouse’s name, address, and identifying number.</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>O</td>
<td>If you file this return for a trust, does the trust have a U.S. business?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>P</td>
<td>Is this an “expatriation return” (see page 24)?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q</td>
<td>During 2003, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to adjust your status to that of a lawful permanent resident of the United States?</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

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**Form 1040NR (2003)**
7. Filing Information

Introduction

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

Topics

This chapter discusses:

- Forms aliens must file,
- When and where to file,
- Penalties,
- Amended returns and claims for refund, and
- Transportation of currency or monetary instruments.

Useful Items

You may want to see:

Forms (and Instructions)

- 1040 U.S. Individual Income Tax Return,
- 1040A U.S. Individual Income Tax Return
- 1040EZ Income Tax Return for Single and Joint Filers With No Dependents
- 1040NR U.S. Nonresident Alien Income Tax Return
- 1040NR–EZ U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents

See chapter 12 for information about getting these forms.

What, When, and Where To File

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

Resident Aliens

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

You are allowed an automatic extension to June 15 to file if your main place of business and the home you live in are outside the United States and Puerto Rico on April 15. You can get an extension of time to August 15 to file your return if you get an extension by April 15 (June 15 if you qualify for the June 15 extension). Use Form 4868 to get the extension to August 15.

If the due date for filing falls on a Saturday, Sunday, or legal holiday, the due date is the next day which is not a Saturday, Sunday, or legal holiday. You may be able to file your return electronically. See IRS e-file in your form instructions.

Nonresident Aliens

Nonresident aliens who are required to file an income tax return should use Form 1040NR or, if qualified, Form 1040NR–EZ.

If you are any of the following, you must file a return:

1) A nonresident alien individual engaged or connected to be engaged in a trade or business in the United States during 2003. (But see the Note below.)
   You must file even if:
   a) Your income did not come from a trade or business conducted in the United States,
   b) You have no income from U.S. sources, or
   c) Your income is exempt from income tax.

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

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

4) A fiduciary for a nonresident alien estate or trust.

Note. If you were a nonresident alien student, teacher, or trainee who was temporarily present in the United States under an “F,” “J,” “M,” or “Q” visa, you must file Form 1040NR (or Form 1040NR–EZ) only if you have income that is subject to tax, such as wages, tips, scholarship and fellowship grants, dividends, etc.

You must also file if you want to:

1) Claim a refund of over withheld or overpaid tax, or
2) Claim the benefit of any deductions or credits. For example, if you have no U.S. business activities but have income from real property that you choose to treat as effectively connected income (discussed in chapter 4), you must timely file a true and accurate return to take any allowable deductions against that income. For information on what is timely, see When to file for deductions and credits under When To File, later.

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

Form 1040NR–EZ

You can use Form 1040NR–EZ if all of the following conditions are met.

1) You do not claim any dependents.
2) You cannot be claimed as a dependent on someone else’s U.S. tax return.
3) If you were married, you cannot claim an exemption for your spouse.
4) Your taxable income is less than $50,000.
5) You do not claim any itemized deductions (other than for state and local income taxes).
6) Your only U.S. source income is from wages, salaries, tips, taxable refunds of state and local income taxes, and scholarship or fellowship grants. (If you had taxable interest or dividend income, you cannot use this form.)
7) You are not claiming any adjustments to income other than the student loan interest deduction or scholarship and fellowship grants excluded.
8) You are not claiming any credits.
9) The only taxes you owe are:
   a) The income tax from the Tax Table.
   b) The social security and Medicare tax on tips not reported to your employer.

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

When To File

If you are an employee and you receive wages subject to U.S. income tax withholding, you will generally file by the 15th day of the 4th month after your tax year ends. If you file for the 2003 calendar year, return is due April 15, 2004. If you are not an employee who receives wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 2003 calendar year, your return by June 15, 2004. If you are not an employee who receives wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 2003 calendar year, your return by June 15, 2004. You must file the extension by the regular due date of your return.

When to file for deductions and credits. To get the benefit of any allowable deductions or credits, you must timely file a true and accurate return. For this purpose, a return is timely if it is filed within 16 months of the due date just discussed. However, if you did not file a 2002 tax return and 2003 is not the first year for which you are required to file one, your 2003 return is timely for this purpose if it is filed by the earlier of:

1) The date that is 16 months after the due date for filing your 2003 return, or
2) The date the IRS notifies you that your 2003 return has not been filed and that you cannot claim certain deductions and credits.

The allowance of the following credits is not affected by this time requirement.

1) Credit for withheld taxes.

2) Credit for excise tax on certain uses of gasoline and special fuels.

3) Credit for tax paid by a regulated investment company or a real estate investment trust on undistributed long-term capital gains.

**Penalties**

- **Tax penalties** are imposed for failure to file, underpayment of tax, negligence, fraud, and other violations of the tax laws.

- **Failure-to-file penalty** is imposed for failure to file a tax return on or before the due date (including extensions) for a particular tax period.

- **Failure-to-pay penalty** is imposed for underpayment of tax on or before the due date (including extensions) for a particular tax period.

- **Fraud penalty** is imposed for committing fraud in preparing a tax return.

- **Accuracy-related penalty** is imposed for making an error in reporting income or deductions.

- **Penalty abatement** may be granted under certain circumstances.

- **Waiver of filing deadline** may be granted if the IRS determines that you had reasonable cause for not filing a return.

- **Waiver of late filing penalty** may be granted if the IRS determines that you had reasonable cause for not filing a return.

**Where To File**

File Form 1040NR–EZ and Form 1040NR at the following address:

Internal Revenue Service Center
Philadelphia, PA 19255

**Aliens from the Virgin Islands.**

If you are a bona fide resident of the Virgin Islands on the last day of your tax year and work temporarily in the United States, you must pay your income taxes to the Virgin Islands and file your income tax returns at the following address:

Virgin Islands Bureau of Internal Revenue
9601 Estate Thomas
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802

Report all income from U.S. sources, as well as income from other sources, on your return. For information on filing Virgin Islands returns, contact the Virgin Islands Bureau of Internal Revenue.

Chapter 8 discusses withholding from U.S. wages of Virgin Islanders.

**Penalties**

The law imposes penalties for filing your tax return late or for late payment of any tax due. You may also have to pay a penalty if you substantially underestimate your tax, file a frivolous return, or fail to supply your taxpayer identification number. If you provide fraudulent information on your return, you may have to pay a civil fraud penalty.

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

Fraud. If your failure to file is due to fraud, the penalty is 15% for each month or part of a month that your return is late, up to a maximum of 75%.

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

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

**Paying tax late.** You will have to pay a failure-to-pay penalty of 1/10% of 0.50% of your unpaid taxes for each month, or part of a month, after the due date that the tax is not paid. This penalty does not apply during the automatic 4-month extension of time to file period, if you paid at least 90% of your actual tax liability on or before the due date of your return and pay the balance when you file your return.

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

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

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

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

**Accuracy-related penalty.** You may have to pay an accuracy-related penalty if:

1) You underpay your tax because of either "negligence" or "disregard" of rules or regulations, or

2) You substantially underestimate your income tax.

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

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

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

**Adequate disclosure.** You can avoid the penalty for disregard of rules or regulations if you adequately disclose on your return a position that has at least a reasonable basis. See Disclosure statement, later. This exception will not apply to an item that is attributable to a tax shelter. In addition, it will not...
apply if you fail to keep adequate books and records, or substantial items properly.

**Substantial understatement of income tax.** You undervate your tax if the tax shown on your return is less than the correct tax. The understatement is substantial if it is more than the larger of 10% of the correct tax or $5,000. However, there is no reduction for an adequate disclosure. However, there is a reduction for a position with substantial authority, but only if you reasonably believed that your tax treatment was more likely than not the proper treatment.

**Substantial authority.** Whether there is or was substantial authority for the tax treatment of an item depends on the facts and circumstances. Consideration will be given to court opinions, Treasury regulations, revenue rulings, revenue procedures, and notices and announcements issued by the IRS and published in the Internal Revenue Bulletin that involve the same or similar circumstances as yours.

**Disclosure statement.** To adequately disclose the relevant facts about your tax treatment of an item, use Form 8275, Disclosure Statement. You must also have a reasonable basis for treating the item the way you did. In cases of substantial understatement only, items that meet the requirements of Revenue Procedure 2002–66 (or later update) are considered adequately disclosed on your return without filing Form 8275.

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

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

**Frivolous return.** You may have to pay a penalty of $500 if you file a frivolous return. A frivolous return is one that does not include enough information to figure the correct tax or that contains information clearly showing that the tax you reported is substantially incorrect.

You will have to pay the penalty if you filed this kind of return because of a frivolous position on your part or a desire to delay or interfere with the administration of federal income tax laws. This includes altering or striking out the preprinted language above the space provided for your signature.

This penalty is added to any other penalty provided by law.

The penalty must be paid in full upon notice and demand from IRS even if you protest the penalty.

**Fraud.** If there is any underpayment of tax on your return due to fraud, a penalty of 75% of the underpayment due to fraud will be added to your tax.

**Failure to supply taxpayer identification number.** If you do not include your social security number (SSN) or individual taxpayer identification number (ITIN) or the SSN or ITIN of another person where required on a return, statement, or other document, you will be subject to a penalty of $50 for each failure. You will also be subject to a penalty of $50 if you do not give your SSN or ITIN to another person when it is required on a return, statement, or other document.

For example, if you have a bank account that earns interest, you must give your SSN or ITIN to the bank. The number must be shown on the Form 1099–INT or other statement the bank sends you. If you do not give the bank your SSN or ITIN, you will be subject to the $50 penalty. (You also may be subject to “backup” withholding of income tax.)

You will not have to pay the penalty if you are able to show that the failure was due to reasonable cause and not willful neglect.

**Failure to furnish tax shelter registration number.** A person who sells (or otherwise transfers) an interest in a tax shelter must give you the tax shelter registration number or be subject to a $100 penalty. If you claim any deduction, credit, or other tax benefit because of the tax shelter, you must attach Form 8271, Investor Reporting of Tax Shelter Registration Number, to your return to report this number. You will have to pay a penalty of $250 for each failure to report a tax shelter registration number on your return. The penalty can be excused if you have a reasonable cause for not reporting the number.

**Amended Returns and Claims for Refund.**

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

**Transportation of Currency or Monetary Instruments.**

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

The term “monetary instruments” means the following:

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

However, the term does not include:

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

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

**Filing requirements.** FinCEN Form 105 filing requirements follow.

**Recipients.** Each person who receives currency or other monetary instruments in the United States must file FinCEN Form 105 within 15 days after receipt, with the Customs officer in charge at any port of entry, or file the correct return, attach the corrected return, and demand from IRS even if you protest the penalty.

**Commissioner of Customs and Border Protection Attention: Currency Transportation Reports**

Washington, DC 20229

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

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

**Penalties.** Civil and criminal penalties are provided for failing to file a report, filing a report containing material omissions or misstatements, or filing a false or fraudulent report. Also, the
8. Paying Tax Through Withholding or Estimated Tax

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

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

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

Topics
This chapter discusses:
- How to notify your employer of your alien status
- Income subject to withholding of income tax
- Exemptions from withholding
- Social security and Medicare taxes, and
- Estimated tax rules

Useful Items
You may want to see:
- Publication
  - 515 Withholding of Tax on Nonresident Aliens and Foreign Entities
  - 533 Self-Employment Tax
  - 901 U.S. Tax Treaties
- Form (and Instructions)
  - W–4 Employee’s Withholding Allowance Certificate
  - W–8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
  - W–8ECI Certificate of Foreign Person’s Claim for Exemption From Withholding on Income Not Effectively Connected With the Conduct of a Trade or Business in the United States
  - W–9 Request for Taxpayer Identification Number and Certification
- 1040–ES (NR) U.S. Estimated Tax for Nonresident Alien Individuals
- 8233 Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual
- 8288–B Application for Withholding Certificate for Dispositions by Exempt Persons of U.S. Real Property Interests

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

Withholding From Compensation
The following discussion generally applies only to nonresident aliens. Tax is withheld from resident aliens in the same manner as U.S. citizens.

Wages and other compensation paid to a nonresident alien for services performed as an employee are usually subject to graduated withholding at the same rates as resident aliens and U.S. citizens. Therefore, your compensation, unless it is specifically excluded from the term “wages” by law, or is exempt from tax by treaty, is subject to graduated withholding.

Withholding on Wages
If you are an employee and you receive wages subject to graduated withholding, you will be required to fill out a Form W–4. Also fill out Form W–4 for a scholarship or fellowship grant to the extent it represents payment for past, present, or future services and for which you are not claiming a tax treaty withholding exemption on Form 8233 (discussed later under Income Entitled to Tax Treaty Benefits). These are services you are required to perform as an employee and as a condition of receiving the scholarship or fellowship (or tuition reduction).

Nonresident aliens should fill out Form W–4 using the following instructions instead of the instructions on the Form W–4. This is because of the restrictions on a nonresident alien’s filing status. The limited number of personal exemptions a nonresident alien is allowed, and because a nonresident alien cannot claim the standard deduction.

1) Check only “Single” marital status on line 3 (regardless of your actual marital status).
2) Claim only one allowance on line 5, unless you are a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), or a U.S. national.
3) Request that your employer withhold an additional amount of $7.60 per week on line 6. If your wages are paid based on a 2-week pay period, the additional amount will be $15.30. For other payroll periods, ask your employer for the amount to enter.
4) Do not claim “Exempt” withholding status on line 7.

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

See Withholding on Scholarships and Fellowship Grants later, for how to fill out Form W–4 if you receive a U.S. source scholarship or fellowship grant that is not a payment for services.

Students and business apprentices in India. If you are eligible for the benefits of Article 212(1) of the United States–India Income

Page 40 of 66 of Publication 519
Residents of Puerto Rico. If you are a non-resident alien who is a resident of Puerto Rico, wages for services performed in Puerto Rico are generally not subject to withholding unless you are an employee of the United States or any of its agencies in Puerto Rico.

Residents of the U.S. Virgin Islands. Non-resident aliens who are bona fide residents of the Virgin Islands are not subject to withholding of U.S. tax on income earned while temporarily employed in the United States. This is because those persons pay their income tax to the Virgin Islands. To avoid having tax withheld on income earned in the United States, bona fide residents of the Virgin Islands should write a letter, in duplicate, to their employers, stating that they are bona fide residents of the Virgin Islands and expect to pay tax on all income to the Virgin Islands.

Withholding on Pensions

If you receive a pension as a result of personal services performed in the United States, the pension income is subject to the 30% (or lower treaty) rate of withholding. You may, however, have tax withheld at graduated rates on the portion of the pension that arises from the performance of services in the United States after December 31, 1986. You must fill out Form W–BECI and give it to the withholding agent or payer before the income is paid or credited to you.

Independent Contractors

If there is no employee-employer relationship between you and the person for whom you perform services, your compensation is subject to the 30% (or lower treaty) rate of withholding. However, if you are engaged in a trade or business in the United States during the tax year, your compensation for personal services as an independent contractor (independent personal services) may be entirely or partly exempt from withholding if you reach an agreement with the Internal Revenue Service on the amount of withholding required. Also, the final payment to you during the tax year for independent personal services may be entirely or partly exempt from withholding if you are engaged in a trade or business in the United States during the year and you file the forms and provide the information required by the IRS.

Withholding Agreement

An agreement that you reach with the IRS regarding withholding from your compensation for independent personal services is effective for payments covered by the agreement after it is agreed to by all parties. You must agree to timely file an income tax return for the current tax year.

Central withholding agreements. If you are a nonresident alien entertainer or athlete performing or participating in athletic events in the United States, you may be able to enter into a withholding agreement with the IRS for reduced withholding provided certain requirements are met. Under no circumstances will such a withholding agreement reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement must submit the following information:

1) A list of the names and addresses of the nonresident aliens to be covered by the agreement.
2) Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances or events to be covered by the agreement including, but not limited to, contracts with:
   a) Employers, agents, and promoters,
   b) Exhibition halls,
   c) Persons providing lodging, transportation, and advertising,
   d) Accompanying personnel, such as band members or trainers.
3) An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
4) A proposed budget containing itemized estimates of all gross income and expenses for the period covered by the agreement, including any documents to support these estimates.
5) The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
6) The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for the aliens during the period covered by the agreement.

When the IRS approves the estimated budget and the designated central withholding agents, the Associate Chief Counsel (International) will prepare a withholding agreement. The agreement must be signed by each withholding agent, each nonresident alien covered by the agreement, and the Commissioner of the Internal Revenue Service or his delegate. Generally, each withholding agent must agree to withhold income tax from payments made to the nonresident alien, to pay over the withheld tax to the IRS on the dates and in the amounts specified in the agreement, and to have the IRS apply the payments of withheld tax
to the withholding agent’s Form 1042 account. Each withholding agent will be required to file Form 1042 and Form 1042–S for each tax year in which income is paid to a nonresident alien covered by the withholding agreement. The IRS will credit the withheld tax payments, posted to the withholding agent’s Form 1042 account, in accordance with the Form 1042–S. Each nonresident alien covered by the withholding agreement must agree to file Form 1040NR or, if he or she qualifies, Form 1040NR–EZ.

A request for a central withholding agreement should be sent to the following address at least 90 days before the agreement is to take effect.

Internal Revenue Service
TEC Int’l Territory Field Manager
950 L’Enfant Plaza South, S.W.
Attn: S:T:2:Intrl
Washington, DC 20024

Final payment exemption. Your final payment of compensation during the tax year for independent personal services may be entirely or partly exempt from withholding. This exemption is available only once during your tax year and applies to a maximum of $5,000 of compensation of independent personal services performed in the United States. Ordinary and necessary business expenses can be taken into account if proven to the satisfaction of the Commissioner or his delegate. The Commissioner or his delegate will send you a letter, directed to the withholding agent, showing the amount of the final payment of compensation that is exempt from withholding and the amount that can be paid to you because of the exemption. You must give two copies of the letter to the withholding agent and must also attach a copy of the letter to your income tax return for the tax year for which the exemption is effective.

Allowance for Personal Exemption

Withholding on payments for independent personal services is generally based on the amount of your compensation payment minus the value of one exemption ($3,100 for 2004). To determine the income for independent personal services performed in the United States to which the 30% (or lower treaty) rate will apply, you are allowed one personal exemption if you are not a U.S. national and are not a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea). For purposes of 30% withholding, the exemption is treated as $8.47 a day in 2004 for the period that labor or personal services are performed in the United States. To claim an exemption from withholding on the personal exemption amount, fill out the applicable parts of Form 8233 and give it to the withholding agent.

Example. Eric Schmidt, who is a resident of Germany, worked under a contract with a U.S. firm (not as an employee) in the United States for 100 days during 2004 before returning to his country. He earned $6,000 for the services performed (less considered wages) in the United States. Eric is married and has three dependent children. His wife is not employed and has no income subject to U.S. tax. The amount of the personal exemption to be allowed against the income for his personal services performed within the United States in 2004 is $847 (100 days × $8.47), and withholding at 30% is applied against the balance. Thus, $1,545.90 in tax is withheld from Eric’s earnings (30% of $5,153 ($6,000 – $847)).

U.S. nationals or residents of Canada, Mexico, or the Republic of Korea (South Korea). If you are a nonresident alien who is a resident of Canada, Mexico, Japan, or the Republic of Korea (South Korea), or who is a national of the United States, you are subject to the same 30% withholding on your compensation for independent personal services performed in the United States. However, if you are a U.S. national or a resident of Canada or Mexico, you are allowed the same personal exemptions as U.S. citizens. For the 30% (or lower treaty rate) withholding, you can take $8.47 per day for each allowable exemption in 2004. If you are a resident of Japan or the Republic of Korea (South Korea), you are allowed personal exemptions for yourself and for your spouse and children who live with you in the United States at any time during the tax year. However, the additional exemptions for your spouse and children must be further limited as explained in chapter 5 under Exemptions.

Students and business apprentices from India. If you are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty, you are allowed an exemption for your spouse only if your spouse will have no gross income for 2004 and cannot be claimed as a dependent on another person’s U.S. 2004 return. You are also allowed an exemption for each dependent not admitted to the United States on “F–2,” “J–2,” or “M–2” visas if they meet the same rules that apply to U.S. citizens. For the 30% (or lower treaty rate) withholding on compensation for independent personal services performed in the United States, you are allowed $8.47 per day for each allowable exemption in 2004.

Withholding From Other Income

Other income subject to 30% withholding generally includes fixed or determinable income such as interest (other than portfolio interest), dividends, pensions and annuities, and gains from certain sales and exchanges, discussed in chapter 4. It also includes 85% of social security benefits paid to nonresident aliens.

Refund of taxes withheld in error on social security benefits paid to resident aliens. Social security benefits paid to a lawful permanent resident (green card holder) are not subject to 30% withholding. For U.S. income tax purposes, green card holders continue to be resident aliens until their lawful permanent resident status under immigration laws is either taken away or is administratively or judicially determined to have been abandoned. See Green Card Test in chapter 1. If you are a green card holder, you are not generally subject to the social security benefits because you have a foreign address, the withholding tax is refundable by the Social Security Administration (SSA) or the IRS. SSA will refund taxes erroneously withheld if the refund can be processed during the same calendar year in which the tax was withheld. If SSA cannot refund the taxes withheld, you must file a Form 1040 or 1040A with the Internal Revenue Service C.P.O. 45002, Philadelphia, PA 19255 to determine if you are entitled to a refund. You must also attach the following to your Form 1040 or 1040A.


2) A copy of the “green card”.

3) A signed declaration that includes the following statements: The SSA should not have withheld income tax from my social security benefits because I am a U.S. law-
Other income not subject to withholding of 30% (or lower treaty) rate. The following income is not subject to withholding at the 30% (or lower treaty) rate if you file Form W–8ECI with the payer of the income:
- Income (other than compensation) that is effectively connected with your U.S. trade or business.
- Income from real property that you choose to treat as effectively connected with a U.S. trade or business. See Income From Real Property in chapter 4 for details about this choice.

Special rules for withholding on partnership income, scholarships, and fellowships are explained next.

**Tax Withheld on Partnership Income**

If you are a foreign partner in a U.S. or foreign partnership, the partnership will withhold tax on your share of effectively connected taxable income from the partnership. The partnership will give you a statement on Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax, showing the tax withheld. A withholding agent (usually the payer of the income) will withhold tax on your actual distributions of effectively connected income. In this case the partnership will give you a statement on Form 1042–S, Foreign Person’s U.S. Source Income Subject to Withholding. For 2003, the withholding rate was 35%. Claim the tax withheld as a credit on line 65a or 65b of Form 1040NR, as appropriate.

If you are a foreign partner responsible for withholding, see Partnership Withholding on Effectively Connected Income in Publication 515. Withholding on Scholarships and Fellowship Grants

There is no withholding on a qualified scholarship received by a candidate for a degree. See chapter 3.

If you are a nonresident alien student or grantee with an "F," "J," "M," or "O" visa and you receive a U.S. source grant or scholarship that is not fully exempt, the withholding agent (usually the payer of the scholarship) will withhold tax at 14% (or lower treaty rate) of the taxable part of the grant or scholarship that is not a payment for services. However, if you are not a candidate for a degree and the grant does not meet certain requirements, tax will be withheld at the 30% (or lower treaty) rate.

Any part of a scholarship or fellowship grant that is a payment for services is subject to graduated withholding as discussed earlier under Withholding on Wages.

**Alternate Withholding Procedure**

Your withholding agent may choose to use an alternate procedure by asking you to fill out Form W–4 and the Personal Allowances Worksheet (attached to Form W–4). Use the following instructions instead of the Form W–4 instructions to complete the worksheet.

Line A. Enter the total of the following amounts on line A.
- Personal exemption. Include the prorated part of your allowable personal exemption. Figure the amount by multiplying the number of days you expect to be in the United States in 2004 by the daily exemption amount ($8.47).
- Expenses. Include expenses that will be deductible on your return. These include away-from-home expenses (meals, lodging, and transportation), certain state and local income taxes, charitable contributions, and casualty losses, discussed earlier under Itemized Deductions in chapter 5. They also include business expenses, moving expenses, and the IRA deduction discussed under Deductions in chapter 5.
- The amount of away-from-home expenses should be the anticipated actual amount, if known. If you do not know the amount of actual expenses at the time you complete Form W–4, you can claim the current per diem allowance for participants in the Career Education Program under the Federal Travel Regulations. The current per diem allowance is $18 per day.

- Nontaxable grant or scholarship. Include the part of your grant or scholarship that is not taxable under U.S. law or under a tax treaty.

Line B. Enter—0—unless the following paragraphs apply to you.
- If you are a student who qualifies under Article 21(2) of the United States–India income tax treaty, you are not claiming deductions for away-from-home expenses or other itemized deductions (discussed earlier), enter the standard deduction on line B. The standard deduction amount for 2004 is $4,850.

Lines C and D. Enter—0—on both lines unless the following paragraphs apply to you.
- If you are a resident of Canada, Mexico, Japan, the Republic of Korea (South Korea), or a U.S. national, an additional daily exemption amount may be allowed for your spouse and each of your dependents.
- If you are a resident of India who is eligible for the benefits of Article 21(2) of the United States–India income tax treaty, you can claim an additional daily exemption amount for your spouse only if your spouse will have gross income for 2004 and cannot be claimed as a dependent on another U.S. taxpayer’s 2004 return. You can also claim an additional amount for each of your dependents not admitted to the United States on "F–2," "J–2," or "M–2" visas if they meet the same rules that apply to U.S. citizens.
- Enter any additional amount for your spouse on line C. Enter any additional amount for your dependents on line D.

Lines E, F, and G. No entries should be made on lines E, F, and G.

Line H. Add the amounts on lines A through D and enter the total on line H.

Form W–4. Complete lines 1 through 4 of Form W–4. Sign and date the form and give it with the Personal Allowances Worksheet to your withholding agent.

If you file a Form W–4 to reduce or eliminate the withholding on your scholarship or grant, you must file an annual U.S. income tax return to be allowed the exemptions and deductions you claimed on that form. If you are in the United States during more than 183 days of the year, you must attach a statement to your yearly Form W–4 indicating that you have filed a U.S. income tax return for the previous year. If you have not been in the United States long enough to be required to file a return, you must attach a statement to your Form W–4 saying you will file a U.S. income tax return when required.

After the withholding agent has accepted your Form W–4, tax will be withheld on your scholarship or grant, the amount of tax that applies to wages. The gross amount of the income is reduced by the amount on line H of the worksheet and the withholding tax is figured on the remainder.

You will receive a Form 1042–S from the withholding agent (usually the payer of your grant) showing the gross amount of your tax-exempt scholarship or fellowship grant less the withholding allowance amount, the tax rate, and the amount of tax withheld. Use this form to file your annual U.S. income tax return.

**Income Entitled to Tax Benefit Treaties**

If a tax treaty between the United States and your country provides an exemption from, or a reduced rate of, tax for certain items of income, you should notify the payer of the income (the withholding agent) of your foreign status to claim a tax treaty withholding amount of your gross taxable income. Generally, you do this by filing either Form W–8BEN or Form 8233 with the withholding agent.

File Form W–8BEN for income that is not personal services income. File Form 8233 for personal services income as discussed next.

**Employees and independent contractors.** If you perform personal services as an employee or as an independent contractor and you can claim the exemption on your annual U.S. income tax return, you may be able to claim the tax treaty withholding amount of your gross taxable income. Generally, you do this by filing either Form W–8BEN or Form 8233 with the withholding agent.

Employees and independent contractors should be aware that personal service income is subject to withholding under a tax treaty if it is derived in whole or in part in the United States or paid to a resident of the United States. Even if you submit Form 8233, the withholding agent may have to withhold tax from your income. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. In this case, you must file Form 1040NR (for Form 1040NR–EZ if you qualify) to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty exemption.

**Students, teachers, and researchers.** Students, teachers, and researchers must attach the appropriate statement shown in Appendix A (for students) or Appendix B (for teachers and researchers) at the end of this publication to the Form 8233 and give it to the withholding agent. For treaties not listed in the appendices, citations, and data presented in this document, the Assistant has not independently verified the accuracy of the information. The information is provided "as is" and no warranty is given or implied as to its accuracy or completeness. The Assistant recommends consulting with a qualified member of the bar or tax professional for specific legal advice.
The tax year. for the payment of tax providing security number, and home address.

Special events and promotions. Withholding at the full 30% rate is required for payments made to a nonresident alien or foreign corporation for gate receipts (or television or other receipts) from rock music festivals, boxing promotions, and other entertainment or sporting events, unless the withholding agent has been specifically advised otherwise by letter from the IRS. This is true even if the income may be exempt from taxation by provisions of a tax treaty. One reason for this is that the partial or complete exemption is usually based on factors that cannot be determined until after the close of the tax year.

The required letter should be requested from the:

Internal Revenue Service
TEC Intl Territory Manager
950 E. Enfant Plaza South, S.W.
Attn: S:T:2:Intl
Washington, DC 20024.

Entertainers and athletes can also apply for reduced withholding on the basis of their net income after expenses. See Central withholding agreements under Withholding From Compensation, earlier.

You will be required to pay U.S. tax, at the time of your departure from the United States, on any income for which you incorrectly claimed a treaty exemption. For more details on treaty provisions that apply to compensation, see Publication 961.

Tax Withheld on Real Property Sales

If you are a nonresident alien and you dispose of a U.S. real property interest, the transferee (buyer) of the property generally must withhold a tax equal to 10% of the amount realized on the disposition. Withholding is also required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates. These rules are covered in Publication 515 under U.S. Real Property Interest.

If you are a partner in a domestic partnership, and the partnership disposes of a U.S. real property interest at a gain, the partnership will withhold tax on the amount of gain allocable to its foreign partners. Your share of the income and tax withheld will be reported to you on Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax, or Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding (in the case of a publicly traded partnership).

Withholding is not required in the following situations.

1. The property is acquired by the buyer for use as a residence and the amount realized (sales price) is not more than $300,000.
2. The property disposed of is an interest in a U.S. corporation if any class of stock of the corporation is regularly traded on an established securities market.
3. The property disposed of is an interest in a U.S. corporation that is not regularly traded on an established market and you (the seller) give the buyer a copy of a statement issued by the corporation certifying that the interest is not a U.S. real property interest.
4. You (the seller) give the buyer a certification stating, under penalties of perjury, that you are not a foreign person, and containing your name, U.S. taxpayer identification number, and home address.
5. The buyer receives a withholding certificate from the Internal Revenue Service.
6. You give the buyer written notice that you are not required to recognize any gain or loss on the transfer because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. The buyer must file a copy of the notice with the Director, Philadelphia Service Center, P.O. Box 21086, DP N423 FIRPTA Unit, Philadelphia, PA 19114–0586. You must verify the notice as true and sign it under penalties of perjury. The notice must contain the following information.
   a) A statement that the notice is a notice of nonrecognition under regulation section 1.1445–2(d)(2).
   b) Your name, taxpayer identification number, and home address.
   c) A statement that you are not required to recognize any gain or loss on the transfer.
   d) A brief description of the transfer.
   e) A brief summary of the law and facts supporting your claim that recognition of gain or loss is not required.
   f) You may not give the buyer a written notice for any of the following transfers: the sale of your main home on which you exclude gain, a like-kind exchange that does not qualify for nonrecognition treatment in its entirety, or a deferred like-kind exchange that has not been completed at the time the buyer must file Form 8288. Instead, a withholding certificate (described next) must be obtained.
7. The amount you realize on the transfer of a U.S. real property interest is zero.
8. The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia. The certifications in (3) and (4) must be disregarded by the buyer if the buyer has actual knowledge, or receives notice from a seller’s or buyer’s agent, that they are false.

Withholding certificates. The tax required to be withheld on a disposition can be reduced or eliminated under a withholding certificate issued by the IRS. Either you or the buyer can request a withholding certificate.

A withholding certificate can be issued due to any of the following.

1. The IRS determines that reduced withholding is appropriate because either:
   a) The amount required to be withheld would be more than your maximum tax liability, or
   b) Withholding of the reduced amount would not jeopardize collection of the tax.
2. All of your realized gain is exempt from U.S. tax.
3. You or the buyer enter into an agreement for the payment of tax providing security for the tax liability.
4. IRS. This is true even if the income may be exempt from taxation by provisions of a tax treaty. One reason for this is that the partial or complete exemption is usually based on factors that cannot be determined until after the close of the tax year.

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A withholding certificate can be issued due to any of the following.

1. The IRS determines that reduced withholding is appropriate because either:
   a) The amount required to be withheld would be more than your maximum tax liability, or
   b) Withholding of the reduced amount would not jeopardize collection of the tax.
2. All of your realized gain is exempt from U.S. tax.
3. You or the buyer enter into an agreement for the payment of tax providing security for the tax liability.

Credit for tax withheld. The buyer must report and pay over the withheld tax within 20 days after the transfer using Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests. This form is filed with the IRS with copies A and B of Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. Copy B of this statement will be stamped received by the IRS and returned to you (the seller) if the statement is complete and includes your taxpayer identification number. You must file Copy B with your tax return to take credit for the tax withheld.

Social Security and Medicare Taxes

If you work as an employee in the United States, you must pay social security and Medicare taxes in most cases. Your payments of these taxes contribute to your coverage under the U.S. social security system. Social security coverage provides retirement benefits and medical insurance (Medicare) benefits to individuals who meet certain eligibility requirements.

In most cases, the first $87,000 of taxable wages received in 2003 for services performed in the United States is subject to social security tax. All taxable wages are subject to Medicare tax. Your employer deducts these taxes from each wage payment. Your employer must deduct these taxes even if you do not expect to qualify for social security or Medicare benefits. You can claim a credit for excess social security tax on your income tax return if you have more than one employer and the amount deducted from your combined wages for 2003 is more than $5,394. Use the worksheet in chapter 3 of Publication 505, Tax Withholding and Estimated Tax, to figure your credit.

If any one employer deducted more than $5,394, you cannot claim a credit for that
amount. Ask your employer to refund the ex-
cess.
In general, U.S. social security and Medicare
taxes apply to payments of wages for services
performed as an employee in the United States, regardless of the citizenship or residence of ei-
ther the employee or the employer. In limited situations, these taxes apply to wages for ser-
vice performed outside the United States. Your
employer should be able to tell you if social
security and Medicare taxes apply to your
wages. You cannot make voluntary payments if
taxes are due.

Students and Exchange Visitors
Generally, services performed by you as a non-
resident alien temporarily in the United States as
a nonimmigrant under subparagraph (F), (J),
(M), or (Q) of section 101(a)(15) of the Immigra-
tion and Nationality Act are not covered under
the social security program if the services are
performed to carry out the purpose for which you
were admitted to the United States. This means
that there will be no withholding of social security
or Medicare taxes from the pay you receive for
these services. These types of services are very
limited, and generally include only on-campus
work, practical training, and economic hardship
employment.
However, you are covered under the social
security program for these services if you are
considered a resident alien as discussed in
chapter 1, even though your nonimmigrant clas-
sification ("F," "J," "M," or "Q") remains the same.
Social security and Medicare taxes will be with-
held from your pay.

Nonresident Aliens
If you are a nonresident alien admitted to the
United States as a student, you generally are not
permitted to work for a wage or salary or to
engage in business while you are in the United
States. In some cases, a student admitted to the
United States in "F–1," "M–1," or "J–1" status is
granted permission to work, and it is so noted on
the student’s copy of Immigration Form I–94, 
Arrival-Departure Record. Social security and
Medicare taxes are not withheld from pay for
the work unless the student is considered a resident
alien.

Any student who is enrolled and regu-
larly attending classes at a school may be
exempt from social security and
Medicare taxes on pay for services performed
for that school.
The U.S. Citizenship and Immigration Serv-
ices (USCIS) permits on-campus work for stu-
dents in "F–1" status if it does not displace a
U.S. resident. On-campus work means work
performed on the school’s premises. On-cam-
pus work includes work performed at an
off-campus location that is educationally affili-
ated with the school. On-campus work under the
terms of a scholarship, fellowship, or assistant-
ship is considered part of the academic program
of a student taking a full course of study and is
permitted by the USCIS. In this case, the educa-
tional institution endorses the Form I–20. Social
security and Medicare taxes are not withheld
from pay for this work unless the student is
considered a resident alien.

Students in "F–1" status may be permitted to
participate in a curricular practical training pro-
gram that is an integral part of an established
curriculum. Curricular practical training includes
work/study programs, internships, and coopera-
tive education programs. In this case, the edu-
cational institution endorses the Form I–20.
Social security and Medicare taxes are not with-
held from pay for this work unless the student is
considered a resident alien.

Employment due to severe economic neces-
sity and for optional practical training is some-
times permitted for students in "F–1" status. Students
granted permission to work due to severe
economic necessity or for optional practical
training will be issued Form I–688B or Form I–
766 by the USCIS. Social security and Medi-
care taxes are not withheld from pay for this
work unless the student is considered a resident
alien.

Students in "M–1" status who have com-
pleted a course of study can accept employment
for practical training for up to six months and
must have a Form I–688B or Form I–766 is-
sued by the USCIS. Social security and Medi-
care taxes are not withheld from "M–1" stu-
dents' pay for these services unless the stu-
dent is considered a resident alien.
In all other cases, any services performed by
a nonresident alien student are not considered
as performed to carry out the purpose for which
the student was admitted to the United States.
Social security and Medicare taxes will be with-
held from pay for the services unless the pay is
exempt under the Internal Revenue Code.

Exchange Visitors
Nonresident aliens are admitted to the United
States as nonimmigrant exchange visitors under
section 101(a)(15)(J) of the Immigration and Na-
tionality Act through the sponsorship of ap-
proved organizations and institutions that are
responsible for establishing a program for the
exchange visitor and for any later modification of
that program. Generally, an exchange visitor who
has the permission of the sponsor can work for
the same reasons as the students discussed
above. In these cases, permission is granted by
a letter from the exchange visitor’s sponsor or by
donorship from the program sponsor on Form
IAP–66, Certificate of Eligibility or Form

Social security and Medicare taxes are not
withheld on pay for services of an exchange
visitor who has been given permission to work
and who possesses or obtains a letter of authori-
zation from the sponsor unless the exchange
visitor is considered a resident alien.
In all other cases, services performed by an
exchange visitor are not considered as per-
colored to carry out the purpose for which
the visitor was admitted to the United States. Social
security and Medicare taxes are withheld from
pay for the services unless the pay is exempt
under the Internal Revenue Code.

If you are a "J–1" visa holder, your spouse or
child may be permitted to work in the United
States with the prior approval of the USCIS and
issuance of Form I–688B or Form I–766.

Nonresident aliens admitted to the United
States as participants in cultural exchange
programs under section 101(a)(15)(J) of the
Immigration and Nationality Act may be exempt
from social security and Medicare taxes. Aliens
with "Q" visas are aliens whose employment or
training affords the opportunity for culture-shar-
ing with the American public. They are allowed
to work in the United States for a specific em-
ployer in an approved cultural exchange pro-
gram. The employer must be the petitioner
through whom the alien obtained the "Q" visa.
Social security and Medicare taxes are not with-
held from pay for this work unless the alien is
considered a resident alien. Aliens with "Q"
visas are not permitted to engage in employ-
ment outside the exchange program activities.

Refund of Taxes Withheld in Error
If social security or Medicare taxes were with-
held in error from pay that is not subject to these
taxes, contact the employer who withheld the
taxes for a refund. If you are unable to get a full
refund of the amount withheld, you have a right to
claim a refund with the Internal Revenue Serv-
ice on Form 843. Claim for Refund and Request
for Abatement. Attach the following items to
Form 843.
• A copy of your Form W–2 to prove the
amount of social security and Medicare
taxes withheld.
• A copy of your visa.
• USCIS Form I–94 (Arrival-Departure Re-
cord).
• If you have an F–1 visa, Form I–20.
• If you have J–1 visa, Form IAP–66 or
Form DS–2019.
• If you are engaged in optional practical
training, Form I–766 or Form I–688B.
• A statement from your employer indicating
the amount of the reimbursement your
employer provided and the amount of the
credit or refund your employer claimed or
you authorized your employer to claim. If
you cannot obtain this statement from your
employer, you must provide this informa-
tion on your own statement and explain
why you are not attaching a statement
from your employer or on Form 8316
claiming your employer will not issue the
refund.

File Form 843 (with attachments) with the IRS
office where your employer’s returns were filed.
If you do not know where your employer’s re-
turns were filed, file Form 843 with the Internal
Revenue Service Center, Philadelphia, PA
19255.

Self-Employment Tax
Self-employment tax is the social security and
Medicare taxes for individuals who are self-em-
ployed. Nonresident aliens are exempt from
self-employment tax. Residents of the Virgin Is-
lands, Puerto Rico, Guam, the Commonwealth
of the Northern Mariana Islands, or American
Samoa are considered U.S. residents for this
purpose and are subject to the self-employment
tax.
Resident aliens must pay self-employment tax under the same rules that apply to U.S. citizens. However, a resident alien employed by an international organization, a foreign government, or a wholly-owned instrumentality of a foreign government is not subject to the self-employment tax on income earned in the United States.

Self-employment income you receive while you are a resident alien is subject to self-employment tax even if it was paid for services you performed as a nonresident alien.

Example. Bill Jones is an author engaged in the business of writing books. Bill had several books published in a foreign country while he was a citizen and resident of that country. During 2003, Bill entered the United States as a resident alien. After becoming a U.S. resident, he continued to receive royalties from his foreign publisher. Bill reports his income and expenses on the cash basis (he reports income on his tax return when received and deducts expenses when paid). Bill’s 2003 self-employment income includes the royalties received after he became a U.S. resident even though the books were published while he was a nonresident alien. This royalty income is subject to self-employment tax.

Reporting self-employment tax. Use Schedule SE (Form 1040) to report and figure your self-employment tax. Then enter the tax on line 55 of Form 1040 and attach Schedule SE to Form 1040.

Deduction for one-half of self-employment tax. If you must pay self-employment tax, you can deduct one-half of the self-employment tax paid in figuring your adjusted gross income.


International Social Security Agreements

The United States has entered into social security agreements with foreign countries to coordinate social security coverage and taxation of workers employed for part or all of their working careers in one of the countries. These agreements are commonly referred to as totalization agreements. Under these agreements, dual coverage and dual contributions (taxes) for the same individual and the same years are prohibited. The agreements generally make sure that social security taxes (including self-employment tax) are paid only to one country. Agreements are in effect with the following countries:

- Australia
- Austria
- Belgium
- Canada
- Chile
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- The Republic of Korea (South Korea)
- Luxembourg
- The Netherlands
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- The United Kingdom

Agreements with other countries are expected to enter into force in the future.

Employees. Generally, under these agreements, you are subject to social security taxes only in the country where you are working. However, if you are temporarily sent to work for the same employer in the United States and your pay would normally be subject to social security taxes in both countries, most agreements provide that you remain covered only by the social security system of the country from which you were sent. You can get more information on any agreement by contacting the U.S. Social Security Administration at the address given earlier. If you have access to the Internet, you can get more information at www.socialsecurity.gov/international.

To establish that your pay is subject only to foreign social security taxes and is exempt from U.S. social security taxes (including the Medicare tax) under an agreement, you or your employer should request a certificate of coverage from the foreign country. This will usually be the same agency to which you or your employer pays your foreign social security taxes. The foreign agency will be able to tell you what information is needed for them to issue the certificate. Your employer should keep a copy of the certificate because it may be needed to show why you are exempt from U.S. social security taxes. Only wages paid on or after the effective date of the agreement can be exempt from U.S. social security taxes.

Some of the countries with which the United States has agreements will not issue certificates of coverage. In this case, either you or your employer should request a statement that your wages are not covered by the U.S. social security system. Request the statement from the following address:

U.S. Social Security Administration
Office of International Programs
P.O. Box 17741
Baltimore, MD 21235–7741

Self-employed individuals. Under most agreements, self-employed individuals are covered by the social security system of the country where they reside. However, under some agreements, you may be exempt from U.S. self-employment tax if you temporarily transfer your business activity to or from the United States.

If you believe that your self-employment income is subject only to U.S. self-employment tax and is exempt from foreign social security taxes, request a certificate of coverage from the U.S. Social Security Administration at the address given earlier. This certificate will establish your exemption from foreign social security taxes.

To establish that your self-employment income is subject only to foreign social security taxes and is exempt from U.S. self-employment tax, request a certificate of coverage from the appropriate agency of the foreign country. If the foreign country will not issue the certificate, you should request a statement that your income is not covered by the foreign country’s social security system. Request it from the U.S. Social Security Administration at the address given earlier. Attach a photocopy of either the return as a guide to complete the international section of Form 1040–ES (NR) to figure and pay estimated tax. This will usually be the same agency to which you or your employer pays your foreign social security taxes, request a certificate of coverage from the foreign country.

Estimated Tax

Form 1040–ES (NR)

You may have income from which no U.S. income tax is withheld. Or the amount of tax withheld may be less than the income tax you estimate you will owe at the end of the year. If so, you may have to pay estimated tax.

Generally, you must estimate and pay tax on income and expenses to be less than the smaller of:

1) 90% of the tax shown on your 2004 income tax return, or

2) 100% of the tax shown on your 2003 income tax return (if your 2003 return covered all 12 months of the year).

If your adjusted gross income for 2003 was more than $150,000 ($75,000 if your filing status for 2004 is married filing separately), substitute 110% for 100% in (2) above if you are not a farmer or fisherman. Item (2) also does not apply if you did not file a return for 2003.

If you pay by check, make it payable to the “United States Treasury.”

How to estimate your tax for 2004. If you filed a return for 2003 return as a guide to complete the Estimated Tax Worksheet in the Form 1040–ES (NR) instructions. If you did not file a return for 2003, or if your income, exemptions, deductions, or credits will be different for 2004, you must estimate these amounts. Figure your estimated tax liability using the Tax Rate Schedule in the 2004 Form 1040–ES (NR) instructions for your filing status.

Note. If you expect to be a resident of Puerto Rico during the entire year, use Form 1040–ES or Forma 1040–ES (Español).

When to pay estimated tax. Make your first estimated tax payment by the due date for filing the previous year’s Form 1040NR or Form 1040NR–EZ. If you have wages subject to the same withholding rules that apply to U.S. citizens, you must file Form 1040NR or Form 1040NR–EZ and make your first estimated tax
payment by April 15, 2004. If you do not have
wages subject to withholding, file your income
tax return and make your first estimated tax

If your first estimated tax payment is due
April 15, 2004, you can pay your estimated tax in
full at that time or in four equal installments by
the dates shown next.

1st installment .......... April 15, 2004
2nd installment ........ June 15, 2004
3rd installment ........ Sept. 15, 2004
4th installment .......... Jan. 18, 2005

If your first payment is not due until June 15,
2004, you can pay your estimated tax in full at
that time or:

1) ½ of your estimated tax by June 15, 2004,
2) ¼ of the tax by September 15, 2004, and
3) ¼ by January 18, 2005.

You do not have to make the payment
due January 18, 2005, if you file your
2004 Form 1040NR or 1040NR –EZ by
January 31, 2005, and pay the entire balance
due with your return.

Fiscal year. If your return is not on a calendar-
date basis, your due dates are the 15th day of
the 4th, 6th, and 9th months of your fiscal
year, and the 1st month of the following fiscal
year. If any date falls on a Saturday, Sunday, or
legal holiday, use the next day that is not a
Saturday, Sunday, or legal holiday.

Changes in income, deductions, or exemp-
tions. Even if you are not required to make an
estimated tax payment in April or June, your
circumstances may change so that you will have
to make estimated tax payments later. This can
happen if you receive additional income or if any
of your deductions are reduced or eliminated. If
so, see the instructions for Form 1040 –ES (NR)
and Publication 505 for information on figuring
your estimated tax.

Amended estimated tax. If, after you have
made estimated tax payments, you find your
estimated tax is substantially increased or de-
creased because of a change in your income or
deductions, you should adjust your remaining
estimated tax payments. To do this, see the
instructions for Form 1040 –ES (NR) and Publi-
cation 505.

Penalty for failure to pay estimated income
tax. You will be subject to a penalty for un-
derpayment of installments of estimated tax ex-
cept in certain situations. These situations are
explained on Form 2210, Underpayment of Esti-
imated Tax by Individuals, Estates, and Trusts.

9. Tax Treaty Benefits

Introduction
A nonresident alien (and certain resident aliens)
from a country with which the United States has
an income tax treaty may qualify for certain
benefits. Most treaties require that the nonresi-
dent alien be a resident of the treaty country to
qualify. However, some treaties require that the
nonresident alien be a national or a citizen of the
treaty country.

See Table 9–1 for a list of tax treaty coun-
tries. You can generally arrange to have with-
holding tax reduced or eliminated on wages and
other income that are eligible for tax treaty bene-
fits. See Income Entitled to Tax Treaty Benefits
in chapter 8.

Topics
This chapter discusses:

• Typical tax treaty benefits,
• How to obtain copies of tax treaties, and
• How to claim tax treaty benefits on your
tax return.

Useful Items
You may want to see:

Publication
q 901 U.S. Tax Treaties

Form (and Instructions)
q 1040NR U.S. Nonresident Alien Income
Tax Return
q 1040NR–EZ U.S. Income Tax Return for
Certain Nonresident Aliens With No
Dependents
q 8833 Treaty-Based Return Position
Disclosure Under Section 6114 or
7701(b)

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

Treaty Income
A nonresident alien’s treaty income is the gross
income on which the tax is limited by a tax treaty.

Treaty income includes, for example, dividends
from sources in the United States that are sub-
ject to tax at a treaty rate not to exceed 15%.
Nontreaty income is the gross income of a non-
resident alien on which the tax is not limited by a
tax treaty.

Figure the tax on treaty income on each
separate item of income at the reduced rate that
applies to that item under the treaty.

To determine tax on nontreaty income, figure
the tax at either the flat 30% rate or the gradu-
ated rate, depending upon whether or not the
income is effectively connected with your trade
or business in the United States.

Your tax liability is the sum of the tax on
treaty income plus the tax on nontreaty income,
but cannot be more than the tax liability figured
as if the tax treaty had not come into effect.

Example. Arthur Banks is a nonresident
alien who is single and a resident of a foreign
country that has a tax treaty with the United
States. He received gross income of $25,500
during the tax year from sources within the
United States, consisting of the following items:

Dividends on which the tax is limited to
a 15% rate by the tax treaty ........ $1,400

Compensation for personal services
on which the tax is not limited by the
tax treaty .................. 24,100

Total gross income ................ $25,500

Arthur was engaged in business in the
United States during the tax year. His dividends
are not effectively connected with that business.
He has no deductions other than his own per-
sonal exemption.

His tax liability, figured as though the tax
 treaty had not come into effect, is $3,231 deter-
mimed as follows:

Total compensation ........... $24,100
Less: Personal exemption ...... 3,050

Taxable income ............... $21,050

Tax determined by graduated rate
(Tax Table column for single
taxpayers) .................. $2,811
Plus: Tax on gross dividends ($1,400 ×
30%) .................................. 420
Tax determined as though treaty
had not come into effect ........ $3,231

Arthur’s tax liability, figured by taking into
account the reduced rate on dividend income as
provided by the tax treaty, is $3,021 determined
as follows:

Tax determined by graduated rate
(same as figured above) .......... $2,811
Plus: Tax on gross dividends ($1,400 ×
15%) ................................... 210
Tax on compensation and dividends
.......................... $3,021

His tax liability, therefore, is limited to
$3,021, the tax liability figured using the tax
treaty rate on the dividends.
Some Typical Tax Treaty Benefits

The following paragraphs briefly explain the exemptions that are available under tax treaties for personal services income, remittances, scholarships, fellowships, and capital gain income. The conditions for claiming the exemptions vary under each tax treaty. For more information about the conditions under a particular tax treaty, see Publication 901. Or, you may download the complete text of most U.S. tax treaties at www.irs.gov. Technical explanations for many of these treaties are also available at that site.

Tax treaty benefits also cover income such as dividends, interest, rentals, royalties, pensions, and annuities. These types of income may be exempt from U.S. tax or may be subject to a reduced rate of tax. For more information, see Publication 901 or the applicable tax treaty.

Personal Services

Nonresident aliens from treaty countries who are in the United States for a short stay and also meet certain other requirements may be exempt from tax on their compensation received for personal services performed in the United States. Many tax treaties require that the nonresident alien claiming this exemption be present in the United States for a total of not more than 183 days during the tax year. Other tax treaties specify different periods of maximum presence in the United States, such as 180 days or 90 days. Spending part of a day in the United States counts as a day of presence.

Tax treaties may also require that:
1) The compensation cannot be more than a specific amount (frequently $3,000), and
2) The individual have a foreign employer; that is, an individual, corporation, or entity of a foreign country.

Teachers and Professors

Under many income tax treaties, nonresident alien teachers or professors who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for teaching for the first 2 or 3 years after their arrival in the United States. Many treaties also provide exemption for engaging in research.

Generally, the teacher or professor must be in the United States primarily to teach, lecture, instruct, or engage in research. A substantial part of that person’s time must be devoted to those duties. The normal duties of a teacher or professor include not only formal classroom work involving regularly scheduled lectures, demonstrations, or other student-participation activities, but also the less formal method of presenting ideas in seminars or other informal groups and in joint efforts in the laboratory.

Employees of Foreign Governments

All treaties have provisions for the exemption of income earned by certain employees of foreign governments. However, a difference exists among treaties as to who qualifies for this benefit. Under many treaties, aliens admitted to the United States for permanent residence do not qualify. Under most treaties, aliens who are not U.S. citizens and who are not resident of the treaty country and treaty article. On Form 1040, enter the parentheses on Form 1040, line 21. Next to the amount write “Exempt income” and give the treaty country and treaty article. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Also follow the above procedure for income on which the treaty only reduces the amount of U.S. tax instead of providing a complete exemption from U.S. tax. Attach a statement to Form 1040 showing a computation of the tax at the reduced rate. Also show the treaty country and treaty article that provides for the reduced tax rate. Include this tax on line 60 of Form 1040. On the dotted line next to line 60 write “Tax from attached statement” and the amounts.

Example. Jacques Dubois, who is a resident of the United States under Article 4 of the U.S.-France income tax treaty, receives French social security benefits. Under Article 18(1)(b) of the treaty, French social security benefits are not taxable by the United States. Mr. Dubois is not required to file a Form 8833 for his French social security benefits or report the benefits on Form 1040.

Special Rule for Canadian and German Social Security Benefits

Under income tax treaties with Canada and Germany, if a U.S. resident receives social security benefits from Canada or Germany, those benefits are treated for U.S. income tax purposes as if they were received under the social security legislation of the United States. If you receive social security benefits from Canada or Germany, include them on line 1 of your Social Security Benefits Worksheet for purposes of determining the taxable amount to be reported on Form 1040, line 23b or Form 1040A, line 14b. You are not required to file a Form 8833 for those benefits.

Students, Apprentices, and Trainees

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See Students, Apprentices, and Trainees Who Became Resident Aliens, later, under Resident Aliens.

Capital Gains

Most treaties provide for the exemption of gains from the sale or exchange of personal property. Generally, gains from the sale or exchange of real property located in the United States are taxable.

Resident Aliens

Residents aliens may qualify for tax treaty benefits in the situations discussed below.

U.S. Residency Under Tax Treaty “Tie-Breaker” Rule

In certain circumstances, individuals who are treated as residents of the United States under an income tax treaty (after application of the so-called “tie-breaker” rule) will be entitled to not qualify for treaty benefits. The “tie-breaker” rule is explained in chapter 1 under Effect of Tax Treaty.

If this applies to you, you generally will not need to file a Form 8833 for the income for which treaty benefits are claimed. This is because the income will typically be of a category for which disclosure on a Form 8833 is waived. See Exclusions, later, under Reporting Treaty Benefits Claimed.

In most cases, you also will not need to report the income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2 or other information return, you should report it on the appropriate line of Form 1040 (for example, line 7 in the case of wages or salaries). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write “Exempt income” and give the treaty country and treaty article. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Also follow the above procedure for income on which the treaty only reduces the amount of U.S. tax instead of providing a complete exemption from U.S. tax. Attach a statement to Form 1040 showing a computation of the tax at the reduced rate. Also show the treaty country and treaty article that provides for the reduced tax rate. Include this tax on line 60 of Form 1040. On the dotted line next to line 60 write “Tax from attached statement” and the amounts.

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Students, Apprentices, and Trainees

Generally, you must be a nonresident alien student, apprentice, or trainee in order to claim a treaty exemption for remittances from abroad (including scholarship and fellowship grants) for study and maintenance in the United States. However, if you entered the United States as a nonresident alien, but are now a resident alien for U.S. tax purposes, the treaty exemption will continue to apply if the tax treaty has an exception to the treaty’s saving clause. If you qualify under an exception to the treaty’s saving clause, you can avoid income tax withholding by giving the payor a Form W-9 with the statement required by the Form W-9 instructions.

In most cases, you also will not need to report the income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2 or other information return, you should report it on the appropriate line of Form 1040 (for example, line 7 in the case of wages or salaries). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write “Exempt income” and give the treaty country and treaty article. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.
subtract this amount from your income to arrive at total income on Form 1040, line 22.

**Example.** Mr. Yu, a citizen of the People’s Republic of China, entered the United States as a nonresident alien student on January 1, 1999. He remained a nonresident alien through 2003 and was able to exclude his scholarship from U.S. tax in those years under Article 20 of the U.S.-China income tax treaty. On January 1, 2004, he became a resident alien under the substantial presence test because his stay in the United States exceeded 5 years. Even though Mr. Yu is now a resident alien, the provisions of Article 20 still apply because of the exception to the saving clause in paragraph 2 of the Protocol to the U.S.-China treaty dated April 30, 1984. Mr. Yu should submit Form W–9 and the required statement to the payor.

**Reporting Treaty Benefits Claimed**

If you claim treaty benefits that override or modify any provision of the Internal Revenue Code, and by claiming these benefits your tax is, or might be, reduced, you must attach a fully completed Form 8833 to your tax return. See Exceptions, below, for the situations where you are not required to file Form 8833.

You must file a U.S. tax return and Form 8833 if you claim the following treaty benefits.

1) A reduction or modification in the taxation of gain or loss from the disposition of a U.S. real property interest based on a treaty.

2) A credit for a specific foreign tax for which foreign tax credit would not be allowed by the Internal Revenue Code.

You must also file Form 8833 if you receive payments or income items totaling more than $100,000 and you determine your country of residence under a treaty and not under the rules for residency discussed in chapter 1. These are the more common situations for which Form 8833 is required.

**Exceptions.** You do not have to file Form 8833 for any of the following situations.

1) You claim a reduced rate of withholding tax under a treaty on interest, dividends, rent, royalties, or other fixed or determinable annual or periodic income ordinarily subject to the 30% rate.

2) You claim a treaty reduces or modifies the taxation of income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers. This includes taxable scholarship and fellowship grants.

3) You claim a reduction or modification of taxation of income under an International Social Security Agreement or a Diplomatic or Consular Agreement.

4) You are a partner in a partnership or a beneficiary of an estate or trust and the partnership, estate, or trust reports the required information on its return.

5) The payments or items of income that are otherwise required to be disclosed total no more than $10,000.

**Penalty for failure to provide required information on Form 8833.** If you are required to report the treaty benefits but do not, you may be subject to a penalty of $1,000 for each failure.

**Additional information.** For additional information, see section 301.6114–1(c) of the Income Tax Regulations.
Table 9—1. Table of Tax Treaties (Updated through December 31, 2003)

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
<th>Citation</th>
<th>Applicable Treasury Explanations or Treasury Decision (T.D.)</th>
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<tbody>
<tr>
<td>Austria</td>
<td>TIAS</td>
<td>Jan. 1, 1999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>TIAS</td>
<td>Jan. 1, 1993</td>
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<td>Denmark</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
<td></td>
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<td>Estonia</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
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<tr>
<td>Finland Protocol</td>
<td>TIAS 12101</td>
<td>Jan. 1, 1991</td>
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<tr>
<td>France</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
<td></td>
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<td>India</td>
<td>TIAS</td>
<td>Jan. 1, 1990</td>
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<td>Indonesia Protocol</td>
<td>TIAS 11593</td>
<td>Jan. 1, 1990</td>
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<td>TIAS</td>
<td>Jan. 1, 1995</td>
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<td></td>
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<td>Kazakhstan Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
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<td>Latvia</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
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<td>Lithuania Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
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<td>Luxembourg</td>
<td>TIAS</td>
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<td>Morocco</td>
<td>TIAS 10195</td>
<td>Oct. 26, 1995</td>
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<td>New Zealand</td>
<td>TIAS 10772</td>
<td>Jan. 1, 2000</td>
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<td>Portugal Protocol</td>
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<td>Jan. 1, 1996</td>
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<td>Russia</td>
<td>TIAS</td>
<td>Jan. 1, 1994</td>
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<td>Slovak Republic</td>
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<td>Jan. 1, 2002</td>
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<td>Sweden</td>
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<td>Switzerland</td>
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<td>Jan. 1, 1998</td>
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<tr>
<td>Trinidad and Tobago Protocol</td>
<td>TIAS 7047</td>
<td>Jan. 1, 1970</td>
<td>1971-2 C.B. 479</td>
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<td>Tunisia</td>
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<td>Jan. 1, 1990</td>
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<td>Turkey</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
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<td>Ukraine Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
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<td>United Kingdom (new treaty)</td>
<td>TIAS</td>
<td>Jan. 1, 2004</td>
<td></td>
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<td>Venezuela</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
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</tr>
</tbody>
</table>

1 (TIAS) — Treaties and Other International Act Series.
2 Information on the treaty can be found in Publication 597, Information on the United States-Canada Income Tax Treaty.
3 The U.S.-U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
4 The general effective date for the area that was the German Democratic Republic is January 1, 1991.
5 You can elect to have the old treaty apply in its entirety for a 12-month period from the date the new treaty would otherwise apply. Students who have claimed treaty benefits under Article 21 of the old treaty can continue to apply those provisions.
10. Employees of Foreign Governments and International Organizations

Employees of foreign governments (including foreign nationals) have two possible exemptions of their governmental wages from U.S. income tax:

1) By a provision in a tax treaty or consular convention between the United States and their country, or

2) By meeting the requirements of U.S. tax law.

Employees of international organizations can only exempt their wages by meeting the requirements of U.S. tax law.

The exemption discussed in this chapter applies only to current employees and not to former employees. The exemption is limited to the income of persons who also meet the requirements of the tax treaty or the consular convention.

The exemption under U.S. tax law applies only to current employees and not to former employees. The exemption is limited to the income of persons who also meet the requirements of the tax treaty or the consular convention.

Employees of foreign governments. If you are not a U.S. citizen, or if you are a U.S. citizen but also a citizen of the Philippines, and you work for a foreign government in the United States, your foreign government salary is exempt from U.S. tax if you perform services similar to those performed by U.S. Government employees in that foreign country and that foreign government grants an equivalent exemption.

Certification. To qualify for this exemption, you must certify to the Department of Treasury that you are their employee and that you perform services similar to those performed by U.S. Government employees in that foreign country.

Employees of international organizations. If you work for an international organization in the United States and you are not a U.S. citizen (or you are a U.S. citizen but also a citizen of the Philippines), your salary from that organization is exempt from U.S. tax. However, if you are not a U.S. citizen but are a citizen of the Philippines, your salary from that organization is exempt from U.S. tax. However, you must be a citizen of the Philippines.

An international organization is an organization designated by the President of the United States through Executive Order to qualify for the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

You should find out if you have been made known to, and have been accepted by, the Secretary of State as an officer or employee of that organization.

If you are claiming exemption, you must know the name of the Executive Order covering the international organization and should have some written evidence of your acceptance or designation by the Secretary of State.

The exemption is denied when, because the Secretary of State determines your presence in the United States is no longer desirable, you are not a U.S. citizen, or if you are a U.S. citizen but also a citizen of the Philippines.

11. Departing Aliens and the Sailing or Departure Permit

Introduction

Before leaving the United States, all aliens (except those listed under Aliens Not Required To Obtain Sailing or Departure Permits) must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040–C or Form 2063. These forms are discussed in this chapter.

To find out if you need a sailing or departure permit, first read Aliens Not Required To Obtain Sailing or Departure Permits. If you do not fall into one of the categories in that discussion, you must obtain a sailing or departure permit. Read Aliens Required To Obtain Sailing or Departure Permits.

Topics

This chapter discusses:

- Who needs a sailing permit,
- How to get a sailing permit, and
- Forms you file to get a sailing permit.
Useful Items
You may want to see:

Form (and Instructions)

- 1040-C U.S. Departing Alien Income Tax Return
- 2063 U.S. Departing Alien Income Tax Statement

See chapter 12 for information about getting these forms.

Aliens Not Required To Obtain Sailing or Departure Permits

If you are included in one of the following categories, you do not have to get a sailing or departure permit before leaving the United States. If you are in one of these categories and do not have to get a sailing or departure permit, you must be able to support your claim for exemption with proper identification or give the authority for the exemption.

Category 1. Representatives of foreign governments with diplomatic passports, whether accredited to the United States or other countries, members of their households, and servants accompanying them. Servants who are leaving, but not with a person with a diplomatic passport, must get a sailing or departure permit. However, they can get a sailing or departure permit on Form 2063 without examination of their income tax liability by presenting a letter from the chief of their diplomatic mission certifying that:

1) Their name appears on the “White List” (a list of employees of diplomatic missions), and
2) They do not owe to the United States any income tax, and will not owe any tax up to and including the intended date of departure.

The statement must be presented to an IRS office.

Category 2. Employees of international organizations and foreign governments (other than diplomatic representatives exempt under category 1) and members of their households:

1) Whose compensation for official services is exempt from U.S. tax under U.S. tax laws (described in chapter 10), and
2) Who receive no other income from U.S. sources.

If you are an alien in category (1) or (2), above, who filed the waiver under section 247(b) of the Immigration and Nationality Act, you must get a sailing or departure permit. This is true even if your income is exempt from U.S. tax because of an income tax treaty, consular agreement, or international agreement.

Category 3. Alien students, industrial trainees, and exchange visitors, including their spouses and children, who enter on an “F – 1,” “F – 2,” “H – 3,” “H – 4,” “J – 1,” “J – 2,” or “Q” visa only and who receive no income from U.S. sources while in the United States under those visas other than:

1) Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition,
2) The value of any services or food and lodging connected with this study or training,
3) Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS), or
4) Interest income on deposits that is not effectively connected with a U.S. trade or business. (See Interest Income in chapter 3.)

Category 4. Alien students, including their spouses and children, who enter an “M – 1” or “M – 2” visa only and who receive no income from U.S. sources while in the United States under those visas, other than:

1) Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS) or
2) Interest income on deposits that is not effectively connected with a U.S. trade or business. (See Interest Income in chapter 3.)

Category 5. Certain other aliens temporarily in the United States who have received no taxable income during the tax year up to and including the date of departure or during the preceding tax year. If the IRS has reason to believe that an alien has received income subject to tax and that the collection of income tax is jeopardized by departure, it may then require the alien to obtain a sailing or departure permit. Aliens in this category are:

1) Alien military trainees who enter the United States for training under the sponsorship of the Department of Defense and who leave the United States on official military travel orders,
2) Alien visitors for business on a “B – 1” visa, or on both a “B – 1” visa and a “B – 2” visa, who do not remain in the United States or a U.S. possession for more than 90 days during the tax year,
3) Alien visitors for pleasure on a “B – 2” visa,
4) Aliens in transit through the United States or any of its possessions on a “C – 1” visa, or under a contract, such as a bond agreement, between a transportation line and the Attorney General, and
5) Aliens who enter the United States on a border-crossing identification card or for whom passport visas, and border-crossing identification cards are not required, if they are:

   a) Visitors for pleasure,
   b) Visitors for business who do not remain in the United States or a U.S. possession for more than 90 days during the tax year, or
   c) In transit through the United States or any of its possessions.

Category 6. Alien residents of Canada or Mexico who frequently commute between that country and the United States for employment, and whose wages are subject to the withholding of U.S. tax.

Aliens Required To Obtain Sailing or Departure Permits

If you do not fall into one of the categories listed under Aliens Not Required To Obtain Sailing or Departure Permits, you must obtain a sailing or departure permit. To obtain a permit, file Form 1040-C or Form 2063 (whichever applies) with your local IRS office before you leave the United States. See Forms To File, later. You must also pay all the tax shown as due on Form 1040-C and any taxes due for past years. See Paying Taxes and Obtaining Refunds, later.

If you try to leave the United States without a sailing or departure permit, and cannot show that you qualify to leave without it, you may be subject to an income tax examination by an IRS employee at the point of departure. You must then complete the necessary income tax returns and statements and, ordinarily, pay any taxes due.

Getting a Sailing or Departure Permit

The following discussion covers when and where to get your sailing permit.

Where to get a sailing or departure permit.

If you have been working in the United States, you should get the permit from an IRS office in the area of your employment, or you may obtain one from an IRS office in the area of your departure.

When to get a sailing or departure permit.

You should get your sailing or departure permit at least 2 weeks before you plan to leave. You cannot apply earlier than 30 days before your planned departure date. Do not wait until the last minute in case there are unexpected problems.

Papers to submit.

Getting your sailing or departure permit will go faster if you bring to the IRS office papers and documents related to your income and your stay in the United States. Bring the following records with you if they apply.

1) Your passport and alien registration card or visa.
2) Copies of your U.S. income tax returns filed for the past 2 years. If you were in the United States for less than 2 years, bring the income tax returns you filed for that period.
3) Receipts for income taxes paid on these returns.
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The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.

4) Receipts, bank records, canceled checks, and other documents that prove your de-
ductions, business expenses, and depen-
dents claimed on your returns.

5) A statement from each employer showing
wages paid and tax withheld from January
1 of the current year to the date of depar-
ture. If you were self-employed, you must bring a statement
of income and expenses up to the date
you plan to leave.

6) Proof of estimated tax payments for the
past year and this year.

7) Documents showing any gain or loss from
the sale of personal property, including
capital assets and merchandise.

8) Documents relating to scholarship or fel-
lowsip grants including:
   a) Verification of the grantor, source, and
   purpose of the grant.
   b) Copies of the application for, and ap-
   proval of, the grant.
   c) A statement of the amount paid, and
   your duties and obligations under the
   grant.
   d) A list of any previous grants.

9) Documents indicating you qualify for any
special tax treaty benefits claimed.

10) Document verifying your date of departure
from the United States, such as an airline
ticket.

11) Document verifying your U.S. taxpayer
identification number, such as a social se-
curity card or an IRS issued CP 565 show-
ing your individual taxpayer identification
number (ITIN).

Note: If you are married and reside in a
community property state, also bring the
above-listed documents for your spouse. This
applies whether or not your spouse requires a
permit.

Forms To File

If you must get a sailing or departure permit, you
must file Form 2063 or Form 1040–C. Employ-
ees in the IRS office can assist in filing these
forms. Both forms have a “certificate of compli-
ance” section. When the certificate of compli-
ance is signed by an agent of the Field
Assistance Area Director, it certifies that your
U.S. tax obligations have been satisfied accord-
ing to available information. Your Form 1040–C
copy of the signed certificate, or the one de-
tached from Form 2063, is your sailing or depar-
ture permit.

Form 2063

This is a short form that asks for certain informa-
tion but does not include a tax computation. The
following departing aliens can get their sailing or
departure permits by filing Form 2063.

1) Aliens, whether resident or nonresident,
who have had no taxable income for the
tax year up to and including the date
of departure and for the preceding year, if
the period for filing the income tax return for
that year has not expired.

2) Resident aliens who have received taxable
income during the tax year or preceding
year and whose departure will not hinder
the collection of any tax. However, if the
IRS has information indicating that the
aliens are leaving to avoid paying their in-
come tax, they must file a Form 1040–C.

Aliens in either of these categories who have
not filed an income tax return or paid income tax
for any tax year must file the return and pay the
income tax before they can be issued a sailing or
departure permit on Form 2063.

The sailing or departure permit detached
from Form 2063 can be used for all departures
during the current year. However, the IRS may
cancel the sailing or departure permit for any
later departure if it believes the collection of
income tax is jeopardized by that later depar-
ture.

Form 1040–C

If you must get a sailing or departure permit and
you do not qualify to file Form 2063, you must
file Form 1040–C.

Ordinarily, all income received or reasonably
expected to be received during the tax year up to
and including the date of departure must be
reported on Form 1040–C and the tax on it must
be paid. When you pay any tax shown as due on
the Form 1040–C, and you file all returns and
pay all tax due for previous years, you will re-
ceive a sailing or departure permit. However, the
IRS may permit you to furnish a bond or an
employer letter guaranteeing payment instead
of paying the taxes for certain years. See Bond
or Employer Letter To Ensure Payment, dis-
cussed later. The sailing or departure permit
issued under the conditions in this paragraph is
only for the specific departure for which it is
issued.

If you submit an employer letter guarantee-
ing payment of tax with your Form 1040–C, you
do not need to fill out the form in detail. Just fill
out the identifying information on the form,
check the “Yes” box on line A, sign it, and attach
the letter. The IRS office where you submit the
form will then issue your sailing or departure
permit.

Returning to the United States. If you furnish
the IRS with information showing, to the satis-
faction of the IRS, that you intend to return to the
United States and that your departure does not
jeopardize the collection of income tax, you can
get a sailing or departure permit by filing Form
1040–C without having to pay the tax shown on
it. You must, however, file all income tax returns
that have not yet been filed as required, and pay
all income tax that is due on these returns.

Your Form 1040–C must include all income
received and reasonably expected to be re-
ceived during the entire year of departure. The
sailing or departure permit issued with this Form
1040–C can be used for all departures during
the current year. However, the Service may can-
cel the sailing or departure permit for any later
departure if the payment of income tax appears
to be in jeopardy.

Joint return on Form 1040–C. Departing
husbands and wives who are nonresident aliens
cannot file joint returns. However, if both
spouses are resident aliens, they can file a joint
return on Form 1040–C if:

1) Both spouses can reasonably be expected
to qualify to file a joint return at the normal
close of their tax year, and

2) The tax years of the spouses end at the
same time.

Paying Taxes and Obtaining Refunds

You must pay all tax shown as due on the Form
1040–C at the time of filing it, except when a
bond or an employer letter is furnished, or the
IRS is satisfied that your departure does not
jeopardize the collection of income tax. You
must also pay any taxes due for past years. If
the tax computation on Form 1040–C results in
an overpayment, there is no tax to pay at the
time you file that return. However, the IRS can-
not provide a refund at the time of departure. If
you are due a refund, you must file either Form
1040NR or Form 1040NR–EZ at the end of the
tax year.

Bond or Employer Letter To Ensure Payment

Usually, you must pay the tax shown as due on Form
1040–C when you file it. However, if you pay
taxes due that you owe for prior years, you
can furnish a bond or an employer letter
 guaranteeing payment instead of paying the in-
come taxes shown as due on the Form 1040–C
or the tax return for the preceding year if the
period for filing that return has not expired.

The bond must equal the tax due plus inter-
est to the date of payment as figured by the IRS.
Information about the form of bond and security
on it can be obtained from your IRS office.

Filing Annual U.S. Income Tax Returns

Form 1040–C is not an annual U.S. income tax
return. If an income tax return is required by law,
that return must be filed even though a Form
1040–C has already been filed. Chapters 5 and
7 discuss filing an annual U.S. income tax re-
turn. The tax paid with Form 1040–C should be
taken as a credit against the tax liability for the
entire tax year on your annual U.S. income tax
return.
12. How To Get Tax Help

Free tax services are available from the IRS. Access to most of these services depends on whether you are inside or outside of the United States.

Services Available Inside the United States

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

• The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

• Call the Taxpayer Advocate at 1–877–777–4778.
• Call, write, or fax the Taxpayer Advocate office in your area.
• Call 1–800–829–4059 if you are a TTY/TDD user.

For more information, see Publication 1546, The Taxpayer Advocate Service of the IRS.

Free tax services. To find out what services are available, get Publication 910, Guide to Free Tax Services. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Personal computer. With your personal computer and modem, you can access the IRS on the Internet at www.irs.gov. While visiting our web site, you can:

• See answers to frequently asked tax questions or request help by e-mail.
• Download forms and publications or search for forms and publications by topic or keyword.

• Order IRS products on-line.
• View forms that may be filed in electronically, print the completed form, and then save the form for recordkeeping.
• View Internal Revenue Revenue Bulletins published in the last few years.
• Search regulations and the Internal Revenue Code.
• Receive our electronic newsletters on hot tax issues and news.
• Learn about the benefits of filing electronically (IRS e-file).
• Get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at ftp.irs.gov.

• TaxFax Service. Using the phone attached to your fax machine, you can receive forms and instructions by calling 703–368–9994. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call the FeedWorld Help Desk at 703–487–4608.

Phone. Many services are available by phone.

• Ordering forms, instructions, and publications. Call 1–800–829–3678 to order current and prior year forms, instructions, and publications.
• Asking tax questions. In the United States, call the IRS with your tax questions at 1–800–829–1040. If overseas, you may call 215–516–2000 (English-speaking only). This number is not toll free. The hours of operation are from 6:00 a.m. to 2:00 a.m. EST. If you wish to write instead of call, please address your letter to: Internal Revenue Service, International Section, P.O. Box 920, Bensalem, PA 19020–8518. Make sure you include your taxpayer identification number when you write.
• Solving problems. Take advantage of Everyday Tax Solutions service by calling your local IRS office to set up an in-person appointment at your convenience. Check your local directory assistance or www.irs.gov for the numbers.
• TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1–800–829–4059 to ask tax questions or to order forms and publications.
• TeleTax topics. Call 1–800–829–4477 to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

• Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

• Services. You can walk in to your local IRS office to ask tax questions or get help with a tax problem. Now you can set up an appointment by calling your local IRS office number and, at the prompt, leaving a message requesting Everyday Tax Solutions help. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience.

Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Find the address that applies to your part of the country.

• Western part of U.S.: Western Area Distribution Center Rancho Cordova, CA 95743–0001
• Central part of U.S.: Central Area Distribution Center P.O. Box 8903 Bloomington, IL 61702–8903
• Eastern part of U.S. and foreign addresses: Eastern Area Distribution Center P.O. Box 85074 Richmond, VA 23261–5074

CD-ROM for tax products. You can order IRS Publication 1796, Federal Tax Products on CD-ROM, and obtain:

• Current tax forms, instructions, and publications.
• Prior-year tax forms and instructions.
• Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
• Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling 1–877–233–6767 or on the Internet at http://www.irs.gov/cdorders. The first release is available in early January and the final release is available in late February.
CD-ROM for small businesses. IRS Publication 3207, Small Business Resource Guide, is a must for every small business owner or any taxpayer about to start a business. This handy, interactive CD contains all the business tax forms, instructions and publications needed to successfully manage a business. In addition, the CD provides an abundance of other helpful information, such as how to prepare a business plan, finding financing for your business, and much more. The design of the CD makes finding information easy and quick and incorporates file formats and browsers that can be run on virtually any desktop or laptop computer.

It is available in March. You can get a free copy by calling 1–800–829–3676 or by visiting the website at www.irs.gov/smallbiz.

Services Available Outside the United States

During the filing period (January to mid-June), you can get the necessary federal tax forms and publications from U.S. Embassies and consulates.

Also during the filing season, the IRS conducts an overseas taxpayer assistance program. To find out if IRS personnel will be in your area, you should contact the consular office at the nearest U.S. Embassy.

Phone. You can also call your nearest U.S. Embassy, consulate, or IRS office listed below to find out when and where assistance will be available. These IRS telephone numbers include the country and city codes required if you are outside the local dialing area.

Berlin, Germany (49) (30) 8305–1136
London, England (44) (20) 7408–8077
Paris, France (33) (1) 4312–2555
Rome, Italy (39) (06) 4614–2560
Tokyo, Japan (81) (3) 3224–5466

Overseas taxpayers can also call the U.S. for help at (215) 516–2000.

If you are in Guam, the Bahamas, U.S. Virgin Islands, or Puerto Rico, you can call 1–800–829–1040.

Mail. For answers to technical or account questions, you can write to:

Internal Revenue Service
International Section
P.O. Box 920
Bensalem, PA 19020–8518.

You can also contact one of the IRS offices located abroad, listed earlier.

Phone. You can call the Taxpayer Advocate at (787) 622–8930.

Fax. You can fax the Taxpayer Advocate at (787) 622–8933.

The Taxpayer Advocate represents your interest and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

Mail. Persons living outside the United States may contact the Taxpayer Advocate at:

Internal Revenue Service
Taxpayer Advocate
P.O. Box 193479
San Juan, PR 00919–3479.

For answers to technical or account questions, you can write to:

Internal Revenue Service
International Section
P.O. Box 920
Bensalem, PA 19020–8518.

For more information on the website, see Personal computer under Services Available Inside the United States, earlier.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.
Questions and Answers

This section answers tax-related questions commonly asked by aliens.

What is the difference between a resident alien and a nonresident alien for tax purposes?

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as resident aliens and nonresident aliens. Resident aliens are taxed on their worldwide income, the same as U.S. citizens. Nonresident aliens are taxed only on their U.S. source income.

What is the difference between the taxation of income that is effectively connected with a trade or business in the United States and income that is not effectively connected with a trade or business in the United States?

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

I am a student with an F-1 Visa. I came to the United States on June 30th of last year. I have an H-1B Visa. What is my tax status, resident alien or nonresident alien? What tax return do I file?

You were a dual-status alien last year. As a general rule, since you were in the United States for 183 days or more, you have met the substantial presence test and you are taxed as a resident. However, for the part of the year that you were not present in the United States, you are a nonresident alien. You file Form 1040. Print “Dual-Status Return” across the top. Attach a statement showing your U.S. source income for the part of the year you were a nonresident. You may use Form 1040NR as the statement. Print “Dual-Status Statement” across the top. See First Year of Residence in chapter 1 for rules on determining your residency starting date. An example of a dual-status return is in chapter 6.

Is a “dual-resident taxpayer” the same as a dual-status taxpayer?

A dual-resident taxpayer is one who is resident of both the United States and another country under each country’s tax laws. See Effect of Tax Treaties in chapter 1. You are a dual-status taxpayer when you are both a resident alien and a nonresident alien in the same year. See chapter 6.

I am a resident alien. Can I claim any treaty benefits?

Generally, you cannot claim tax treaty benefits as a resident alien. However, there are exceptions. See Effect of Tax Treaties in chapter 1. See also Resident Aliens Under Some Typical Tax Treaty Benefits in chapter 9.

I am a nonresident alien with no dependents. I am working temporarily for a U.S. company. What return do I file?

You must file Form 1040NR if you are engaged in a trade or business in the United States, or have any other U.S. source income on which tax was not fully paid by the amount withheld. You can use Form 1040NR–EZ instead of Form 1040NR if you meet all nine conditions listed under Form 1040NR–EZ in chapter 7.

I came to the United States on June 30th of last year. I have an H-1B Visa. What is my tax status, resident alien or nonresident alien? What tax return do I file?

As a general rule, since you were in the United States for 183 days or more, you have met the substantial presence test and you are taxed as a resident. However, for the part of the year that you were not present in the United States, you are a nonresident alien. Your husband is a nonresident alien if he has not been a resident of any U.S. social security benefits and income that is not effectively connected with a U.S. trade or business is taxed as a resident. However, there are exceptions.

I am a nonresident alien. What is my tax status, resident alien or nonresident alien? What tax return do I file?

As a general rule, since you were in the United States for 183 days or more, you have met the substantial presence test and you are taxed as a resident. However, for the part of the year that you were not present in the United States, you are a nonresident alien. Your husband is a nonresident alien if he has not been a resident of any U.S. social security benefits and income that is not effectively connected with a U.S. trade or business is taxed as a resident. However, there are exceptions.

I am a nonresident alien. I have an H-1B Visa and my husband has an F-1 Visa. We both lived in the United States all of last year and had income. What kind of form should we file? Do we file separate returns or a joint return?

Assuming both of you had visas for all of last year, you are a resident alien. Your husband is a nonresident alien if he has not been in the United States as a student for more than 5 years. You and your husband can file a joint tax return on Form 1040, 1040A, or 1040EZ if he makes the choice to be treated as a resident for the entire year. See Nonresident Spouse Treated as a Resident in chapter 1. If your husband does not make this choice, you must file a separate return on Form 1040 or Form 1040A. Your husband must file Form 1040NR or 1040NR–EZ.

Is a “dual-resident taxpayer” the same as a “dual-status taxpayer”?

No. A dual-resident taxpayer is one who is resident of both the United States and another country under each country’s tax laws. See Effect of Tax Treaties in chapter 1. You are a dual-status taxpayer when you are both a resident alien and a nonresident alien in the same year. See chapter 6.

I am a nonresident alien and invested money in the U.S. stock market through a U.S. brokerage company. Are the dividends and the capital gains taxable? If yes, how are they taxed?

The following rules apply if the dividends and capital gains are not effectively connected with a U.S. trade or business.

• Capital gains are generally not taxable if you were in the United States for less than 183 days during the year. See Sales or Exchanges of Capital Assets in chapter 4 for more information and exceptions.
• Dividends are taxed at a 30% (or lower treaty rate) rate. The brokerage company or payor of the dividends should withhold this tax at source. If tax is not withheld at the correct rate, you must file Form 1040NR to receive a refund or pay any additional tax due.

If the capital gains and dividends are effectively connected with a U.S. trade or business, they are taxed according to the same rules and at the same rates that apply to U.S. citizens and residents.

I am a nonresident alien. I receive U.S. social security benefits. Are my benefits taxable?

If you are a nonresident alien, 85% of any U.S. social security benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the flat 30% tax, unless exempt, or subject to a lower treaty rate. See The 30% Tax in chapter 4.

Do I have to pay taxes on my scholarship?

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

If your scholarship is from U.S. sources or you are a resident alien, your scholarship is subject to U.S. tax according to the following rules.

• If you are a candidate for a degree, you may be able to exclude your income from the part of the scholarship you use to pay for tuition, fees, books, supplies, and equipment required by the educational institution. However, the part of the scholarship you use to pay for other expenses, such as room and board, is taxable. See Scholarships and Fellowship.
Grants in chapter 3 for more information.

- If you are not a candidate for a degree, your scholarship is taxable.

I am a nonresident alien. Can I claim the standard deduction?

Nonresident aliens cannot claim the standard deduction. However, see Students and business apprentices from India, under Itemized Deductions in chapter 5 for an exception.

I am a dual-status taxpayer. Can I claim the standard deduction?

You cannot claim the standard deduction allowed on Form 1040. However, you can itemize any allowable deductions.

I am filing Form 1040NR. Can I claim itemized deductions?

Nonresident aliens can claim some of the same itemized deductions that resident aliens can claim. However, nonresident aliens can claim itemized deductions only if they have income effectively connected with their U.S. trade or business. See Itemized Deductions in chapter 5.

I am not a U.S. citizen. What exemptions can I claim?

Resident aliens can claim personal exemptions and exemptions for dependents in the same way as U.S. citizens. However, nonresident aliens generally can claim only a personal exemption for themselves on their U.S. tax return. There are special rules for residents of Mexico, Canada, Japan, and the Republic of Korea (South Korea); for U.S. nationals; and for students and business apprentices from India. See Exemptions in chapter 5.

What exemptions can I claim as a dual-status taxpayer?

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

I am single with a dependent child. I was a dual-status alien in 2000. Can I claim the earned income credit on my 2003 tax return?

If you are a nonresident alien for any part of the year, you cannot claim the earned income credit. See chapter 6 for more information on dual-status aliens.

I am a nonresident alien student. Can I claim an education credit on my Form 1040NR?

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

I am a nonresident alien, temporarily working in the U.S. under a J visa. Am I subject to social security and Medicare taxes?

Generally, services you perform as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if you perform the services to carry out the purpose for which you were admitted to the United States. See Social Security and Medicare Taxes in chapter 6.

I am a nonresident alien student. Social security taxes were withheld from my pay in error. How do I get a refund of these taxes?

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. See Refund of Taxes Withheld in Error in chapter 8.

I am an alien who will be leaving the United States. What forms do I have to file before I leave?

Before leaving the United States, aliens generally must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040–C or Form 2063. These forms are discussed in chapter 11.

I filed a Form 1040–C when I left the United States. Do I still have to file an annual U.S. tax return?

Form 1040–C is not an annual U.S. income tax return. If an income tax return is required by law, you must file that return even though you already filed a Form 1040–C. Chapters 5 and 7 discuss filing an annual U.S. income tax return.
Appendix A

This appendix contains the state-ments nonresident alien students must file with Form 8233, Exem-p tion From Withholding on Compensa-tion for Independent (and Certain Dependent) Personal Services of a Nonresident Alien In-dividual, to claim a tax treaty ex-emption from withholding of tax on compensation for dependent per-sonal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See chapter 8 for more information on withholding.

Belgium, Iceland, Japan, Korea, Norway, Poland, and Romania

I was a resident of [insert the name of the country under whose treaty you claim exemption] on the date of my arrival in the United States. I am not a U.S. citi-zen. I have not been lawfully ac-corded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary pur-pose of studying at [insert the name of the university or other recognized educational institution at which you study].

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from with-holding of federal income tax under the tax treaty between the United States and the People’s Republic of China in an amount not in excess of $5,000 for any tax year.

I arrived in the United States on [insert the date of your arrival in the United States before beginning study or training]. I am claiming this exemption only for such period of time as is reason-ably necessary to complete the ed ucation or training.

Cyprus

I was a resident of Cyprus on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing perma-nently in the United States as an immigrant.

I am temporarily present in the United States for the primary pur-pose of studying at [insert the name of the university or other recognized educational institution at which you study].

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from with-holding of federal income tax under the tax treaty between the United States and Cyprus in an amount not in excess of $2,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customa-ry required to effectuate the pur-pose of this visit.

I arrived in the United States on [insert the date of your arrival in the United States before beginning study or training]. The treaty exemption is available only for compensation paid during a period of six years following the date of my arrival in the United States.

Germany

I was a resident of the Federal Repub-lic of Germany on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States as a student or busi-ness apprentice for the purpose of full-time study or training at [insert the name of the ac-credited university, college, school or other educational institution].

People’s Republic of China

I was a resident of the People’s Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been law-fully accorded the privilege of resid-ing permanently in the United States as an immigrant.

I am present in the United States solely for the pur-pose of my education or training.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from with-holding of federal income tax under the tax treaty between the United States and China in an amount not in excess of $5,000 for any tax year.

I arrived in the United States on [insert the date of your arrival in the United States before beginning study or training]. I am claiming this exemption only for such period of time as is necessary to com-plete, as a full-time student, educa-tional requirements as a candidate for a postgraduate or professional degree from a recognized educa-tional institution.

Egypt

I was a resident of Egypt on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing perma-nently in the United States as an immigrant.

I am temporarily present in the United States for the primary pur-pose of studying at [insert the name of the university or other recognized educational institution at which you study].

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from with-holding of federal income tax under the tax treaty between the United States and Egypt in an amount not in excess of $3,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customa-ry required to effectuate the pur-pose of this visit.

I arrived in the United States on [insert the date of your arrival in the United States before beginning study or training]. The treaty exemption is available only for compensation paid during a period of four years following the date of my arrival in the United States.

Indonesia

I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing perma-nently in the United States as an immigrant.

I am temporarily present in the United States solely for the pur-pose of study at [insert the name of the university or other ac-credited educational institution at which you study].

I will receive compensation for personal services performed in the United States. This compensation qual-ifies for exemption from withholding of federal income tax under the tax treaty between the United States and Indonesia in an amount not in excess of $5,000 for any tax year.

I arrived in the United States on [insert the date of your arrival in the United States before beginning study or training]. The treaty exemption is available only for compensation paid during a period of four years following the date of my arrival in the United States.
before beginning study at the U.S. educational institution. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

Morocco
I was a resident of Morocco on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I am temporarily present in the United States for the primary purpose of studying at [insert the name of the university or other recognized educational institution at which you study].
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and Pakistan in an amount not in excess of $5,000 for any tax year.

Philippines
I was a resident of the Philippines on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I am temporarily present in the United States for the primary purpose of studying at [insert the name of the university or other recognized educational institution at which you study].
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and the Philippines in an amount not in excess of $3,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a student before the date of my arrival in the United States.
I arrived in the United States on [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

Pakistan
I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I am temporarily present in the United States solely as a student at [insert the name of the recognized university, college, or school in the United States at which you study].
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and Pakistan in an amount not in excess of $5,000 for any tax year.

Tunisia
I was a resident of Tunisia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I arrived in the United States on [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

Trinidad and Tobago
I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I am temporarily present in the United States for the primary purpose of studying at [insert the name of the university or other accredited educational institution at which you study].
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and Trinidad and Tobago in an amount not in excess of $2,000 for any tax year. I have not previously claimed the privilege of an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.
I arrived in the United States on [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

Spain
I was a resident of Spain on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and Spain in an amount not in excess of $5,000 for any tax year.

Tunisia
I was a resident of Tunisia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
I am temporarily present in the United States for the primary purpose of studying at [insert the name of the university or other accredited educational institution at which you study].
I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the treaty between the United States and Tunisia in an amount not in excess of $4,000 for any tax year.
I arrived in the United States on [insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.
Appendix B

This appendix contains the statements nonresident alien teachers and researchers must file with Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, to claim a tax treaty exemption from withholding of tax on compensation for dependant personal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See chapter 8 for more information on withholding.

Belgium and Japan

I was a resident of [insert the name of the country under whose treaty you claim the exemption] on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching or engaging in research activities.

The teaching or research compensation paid during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under that treaty for income received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]).

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Commonwealth of Independent States (except Kazakhstan, Russia, and Ukraine)

I am a resident of [insert the name of C.I.S. member] on the date of my arrival in the United States. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant. I have accepted an invitation by a governmental agency or institution in the United States, or by an educational or scientific research institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in scientific, technical, or professional conferences at [insert the name of the governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference], which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Republic of China

I was a resident of the People’s Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the People’s Republic of China and the United States.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Republic of Germany

I am a professor or teacher visiting the United States on a temporary basis for the purpose of teaching or engaging in research at [insert the name of the educational institution]. I have not been lawfully accorded the privilege of residing permanently in the United States.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Germany

I am a resident of the Republic of Germany on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am a resident of the Federal Republic of Germany for the purpose of teaching, giving lectures, or conducting research at [insert the name of the educational institution] or scientific research institution at which you teach, lecture, or conduct research, or an educational or scientific research institution or governmental agency or institution in the United States or the former Union of Soviet Socialist Republics. I have not previously claimed an income tax exemption under that treaty for or during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]).

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference, which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

The Republic of Korea

I am a resident of the Republic of Korea on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching, engaging in research, or participating in conferences which a governmental agency or institution, educational or scientifi
dent, apprentice, or trainee during the immediately preceding period. (If, however, following the period in which the alien claimed benefits as a student, apprentice, or trainee, that person returned to the Federal Republic of Germany and resumed residence and physical presence before returning to the United States as a teacher or researcher, that person may claim the benefits of this treaty.)

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival into the United States before beginning the services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

**Greece**

I am a resident of Greece. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant. I am a professor or teacher visiting the United States for the purpose of teaching at [insert the name of the educational institution at which you teach], which is an educational institution. I will receive compensation for my teaching activities.

The teaching compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Greece. I have not previously claimed an income tax exemption under this treaty for income received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]). The teaching compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Greece. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will not be undertaken primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

**India**

I was a resident of India on the date of my arrival in the United States. I am a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant. I am visiting the United States for the purpose of teaching or conducting research at [insert the name of the university, college, school, or other similar educational institution]. I will receive compensation for my teaching or research activities.

The teaching, or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and India. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

**Italy**

I was a resident of Italy on the date of my arrival in the United States. I am a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant. I am a professor or teacher visiting the United States for the purpose of teaching or performing research at [insert the name of the educational institution or medical facility at which you teach or perform research], which is an educational institution or a medical facility primarily funded from governmental sources. I will receive compensation for my teaching or research activities.

The teaching, or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Italy. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the general interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

**Jamaica**

I was a resident of Jamaica on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant. I am visiting the United States for the purpose of teaching or conducting research for a period not expected to exceed two years at [insert the name of the educational institution at which you teach or conduct research], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed] to [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Jamaica. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival into the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.
Pakistan

I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for the purpose of teaching at [insert the name of the educational institution at which you teach], which is a recognized educational institution. I will receive compensation for my teaching activities.

The teaching compensation received during the entire tax year (or during the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Pakistan. I have not previously claimed an income tax exemption under this treaty for income received as a teacher or student before the date of my arrival in the United States.

I arrived in the United States on [insert the date of your last arrival in the United States], which is a recognized educational institution. I am a professor or teacher visiting the United States for the purpose of teaching at [insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching activities.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on [insert the date of your last arrival in the United States] before beginning the teaching or research services for which exemption is claimed. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

Trinidad and Tobago

I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other educational institution in the United States, to come to the United States for the purpose of teaching or engaging in research at [insert the name of the educational institution], which is an educational institution approved by an appropriate governmental educational authority. No agreement exists between the government of the United States and the government of Trinidad and Tobago for the provision of my services. I will receive compensation for my teaching or research services.

The teaching or research compensation received during the entire tax year (or for the period from [insert the date of your last arrival in the United States] to [insert the date of your last arrival in the United States]) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Trinidad and Tobago. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I arrived in the United States on [insert the date of your last arrival in the United States] before beginning the teaching or research services for which exemption is claimed. The treaty exemption is available only for compensation received during a period of two years beginning on that date. The entire treaty exemption is lost retroactively if my stay in the United States exceeds two years.
To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.
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