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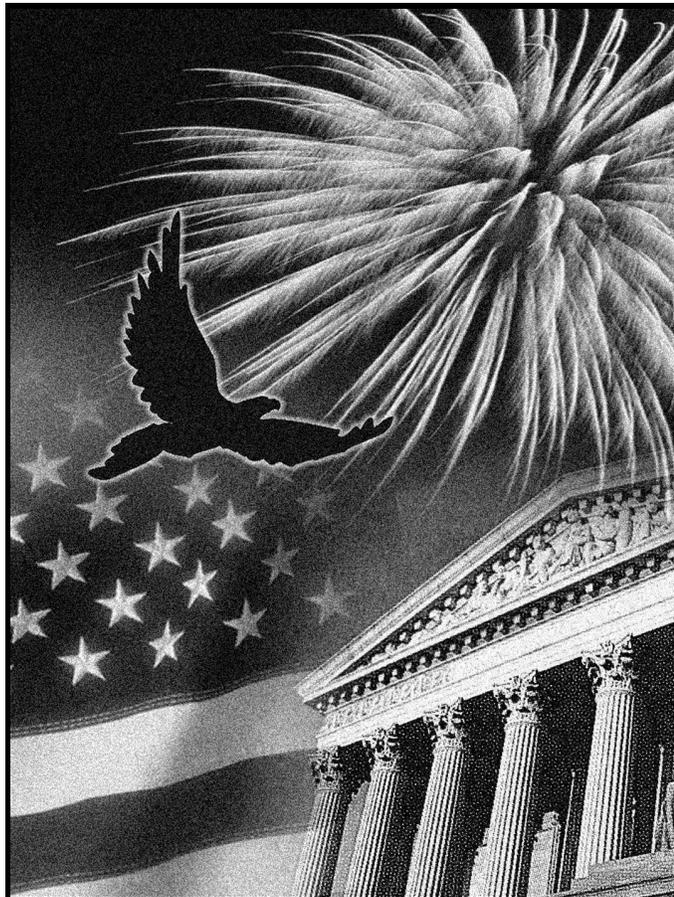
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Service

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U.S. Tax Guide for Aliens

For use in preparing
2009 Returns



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Introduction

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

Table A, Where To Find 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. **Where To Find What You Need To Know About U.S. Taxes**

Commonly Asked Questions	Where To Find The Answer
Am I a nonresident alien or resident alien?	See chapter 1 .
Can I be a nonresident alien and a resident alien in the same year?	<ul style="list-style-type: none"> • See Dual-Status Aliens in chapter 1. • See chapter 6.
I am a resident alien and my spouse is a nonresident alien. Are there special rules for us?	<ul style="list-style-type: none"> • See <i>Nonresident Spouse Treated as a Resident</i> in chapter 1. • See Community Income in chapter 2.
Is all my income subject to U.S. tax?	<ul style="list-style-type: none"> • See chapter 2. • See chapter 3.
Is my scholarship subject to U.S. tax?	<ul style="list-style-type: none"> • See Scholarship Grants, Prizes, and Awards in chapter 2. • See Scholarship and Fellowship Grants in chapter 3. • See chapter 9.
What is the tax rate on my income subject to U.S. tax?	See chapter 4 .
I moved to the United States this year. Can I deduct my moving expenses on my U.S. return?	See Deductions in chapter 5.
Can I claim exemptions for my spouse and children?	See Exemptions in chapter 5.
I pay income taxes to my home country. Can I get credit for these taxes on my U.S. tax return?	See Tax Credits and Payments in chapter 5.
What forms must I file and when and where do I file them?	See chapter 7 .
How should I pay my U.S. income taxes?	See chapter 8 .
Am I eligible for any benefits under a tax treaty?	<ul style="list-style-type: none"> • See Income Entitled to Tax Treaty Benefits in chapter 8. • See chapter 9.
Are employees of foreign governments and international organizations exempt from U.S. tax?	See chapter 10 .
Is there anything special I have to do before leaving the United States?	<ul style="list-style-type: none"> • See chapter 11. • See Expatriation Tax in chapter 4.

Answers to frequently asked questions are presented in the back of the publication.

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

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Individual Forms and Publications Branch
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

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

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

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Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

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

What's New for 2009

IRA deduction expanded. You may be able to take an IRA deduction if you were covered by a retirement plan and your 2009 modified adjusted gross income (AGI) is less than \$65,000 (\$109,000 if married filing jointly or a qualifying widow(er)).

Making work pay credit. If you are a resident alien who had earned income in 2009, you may be eligible for a refundable tax credit. The credit is the lesser of:

1. 6.2% of your earned income for 2009, or
2. \$400 (\$800 in the case of a joint return).

For details, see Schedule M (Form 1040A or 1040) and its instructions.

Government retiree credit. You may be able to take this credit if you received a pension or annuity payment in 2009 for service performed

for the U.S. government or any state or local government (or any agency of one or more of these) and the service was not covered by social security. For details, see Schedule M (Form 1040A or 1040).

Portion of unemployment compensation not taxable. The first \$2,400 of unemployment compensation for 2009 is exempt from federal income tax. Any unemployment compensation over \$2,400 is taxable.

Deduction for motor vehicle taxes. Resident aliens may be able to deduct state or local sales and excise taxes paid on the purchase of new cars, light trucks, motor homes, and motorcycles after February 16, 2009, as an itemized deduction or as part of the standard deduction. For details, see the instructions for Schedule A (Form 1040).

Hope education credit. The maximum Hope credit has increased to \$2,500. Part of the credit is now refundable. See Publication 970, Tax Benefits for Education.

First-time homebuyer credit. This credit has been extended for purchases of a main home in the United States after 2008 and before May 1, 2010 (before July 1, 2010, if you entered into a written binding contract before May 1, 2010). The credit is generally 10% of the purchase price of the home but is limited to \$8,000 (\$4,000 if married filing separately).

Also, the credit has been modified to allow a smaller credit (limited to \$6,500, \$3,250 if married filing separately) if you (and your spouse if married) owned and used the same main home for any period of 5 consecutive years during the 8-year period ending on the date you bought your new main home in the United States. For this credit, the replacement home must be purchased after November 6, 2009, and before May 1, 2010 (before July 1, 2010, if you entered into a written binding contract before May 1, 2010).

You can choose to claim the credit on your 2009 return for a home you bought in 2010 that qualifies for the credit.

See Form 5405 (Rev. December 2009) for more information.

Exemption for certain distributions from mutual funds extended. The exemption from the 30% tax on certain interest-related dividends and short-term capital gain dividends received from a mutual fund or other regulated investment company has been extended 2 years. It now applies to dividends for tax years of the company beginning before 2010. See [Dividend Income](#) in chapter 3.

What's New for 2010

IRA deduction expanded. You may be able to take an IRA deduction if you were covered by a retirement plan and your 2010 modified AGI is

less than \$66,000 (\$109,000 if married filing jointly or qualifying widow(er)). If your spouse was covered by a retirement plan, but you were not, you may be able to take an IRA deduction if your 2010 modified AGI is less than \$177,000.

Repayment of first-time homebuyer credit. If you claimed the first-time homebuyer credit for a home you bought in 2008, you must begin repaying it in 2010. See Form 5405 for details.

Personal exemption and itemized deduction phaseouts ended. For 2010, taxpayers with adjusted gross income above a certain amount will no longer lose part of their deduction for personal exemptions and itemized deductions. Under current law, these phaseouts will resume in 2011.

Earned income credit (EIC). You (if you are a resident alien) may be able to take the EIC if:

- Three or more children lived with you and you earned less than \$43,352 (\$48,362 if married filing jointly),
- Two children lived with you and you earned less than \$40,363 (\$45,373 if married filing jointly),
- One child lived with you and you earned less than \$35,535 (\$40,545 if married filing jointly), or
- A child did not live with you and you earned less than \$13,460 (\$18,470 if married filing jointly).

The maximum AGI you can have and still get the credit also has increased. You may be able to take the credit if your AGI is less than the amount in the above list that applies to you. The maximum investment income you can have and get the credit is still \$3,100.

Personal casualty and theft loss limit reduced. Each personal casualty or theft loss is limited to the excess of the loss over \$100 (instead of \$500).

Expiring tax benefits. The following benefits are scheduled to expire and will not be available for 2010.

- Deduction for educator expenses in figuring adjusted gross income.
- Tuition and fees deduction.
- Increased standard deduction for real estate taxes or net disaster loss.
- Itemized deduction or increased standard deduction for state or local sales or excise taxes on the purchase of a new motor vehicle.

- Deduction for state and local sales taxes.
- The exclusion from income of up to \$2,400 in unemployment compensation.
- The exclusion from income of qualified charitable distributions.
- Government retiree credit.
- District of Columbia first-time homebuyer credit (for homes purchased after 2009).
- Extra \$3,000 IRA deduction for employees of bankrupt companies.
- Certain tax benefits for Midwestern disaster areas, including the additional exemption amount if you provided housing for a person displaced by the Midwestern storms, tornadoes, or flooding.

Exemption for certain distributions from mutual funds expires. The exemption from the 30% tax on certain interest-related dividends and short-term capital gain dividends received from a mutual fund or other regulated investment company expires for dividends for tax years of the company beginning after 2009. See [Dividend Income](#) in chapter 3.

Reminders

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

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

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:

Form (and Instructions)

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

See [chapter 12](#) for information about getting these forms.

Nonresident Aliens

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

Resident Aliens

You are a resident alien of the United States for tax purposes if you meet either the green card test or the substantial presence test for calendar year 2009 (January 1–December 31). Even if you do not meet either of these tests, you may be able to choose to be treated as a U.S. resident for part of the year. See [First-Year Choice](#) under *Dual-Status Aliens*, later.

Green Card Test

You are a resident for tax purposes if you are a lawful permanent resident of the United States at any time during calendar year 2009. (However, see [Dual-Status Aliens](#), later.) This is known as the “green card” test. You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued you an alien registration card, also known as a “green card.” You continue to have resident status under this test unless the status is taken away from you or is administratively or judicially determined to have been abandoned.

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

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

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

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

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

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

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



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

Termination of residency after June 3, 2004, and before June 17, 2008. If you terminated your residency after June 3, 2004, and before June 17, 2008, you will still be considered a U.S. resident for tax purposes until you notify the Secretary of Homeland Security and file Form 8854, Expatriation Information Statement.

Termination of residency after June 16, 2008. For information on your residency termination date, see [Former long-term resident](#) under *Expatriation After June 16, 2008*, 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 calendar year 2009. To meet this test, you must be physically present in the United States on at least:

1. 31 days during 2009, and
2. 183 days during the 3-year period that includes 2009, 2008, and 2007, counting:
 - a. All the days you were present in 2009, and
 - b. $\frac{1}{3}$ of the days you were present in 2008, and
 - c. $\frac{1}{6}$ of the days you were present in 2007

Example. You were physically present in the United States on 120 days in each of the years 2007, 2008, and 2009. To determine if you meet the substantial presence test for 2009, count the full 120 days of presence in 2009, 40 days in 2008 ($\frac{1}{3}$ of 120), and 20 days in 2007 ($\frac{1}{6}$ of 120). Because the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 2009.

The term United States includes the following areas.

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

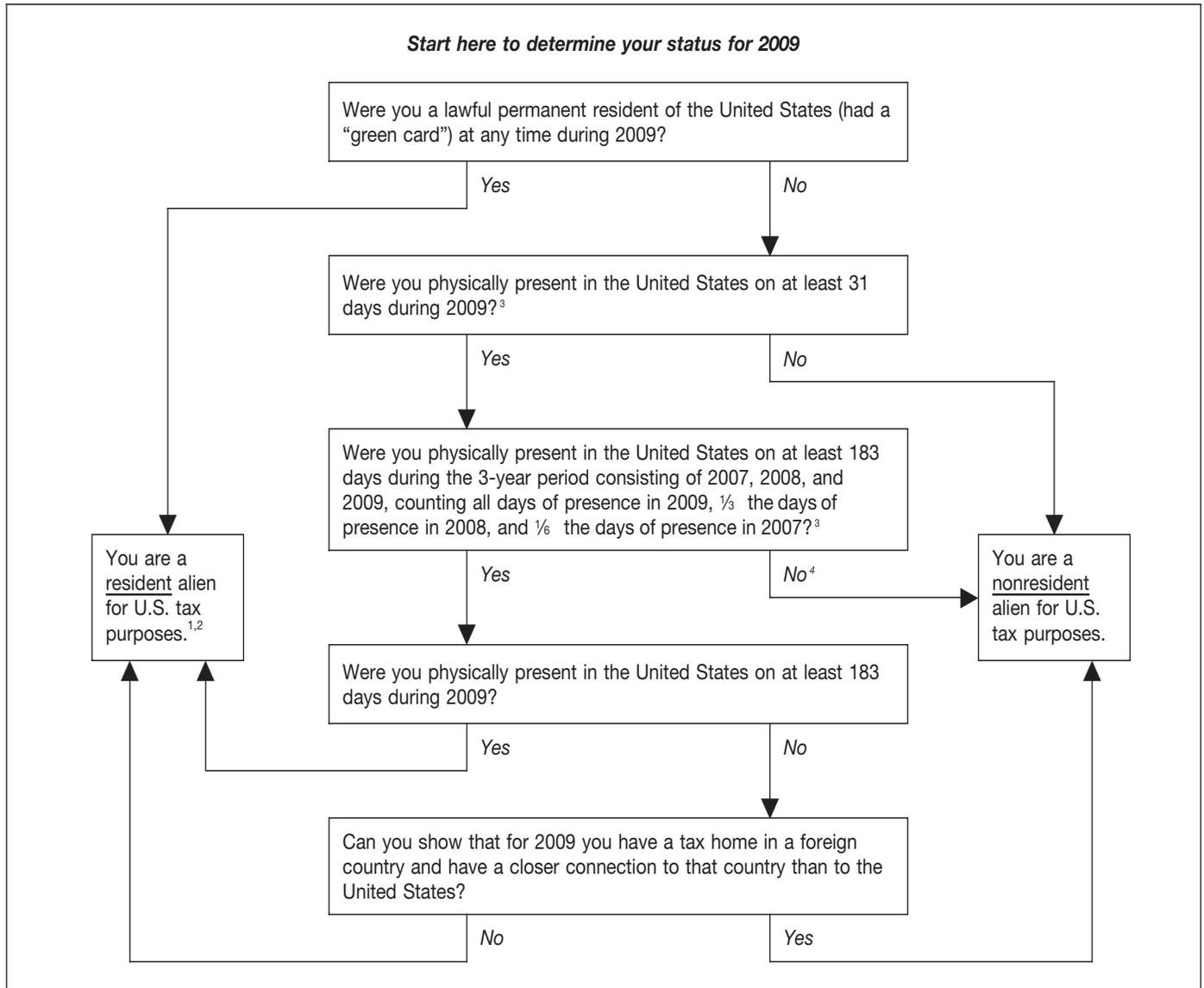
The term does not include U.S. possessions and territories or U.S. airspace.

Days of Presence in the United States

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

- Days you commute to work in the United States from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.

Figure 1-A. Nonresident Alien or Resident Alien?



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 In some circumstances you may still be considered a nonresident alien under an income tax treaty between the U.S. and your country. Check the provisions of the treaty carefully.

³ See *Days of Presence in the United States* in this chapter for days that do not count as days of presence in the United States.

⁴ If you meet the substantial presence test for 2010, you may be able to choose treatment as a U.S. resident alien for part of 2009. For details, see *Substantial Presence Test under Resident Aliens and First-Year Choice under Dual-Status Aliens* in chapter 1.

- Days you are in the United States for less than 24 hours when you are in transit between two places outside the United States.
- Days you are in the United States as a crew member of a foreign vessel.
- Days you are unable to leave the United States because of a medical condition that arose while you are in the United States.
- Days you are an exempt individual.

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

Regular commuters from Canada or Mexico.

Do not count the days on which you commute to work in the United States from your residence in Canada or Mexico if you regularly commute

from Canada or Mexico. You are considered to commute regularly if you commute to work in the United States on more than 75% of the workdays during your working period.

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

season or cycle on which you are present in the United States to work. You can have more than one working period in a calendar year, and your working period can begin in one calendar year and end in the following calendar year.

Example. Maria Perez lives in Mexico and works for Compañía ABC in its office in Mexico. She was assigned to her firm’s office in the United States from February 1 through June 1. On June 2, she resumed her employment in Mexico. On 69 days, Maria commuted each morning from her home in Mexico to work in Compañía ABC’s U.S. office. She returned to her home in Mexico on each of those evenings. On 7 days, she worked in her firm’s Mexico office. For purposes of the substantial presence test, Maria does not count the days she commuted to work in the United States because

those days equal more than 75% of the workdays during the working period (69 workdays in the United States divided by 76 workdays in the working period equals 90.8%).

Days in transit. Do not count the days you are in the United States for less than 24 hours and you are in transit between two places outside the United States. You are considered to be in transit if you engage in activities that are substantially related to completing travel to your foreign destination. For example, if you travel between airports in the United States to change 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 arose 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.

- 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.
- You returned to the United States for treatment of a medical condition that arose during a prior stay.
- 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 exempt from U.S. tax, but to anyone in the following categories.

- An individual temporarily present in the United States as a foreign government-related individual.
- A teacher or trainee temporarily present in the United States under a "J" or "Q" visa, who substantially complies with the requirements of the visa.
- A student temporarily present in the United States under an "F," "J," "M," or "Q" visa, who substantially complies with the requirements of the visa.
- A professional athlete temporarily in the United States to compete in a charitable sports event.

The specific rules for each of these four categories are discussed next.

Foreign government-related individuals.

A foreign government-related individual is an individual (or a member of the individual's immediate family) who is temporarily present in the United States:

- As a full-time employee of an international organization,
- By reason of diplomatic status, or
- By reason of a visa (other than a visa that grants lawful permanent residence) that the Secretary of the Treasury determines represents full-time diplomatic or consular status.

An international organization is any public international organization that the President of the United States has designated by Executive Order as being entitled to the privileges, exemptions, and immunities provided for in the International Organizations Act. An individual is a full-time employee if his or her work schedule meets the organization's standard full-time work schedule.

An individual is considered to have full-time diplomatic or consular status if he or she:

- Has been accredited by a foreign government that is recognized by the United States,
- Intends to engage primarily in official activities for that foreign government while in the United States, and
- 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:

- Are under 21 years of age,
- Reside regularly in the exempt individual's household, and
- 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 a "J" or "Q" visa and 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 teachers and trainees. See the definition of immediate family, earlier, under [Foreign government-related individuals](#).

You will not be an exempt individual as a teacher or trainee if you were exempt as a teacher, trainee, or student for any part of 2 of the 6 preceding calendar years. However, you will be an exempt individual if you were exempt as a teacher, trainee, or student for any part of 3 (or fewer) of the 6 preceding calendar years and:

- A foreign employer paid all of your compensation during the current year, and
- A foreign employer paid all of your compensation during each of the preceding 6 years you were present in the United States as a teacher or trainee.

A foreign employer includes an office or place of business of an American entity in a foreign country or a U.S. possession.

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.

Example. Carla was temporarily in the United States during the year as a teacher on a "J" visa. Her compensation for the year was paid by a foreign employer. Carla was treated as an exempt teacher for the previous 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 meet both of the following requirements.

- You establish that you do not intend to reside permanently in the United States.

- 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.

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

- The main purpose is to benefit a qualified charitable organization.
- The entire net proceeds go to charity.
- 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.

- You were unable to leave the United States as planned because of a medical condition or problem.
- You were temporarily in the United States as a teacher or trainee on a “J” or “Q” visa.
- You were temporarily in the United States as a student on an “F,” “J,” “M,” or “Q” visa.
- You were a professional athlete competing in a charitable sports event.

Attach Form 8843 to your 2009 income tax return. If you do not have to file a return, send Form 8843 to the Department of the Treasury, Internal Revenue Service Center, Austin TX 73301-0215, 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.

Closer Connection to a Foreign Country

Even if you meet the substantial presence test, you can be treated as a nonresident alien if you:

- Are present in the United States for less than 183 days during the year,
- Maintain a tax home in a foreign country during the year, and
- Have a closer connection during the year to one foreign country in which you have a tax home than to the United States (unless you have a closer connection to two foreign countries, discussed next).

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

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

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

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

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

- Any territory under the sovereignty of the United Nations or a government other than that of the United States,

- The territorial waters of the foreign country (determined under U.S. law),
- The seabed and subsoil of those 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, and
- Possessions and territories of the United States.

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

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

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

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

- You personally applied, or took other steps during the year, to change your status to that of a permanent resident, or
- You had an application pending for 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, Exemptions 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-140, Immigrant Petition for Alien Worker, on your behalf

Form ETA-750, 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 Department of the Treasury, Internal Revenue Service Center, Austin TX 73301-0215, 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. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Effect of Tax Treaties

The rules given here 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 residence (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 Claimed](#) 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 you were not a U.S. resident at any time during the preceding calendar year, you are a U.S. resident only for the part of the calendar year that begins on the residency starting date. You are a nonresident alien for the part of the year before that date.

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

- You had a closer connection to a foreign country than to the United States, and
- Your tax home was in that foreign country.

See [Closer Connection to a Foreign Country](#), earlier.

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

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

Example. Ivan Ivanovich is a citizen of Russia. He came to the United States for the first time on January 6, 2009, to attend a business meeting and returned to Russia on January 10, 2009. His tax home remained in Russia. On March 1, 2009, he moved to the United States and resided here for the rest of the year. Ivan is able to establish a closer connection to Russia for the period January 6–10. Thus, his residency starting date is March 1.

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

- Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
- Your passport number and the name of the country that issued your passport.
- The tax year for which the statement applies.
- The first day that you were present in the United States during the year.
- The dates of the days you are excluding in figuring your first day of residency.

- Sufficient facts to establish that you have maintained your tax home in 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 Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, on or before the due date for filing Form 1040NR or Form 1040NR-EZ. The due date for filing is discussed in chapter 7.

If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. 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 the green card test at any time during a calendar year, but do not meet the substantial presence test for that year, your residency starting date is the first day in the calendar year on which you are present in the United States as a lawful permanent resident.

If you 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, 2008, and remained until November 5, 2008, when he returned to Switzerland. Robert came back to the United States on March 5, 2009, as a lawful permanent resident and still resides here. In calendar year 2009, Robert's U.S. residency is deemed to begin on January 1, 2009, because he qualified as a resident in calendar year 2008.

First-Year Choice

If you do not meet either the green card test or the substantial presence test for 2008 or 2009 and you did not choose to be treated as a resident for part of 2008, but you meet the substantial presence test for 2010, you can choose to be treated as a U.S. resident for part of 2009. To make this choice, you must:

1. Be present in the United States for at least 31 days in a row in 2009, 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 2009. 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 2009 is the first day of the earliest 31-day period (described in (1) above) that you use to qualify for the choice. You are treated as a U.S. resident for the rest of the year. If you are present for more than one 31-day period and you satisfy condition (2) above for each of those periods, your residency starting date is the first day of the first 31-day period. If you are present for more than one 31-day period but you satisfy condition (2) above only for a later 31-day period, your residency starting date is the first day of the later 31-day period.

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

Example 1. Juan DaSilva is a citizen of the Philippines. He came to the United States for the first time on November 1, 2009, and was here on 31 consecutive days (from November 1 through December 1, 2009). Juan returned to the Philippines on December 1 and came back to the United States on December 17, 2009. He stayed in the United States for the rest of the year. During 2010, Juan was a resident of the United States under the substantial presence test. Juan can make the first-year choice for 2009 because he was in the United States in 2009 for a period of 31 days in a row (November 1 through December 1) and for at least 75% of the days following (and 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, 2009.

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 2009 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 for 2009. You must attach a statement to Form 1040 to make the first-year choice for 2009. The statement must contain your name and address and specify the following.

- That you are making the first-year choice for 2009.
- That you were not a resident in 2008.
- That you are a resident under the substantial presence test in 2010.
- The number of days of presence in the United States during 2010.
- The date or dates of your 31-day period of presence and the period of continuous presence in the United States during 2009.

- The date or dates of absence from the United States during 2009 that you are treating as days of presence.

You cannot file Form 1040 or the statement until you meet the substantial presence test for 2010. If you have not met the test for 2010 as of April 15, 2010, you can request an extension of time for filing your 2009 Form 1040 until a reasonable period after you have met that test. To request an extension to file until October 15, 2010, 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 2009 figured as if you were a nonresident alien the entire year. You can use Form 1040NR or Form 1040NR-EZ to figure the tax. Enter the tax on Form 4868. If you do not pay the tax due, you will be charged interest on any tax not paid by the regular due date of your return, and you may be charged a penalty on the late payment.

Once you make the first-year choice, you may not revoke it without the approval of the Internal Revenue Service.

If you do not follow the procedures discussed here for making the first-year choice, you will be treated as a nonresident alien for all of 2009. However, this does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing procedures and significant steps to comply with the procedures.

Choosing Resident Alien Status

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

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

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

- A declaration that you both qualify to make the choice and that you choose to be treated as U.S. residents for the entire tax year.
- The name, address, and taxpayer 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 2009 but are not a U.S. resident during any part of 2010 you cease to be a U.S. resident on your residency termination date. Your residency termination date is December 31, 2009, 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 2009 that you are physically present in the United States, if you met the substantial presence test,
2. The first day in 2009 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 2009, your tax home was in a foreign country and you had a closer connection to that foreign country. See [Closer Connection to a Foreign Country](#), earlier.



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

Termination of residency. For information on your residency termination date, see [Former long-term resident](#) under *Expatriation After June 16, 2008*, 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.

- You can exclude days from more than one period of presence as long as the total days in all periods are not more than 10.
- You cannot exclude any days in a period of consecutive days of presence if all the days in that period cannot be excluded.
- Although you can exclude up to 10 days of presence in determining your residency 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, 2009, and resided here until August 25, 2009. On December 12, 2009, Lola came to the United States for vacation and stayed here until December 16, 2009, 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 2009 and can establish a closer connection to Malta for the rest of calendar year 2009. Lola is a U.S. resident under the substantial presence test for 2009 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, 2009.

Residency during the next year. If you are a U.S. resident during any part of 2010 and you are a resident during any part of 2009, you will be taxed as a resident through the end of 2009. This applies whether you have a closer connection to a foreign country than the United States during 2009, 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).

- Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
- Your passport number and the name of the country that issued your passport.

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

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

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

Nonresident Spouse Treated as a Resident

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

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



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

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

How To Make the Choice

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

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

Amended return. You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040X. Attach Form 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.

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, 2006, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed joint 2006 and 2007 income tax returns. On January 10, 2008, 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 2008 because Dick was a resident alien for part of that year. However, because neither Dick nor Judy is a resident alien at any time

during 2009, 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 2009. If Dick becomes a resident alien again in 2010, 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 in the United States and a bona fide resident of American Samoa or Puerto Rico during the entire tax year, you are taxed, with certain exceptions, according to the rules for resident aliens of the United States. For more information, see [Bona Fide Residents of American Samoa or Puerto Rico](#) in [chapter 5](#).

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

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

2.

Source of Income

Introduction

After you have determined your alien status, you must determine the source of your income. This chapter will help you determine the source of different types of income you may receive during the tax year. This chapter also discusses special rules for married individuals who are domiciled in a country with community property laws.

Topics

This chapter discusses:

- Income source rules, and
- Community income.

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.



Not all items of U.S. source income are taxable. See [chapter 3](#).

Interest Income

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

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

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

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

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

1. Interest paid by a resident alien or a domestic corporation if for the 3-year period ending with the close of the payer's tax year preceding the interest payment, at least 80% of the payer's total gross income:
 - a. Is from sources outside the United States, and
 - b. Is attributable to the active conduct of a trade or business by the individual or corporation in a foreign country or a U.S. possession.
2. Interest paid by a foreign branch of a domestic corporation or a domestic partnership on deposits or withdrawable accounts with mutual savings banks, cooperative banks, credit unions, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under federal or state law if the interest paid or credited can be deducted by the association.

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

Dividends

In most cases, dividend income received from domestic corporations is U.S. source income. Dividend income from foreign corporations is usually foreign source income. Exceptions to both of these rules are discussed below.

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

First exception. Dividends received from a domestic corporation are not U.S. source income if the corporation elects to take the American Samoa economic development credit.

Second exception. Part of the dividends received from a foreign corporation is U.S. source income if 25% or more of its total gross income for the 3-year period ending with the close of its tax year preceding the declaration of dividends was effectively connected with a trade or business in the United States. If the corporation was formed less than 3 years before the declaration, use its total gross income from the time it was formed. Determine the part that is U.S. source income by multiplying the dividend by the following fraction.

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

Personal Services

All wages and any other compensation for services performed in the United States are considered to be from sources in the United States. The only exceptions to this rule are discussed in chapter 3 under *Employees of foreign persons, organizations, or offices*, and under *Crew members*.

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

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

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

Time Basis

Use a time basis to figure your U.S. source compensation (other than the fringe benefits discussed later). Do this by multiplying your total compensation (other than the fringe benefits discussed later) by the following fraction:

$$\frac{\text{Number of days you performed services in the United States during the year}}{\text{Total number of days you performed services during the year}}$$

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

Example 1. Christina Brooks, a resident of the Netherlands, worked 240 days for a U.S. company during the tax year. She received \$80,000 in compensation. None of it was for fringe benefits. Christina performed services in the United States for 60 days and performed services in the Netherlands for 180 days. Using the time basis for determining the source of compensation, \$20,000 ($\$80,000 \times \frac{60}{240}$) is her U.S. source income.

Example 2. Rob Waters, a resident of South Africa, is employed by a corporation. His annual salary is \$100,000. None of it is for fringe benefits. During the first quarter of the year he worked entirely within the United States. On April 1, Rob was transferred to Singapore for the remainder of the year. Rob is able to establish that the first quarter of the year and the last 3 quarters of the year are two separate, distinct, and continuous periods of time. Accordingly, \$25,000 of Rob's annual salary is attributable to the first quarter of the year ($.25 \times \$100,000$). All of it is U.S. source income because he worked entirely within the United States during that quarter. The remaining \$75,000 is attributable to the last three quarters of the year. During those quarters, he worked 150 days in Singapore and 30 days in the United States. His periodic performance of services in the United States did not result in distinct, separate, and continuous periods of time. Of his \$75,000 salary, \$12,500 ($\$75,000 \times \frac{30}{180}$) is U.S. source income for the year.

Multi-year compensation. The source of multi-year compensation is generally determined on a time basis over the period to which the compensation is attributable. Multi-year compensation is compensation that is included in your income in one tax year but that is attributable to a period that includes two or more tax years.

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

The amount of compensation treated as from U.S. sources is figured by multiplying the total multi-year compensation by a fraction. The numerator of the fraction is the number of days (or

unit of time less than a day, if appropriate) that you performed labor or personal services in the United States in connection with the project. The denominator of the fraction is the total number of days (or unit of time less than a day if appropriate) that you performed labor or personal services in connection with the project.

Geographical Basis

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

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

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

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

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

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

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

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

A housing fringe benefit does not include:

- Deductible interest and taxes (including deductible interest and taxes of a tenant-stockholder in a cooperative housing corporation),
- The cost of buying property, including principal payments on a mortgage,
- The cost of domestic labor (maids, gardeners, etc.),
- Pay television subscriptions,
- Improvements and other expenses that increase the value or appreciably prolong the life of property,
- Purchased furniture or accessories,
- Depreciation or amortization of property or improvements,
- The value of meals or lodging that you exclude from gross income, or
- The value of meals or lodging that you deduct as moving expenses.

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

expenses for education at an elementary or secondary school.

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

Local transportation. The source of a local transportation fringe benefit is determined based on the location of your principal place of work. Your local transportation fringe benefit is the amount that you receive as compensation for local transportation for you or your spouse or dependents at the location of your principal place of work. The amount treated as a local transportation fringe benefit is limited to actual expenses incurred for local transportation and the fair rental value of any employer-provided vehicle used predominantly by you or your spouse or dependents for local transportation. Actual expenses do not include the cost (including interest) of any vehicle purchased by you on your behalf.

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

Moving expense reimbursement. The source of a moving expense reimbursement is generally based on the location of your new principal place of work. However, the source is determined based on the location of your former principal place of work if you provide sufficient evidence that such determination of source is more appropriate under the facts and circumstances of your case. Sufficient evidence generally requires an agreement between you and your employer, or a written statement of company policy, which is reduced to writing before the move and which is entered into or established to induce you or other employees to move to another country. The written statement or agreement must state that your employer will reimburse you for moving expenses that you incur to return to your former principal place of work regardless of whether you continue to work for your employer after returning to that location. It may contain certain conditions upon which the right to reimbursement is determined as long as those conditions set forth standards that are definitely ascertainable and can only be fulfilled prior to, or through completion of, your return move to your former principal place of work.

Alternative Basis

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

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

Transportation Income

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

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

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income: Personal services Sale of inventory—purchased Sale of inventory—produced	Where services performed Where sold Allocation
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties: Natural resources Patents, copyrights, etc.	Location of property Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but see Personal Property , later, for exceptions)
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.

*Exceptions include:

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

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

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

For information on how U.S. source transportation income is taxed, see [chapter 4](#).

Scholarships, Grants, Prizes, and Awards

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

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

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

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



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

Pensions and Annuities

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

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

Rents or Royalties

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

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

Real Property

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

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

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

Personal Property

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

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

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

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

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

from sources outside the United States. For information on making this allocation, see section 1.863-3 of the regulations.

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

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

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

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

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

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

Intangible property. Intangible property includes patents, copyrights, secret processes or formulas, goodwill, trademarks, trade names, or other like property. The gain from the sale of amortizable or depreciable intangible property, up to the previously allowable amortization or depreciation deductions, is sourced in the same way as the original deductions were sourced. This is the same as the source rule for gain from the sale of depreciable property. See [Depreciable property](#), earlier, for details on how to apply this rule.

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

Sales through offices or fixed places of business. Despite any of the 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. However, this rule does not apply to sales of inventory property for use, disposition, or consumption outside the United States if your office or other fixed place of business outside the United States materially participated in the sale.

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

Community Income

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

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

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

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

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

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

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

property law to determine what is separate property.

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

3.

Exclusions From Gross Income

Introduction

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

Topics

This chapter discusses:

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

Useful Items

You may want to see:

Publication

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

See [chapter 12](#) for information about getting these publications.

Resident Aliens

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

Foreign Earned Income and Housing Amount

If you are physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months, you may qualify for the foreign earned income exclusion. The exclusion is \$91,400 in 2009. 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. A foreign country is any territory under the sovereignty of a government other than that of the United States.

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

The term "foreign country" does not include U.S. possessions or territories. It does not include the Antarctic region.

Nonresident Aliens

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

Interest Income

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

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

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

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

- Not in registered form (bearer obligations) that are sold only to foreign investors, and the interest on which is payable only outside the United States and its possessions, and that has on its face a statement that any U.S. person holding the obligation will be subject to limitations under the U.S. income tax laws,
- In registered form that are targeted to foreign markets and the interest on which is

paid through financial institutions outside the United States, or

- In registered form that are not targeted to foreign markets, if you furnished the payer of the interest (or the withholding agent) a statement that you are not a U.S. person. You should have made this statement on a Form W-8BEN or on a substitute form similar to Form W-8BEN. In either case, the statement should have been signed under penalties of perjury, should have certified that you are not a U.S. citizen or resident, and should have included your name and address.

Portfolio interest does not include the following types of interest.

- Interest you receive on an obligation issued by a corporation of which you own, directly or indirectly, 10% or more of the total voting power of all classes of voting stock.
- Interest you receive on an obligation issued by a partnership of which you own, directly or indirectly, 10% or more of the capital or profits interests.
- Contingent interest.

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

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

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

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

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

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

Dividend Income

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

Certain dividends paid by foreign corporations. There is no 30% tax on U.S. source dividends you receive from a foreign corporation. See [Second exception](#) under *Dividends* in chapter 2 for how to figure the amount of excludable dividends.

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

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

Services Performed for Foreign Employer

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

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

1. You perform personal services as an employee of or under a contract with a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or 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 your pay is more than \$3,000, do not include any amounts you get from your employer for advances or reimbursements of business travel expenses, if you were required to and did account to your employer for those expenses. If the advances or reimbursements are more than your expenses, include the excess in your pay for these services.

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

Example 1. During 2009, Henry Smythe, a nonresident alien from a nontreaty country, worked for an overseas office of a U.S. partnership. Henry, who uses the calendar year as his tax year, was temporarily present in the United States for 60 days during 2009 performing personal services for the overseas office of the partnership. That office paid him a total gross salary of \$2,800 for those services. During 2009, 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 salary for the services performed in the United States during 2009 was \$4,500. He received \$2,875 in 2009, and \$1,625 in 2010. During 2009, 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 between 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. Nonresident alien students and exchange visitors present in the United States under “F,” “J,” or “Q” visas can exclude from gross income pay received from a foreign employer.

This group includes bona fide students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in a field of specialized knowledge or skill, or persons of similar description. It also includes the alien's spouse and minor children if they come with the alien or come later to join the alien.

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

Foreign employer. A foreign employer is:

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

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

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

1. You receive the annuity only because:

- a. You performed personal services outside the United States while you were a nonresident alien, or
 - b. You performed personal services inside the United States while you were a nonresident alien and you met the three conditions, described earlier, under [Employees of foreign persons, organizations, or offices](#).
2. At the time the first amount is paid as an annuity under the plan (or by the trust), 90% or more of the employees for whom contributions or benefits are provided under the annuity plan (or under the plan of which the trust is a part) are U.S. citizens or residents.

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

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

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

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

Gambling Winnings From Dog or Horse Racing

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

Gain From the Sale of Your Main Home

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



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

Scholarships and Fellowship Grants

If you are a candidate for a degree, you may be able to exclude from your income part or all of

the amounts you receive as a qualified scholarship. The rules discussed here apply to both resident and nonresident aliens.



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

A scholarship or fellowship is excludable from income only if:

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

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

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

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

Qualified education expenses. These are expenses for:

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

However, in order for these to be qualified education expenses, the terms of the scholarship or fellowship cannot require that it be used for other purposes, such as room and board, or specify that it cannot be used for tuition or course-related expenses.

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

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

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

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

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

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

4.

How Income of Aliens Is Taxed

Introduction

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

Topics

This chapter discusses:

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

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. Resident aliens use the Tax Table or Tax Computation Worksheets located in the Form 1040 instructions, which apply to U.S. citizens.

Nonresident Aliens

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

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

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



If you were formerly a U.S. citizen or resident alien, these rules may not apply. See [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 “Q” visa. A nonresident alien temporarily present in the United States under a “J” visa includes a nonresident alien individual admitted to the United States as an exchange visitor under the Mutual Educational and Cultural Exchange Act of 1961. The taxable part of any scholarship or fellowship grant that is U.S. source income is treated as effectively connected with a trade or business in the United States.

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

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

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

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

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

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

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

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

even if the trading takes place while you are present in the United States or is done by your employee or your broker or other agent.

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

Effectively Connected Income

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

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

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

Investment Income

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

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

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

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

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

- Held for the principal purpose of promoting the conduct of a trade or business in the United States,
- Acquired and held in the ordinary course of the trade or business conducted in the United States (for example, an account receivable or note receivable arising from that trade or business), or
- Otherwise held to meet the present needs of the trade or business in the United States and not its anticipated future needs.

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

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

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

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

Personal Service Income

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

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

performing personal services, the income, gain, or loss is effectively connected.

Pensions. If you 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 pay 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 pay.

Transportation Income

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

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

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

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

Business Profits and Losses and Sales Transactions

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

Real Property Gain or Loss

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

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

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

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

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

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

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

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

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

Domestically controlled QIE. The sale of an interest in a domestically controlled QIE is not

the sale of a U.S. real property interest. The entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of disposition, or (b) the period during which the entity was in existence.

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

1. Dispose of an interest in the domestically controlled QIE during the 30-day period before the ex-dividend date of a distribution that you would (but for the disposition) have treated as gain from the sale or exchange of a U.S. real property interest, and
2. Acquire, or enter into a contract or option to acquire, a substantially identical interest in that entity during the 61-day period that began on the first day of the 30-day period.

If this occurs, you are treated as having gain from the sale or exchange of a U.S. real property interest in an amount equal to the distribution made after June 15, 2006, that would have been treated as such gain. This also applies to any substitute dividend payment.

A transaction is not treated as an applicable wash sale transaction if:

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

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

Foreign Income

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

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

An office or other fixed place of business is a material factor if it significantly contributes to, and is an essential economic element in, the earning of the income.

The three kinds of foreign source income are listed below.

1. Rents and royalties for the use of, or for the privilege of using, intangible personal property located outside the United States or from any interest in such property. Included are rents or royalties for the use, or for the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, goodwill, trademarks, 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.

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

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

Tax on Effectively Connected Income

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

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

Example. Ted Richards, a nonresident alien, entered the United States in August 2008, to perform personal services in the U.S. office of his overseas employer. He worked in the U.S. office until December 25, 2008, but did not leave this country until January 11, 2009. On January 8, 2009, he received his final paycheck for services performed in the United States during 2008. All of Ted's income during his stay here is U.S. source income.

During 2008, Ted was engaged in the trade or business of performing personal services in the United States. Therefore, all amounts paid to him in 2008 for services performed in the United States during 2008 are effectively connected with that trade or business during 2008.

The salary payment Ted received in January 2009 is U.S. source income to him in 2009. It is effectively connected with a trade or business in the United States because he was engaged in a trade or business in the United States during 2008 when he performed the services that earned the income.

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

The 30% Tax

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

Fixed or Determinable Income

The 30% (or lower treaty) rate applies to the gross amount of U.S. source fixed or determinable annual or periodic gains, profits, or income.

Income is fixed 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 securities lending transaction or a sale-repurchase transaction is treated the same as the amounts received on the transferred security. Other items of income, such as royalties, also may be subject to the 30% tax.

TIP 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 recompute your proper share of OID shown on Form 1042-S if any of the following apply.

- You bought the debt instrument at a premium or paid an acquisition premium.
- The debt instrument is a stripped bond or a stripped coupon (including zero coupon instruments backed by U.S. Treasury securities).
- 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](#).

Gambling Winnings

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

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

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 musical or artistic compositions, letters or memoranda, or similar property.
- Certain U.S. government publications.
- Certain commodities derivative financial instruments held by a commodities derivatives 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 tax year for a prior period, your tax year will be the calendar year for purposes of the 183-day rule. Also, you must file your tax return on a calendar-year basis.

If you were in the United States for less than 183 days during the tax year, 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 property) that are effectively connected with a trade or business in the United States on a separate Schedule D (Form 1040), Form 4797, or both. Attach them to Form 1040NR.

Income From Real Property

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

You can make this choice only for real property income that is not otherwise effectively connected with your U.S. trade or business.

If you make the choice, you can claim deductions attributable to the real property income and only your net income from real property is taxed.

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

Example. You are a nonresident alien and are not engaged in a U.S. trade or business. You own a single-family house in the United States that you rent out. Your rental income for the year is \$10,000. This is your only U.S. source income. 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 withholding 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 expenses.) Any resulting net income is taxed at graduated rates. If you make this choice, report the rental income and expenses on Schedule E (Form 1040) and attach the schedule to Form 1040NR. For the first year you make the choice, also attach the statement discussed next.

Making the choice. Make the initial choice by attaching a statement to your return, or amended return, for the year of the choice. Include the following in your statement.

- That you are making the choice.
- Whether the choice is under Internal Revenue Code section 871(d) (explained above) or a tax treaty.
- A complete list of all your real property, or any interest in real property, located in the United States. Give the legal identification of U.S. timber, coal, or iron ore in which you have an interest.
- The extent of your ownership in the property.
- The location of the property.
- A description of any major improvements to the property.
- The dates you owned the property.
- Your income from the property.
- Details of any previous choices and revocations of the real property income choice.

This choice stays in effect for all later tax years unless you revoke it.

Revoking the choice. You can revoke the choice without IRS approval by filing Form 1040X, Amended U.S. Individual Income Tax Return, for the year you made the choice and for later tax years. You must file Form 1040X within 3 years from the date your return was filed or 2 years from the time the tax was paid, whichever is later. If this time period has expired for the year of choice, you cannot revoke the choice for that year. However, you may revoke the choice

for later tax years only if you have IRS approval. For information on how to get IRS approval, see Regulation section 1.871-10(d)(2).

Transportation Tax

A 4% tax rate applies to transportation income that is not effectively connected because it does not meet the two conditions listed earlier under *Transportation Income*. If you receive transportation income subject to the 4% tax, you should figure the tax and show it on line 55 of Form 1040NR. Attach a statement to your return that includes the following information (if applicable).

- Your name, taxpayer identification number, and tax year.
- A description of the types of services performed (whether on or off board).
- Names of vessels or registration numbers of aircraft on which you performed the services.
- Amount of U.S. source transportation income derived from each type of service for each vessel or aircraft for the calendar year.
- Total amount of U.S. source transportation income derived from all types of services for the calendar year.

This 4% tax applies to your U.S. source gross transportation income. This only includes transportation income that is treated as derived from sources in the United States if the transportation begins or ends in the United States. For transportation income from personal services, the transportation must be between the United States and a U.S. possession. For personal services of a nonresident alien, this only applies to income derived from, or in connection with, an aircraft.

Interrupted Period of Residence

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

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

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

with a U.S. trade or business. For information on how to figure the special tax, see *How To Figure the Expatriation Tax (If You Expatriated Before June 17, 2008)* under *Expatriation Tax*, below.

Example. John Willow, a citizen of New Zealand, entered the United States on April 1, 2004, as a lawful permanent resident. On August 1, 2006, John ceased to be a lawful permanent resident and returned to New Zealand. During his period of residence, he was present in the United States for at least 183 days in each of three consecutive years (2004, 2005, and 2006). He returned to the United States on October 5, 2009, as a lawful permanent resident. He became a resident before the close of the third calendar year (2009) beginning after the end of his first period of residence (August 1, 2006). Therefore, he is subject to tax under the special rule for the period of nonresidence (August 2, 2006, through October 4, 2009) if it is more than the tax that would normally apply to him as a nonresident alien.

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

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. The rules that apply are based on the dates of expatriation, which are described in the following sections.

- *Expatriation Before June 4, 2004.*
- *Expatriation After June 3, 2004, and Before June 17, 2008.*
- *Expatriation After June 16, 2008.*

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

Expatriation Before June 4, 2004

If you expatriated before June 4, 2004, the expatriation rules apply if one of the principal purposes of the action is the avoidance of U.S. taxes. Unless you received a ruling from the IRS that you did not expatriate to avoid U.S. taxes, you are presumed to have tax avoidance as a principal purpose if:

1. Your average annual net income tax for the last 5 tax years ending before the date of your action to relinquish your citizenship or terminate your residency was more than \$100,000, or
2. Your net worth on the date of your action was \$500,000 or more.

The amounts above are adjusted for inflation if your expatriation action is after 1997 (see Table 4-1).

Reporting requirements. If you lost your U.S. citizenship, you should have filed Form 8854 with a consular office or a federal court at the time of loss of citizenship. If you ended your long-term residency, you should have filed Form 8854 with the Internal Revenue Service when you filed your dual-status tax return for the year your residency ended.

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

Penalties. If you failed to file Form 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 of the 10-year period beginning on the date of expatriation during which your failure to file continues. The penalty will not be imposed if you can show that the failure is due to reasonable cause and not willful neglect.

Expatriation tax. The expatriation tax is figured in the same way as for those expatriating after June 3, 2004, and before June 17, 2008. See [How To Figure the Expatriation Tax \(If You Expatriated Before June 17, 2008\)](#) in the next section.

Expatriation After June 3, 2004, and Before June 17, 2008

If you expatriated after June 3, 2004, and before June 17, 2008, the expatriation rules apply to you if any of the following statements apply.

1. Your average annual net income tax for the 5 tax years ending before the date of expatriation or termination of residency is more than:

- a. \$124,000 if you expatriated or terminated residency in 2004.
- b. \$127,000 if you expatriated or terminated residency in 2005.
- c. \$131,000 if you expatriated or terminated residency in 2006.
- d. \$136,000 if you expatriated or terminated residency in 2007.
- e. \$139,000 if you expatriated or terminated residency in 2008.

2. Your net worth is \$2 million or more on the date of your expatriation or termination of residency.

3. You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 tax years preceding the date of your expatriation or termination of residency.

Exception for dual-citizens and certain minors. Certain dual-citizens and certain minors (defined next) are not subject to the expatriation tax even if they meet (1) or (2) earlier. However, they still must provide the certification required in (3).

Certain dual-citizens. You may qualify for the exception described above if all of the following apply.

- You became at birth a U.S. citizen and a citizen of another country and you continue to be a citizen of that other country.
- You were never a resident alien of the United States (as defined in chapter 1).
- You never held a U. S. passport.
- You were present in the United States for no more than 30 days during any calendar year that is 1 of the 10 calendar years preceding your loss of U. S. citizenship.

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

- You became a U.S. citizen at birth.
- Neither of your parents was a U.S. citizen at the time of your birth.
- You expatriated before you were 18½.

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

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

The expatriation tax does not apply to any tax year during the 10-year period if you are physically present in the United States for more than 30 days during the calendar year ending in that year. Instead, you are treated as a U.S. citizen or resident and taxed on your worldwide income for that tax year. You must file Form 1040, 1040A, or 1040EZ and figure your tax as prescribed in the instructions for those forms.

When counting the number of days of presence during a calendar year, count any day you were physically present in the United States at any time during the day. However, do not count any days (up to a limit of 30 days) on which you performed personal services in the United States for an employer who is not related to you if either of the following apply.

1. You have ties with other countries. You have ties with other countries if:
 - a. You became (within a reasonable period after your expatriation or termination of residency) a citizen or resident of the country in which you, your spouse, or either of your parents were born, and
 - b. You became fully liable for income tax in that country.
2. You were physically present in the United States for 30 days or less during each year in the 10-year period ending on the date of expatriation or termination of residency. Do not count any day you were an exempt individual or were unable to leave the United States because of a medical condition that arose while you were in the United States. See [Exempt individual](#) and [Medical condition](#) in chapter 1 under [Substantial Presence Test](#), but disregard the information about Form 8843.

Related employer. If your employer in the United States is any of the following, then your employer is related to you. You must count any days you performed services in the United States for that employer as days of presence in the United States.

- Members of your family. This includes only your brothers and sisters, half-brothers and half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- A partnership in which you directly or indirectly own more than 50% of the capital interest or the profits interest.
- A corporation in which you directly or indirectly own more than 50% in value of the outstanding stock. (See Publication 550, chapter 4, [Constructive ownership of stock](#), for how to determine whether you directly or indirectly own outstanding stock.)

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

IF you expatriated during . . .	THEN the rules outlined on this page apply if . . .	
	Your 5-year average annual net income tax was more than ...	OR Your net worth equaled or exceeded ...
1999	110,000	552,000
2000	112,000	562,000
2001	116,000	580,000
2002	120,000	599,000
2003	122,000	608,000
2004 (before June 4)*	124,000	622,000

*If you expatriated after June 3, 2004, see [Expatriation After June 3, 2004, and Before June 17, 2008](#) or [Expatriation After June 16, 2008](#).

- A tax-exempt charitable or educational organization that is directly or indirectly controlled, in any manner or by any method, by you or by a member of your family, whether or not this control is legally enforceable.

Date of tax expatriation. For purposes of U.S. tax rules, the date of your expatriation or termination of residency is the later of the dates on which you perform the following actions.

- You notify either the Department of State or the Department of Homeland Security (whichever is appropriate) of your expatriating act or termination of residency.
- You file Form 8854 in accordance with the form instructions.

Annual return. If the expatriation tax applies to you, you must file Form 8854 each year during the 10-year period following the date of expatriation. You must file this form even if you owe no U.S. tax.

Penalty. If you fail to file Form 8854 for any tax year, fail to include all information required to be shown on the form, or include incorrect information, you may have to pay a penalty of \$10,000. You will not have to pay a penalty if you show that the failure is due to reasonable cause and not to willful neglect.

How To Figure the Expatriation Tax (If You Expatriated Before June 17, 2008)

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.

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 and during the periods you met the ownership requirements discussed above.

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

Expatriation Tax Return

If you expatriated or terminated your U.S. residency, or you are subject to the expatriation tax, you must file Form 8854, *Expatriation Information Statement*. Attach it to Form 1040NR if you are required to file that form. If you are present in the United States following your expatriation and are subject to tax as a U.S. citizen or resident, file Form 8854 with Form 1040.

Expatriation After June 16, 2008

If you expatriated after June 16, 2008, the expatriation rules apply to you if you meet any of the following conditions.

1. Your average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than:
 - a. \$139,000 if you expatriated or terminated residency before January 1, 2009.
 - b. \$145,000 if you expatriated or terminated residency in 2009.
2. Your net worth is \$2 million or more on the date of your expatriation or termination of residency.
3. You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.

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

Certain dual-citizens. You may qualify for the exception described above if both of the following apply.

- You became at birth a U.S. citizen and a citizen of another country and you continue to be a citizen of, and are taxed as a resident of, that other country.
- You have been a resident of the United States for not more than 10 years during the 15-year tax period ending with the tax year during which the expatriation occurs. For the purpose of determining U.S. residency, use the substantial presence test described in chapter 1.

Certain minors. You may qualify for the exception described earlier if you meet both of the following requirements.

- You expatriated before you were 18½.
- You have been a resident of the United States for not more than 10 tax years before the expatriation occurs. For the purpose of determining U.S. residency, use the substantial presence test described in chapter 1.

Expatriation date. Your expatriation date is the date you relinquish U.S. citizenship (in the case of a former citizen) or terminate your long-term residency (in the case of a former U.S. resident).

Former U.S. citizen. You are considered to have relinquished your U.S. citizenship on the earliest of the following dates.

1. The date you renounced U.S. citizenship before a diplomatic or consular officer of the United States (provided that the voluntary renouncement is later confirmed by the issuance of a certificate of loss of nationality).
2. The date you furnished to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality).
3. The date the State Department issues a certificate of loss of nationality.
4. The date that a U.S. court canceled your certificate of naturalization.

Former long-term resident. You are considered to have terminated your long-term residency on earliest of the following dates.

1. The date you voluntarily relinquished your lawful permanent resident status by filing Department of Homeland Security Form I-407 with a U.S. consular or immigration officer, and the Department of Homeland Security determines that you have, in fact, abandoned your lawful permanent resident status.
2. The date you became subject to a final administrative order for your removal from the United States under the Immigration and Nationality Act and you actually left the United States as a result of that order.
3. If you were a dual resident of the United States and a country with which the United States has an income tax treaty, the date you began to be treated as a resident of that country and you determined that, for purposes of the treaty, you are a resident of the treaty country and notify the IRS of that treatment on Forms 8833 and 8854. See [Effect of Tax Treaties](#) in chapter 1 for more information about dual residents.

How To Figure the Expatriation Tax (If You Expatriate After June 16, 2008)

In the year you expatriate, you are subject to income tax on the net unrealized gain (or loss) in your property as if the property had been sold for its fair market value on the day before your expatriation date (“mark-to-market tax”). This applies to most types of property interests you held on the date of relinquishment of citizenship or termination of residency. But see [Exceptions](#), below.

Gains arising from deemed sales must be taken into account for the tax year of the deemed sale without regard to other U.S. internal revenue laws. Losses from deemed sales must be taken into account to the extent otherwise provided under U.S. internal revenue laws. However, Internal Revenue Code section 1091 (relating to the disallowance of losses on wash sales of stock and securities) does not apply. The net gain that you otherwise must include in your income is reduced (but not below zero) by:

1. \$600,000 if you expatriated or terminated residency before January 1, 2009.
2. \$626,000 if you expatriated or terminated residency in 2009.

Exceptions. The mark-to-market tax does not apply to the following.

1. Eligible deferred compensation items.
2. Ineligible deferred compensation items.
3. Interests in nongrantor trusts.
4. Specified tax deferred accounts.

Instead, items (1) and (3) may be subject to withholding at source. In the case of item (2), you are treated as receiving the present value of your accrued benefit as of the day before the expatriation date. In the case of item (4), you are treated as receiving a distribution of your entire interest in the account on the day before your expatriation date. See paragraphs (d), (e), and (f) of section 877A for more information.

Expatriation Tax Return

If you are subject to the expatriation rules (as discussed earlier in the first paragraph under *Expatriation After June 16, 2008*), you must file Form 8854. Attach it to Form 1040 or Form 1040NR if you are required to file either of those forms.

Deferral of payment of mark-to-market tax. You can make an irrevocable election to defer payment of the mark-to-market tax imposed on the deemed sale of property. If you make this election, the following rules apply.

1. You can make the election on a property-by-property basis.
2. The deferred tax attributable to a particular property is due on the return for the tax year in which you dispose of the property.
3. Interest is charged for the period the tax is deferred.

4. The due date for the payment of the deferred tax cannot be extended beyond the earlier of the following dates.
 - a. The due date of the return required for the year of death.
 - b. The time that the security provided for the property fails to be adequate. See item (6) below.
5. You make the election on Form 8854.
6. You must provide adequate security (such as a bond).
7. You must make an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of the mark-to-market tax.

For more information about the deferral of payment, see the Instructions for Form 8854.

5.

Figuring Your Tax

Introduction

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

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

Topics

This chapter discusses:

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

Useful Items

You may want to see:

Publication

- 463** Travel, Entertainment, Gift, and Car Expenses

- 501** Exemptions, Standard Deduction, and Filing Information
- 521** Moving Expenses
- 526** Charitable Contributions
- 535** Business Expenses
- 597** Information on the United States–Canada Income Tax Treaty

Form (and Instructions)

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

See [chapter 12](#) for information about getting these publications and forms.

Tax Year

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

Identification Number

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

You must furnish a taxpayer identification number if you are:

- An alien who has income effectively connected with the conduct of a U.S. trade or business at any time during the year,
- An alien who has a U.S. office or place of business at any time during the year,

- A nonresident alien spouse treated as a resident, as discussed in chapter 1, or
- Any other alien who files a tax return, an amended return, or a refund claim (but not information returns).

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

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

F-1 and M-1 visa holders. If you are an F-1 or M-1 student, you must also show your Form I-20. For more information, see SSA Publication 05-10181, International Students and Social Security Numbers, available online at www.socialsecurity.gov/pubs/10181.html.

J-1 visa holders. If you are a J-1 exchange visitor, you will also need to show your Form DS-2019. For more information, see SSA Publication 05-10107, Foreign Workers and Social Security Numbers, available online at www.socialsecurity.gov/pubs/10107.html.

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. Allow 6 weeks for the IRS to notify you of your ITIN (8–10 weeks if you apply during peak processing periods (January 15 through April 30) or if you are filing from overseas). If you already have an ITIN, enter it wherever an SSN is required on your tax return.

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

In addition to those aliens who are required to furnish a taxpayer identification number and are not eligible for an SSN, a Form W-7 must be filed for:

- Alien individuals who are claimed as dependents and are not eligible for an SSN, and
- Alien spouses who are claimed as exemptions 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 2007 or 2008, you did not remarry before the end of 2009, 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 596 for more information.

Nonresident Aliens

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

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

Exceptions. Married nonresident aliens normally cannot use the Tax Table column or the Tax Computation Worksheet for single individuals. However, you may be able to file as single if you lived apart from your spouse during the last 6 months of the year and you are a

married resident of Canada, Mexico, South Korea, or are a married U.S. national. See the instructions for Form 1040NR or Form 1040NR-EZ to see if you qualify. U.S. national is defined later in this section under [Qualifying widow\(er\)](#).

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

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

1. You were a resident of Canada, Mexico, or South Korea, or a U.S. national (defined below).
2. Your spouse died in 2007 or 2008 and you did not remarry before the end of 2009.
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 Mariana Islanders 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:

- Your spouse is a resident alien or U.S. citizen for the entire tax year,
- You do not choose to be treated as a resident alien, and
- 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 a nonresident alien, your spouse may still be considered married for purposes of the earned income credit. In that case, your spouse will not be entitled to the credit. See Publication 596 for more information.

Estates and trusts. 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.

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

Puerto Rico, at the end of this chapter, for information about special rules.

Reporting Your Income

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

Deductions

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

Resident Aliens

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

Nonresident Aliens

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

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

Losses. You can deduct losses resulting from transactions that you entered into for profit and that 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 2009, you can deduct as an adjustment to income up to \$250 in unreimbursed qualified expenses you paid or incurred during 2009 for books, supplies (other than nonathletic supplies for courses of instruction in health or

physical education), computer equipment, and other equipment and materials used in the classroom. For more information, see your tax form instructions.

Individual retirement arrangement (IRA). If you made contributions to a traditional IRA for 2009, you may be able to take an IRA deduction. But you must have taxable compensation effectively connected with a U.S. trade or business to do so. A statement should be sent to you by June 1, 2010, that shows all contributions to your traditional IRA for 2009. If you were covered by a retirement plan (qualified pension, profit-sharing (including 401(k)), 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 a traditional IRA even if you cannot deduct them. If you made nondeductible contributions to a traditional IRA for 2009, you must report them on Form 8606, Nondeductible IRAs.

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

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

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

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

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

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

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

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

Self-employed SEP, SIMPLE, and qualified retirement plans. If you are 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 29 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 2009, you may be able to deduct up to \$2,500 of the interest you paid. Generally, you can claim the deduction if all of the following requirements are met.

1. Your filing status is any filing status except married filing separately.
2. Your modified adjusted gross income is less than \$75,000.
3. No one else is claiming an exemption for you on his or her 2009 tax return.
4. You paid interest on a loan taken out only to pay tuition and other qualified higher education expenses for yourself, your spouse, someone who was your dependent when the loan was taken out, or someone you could have claimed as a dependent for the year the loan was taken out except that:
 - a. The person filed a joint return,
 - b. The person had gross income that was equal to or more than the exemption amount for that year (\$3,650 for 2009), or
 - c. You could be claimed as a dependent on someone else's return.
5. The loan is not from a related person or a person who borrowed the proceeds under a qualified employer plan or a contract purchased under such a 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.

- \$125,100, if married filing separately.
- \$166,800, if single.
- \$208,500, if head of household.
- \$250,200, 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 (\$3,650 for 2009). 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 South Korea. Nonresident aliens who are residents of South Korea may be able to claim exemptions for a spouse and children. The income tax treaty with South Korea imposes two additional requirements on South Korean residents:

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

Example. Mr. Park, a nonresident alien who is a resident of South Korea, lives temporarily in the United States with his wife and two children. During the tax year he receives U.S. compensation of \$9,000. He also receives \$3,000 of income from sources outside the United States that is not effectively connected with his U.S. trade or business. Thus, his total income for the year is \$12,000. Mr. Park meets all requirements for claiming exemptions for his spouse and two children. The additional deduction for 2009 is \$8,213 figured as follows:

$$\frac{\$9,000}{\$12,000} \times \$10,950^* = \$8,213$$
$$^*3 \times \$3,650 = \$10,950$$

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

- \$125,100, if married filing separately.
- \$166,800, if single.
- \$250,200, 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 \$166,800 (\$83,400 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 Worksheet 5-1 to figure your standard deduction. If you are married and your spouse files a return and itemizes deductions, you cannot take the standard deduction.

Caution. If you are married filing a separate return and your spouse itemizes deductions, do not complete this worksheet. You cannot take the standard deduction even if you were born before January 2, 1945, are blind, pay real estate taxes, pay new motor vehicle taxes, or have a net disaster loss.

1 Enter the amount shown below for your filing status.

- Single or married filing separately—\$5,700
- Qualifying widow(er)—\$11,400

} 1. _____

2 Can you be claimed as a dependent on someone else's U.S. income tax return?
 No. Skip line 3; enter the amount from line 1 on line 4.
 Yes. Go to line 3.

3 Is your **earned income*** more than \$650?
 Yes. Add \$300 to your earned income. Enter the total } 3. _____
 No. Enter \$950

4 Enter the **smaller** of line 1 or line 3 4. _____

5 If born before January 2, 1945, OR blind, enter \$1,100 (\$1,400 if single). If born before January 2, 1945, AND blind, enter \$2,200 (\$2,800 if single). Otherwise, enter -0- 5. _____

6 Enter any net disaster loss from Form 4684, line 18. ** 6. _____

7 Enter the state and local real estate taxes you paid. Do not include foreign real estate taxes. See *Instructions for line 7 of Worksheet 5-1.* 7. _____

8 Maximum real estate tax deduction 8. 500.00

9 Enter the **smaller** of line 7 or line 8. 9. _____

10 Did you pay any state or local sales or excise taxes in 2009 for the purchase of a new motor vehicle after February 16, 2009 (see *Instructions for Line 10 of Worksheet 5-1*)? 10. _____
 No. Skip lines 10-17, enter -0- on line 18, and go to line 19.
 Yes. If Form 1040NR, line 36, or Form 1040NR-EZ, line 10, is less than \$135,000, enter the amount of those taxes paid. Otherwise, skip lines 10 through 17, enter -0- on line 18, and go to line 19.

11 Enter the purchase price (**before taxes**) of the new motor vehicles) (see *Instructions for Line 11 of Worksheet 5-1*) 11. _____

12 Is the amount on line 11 more than \$49,500? 12. _____
 No. Enter the amount from line 10.
 Yes. Figure the portion of the tax from line 10 that is attributable to the first \$49,500 of the purchase price of each new motor vehicle and enter it here (see *Instructions for Line 12 of Worksheet 5-1*)

13 Enter the amount from Form 1040NR, line 36, or Form 1040NR-EZ, line 10 13. _____

14 Enter \$125,000 14. _____

15 Is the amount on line 13 more than the amount on line 14? 15. _____
 No. Skip lines 15 through 17, enter the amount from line 12 on line 18 and go to line 19.
 Yes. Subtract line 14 from line 13

16 Divide the amount on line 15 by \$10,000. Enter the result as a decimal (rounded to at least three places). If the result is 1.000 or more, enter 1.000 16. _____

17 Multiply line 12 by line 16 17. _____

18 Subtract line 17 from line 12 18. _____

19 Add lines 4, 5, 6, 9, and 18. Enter the total here and on Form 1040NR, line 37 (or Form 1040NR-EZ, line 11**). Print "Standard Deduction Allowed Under U.S.–India Income Tax Treaty" in the space to the left of these lines. **This is your standard deduction for 2009.** 19. _____

***Earned income** includes wages, salaries, tips, professional fees, and other compensation received for personal services you performed. It also includes any amount received as a scholarship that you must include in your income. Generally, your earned income is the total of the amount(s) you reported on Form 1040NR, lines 8,12,13, and 19 (or Form 1040NR-EZ, lines 3 and 5, minus any amount on line 8).

**If the amount on line 6 of this worksheet is more than zero, you cannot file Form 1040NR-EZ; you must file Form 1040NR.

Instructions for line 7 of Worksheet 5-1.

Include taxes (state and local) you paid in 2009 on real estate you own that was not used for business, but only if the taxes are based on the assessed value of the property. The assessment must be made uniformly on property throughout the community, and the proceeds must be used for general community or governmental purposes. Publication 530 explains the deductions homeowners can take.

Do not include the following amounts on line 7.

- Foreign real estate taxes.
- Taxes deductible in arriving at adjusted gross income (such as taxes on business real estate).
- Itemized charges for services to specific property or persons (for example, a \$20 monthly charge per house for trash collection, a \$5 charge for every 1,000 gallons of water consumed, or a flat charge for mowing a lawn that had grown higher than permitted under a local ordinance).
- Charges for improvements that tend to increase the value of your property (for example, an assessment to build a new sidewalk). The cost of a property improvement is added to the basis of the property. However, you can include a charge if it is used only to maintain an existing public facility in service (for example, a charge to repair an existing sidewalk, and any interest included in that charge).

If your mortgage payments include your real estate taxes, you can include only the amount the mortgage company actually paid to the taxing authority in 2009.

If you sold your home in 2009, any real estate tax charged to the buyer should be shown on your settlement statement and in box 5 of any Form 1099-S you received. This amount is considered a refund of real estate taxes. Any real estate taxes you paid at closing should be shown on your settlement statement.

If you received a refund or rebate in 2009 of real estate taxes you paid in 2009, reduce the amount you include by the amount of the refund or rebate. If you received a refund or rebate in 2009 of real estate taxes you paid in an earlier year, do not reduce your deduction by this amount. Instead, you must include the refund or rebate in income, if you deducted the real estate taxes in the earlier year and the deduction reduced your tax. See *Recoveries* in Publication 525 for details on how to figure the amount to include in income.

Instructions for line 10 of Worksheet 5-1.

If you check the "Yes" box, you may be able to include some or all of the state or local sales and excise taxes you paid for any new motor vehicle(s) (defined below) purchased after February 16, 2009. However, if the amount on Form 1040NR, line 36, or Form 1040NR-EZ, line 10, is equal to or greater than \$135,000, you cannot include these taxes. To determine the amount of state or local sales and excise taxes to enter on line 10, refer to the sales invoice(s) for any new motor vehicle(s) you purchased. Taxes deductible in arriving at adjusted gross income, such as taxes on a vehicle used in your business, cannot be used to increase your standard deduction.

States with no sales tax. The states of Alaska, Delaware, Hawaii, Montana, New Hampshire, and Oregon do not have a sales tax. However, you may be charged other fees or taxes on the purchase of a new motor vehicle in one of these six states that is similar to a sales tax. The fees or taxes that qualify must be assessed on the purchase of the vehicle and must be based on the vehicle's sales price or as a per unit fee. You can include these fees or taxes on line 10.

One example of a fee you can include on line 10 is the 3.75% document fee when registering a title with the Delaware Division of Motor vehicles. The fee is 3.75% of the purchase price.

New motor vehicle. A new motor vehicle is any of the following. The original use of the vehicle must begin with you.

- A passenger automobile or light truck that is self propelled, designed to transport people or property on a street or highway, and the gross vehicle weight rating of the vehicle is not more than 8,500 pounds.
- A motorcycle (defined below) with a gross vehicle weight rating of not more than 8,500 pounds.
- A motor home (defined below).

Motorcycle. A vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motor home. A multi-purpose vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities.

- Cooking.
- Refrigeration or ice box.
- Self-contained toilet.
- Heating and/or air conditioning.
- Potable water supply system including a faucet and sink.
- Separate 110-125 volt electrical power supply and/or propane.

Instructions for line 11 of Worksheet 5-1.

Enter on line 11 the cost of the new motor vehicle(s). Do not include on line 11 any state or local sales or excise taxes you entered on line 10.

Instructions for line 12 of Worksheet 5-1.

If you check the "Yes" box, the amount you can include for state or local sales and excise taxes is limited to the taxes imposed on the first \$49,500 of the purchase price of each new motor vehicle. To figure the amount to enter on line 12, you will need to know the rate(s) of tax that apply in the state and locality where you purchased each new motor vehicle. If the state and locality where you purchased the new motor vehicle imposes a fixed rate, multiply the combined state and local rate by the smaller of \$49,500 or the purchase price (before taxes) of the new motor vehicle. See *Example 1 below*.

Some taxing jurisdictions may provide for a sales tax that is limited to a certain dollar amount per purchase. One example is Manatee County, Florida. Manatee County charges an additional

1/2% (.005) discretionary sales tax that is collected on the first \$5,000 of a purchase, not to exceed \$25. See *Example 2 below*.

Example 1. You purchased a new motor vehicle on April 3, 2009, for \$56,500 before taxes. The state where you purchased the vehicle imposes a fixed sales tax rate of 5% and the locality also charges a fixed rate of 1%, for a combined sales tax rate of 6%. The amount of sales tax you can include on line 12 is \$2,970 ($\$49,500 \times 6\%$ (.06)).

Example 2. You purchased a new motor vehicle in Manatee, Florida, on April 16, 2009, for \$60,000 before taxes. The state of Florida has a fixed sales tax rate of 6%. The amount of sales tax you can include on line 12 is \$2,995 ($\$49,500 \times 6\%$ (.06) + \$25). In this example, \$2,970 represents the 6% Florida sales tax and the \$25 is for the Manatee County discretionary sales tax on the first \$5,000 of the purchase price.

State and local income taxes. You can deduct state and local income taxes you paid on income that is effectively connected with a trade or business in the United States. If you received a refund or rebate in 2009 of real estate taxes you paid in an earlier year, do not reduce your deduction by that amount. Instead, you must include the refund or rebate in income if you deducted the real estate taxes in the earlier year and the deduction reduced your tax. See *Recoveries* in Publication 525 for details on how to figure the amount to include in income.

Charitable contributions. You can deduct your charitable contributions or gifts to qualified organizations subject to certain limits. Qualified organizations include organizations that are religious, charitable, educational, scientific, or literary in nature, or that work to prevent cruelty to children or animals. Certain organizations that promote national or international amateur sports competition are also qualified organizations.

Foreign organizations. Contributions made directly to a foreign organization are not deductible. However, you can deduct contributions to a U.S. organization that transfers funds to a charitable foreign organization if the U.S. organization controls the use of the funds or if the foreign organization is only an administrative arm of the U.S. organization.

For more information about organizations that qualify to receive charitable contributions, see Publication 526, 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 contribution that is 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 charitable contribution.

Cash contributions. You cannot deduct a cash contribution, regardless of the amount, unless you keep as a record of the contribution a bank record (such as a canceled check, a bank copy of a canceled check, or a bank statement

containing the name of the charity, the date, and the amount) or a written record from the charity. The written record must include the name of the charity, date of the contribution, and the amount of the contribution.

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

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

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

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

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

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

- Ordinary income property, or
- Capital gain property.

For information about these rules, see Publication 526.

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

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

time of the casualty or theft. You can deduct theft losses only in the year in which you discover the loss.

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

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

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

Losses from personal use property. You cannot deduct the first \$500 of each casualty or theft loss to property held for personal use. You can deduct only the total of these losses for the year (reduced by the \$500 limit) that is more than 10% of your adjusted gross income (line 36, Form 1040NR) for the year. These limits do not apply to certain disaster losses as discussed in the Instructions for Form 4684.

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

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

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

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

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

For example, if you have established a “tax home” through regular employment in a foreign country, and intend to return to similar employment in the same country at the end of your temporary stay in the United States, you can deduct reasonable travel expenses you paid.

You cannot deduct travel expenses for other members of your family or party.

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

- Transportation—airfare, local transportation, including train, bus, etc.,
- Lodging—rent paid, utilities (do not include telephone), hotel or motel room expenses, and
- Meal expenses—actual expenses allowed if you keep records of the amounts, or, if you do not wish to keep detailed records, you are generally allowed a standard meal allowance amount depending on the date and area of your travel. You generally can deduct only 50% of unreimbursed meal expenses. The standard meal allowance rates for high-cost areas are in Publication 1542, Per Diem Rates (For Travel Within the Continental United States), which is available only on the Internet at www.irs.gov/pub/irs-pdf/p1542.pdf. The rates for other areas are in Publication 463.

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

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

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

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

Tax Credits and Payments

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

Resident Aliens

Resident aliens generally claim tax credits and report tax payments, including withholding, 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 qualifying child who is under age 13, or your disabled dependent or disabled spouse, so that you can work or look for work. Generally, you must be able to claim an exemption for your dependent.

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

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

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

Retirement savings contributions credit. You may qualify for this credit (also known as the saver's credit) if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2009. You cannot claim this credit if:

1. You were born after January 1, 1992,
2. You were a full-time student,
3. Your exemption is claimed by someone else on his or her 2009 tax return, or
4. Your adjusted gross income is more than:
 - a. \$55,500, if your filing status is married filing jointly,
 - b. \$41,625, if your filing status is head of household, or
 - c. \$27,750, if your filing status is single, married filing separately, or qualifying widow(er).

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

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

A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2009.

- Is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
- Is a U.S. citizen, a U.S. national, or a resident alien.
- Did not provide over half of his or her own support for 2009.
- Lived with you more than half of 2009. Temporary absences, such as for school, vacation, or medical care, count as time lived in the home.

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

See your form instructions for additional details.

Adoption credit. You may qualify to take a tax credit of up to \$12,150 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.

Earned income credit. You may qualify for an earned income credit of up to \$3,043 if a child lived with you in the United States and your earned income and adjusted gross income were each less than \$35,463 (\$40,463 if married filing jointly). If two children lived with you in the United States and your earned income and adjusted gross income were each less than \$40,295 (\$45,295 if married filing jointly), your credit could be as much as \$5,028. If three or more children lived with you in the United States and your earned income and adjusted gross income were each less than \$43,279 (\$48,279 if married filing jointly), your credit could be as much as \$5,657. If you do not have a qualifying child and your earned income and adjusted gross income were each less than \$13,440 (\$18,440 if married filing jointly), your credit could be as much as \$457. 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 federally funded benefit, you cannot claim the earned income credit. An example of a federally funded benefit is Medicaid. If a card has this legend and the individual's immigration status has changed so that the individual is now a U.S. citizen or lawful permanent resident, ask the SSA to 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 2010 instead of waiting until you file your 2010 tax return. Fill out the 2010 Form W-5, Earned Income Credit Advance Payment Certificate. If you expect to qualify for the credit in 2010 give the bottom part of the

form to your employer. Your employer will include part of the credit regularly in your pay during 2010.

If you received advance payments of the earned income credit in 2009, you must file a 2009 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.

First-time homebuyer credit. You may be able to take this credit if you bought a main home in the United States and you meet either of the following conditions.

1. You (and your spouse if married) did not own any other main home during the 3-year period ending on the date of purchase.
2. You (and your spouse if married) previously owned and used the same main home as your main home for any 5-consecutive-year period during the 8-year period ending on the date you purchased your new main home.

This credit can be as much as:

- \$8,000 (\$4,000 if married filing separately) if you meet condition 1 above, or
- \$6,500 (\$3,250 if married filing separately) if you meet condition 2 above.

For more information, see Form 5405 and its separate instructions.

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 your U.S. source income if those taxes were imposed only because you are a citizen or resident of the foreign country or possession.

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 qualifying child who is under age 13, or your disabled dependent or disabled spouse, so

that you can work or look for work. Generally, you must be able to claim an exemption for your dependent.

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 [chapter 1](#), 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 generally means wages, salaries, and professional fees for personal services performed.

For more information, get Publication 503.

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

Retirement savings contributions credit. You may qualify for this credit (also known as the saver's credit) if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2009. You cannot claim this credit if:

- You were born after January 1, 1992,
- You were a full-time student,
- Your exemption is claimed by someone else on his or her 2009 tax return, or
- Your adjusted gross income is more than \$27,750.

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

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

A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2009.
- Is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
- Is a U.S. citizen, a U.S. national, or a resident alien.
- Did not provide over half of his or her own support for 2009.
- Lived with you more than half of 2009. Temporary absences, such as for school, vacation, or medical care, count as time lived in the home.

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

See your form instructions for additional details.

Adoption credit. You may qualify to take a tax credit of up to \$12,150 for qualifying expenses paid to adopt an eligible child. This amount may

be allowed for the adoption of a child with special needs regardless of whether you have qualifying expenses. To claim the adoption credit, file Form 8839 with your Form 1040NR.

Married nonresident aliens can claim the credit 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 *Married Persons Filing Separate Returns* in the Form 8839 instructions).

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

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



You, your spouse, and any qualifying child must have valid SSNs to claim this credit. You cannot claim the credit 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 federally funded benefit, you cannot claim the earned income credit. An example of a federally funded benefit is Medicaid. If a card has this legend and the individual's immigration status has changed so that the individual is now a U.S. citizen or lawful permanent resident, ask the SSA to issue a new social security card without the legend.

See Publication 596 for more information on the credit.

Tax Withheld

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

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

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

Tax paid on undistributed long-term capital gains. If you are a shareholder in a mutual fund (or other regulated investment company) or real estate investment trust, you can claim a credit for your share of any taxes paid by the

company on its undistributed long-term capital gains. You will receive information on Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, which you must attach to your return.

Tax withheld at the source. You can claim as a payment any tax withheld at the source on investment and other fixed or determinable annual or periodic income paid to you. Fixed or determinable income includes interest, dividend, rental, and royalty income that you do not claim to be effectively connected income. Wage or salary payments can be fixed or determinable income to you, but usually are subject to withholding as discussed above. Taxes on fixed or determinable income are withheld at a 30% rate or 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 that is publicly traded may withhold 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 58a or 58b of Form 1040NR, as appropriate.

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

Form number	Location of tax withheld
RRB-1042S	Box 12
SSA-1042S	Box 9
W-2	Box 2
W-2c	Box 2
1042-S	Box 9
8805	Line 10
8288-A	Box 2

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. However, you can exclude the income discussed in the following paragraphs.

For tax purposes other than reporting income, however, you will be treated as a nonresident alien. For example, you are not allowed the standard deduction, you cannot file a joint return, and you are not allowed a deduction for a

dependent unless that person is a citizen or national of the United States. There are also limits on what deductions and credits are allowed. See *Nonresident Aliens* under [Deductions, Itemized Deductions](#), and [Tax Credits and Payments](#) in this chapter.

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

If you report income on a calendar year basis and you do not have wages subject to withholding, file your return and pay your tax by June 15. You must also make your first payment of estimated tax by June 15. You cannot file a joint income tax return or make joint payments of estimated tax. However, if you are married to a U.S. citizen or resident, see [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 also due by April 15. For information on withholding and estimated tax, see [chapter 8](#).

Residents of American Samoa. If you are a bona fide resident of American Samoa for the entire year, you can exclude from gross income all income from sources in American Samoa (other than amounts for services performed as an employee of the U.S. government or any of its agencies). For tax years ending after April 9, 2008, an employee of the American Samoan government is not considered an employee of the U.S. government or any of its agencies for purposes of the exclusion. For more information about this exclusion, get Form 4563 and Publication 570, *Tax Guide for Individuals With Income From U.S. Possessions*.

6.

Dual-Status Tax Year

Introduction

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

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

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

Topics

This chapter discusses:

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

Useful Items

You may want to see:

Publication

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

Form (and Instructions)

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

See [chapter 12](#) for information about getting these publications and forms.

Tax Year

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

Income Subject to Tax

For the part of the year you are a resident alien, you are taxed on income from all sources. Income 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 or if you

became a nonresident alien after receiving it and before the end of the year.

For the part of the year you are a nonresident alien, you are taxed on income from U.S. sources and on certain foreign source income treated as effectively connected with a U.S. trade or business. (The rules for treating foreign source income as effectively connected are discussed in chapter 4 under *Foreign Income*.)

Income from sources outside the United States that is not effectively connected with a trade or business in the United States is not taxable if you receive it while you are a nonresident alien. The income is not taxable even if you earned it while you were a resident alien or if you became a resident alien 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 provision. Generally, tax treaty provisions apply only to the part of the year you were a nonresident. In certain cases, however, treaty provisions may apply while you were a resident alien. See [chapter 9](#) for more information.

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

Restrictions for Dual-Status Taxpayers

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

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

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

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

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

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

- Married resident of Canada, Mexico, or South Korea, or
- Married U.S. national.

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

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

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

- You are married, and
- You choose to be treated as a resident for all of 2009 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 alien if you are a:

1. Resident of Canada, Mexico, or South Korea,
2. U.S. national, or
3. 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 flat 30% tax, unless exempt, or subject to a lower treaty rate. (See [The 30% Tax](#) in chapter 4.)

During the part of the year you are a resident alien, part of the social security and the equivalent portion of tier 1 railroad retirement benefits will be taxed at graduated rates if your modified adjusted gross income plus half of 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-1042S showing your combined benefits for the entire year and the amount of tax withheld. You will not receive separate statements for the benefits received during your periods of U.S. residence and nonresidence. Therefore, it is important for you to keep careful records of these amounts. You will need this information to properly complete your return and determine your tax liability.

If you received railroad retirement benefits while you were a nonresident alien, the U.S. Railroad Retirement Board (RRB) will send you Form RRB-1042S, Statement for Nonresident Alien Recipients of Payments by the Railroad Retirement Board, and/or Form RRB-1099-R, 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.

Tax Credits and Payments

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

Credits

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

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

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

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

Married dual-status aliens can claim the credit only if they choose to file a joint return as discussed in [chapter 1](#), or if they qualify as certain married individuals living apart.

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 for that tax year.

For more information, get Publication 503 and Form 2441.

Retirement savings contributions credit.

You may qualify for this credit (also known as the saver's credit) if you made eligible contributions to an employer-sponsored retirement plan or to an individual retirement arrangement (IRA) in 2009. You cannot claim this credit if:

- You were born after January 1, 1992.
- You were a full-time student.
- Your exemption is claimed by someone else on his or her 2009 tax return.
- Your adjusted gross income is more than \$27,750.

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

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

A qualifying child for purposes of the child tax credit is a child who:

- Was under age 17 at the end of 2009.
- Is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
- Is a U.S. citizen, a U.S. national, or a resident alien.
- Did not provide over half of his or her own support for 2009.
- Lived with you more than half of 2009. Temporary absences, such as for school, vacation, or medical care, count as time lived in the home.

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

See your form instructions for additional details.

Adoption credit. You may qualify to take a tax credit of up to \$12,150 for qualifying expenses paid to adopt an eligible child. This amount may be allowed for the adoption of a child with special needs regardless of whether you have qualifying expenses. To claim the adoption credit, file Form 8839 with the U.S. income tax return that you file.

Married dual-status aliens can claim the credit only if they choose to file a joint return with a U.S. citizen or resident spouse as discussed in [chapter 1](#), or if they qualify as certain married individuals living apart (see *Married Persons Filing Separate Returns* in the Form 8839 instructions).

Payments

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

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

Forms To File

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

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

If you expatriated or terminated your residency in 2009, you may be required to file an expatriation statement (Form 8854) with your tax return. For more information, see [Expatriation Tax](#) in chapter 4.

Statement. Any statement must have your name, address, and taxpayer identification number on it. You do not need to sign a separate statement or schedule accompanying your return, because your signature on the return also applies to the supporting statements and schedules.

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 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. In either case, file your return with the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215.

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



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

Illustration of Dual-Status Return

Sam R. Brown is single and a subject of the United Kingdom (U.K.). He temporarily entered the United States with an H-1 visa to develop a new product line for the Major Product Co. He arrived in the United States March 18, 2009, and left May 25, 2009, returning to his home in England.

The Major Product Co. later offered Sam a permanent job, and he returned to the United States with a permanent visa on September 10, 2009.

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

After Sam became permanently employed, his wages for the rest of the year were \$21,950, including reimbursement of his moving expenses. He received a separate Form W-2 for this period. His other income received in 2009 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, address, and social security number on page 1 of Form 1040NR. He prints “Dual-Status Statement” across the top of the form.

On line 8, Sam enters his salary while a nonresident. He enters the state income tax withheld from his salary on line 37 (carried from page 3, line 17, Schedule A) and the federal income tax withheld (\$536) from his salary on line 58a. He also carries these amounts to Form 1040 (discussed later).

Page 4. Sam also reports the not effectively connected U.S. income received while he was a nonresident alien. He reports the April and July dividends from the Major Product Co. in column (b) of line 1a on Schedule NEC. He figures the tax on his dividend income on lines 14 and 15 of Schedule NEC and carries it forward to line 52 on Form 1040NR. (The rate of tax on this income is limited to 15% by Article 10 of the U.S.-U.K. income tax treaty. Treaty rates vary from country to country, so be sure to check the provisions in the treaty you are claiming.)

Sam also reports \$36, the amount of tax withheld at source by the Major Product Co. on line 58d, Form 1040NR. Later he will report the amount on Form 1040.

Page 5. Sam is not required to report the interest credited to his account by the U.S. Bank during the period he was a nonresident alien. Interest on deposits with U.S. banks that is not effectively connected with a U.S. trade or business generally is treated as income from sources in the United States but is not taxable to a nonresident alien.

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

Sam completes all applicable items on page 5 of Form 1040NR.

Form 1040

Sam completes Form 1040 as follows.

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

Sam reports on line 7, Form 1040, all wages received during the period he was a resident of the United States (\$21,950) and the wages received during the period he was a nonresident alien (\$6,500) that was effectively connected with his U.S. trade or business. This income is taxed at the graduated rates.

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

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

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

Schedule A (Form 1040). Sam cannot claim the standard deduction because he has a

dual-status tax year. He reports his itemized deductions on Schedule A (Form 1040). The only itemized deduction he had while he was a nonresident alien was the state income tax withheld from his pay. For information purposes, he lists this amount on Schedule A, line 1, Form 1040NR, in addition to including it on Schedule A, Form 1040.

Sam totals his itemized deductions on line 29, Schedule A (Form 1040).

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

Sam enters \$3,650 for one personal exemption on Form 1040, line 42. He subtracts the amount on line 42 from the amount on line 41 to figure his taxable income, line 43.

Sam is now ready to figure the tax on his income taxed at the graduated rates. He uses the column in the Tax Table for single individuals. He enters \$1,994 on line 44. Because he had no alternative minimum tax to add, he enters \$1,994 again on line 46.

Sam also enters \$1,994 on line 55 because he had no credits to subtract.

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

to line 60 and includes it in the total tax on line 60.

Sam adds the total amount of tax withheld (\$2,654) from his wages to the amount of tax withheld at source (\$36 from Form 1040NR, line 58d). He enters \$2,690 on line 61. He also writes a brief explanation.

Sam compares the total tax on Form 1040, line 60 to the total payments on line 71, to see if he has overpaid his tax or if he owes an additional amount. Because the amount of tax withheld and the amount of tax paid at source are more than his total tax, he has overpaid his tax. He subtracts the amount on line 60 from the amount on line 71 to figure his refund.

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



Sam mails the return to the following address.

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

Label

(See instructions on page 14.)

Use the IRS label.

Otherwise, please print or type.

Form fields for name, address, and year: Your first name and initial (Sam R.), Last name, Home address (2617 Pewter Place), City, town or post office, state, and ZIP code (Anytown, Va 22000).

OMB No. 1545-0074

Your social security number

000 00 0000

Spouse's social security number

You must enter your SSN(s) above.

Checking a box below will not change your tax or refund.

Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 14)

You Spouse

Filing Status

- 1 Single (checked), 2 Married filing jointly, 3 Married filing separately, 4 Head of household, 5 Qualifying widow(er)

Exemptions

Exemption boxes: 6a Yourself (checked), 6b Spouse, 6c Dependents table, 6d Total number of exemptions claimed (1)

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 22.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Income table with rows 7-22. Total income: 28,965

Adjusted Gross Income

Adjusted Gross Income table with rows 23-37. Adjusted gross income: 20,665

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 97.

Cat. No. 11320B

Form 1040 (2009)

Tax and Credits

38	Amount from line 37 (adjusted gross income)	38	20,665
39a	Check <input type="checkbox"/> You were born before January 2, 1945, <input type="checkbox"/> Blind. Total boxes <input type="checkbox"/> if: <input type="checkbox"/> Spouse was born before January 2, 1945, <input type="checkbox"/> Blind. checked ▶ 39a <input type="checkbox"/>		
b	If your spouse itemizes on a separate return or you were a dual-status alien, see page 35 and check here ▶ 39b <input checked="" type="checkbox"/>		
40a	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40a	922
b	If you are increasing your standard deduction by certain real estate taxes, new motor vehicle taxes, or a net disaster loss, attach Schedule L and check here (see page 35) ▶ 40b <input type="checkbox"/>		
41	Subtract line 40a from line 38	41	19,743
42	Exemptions. If line 38 is \$125,100 or less and you did not provide housing to a Midwestern displaced individual, multiply \$3,650 by the number on line 6d. Otherwise, see page 37	42	3,650
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	16,093
44	Tax (see page 37). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	44	1,994
45	Alternative minimum tax (see page 40). Attach Form 6251	45	
46	Add lines 44 and 45	46	1,994
47	Foreign tax credit. Attach Form 1116 if required	47	
48	Credit for child and dependent care expenses. Attach Form 2441	48	
49	Education credits from Form 8863, line 29	49	
50	Retirement savings contributions credit. Attach Form 8880	50	
51	Child tax credit (see page 42)	51	
52	Credits from Form: a <input type="checkbox"/> 8396 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 5695	52	
53	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	53	
54	Add lines 47 through 53. These are your total credits	54	
55	Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-	55	1,994

Other Taxes

56	Self-employment tax. Attach Schedule SE	56	
57	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	57	
58	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	58	
59	Additional taxes: a <input type="checkbox"/> AEIC payments b <input type="checkbox"/> Household employment taxes. Attach Schedule H	59	
60	Add lines 55 through 59. This is your total tax Total from 1040NR \$36	60	2,030

Payments

61	Federal income tax withheld from Forms W-2 and 1099	61	2,690
62	2009 estimated tax payments and amount applied from 2008 return	62	
63	Making work pay and government retiree credits. Attach Schedule M	63	
64a	Earned income credit (EIC)	64a	
b	Nontaxable combat pay election 64b		
65	Additional child tax credit. Attach Form 8812	65	
66	Refundable education credit from Form 8863, line 16	66	
67	First-time homebuyer credit. Attach Form 5405	67	
68	Amount paid with request for extension to file (see page 72)	68	
69	Excess social security and tier 1 RRTA tax withheld (see page 72)	69	
70	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 4136 c <input type="checkbox"/> 8801 d <input type="checkbox"/> 8885	70	
71	Add lines 61, 62, 63, 64a, and 65 through 70. These are your total payments	71	2,690

Refund

72	If line 71 is more than line 60, subtract line 60 from line 71. This is the amount you overpaid	72	660
73a	Amount of line 72 you want refunded to you . If Form 8888 is attached, check here ▶ <input type="checkbox"/>	73a	660
b	Routing number	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
d	Account number		
74	Amount of line 72 you want applied to your 2010 estimated tax ▶ 74	74	

Amount You Owe

75	Amount you owe. Subtract line 71 from line 60. For details on how to pay, see page 74	75	
76	Estimated tax penalty (see page 74)	76	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 75)? **Yes.** Complete the following. **No**

Designee's name ▶	Phone no. ▶	Personal identification number (PIN) ▶
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Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 15. Keep a copy for your records.	Your signature Sam R. Brown	Date 3-16-10	Your occupation R&D Specialist	Daytime phone number
	Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no.	

**SCHEDULE A
(Form 1040)**

Itemized Deductions

OMB No. 1545-0074

2009

Attachment
Sequence No. **07**

Department of the Treasury
Internal Revenue Service (99)

▶ **Attach to Form 1040.**

▶ **See Instructions for Schedule A (Form 1040).**

Name(s) shown on Form 1040

Sam R. Brown

Your social security number

000-00-0000

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.						
	1	Medical and dental expenses (see page A-1)					
	2	Enter amount from Form 1040, line 38 2					
	3	Multiply line 2 by 7.5% (.075)					
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4		
Taxes You Paid <small>(See page A-2.)</small>	5 State and local (check only one box):						
	a	<input checked="" type="checkbox"/> Income taxes, or		612			
	b	<input type="checkbox"/> General sales taxes					
	6	Real estate taxes (see page A-5)					
	7	New motor vehicle taxes from line 11 of the worksheet on back. Skip this line if you checked box 5b					
	8	Other taxes. List type and amount ▶					
	9	Add lines 5 through 8				9	
						612	
	Interest You Paid <small>(See page A-6.)</small>	10	Home mortgage interest and points reported to you on Form 1098				
11		Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-7 and show that person's name, identifying no., and address ▶					
12		Points not reported to you on Form 1098. See page A-7 for special rules					
13		Qualified mortgage insurance premiums (see page A-7)					
14		Investment interest. Attach Form 4952 if required. (See page A-8.)					
15		Add lines 10 through 14				15	
Gifts to Charity <small>If you made a gift and got a benefit for it, see page A-8.</small>	16	Gifts by cash or check. If you made any gift of \$250 or more, see page A-8		310			
	17	Other than by cash or check. If any gift of \$250 or more, see page A-8. You must attach Form 8283 if over \$500					
	18	Carryover from prior year					
	19	Add lines 16 through 18				19	
					310		
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See page A-10.)				20	
Job Expenses and Certain Miscellaneous Deductions <small>(See page A-10.)</small>	21	Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See page A-10.) ▶					
	22	Tax preparation fees					
	23	Other expenses—investment, safe deposit box, etc. List type and amount ▶					
	24	Add lines 21 through 23					
	25	Enter amount from Form 1040, line 38 25					
	26	Multiply line 25 by 2% (.02)					
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-				27	
Other Miscellaneous Deductions	28	Other—from list on page A-11. List type and amount ▶				28	
Total Itemized Deductions	29	Is Form 1040, line 38, over \$166,800 (over \$83,400 if married filing separately)? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40a. <input type="checkbox"/> Yes. Your deduction may be limited. See page A-11 for the amount to enter.				29	922
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here <input type="checkbox"/>					

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Cat. No. 17145C

Schedule A (Form 1040) 2009

Dual Status Statement

Form 1040NR
Department of the Treasury
Internal Revenue Service

U.S. Nonresident Alien Income Tax Return

For the year January 1-December 31, 2009, or other tax year

OMB No. 1545-0074

2009

beginning , 2009, and ending , 20

Please print or type

Your first name and initial: Sam R.
Last name: Brown
Identifying number (see page 7): 000-00-0000
Present home address: 2617 Pewter Place
Country: USA

Filing Status

Check only one box.

1 Single resident of Canada or Mexico, or a single U.S. national
2 Other single nonresident alien
3 Married resident of Canada or Mexico, or a married U.S. national
4 Married resident of South Korea
5 Other married nonresident alien
6 Qualifying widow(er) with qualifying child

Exemptions

If more than four dependents, see page 9.

7a Yourself. If someone can claim you as a dependent, do not check box 7a.
7b Spouse. Check box 7b only if you checked box 3 or 4 above and your spouse did not have any U.S. gross income.
c Dependents: (see page 9)
d Total number of exemptions claimed

Income Effectively Connected With U.S. Trade/Business.

Attach Forms W-2, 1042-S, SSA-1042S, RRB-1042S, and 8288-A here. Also attach Form(s) 1099-R if tax was withheld.

Enclose, but do not attach, any payment.

8 Wages, salaries, tips, etc. Attach Form(s) W-2
9a Taxable interest
9b Tax-exempt interest. Do not include on line 9a
10a Ordinary dividends
10b Qualified dividends (see page 11)
11 Taxable refunds, credits, or offsets of state and local income taxes
12 Scholarship and fellowship grants
13 Business income or (loss)
14 Capital gain or (loss)
15 Other gains or (losses)
16a IRA distributions
16b Taxable amount
17a Pensions and annuities
17b Taxable amount
18 Rental real estate, royalties, partnerships, trusts, etc.
19 Farm income or (loss)
20 Unemployment compensation in excess of \$2,400
21 Other income
22 Total income exempt by a treaty
23 Add the amounts in the far right column for lines 8 through 21. This is your total effectively connected income

Adjusted Gross Income

24 Educator expenses
25 Health savings account deduction
26 Moving expenses
27 Self-employed SEP, SIMPLE, and qualified plans
28 Self-employed health insurance deduction
29 Penalty on early withdrawal of savings
30 Scholarship and fellowship grants excluded
31 IRA deduction
32 Student loan interest deduction
33 Domestic production activities deduction
34 Add lines 24 through 33
35 Subtract line 34 from line 23. This is your adjusted gross income.

Schedule A—Itemized Deductions (See pages 32, 33, and 34.)

07

State and Local Income Taxes	1	State income taxes	1	195			
	2	Local income taxes	2				
	3	Add lines 1 and 2	3				195
Gifts to U.S. Charities	Caution: <i>If you made a gift and received a benefit in return, see page 32.</i>						
	4	Gifts by cash or check. If you made any gift of \$250 or more, see pages 32 and 33	4				
	5	Other than by cash or check. If you made any gift of \$250 or more, see pages 32 and 33. You must attach Form 8283 if the amount of your deduction (defined on page 33) is more than \$500	5				
	6	Carryover from prior year	6				
	7	Add lines 4 through 6	7				
Casualty and Theft Losses	8	Casualty or theft loss(es). Attach Form 4684. See page 33	8				
Job Expenses and Certain Miscellaneous Deductions	9	Unreimbursed employee expenses—job travel, union dues, job education, etc. You must attach Form 2106 or Form 2106-EZ if required. See page 33 ▶	9				
	10	Tax preparation fees	10				
	11	Other expenses. See page 34 for expenses to deduct here. List type and amount ▶	11				
	12	Add lines 9 through 11	12				
	13	Enter the amount from Form 1040NR, line 36	13				
	14	Multiply line 13 by 2% (.02)	14				
	15	Subtract line 14 from line 12. If line 14 is more than line 12, enter -0-	15				
Other Miscellaneous Deductions	16	Other—see page 34 for expenses to deduct here. List type and amount ▶	16				
Total Itemized Deductions	17	Is Form 1040NR, line 36, over \$166,800 (over \$83,400 if you checked filing status box 3, 4, or 5 on page 1 of Form 1040NR)? <input type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 3 through 16. Also enter this amount on Form 1040NR, line 37. <input type="checkbox"/> Yes. Your deduction may be limited. See page 34 for the amount to enter here and on Form 1040NR, line 37.	17				195

Schedule NEC—Tax on Income Not Effectively Connected With a U.S. Trade or Business (see page 35)

Nature of income		Enter amount of income under the appropriate rate of tax (see page 35)			
		(a) 10%	(b) 15%	(c) 30%	(d) Other (specify) %
1	Dividends paid by:				
a	U.S. corporations				
b	Foreign corporations		240		
2	Interest:				
a	Mortgage				
b	Paid by foreign corporations				
c	Other				
3	Industrial royalties (patents, trademarks, etc.)				
4	Motion picture or T.V. copyright royalties				
5	Other royalties (copyrights, recording, publishing, etc.)				
6	Real property income and natural resources royalties				
7	Pensions and annuities				
8	Social security benefits				
9	Capital gain from line 18 below				
10	Gambling—Residents of Canada only. Enter net income in column (c). If zero or less, enter -0-.				
a	Winnings _____				
b	Losses _____				
11	Gambling winnings—Residents of countries other than Canada Note. Losses not allowed				
12	Other (specify) _____				
13	Add lines 1a through 12 in columns (a)-(d)		240		
14	Multiply line 13 by rate of tax at top of each column		36		
15	Tax on income not effectively connected with a U.S. trade or business. Add columns (a)-(d) of line 14. Enter the total here and on Form 1040NR, line 52				15

Capital Gains and Losses From Sales or Exchanges of Property

16 (a) Kind of property and description (if necessary, attach statement of descriptive details not shown below)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) LOSS if (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (d) from (d)
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).						
Report property sales or exchanges that are effectively connected with a U.S. business on Schedule D (Form 1040), Form 4797, or both.						
17 Add columns (f) and (g) of line 16						17 ()
18 Capital gain. Combine columns (f) and (g) of line 17. Enter the net gain here and on line 9 above (if a loss, enter -0-)						18 ()

Other Information (see page 37)

A Of what country or countries were you a citizen or national during the tax year? United Kingdom

B In what country did you claim residence for tax purposes during the tax year? United Kingdom

C Have you ever applied to be a green card holder (lawful permanent resident) of the United States? **Yes** **No**

D Were you ever:

1. A U.S. citizen? **Yes** **No**

2. A green card holder (lawful permanent resident) of the United States? **Yes** **No**

If you answer "Yes" to 1 or 2, see Pub. 519, chapter 4, to see expatriation rules that apply to you.

E What was your visa type on the last day of the tax year? Permanent

F Have you ever changed your visa type (nonimmigrant status)? **Yes** **No**

G List all dates you entered and left the United States during 2009 (see page 37).

Note. If you are a resident of Canada or Mexico AND enter and leave the United States at frequent intervals, check the box for **Canada** or **Mexico** and skip to question H **Canada** **Mexico**

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy
03 / 18 / 09	05 / 25 / 09
09 / 10 / 09	/ NA /
/ /	/ /
/ /	/ /

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy
/ /	/ /
/ /	/ /
/ /	/ /
/ /	/ /

H Give number of days (including vacation, nonworkdays, and partial days) you were present in the United States during: 2007 0, 2008 0, and 2009 181

I Did you file a U.S. income tax return for any prior year? **Yes** **No**
If "Yes," give the latest year and form number you filed **Yes** **No**

J Are you filing a return for a trust? **Yes** **No**
If "Yes," did the trust have a U.S. or foreign owner under the grantor trust rules, make a distribution or loan to a U.S. person, or receive a contribution from a U.S. person? **Yes** **No**

K Did you receive total compensation of \$250,000 or more during the tax year? **Yes** **No**
If "Yes," did you use an alternative method to determine the source of this compensation? **Yes** **No**

L Income Exempt from Tax—If you are claiming the benefits of a U.S. income tax treaty with a foreign country, complete 1 and 2 below. See Pub. 901 for more information on tax treaties.

1. Enter the name of the country, the applicable tax treaty article, the number of months in prior years you claimed the treaty benefit, and the amount of exempt income in the columns below. Attach Form 8833 if required (see page 38).

(a) Country	(b) Tax treaty article	(c) Number of months claimed in prior tax years	(d) Amount of exempt income in current tax year

(e) Total. Enter this amount on Form 1040NR, line 22. Do not enter it on line 8 or line 12 **Yes** **No**
2. Were you subject to tax in a foreign country on any of the income shown in 1(d) above? **Yes** **No**

7.

Filing Information

Introduction

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

Topics

This chapter discusses:

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

Useful Items

You may want to see:

Forms (and Instructions)

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

See [chapter 12](#) for information about getting these forms.

What, When, and Where To File

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

Resident Aliens

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

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

as having abandoned status and may lose permanent resident status.

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

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

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

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



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



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

Nonresident Aliens

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

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

1. A nonresident alien individual engaged or considered to be engaged in a trade or business in the United States during 2009. (But see [Exceptions](#), later.)
You must file even if:
 - a. Your income did not come from a trade or business conducted in the United States,
 - b. You have no income from U.S. sources, or
 - c. Your income is exempt from income tax.
2. A nonresident alien individual not engaged in a trade or business in the United States with U.S. income on which the tax liability was not satisfied by the withholding of tax at the source.

3. A representative or agent responsible for filing the return of an individual described in (1) or (2).
4. A fiduciary for a nonresident alien estate or trust.

You must also file if you want to:

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

Exceptions. You do not need to file Form 1040NR or Form 1040NR-EZ if you meet either of the following conditions.

1. Your only U.S. trade or business was the performance of personal services, and
 - a. Your wages were less than \$3,650, and
 - b. You have no other need to file a return to claim a refund of overwithheld taxes, to satisfy additional withholding at source, or to claim income exempt or partly exempt by treaty.
2. You were a nonresident alien student, teacher, or trainee who was temporarily present in the United States under an "F," "J," "M," or "Q" visa and you have no income that is subject to tax, such as wages, tips, scholarship and fellowship grants, dividends, etc.



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

Form 1040NR-EZ

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

1. You do not claim any dependents.
2. You cannot be claimed as a dependent on someone else's U.S. tax return.
3. If you were married, you do not claim an exemption for your spouse.
4. Your taxable income is less than \$100,000.
5. You are not claiming any itemized deductions (other than for state and local income taxes).
6. Your only U.S. source income is from wages, salaries, tips, taxable refunds of

state and local income taxes, and scholarship or fellowship grants. (If you had taxable interest or dividend income, you cannot use this form.)

7. You are not claiming any adjustments to income other than the student loan interest deduction or scholarship and fellowship grants excluded.
8. You are not claiming any tax credits.
9. This is not an "expatriation return." See [Expatriation Tax](#) in chapter 4.
10. The only taxes you owe are:
 - a. The income tax from the Tax Table.
 - b. The social security and Medicare tax from Form 4137 or Form 8919.
11. You are not claiming a credit for excess social security and tier 1 RRTA tax withheld.

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

When To File

If you are an employee and you receive wages subject to U.S. income tax withholding, you will generally file by the 15th day of the 4th month after your tax year ends. If you file for the 2009 calendar year, your return is due April 15, 2010.

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 2009 calendar year, file your return by June 15, 2010.

Extensions of time to file. If you cannot file your return by the due date, file Form 4868 or use one of the electronic filing options explained in the Form 4868 instructions. For the 2009 calendar year, this will extend the due date to October 15, 2010 (December 15, 2010, if the regular due date of your return is June 15, 2010). You must file the extension by the regular due date of your return.

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

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

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

When to file for deductions and credits. To get the benefit of any allowable deductions or credits, you must timely file a true and accurate return. For this purpose, a return is timely if it is filed within 16 months of the due date just discussed. However, if you did not file a 2008 tax return and 2009 is not the first year for which you

are required to file one, your 2009 return is timely for this purpose if it is filed by the earlier of:

- The date that is 16 months after the due date for filing your 2009 return, or
- The date the IRS notifies you that your 2009 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.

- Credit for withheld taxes.
- Credit for excise tax on certain uses of gasoline and special fuels.
- Credit for tax paid by a mutual fund (or other regulated investment company) or a real estate investment trust on undistributed long-term capital gains.

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

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

You can follow the same procedure if you believe you have no U.S. tax liability because of a U.S. tax treaty. Be sure to also complete item L on page 5 of Form 1040NR.

Waiver of filing deadline. The IRS may waive the filing deadline if you establish that, based on the facts and circumstances, you acted reasonably and in good faith in failing to file a U.S. income tax return (including a protective return) and you cooperate with the IRS in determining your U.S. income tax liability for the tax year for which you did not file a return.

Where To File



File Form 1040NR-EZ and Form 1040NR at the following address.

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

Aliens from the U.S. Virgin Islands.



If you are a bona fide resident of the U.S. Virgin Islands during your entire tax year and work temporarily in the United States, you must pay your income taxes

to the U.S. 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, VI 00802

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

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

Aliens from Guam or the Commonwealth of the Northern Mariana Islands. If you are a bona fide resident of Guam or the Commonwealth of the Northern Mariana Islands (CNMI) during your entire tax year, you must file your return and pay any tax due to Guam or the CNMI. Report all income, including income from U.S. sources, on your return. It is not necessary to file a separate U.S. income tax return.



Bona fide residents of Guam should file their Guam returns at the following address.

Department of Revenue and Taxation
Government of Guam
P.O. Box 23607
GMF, GU 96921



Bona fide residents of the CNMI should file their CNMI income tax returns at the following address.

Division of Revenue and Taxation
Commonwealth of the Northern Mariana Islands
P.O. Box 5234 CHR
Saipan, MP 96950

If you are not a bona fide resident of Guam or the CNMI, see Pub. 570, Tax Guide for Individuals With Income From U.S. Possessions, for information on where to file your return.

Penalties

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

Civil Penalties

If you do not file your return and pay your tax by the due date, you may have to pay a penalty. You may also have to pay a penalty if you substantially understate your tax, file a frivolous tax submission, 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 a 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 \$135 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 $\frac{1}{2}$ of 1% (.50%) of your unpaid taxes for each month, or part of a month, after the due date that the tax is not paid. This penalty does not apply during the automatic 6-month extension of time to file period, if you paid at least 90% of your actual tax liability on or before the due date of your return and pay the balance when you file the return.

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

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

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

Combined penalties. If both the failure-to-file penalty and the failure-to-pay penalty (discussed earlier) apply in any month, the 5% (or 15%) failure-to-file penalty is reduced by the failure-to-pay penalty. However, if you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of \$135 or 100% of the unpaid tax.

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

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

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

Negligence or disregard. The term “negligence” 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 adequate books and records. You will not have to pay a negligence penalty if you have a reasonable basis for a position you took.

The term “disregard” includes any careless, reckless, or intentional disregard.

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 substantiate items properly.

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

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

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

Substantial authority. Whether there is or 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 2010-15, 2010-7 IRB 404 (or later update) are considered adequately disclosed on your return without filing Form 8275.

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

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

Filing erroneous claim for refund or credit.

You may have to pay a penalty if you file an erroneous claim for refund or credit. The penalty is equal to 20% of the disallowed amount of the claim, unless you can show a reasonable basis for the way you treated an item. The penalty will not be figured on any part of the disallowed amount of the claim that relates to the earned income credit or on which the accuracy-related or fraud penalties are charged.

Frivolous tax submission. You may have to pay a penalty of \$5,000 if you file a frivolous tax return or other frivolous submissions. A frivolous tax 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. For more information on frivolous returns, frivolous submissions, and a list of positions that are identified as frivolous, see Notice 2008-14, 2008-4

IRB 310 available at www.irs.gov/irb/2008-04_irb/ar01.html.

You will have to pay the penalty if you filed this kind of return or submission based on a frivolous position or a desire to delay or interfere with the administration of federal 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.

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.

Criminal Penalties

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

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

Amended Returns and Claims for Refund

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

Transportation of Currency or Monetary Instruments

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

The term “monetary instruments” means the following:

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

However, the term does not include:

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

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

Filing requirements. FinCEN Form 105 filing requirements follow.

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

Commissioner of Customs
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 on or before the date of entry, departure, mailing, or shipping.

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

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

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

8.

Paying Tax Through Withholding or Estimated Tax

Introduction

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

1. **Withholding.** If you are an employee, your employer probably withholds income tax from your pay. Tax may also be withheld from certain other income—including pensions, bonuses, commissions, and gambling winnings. In each case, the amount withheld is paid to the U.S. Treasury in your name.
2. **Estimated tax.** If you do not pay your tax through withholding, or do not pay enough tax that way, you might have to pay estimated tax. People who are in business for themselves generally will have to pay their tax this way. You may have to pay estimated tax if you receive income such as dividends, interest, rent, and royalties. Estimated tax is used to pay not only income tax, but self-employment tax and alternative minimum tax as well.

Topics

This chapter discusses:

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

Useful Items

You may want to see:

Publication

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

Form (and Instructions)

- W-4** Employee’s Withholding Allowance Certificate
- W-8BEN** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
- W-8ECI** Certificate of Foreign Person’s Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
- W-9** Request for Taxpayer Identification Number and Certification
- 1040-ES (NR)** U.S. Estimated Tax for Nonresident Alien Individuals
- 8233** Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual
- 8288-B** Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

See [chapter 12](#) for information about getting these publications and forms.

Notification of Alien Status

You must let your employer know whether you are a resident or a nonresident alien so your employer can withhold the correct amount of tax from your wages.

If you are a resident alien under the rules discussed in chapter 1, you must file Form W-9 or a similar statement with your employer. If you are a nonresident alien under those rules, you must furnish to your employer Form 8233 or Form W-8BEN, establishing that you are a foreign person, or Form W-4, establishing that your compensation is subject to graduated withholding at the same rates as resident aliens or U.S. citizens.

If you are a resident alien and you receive income other than wages (such as dividends and royalties) from sources within the United States, file Form W-9 or similar statement with the withholding agent (generally, the payer of the income) so the agent will not withhold tax on the income at the 30% (or lower treaty) rate. If you receive this type of income as a nonresident alien, file Form W-8BEN with the withholding agent so that the agent will withhold tax at the 30% (or lower treaty) rate. However, if the income is effectively connected with a U.S. trade or business, file Form W-8ECI instead.

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. Enter your social security number (SSN) on line 2. Do not enter an individual taxpayer identification number (ITIN).
2. Check only “Single” marital status on line 3 (regardless of your actual marital status).
3. Claim only one allowance on line 5, unless you are a resident of Canada, Mexico, or South Korea, or a U.S. national.
4. Write “Nonresident Alien” or “NRA” on the dotted line on line 6. You can request additional withholding on line 6 at your option.
5. 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 Mariana 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 from India. If you are eligible for the benefits of Article 21(2) of the United States-India Income Tax Treaty, you may claim an additional withholding allowance for the standard deduction. You can claim an additional withholding allowance for your spouse only if your spouse will have no gross income for 2010 and cannot be claimed as a dependent on another U.S. taxpayer’s 2010 return. You may also claim an additional withholding allowance 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.

Household employees. If you work as a household employee, your employer does not have to withhold income tax. However, you may agree to voluntary income tax withholding by filing a Form W-4 with your employer. The agreement goes into effect when your employer accepts the agreement by beginning the withholding. You or your employer may end the agreement by letting the other know in writing.

Wages Exempt From Withholding

Wages that are exempt from U.S. income tax under an income tax treaty are generally exempt from withholding. For information on how to claim this exemption from withholding, see [Income Entitled to Tax Treaty Benefits](#), later.

Wages paid to aliens who are residents of American Samoa, Canada, Mexico, Puerto Rico, or the U.S. Virgin Islands may be exempt from withholding. The following paragraphs explain these exemptions.

Residents of Canada or Mexico engaged in transportation-related employment. Certain residents of Canada or Mexico who enter or leave the United States at frequent intervals are not subject to withholding on their wages. These persons either:

- Perform duties in transportation service between the United States and Canada or Mexico, or
- Perform duties connected to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mexico.



This employment is subject to withholding of social security and Medicare taxes unless the services are performed for a railroad.

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

- Is not a U.S. citizen or resident,

- Is a resident of Canada or Mexico, whichever applies, and
- Expects to perform duties previously described during the tax year in question.

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

Residents of American Samoa and Puerto Rico. If you are a nonresident alien employee who is a resident of American Samoa or Puerto Rico, wages for services performed in American Samoa or Puerto Rico are generally not subject to withholding unless you are an employee of the United States or any of its agencies in American Samoa or Puerto Rico.

Residents of the U.S. Virgin Islands. Nonresident aliens who are bona fide residents of the U.S. 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 U.S. Virgin Islands. To avoid having tax withheld on income earned in the United States, bona fide residents of the U.S. Virgin Islands should write a letter, in duplicate, to their employers, stating that they are bona fide residents of the U.S. Virgin Islands and expect to pay tax on all income to the U.S. Virgin Islands.

Withholding on Pensions

If you receive a pension as a result of personal services performed in the United States, the pension income is subject to the 30% (or lower treaty) rate of withholding. You may, however, have tax withheld at graduated rates on the portion of the pension that arises from the performance of services in the United States after December 31, 1986. You must fill out Form W-8BEN and give it to the withholding agent or payer before the income is paid or credited to you.

Withholding on Tip Income

Tips you receive during the year for services performed in the United States are subject to U.S. income tax. Include them in taxable income. In addition, tips received while working for one employer, amounting to \$20 or more in a month, are subject to graduated withholding.

Independent Contractors

If there is no employee-employer relationship between you and the person for whom you 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. 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.

File Form 13930 and the required attachments with the IRS to request a central withholding agreement. Either you or your authorized representative can file the form. It should be sent to the IRS at least 45 days before the agreement is to take effect. Exceptions will be considered on a case by case basis.

Final payment exemption. Your final payment of compensation during the tax year for independent personal services may be entirely or partly exempt from withholding. This exemption is available only once during your tax year and applies to a maximum of \$5,000 of compensation. To obtain this exemption, you or your agent must give the following statements and information to the Commissioner or his delegate.

- A statement by each withholding agent from whom you have received gross income effectively connected with a trade or business in the United States during the tax year, showing the amount of income paid and the tax withheld. Each statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- A statement by the withholding agent from whom you expect to receive the final payment of compensation, showing the amount of the payment and the amount of tax that would be withheld if a final payment exemption were not granted. This statement must also be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- A statement by you that you do not intend to receive any other income effectively connected with a trade or business in the United States during the current tax year.
- The amount of tax that has been withheld or paid under any other provision of the Internal Revenue Code or regulations for any income effectively connected with your trade or business in the United States during the current tax year.
- The amount of your outstanding tax liabilities, if any, including interest and penalties, from the current tax year or prior tax periods.
- Any provision of an income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of your residence, and a statement of sufficient facts to justify an exemption under the treaty.

- A statement signed by you, and verified by a declaration that it is made under penalties of perjury, that all the information given is true and that to your knowledge no relevant information has been omitted.

If satisfied with the information, the IRS will determine the amount of your tentative income tax for the tax year on gross income effectively connected with your trade or business 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 (\$3,650 for 2010).

To determine the income for independent personal services performed in the United States to which the 30% (or lower treaty) rate will apply, you are allowed one personal exemption if you are not a U.S. national and are not a resident of Canada, Mexico, or South Korea. For purposes of 30% withholding, the exemption is prorated at \$10.00 a day in 2010 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 Country X worked under a contract with a U.S. firm (not as an employee) in the United States for 100 days during 2010 before returning to his country. He earned \$6,000 for the services performed (not considered wages) in the United States. Eric is married and has three dependent children. His wife is not employed and has no income subject to U.S. tax. The amount of the personal exemption to be allowed against the income for his personal services performed within the United States in 2010 is \$1,000 (100 days × \$10.00), and withholding at 30% is applied against the balance. Thus, \$1,500 in tax is withheld from Eric's earnings (30% of \$5,000 (\$6,000 – \$1,000)).

U.S. nationals or residents of Canada, Mexico, or South Korea. If you are a nonresident alien who is a resident of Canada, Mexico, or 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 \$10.00 per day for each allowable exemption in 2010. If you are a resident of 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 prorated 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 2010 and cannot be claimed as a dependent on another U.S. taxpayer's 2010 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 \$10.00 per day for each allowable exemption in 2010.

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 and tax was withheld in error on your 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 Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301 to determine if you are entitled to a refund. You must also attach the following to your Form 1040 or 1040A.

- A copy of Form SSA-1042S, Social Security Benefit Statement.
- A copy of the "green card."
- 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. lawful permanent resident and my green card

has been neither revoked nor administratively or judicially determined to have been abandoned. I am filing a U.S. income tax return for the tax year as a resident alien reporting all of my worldwide income. I have not claimed benefits for the tax year under an income tax treaty as the resident of a country other than the United States.

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 (ECTI) from the partnership. You may be able to reduce your ECTI subject to withholding by certain partner-level deductions. Generally, you must use Form 8804-C for this purpose. See the instructions for Form 8804-C for more information.

The withholding rate on your share of effectively connected income is generally the highest rate of tax that applies to you (35% for 2010). However, the partnership may withhold at the highest rate that applies to a particular type of income allocable to you if you gave the partnership the appropriate documentation (generally, Form W-8BEN). Long-term capital gain is an example of a particular type of income to which a highest tax rate applies. Claim the tax withheld as a credit on your 2010 Form 1040NR.

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 that is publicly traded 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.

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 "Q" 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) withholds 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 2010 by the daily exemption amount (\$10.00).

Expenses. Include expenses that will be deductible on your return. These include away-from-home expenses (meals, lodging, and transportation), certain state and local income taxes, charitable contributions, and casualty losses, discussed earlier under *Itemized Deductions* in chapter 5. They also include business expenses, moving expenses, and the IRA deduction discussed under *Deductions* in chapter 5.

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

Line B. Enter -0- unless the following paragraph applies to you.

If you are a student who qualifies under Article 21(2) of the United States-India Income Tax Treaty, and you are not claiming deductions for away-from-home expenses or other itemized deductions (discussed earlier), enter the standard deduction on line B. The standard deduction amount for 2010 is \$5,700.

Lines C and D. Enter -0- on both lines unless the following paragraphs apply to you.

If you are a resident of Canada, Mexico, 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 no gross income for 2010 and cannot be claimed as a dependent on another U.S. taxpayer's 2010 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 one tax 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 at the graduated rates that apply 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 taxable scholarship or fellowship grant less the withholding allowance amount, the tax rate, and the amount of tax withheld. Use this form to prepare your annual U.S. income tax return.

Income Entitled to Tax Treaty Benefits

If a tax treaty between the United States and your country provides an exemption from, or a reduced rate of, tax for certain items of income, you should notify the payor of the income (the withholding agent) of your foreign status to claim a tax treaty withholding exemption. Generally, you do this by filing either Form W-8BEN or Form 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 an exemption from withholding on that personal service income because of a tax treaty, give Form 8233 to each withholding agent from whom amounts will be received.

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 (or Form 1040NR-EZ if you qualify) to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty 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, attach a statement in a format similar to those for other treaties.

If you received a scholarship or fellowship and personal services income from the same withholding agent, use Form 8233 to claim an exemption from withholding based on a tax treaty for both types of income.

Special events and promotions. 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:

Central Withholding Agreement Program
Internal Revenue Service
M/S 0175 110 City Parkway
Las Vegas, NV 89106

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 901.

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.

A distribution by a qualified investment entity to a nonresident alien shareholder that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is subject to withholding at 35%. Withholding is also required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates. These rules are covered in Publication 515.

For information on the tax treatment of dispositions of U.S. real property interests, see [Real Property Gain or Loss](#) in chapter 4.

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 domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded corporations.
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.

You can give the certification to a qualified substitute. The qualified substitute gives the buyer a statement, under penalties of perjury, that the certification is in the possession of the qualified substitute. For this purpose, a qualified substitute is (a) the person (including any attorney or title company) responsible for closing the transaction, other than your agent, and (b) the buyer's agent.

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

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.
9. A distribution from a domestically controlled qualified investment entity that is treated as a distribution of a U.S. real property interest only because an interest in the entity was disposed of in an applicable wash sale transaction. See [Wash sale](#) under *Real Property Gain or Loss* in chapter 4.

The certifications in (3) and (4) must be disregarded by the buyer if the buyer or qualified substitute has actual knowledge, or receives notice from a seller's or buyer's agent (or substitute), that they are false. This also applies to the qualified substitute's statement under (4).

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 enters into an agreement for the payment of tax providing security for the tax liability.

Get Publication 515 and Form 8288-B for information on procedures to request a withholding certificate.

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 (TIN). You must file Copy B with your tax return to take credit for the tax withheld.

A stamped copy of Form 8288-A will not be provided to you if your TIN is not included on that form. In this case, to get credit for the tax withheld, you must attach to your U.S. income tax return substantial evidence of withholding (for example, closing documents) and a statement that contains all of the following information.

- Your name and TIN.
- The buyer's name, address, and TIN.
- A description and location of the property.
- The date of the transfer.
- The amount realized on the transfer.
- The amount of 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, survivors and disability benefits, and medical insurance (Medicare) benefits to individuals who meet certain eligibility requirements.

In most cases, the first \$106,800 of taxable wages received in 2009 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 2009 is more than \$6,621.60. Use the appropriate worksheet in chapter 3 of Publication 505, Tax Withholding and Estimated Tax, to figure your credit.

If any one employer deducted more than \$6,621.60, you cannot claim a credit for that amount. Ask your employer to refund the excess. If your employer does not refund the excess, you can file a claim for refund using Form 843.

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States. Your employer should be able to tell you if social security and Medicare taxes apply to your wages. You cannot make voluntary payments if no taxes are due.

Students and Exchange Visitors

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. These types of services are very limited, and generally include only on-campus

work, practical training, and economic hardship employment.

Social security and Medicare taxes will be withheld from your pay for these services if you are considered a resident alien as discussed in chapter 1, even though your nonimmigrant classification ("F," "J," "M," or "Q") remains the same.

Services performed by a spouse or minor child of nonimmigrant aliens with the classification of "F-2," "J-2," "M-2," and "Q-3" are covered under social security.

Nonresident Alien Students

If you are a nonresident alien temporarily admitted to the United States as a student, you generally are not permitted to work for a wage or salary 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. Social security and Medicare taxes are not withheld from pay for the work unless the student is considered a resident alien.



Any student who is enrolled and regularly attending classes at a school may be exempt from social security and Medicare taxes on pay for services performed for that school.

The U.S. Citizenship and Immigration Services (USCIS) permits on-campus work for students in "F-1" status if it does not displace a U.S. resident. On-campus work means work performed on the school's premises. On-campus work includes work performed at an off-campus location that is educationally affiliated with the school. On-campus work under the terms of a scholarship, fellowship, or assistantship is considered part of the academic program of a student taking a full course of study and is permitted by the USCIS. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

Students in "F-1" status may be permitted to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training includes work/study programs, internships, and cooperative education programs. In this case, the educational 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.

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

Students in "M-1" status who have completed a course of study can accept employment for practical training for up to 6 months and must have a Form I-688B or Form I-766 issued by the USCIS. Social security and Medicare taxes are not withheld from "M-1" students' pay for these services unless the student is considered a resident alien.

In all other cases, any services performed by a nonresident alien student are not considered as performed to carry out the purpose for which the student was admitted to the United States. Social security and Medicare taxes will be withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

Exchange Visitors

Nonresident aliens are temporarily admitted to the United States as nonimmigrant exchange visitors under section 101(a)(15)(J) of the Immigration and Nationality Act through the sponsorship of approved organizations and institutions that are responsible for establishing a program for the exchange visitor and for any later modification of that program. Generally, an exchange visitor who has the permission of the sponsor can work for the same reasons as the students discussed above.

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 authorization 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 performed 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 temporarily admitted to the United States as participants in international cultural exchange programs under section 101(a)(15)(Q) of the Immigration and Nationality Act may be exempt from social security and Medicare taxes. The employer must be the petitioner through whom the alien obtained the "Q" visa. Social security and Medicare taxes are not withheld from pay for this work unless the alien is considered a resident alien. Aliens with "Q" visas are not permitted to engage in employment outside the exchange program activities.

Refund of Taxes Withheld in Error

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, Claim for Refund and Request for Abatement. Attach the following items to Form 843.

- A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
- A copy of your visa.
- Form I-94 (or other documentation showing your dates of arrival or departure).
- If you have an F-1 visa, Form I-20.
- If you have a J-1 visa, Form DS-2019.

- If you are engaged in optional practical training or employment due to severe economic necessity, 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 information on your own statement and explain why you are not attaching a statement from your employer or on Form 8316 claiming your employer will not issue the refund.
- If you were exempt from social security and Medicare tax for only part of the year, pay statements showing the tax paid during the period you were exempt.

File Form 843 (with attachments) with the Department of the Treasury, 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-employed. Nonresident aliens are not subject to self-employment tax. Residents of the U.S. Virgin Islands, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa are considered U.S. residents for this purpose and are subject to the self-employment tax.

Resident aliens must pay self-employment tax under the same rules that apply to U.S. citizens. However, a resident alien employed by an international organization, a foreign government, or a wholly-owned instrumentality of a foreign government is not subject to the self-employment tax on income earned in the United States.

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

Example. Bill Jones is an author engaged in 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 2009, 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 2009 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 Form 1040, line 56, 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.

More information. Get Publication 334, Tax Guide for Small Business, for more information about self-employment tax.

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 work are eliminated. 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.
- Czech Republic.
- Denmark.
- Finland.
- France.
- Germany.
- Greece.
- Ireland.
- Italy.
- Japan.
- Korea, South.
- Luxembourg.
- The Netherlands.
- Norway.
- Poland (effective March 1, 2009).
- 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 later. 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 appropriate agency of 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 U.S. social security system. Request it from the U.S. Social Security Administration at the address given earlier. Attach a photocopy of either statement to Form 1040 each year you are exempt. Also print "Exempt, see attached statement" on the line for self-employment tax.

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 make estimated tax payments for 2010 if you expect to owe at least \$1,000 in tax and you expect your withholding and certain refundable credits to be less than the smaller of:

1. 90% of the tax to be shown on your 2010 income tax return, or
2. 100% of the tax shown on your 2009 income tax return (if your 2009 return covered all 12 months of the year).

If your adjusted gross income for 2009 was more than \$150,000 (\$75,000 if your filing status for 2010 is married filing separately), substitute 110% for 100% in (2) above if you are not a farmer or fisherman. Item (2) does not apply if you did not file a 2009 return.

A nonresident alien should use Form 1040-ES (NR) to figure and pay estimated tax. If you pay by check, make it payable to the "United States Treasury."

How to estimate your tax for 2010. If you filed a 2009 return on Form 1040NR or Form 1040NR-EZ and expect your income, number of exemptions, and total deductions for 2010 to be nearly the same, you should use your 2009 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 2009, or if your income, exemptions, deductions, or credits will be different for 2010, you must estimate these amounts. Figure your estimated tax liability using the Tax Rate Schedule in the 2010 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, 2010. If you do not have wages subject to withholding, file your income tax return and make your first estimated tax payment by June 15, 2010.

If your first estimated tax payment is due April 15, 2010, 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, 2010
2nd installment	June 15, 2010
3rd installment	Sept. 15, 2010
4th installment	Jan. 18, 2011

If your first payment is not due until June 15, 2010, you can pay your estimated tax in full at that time or:

1. 1/2 of your estimated tax by June 15, 2010,
2. 1/4 of the tax by September 15, 2010, and
3. 1/4 by January 18, 2011.



You do not have to make the payment due January 18, 2011, if you file your 2010 Form 1040NR or 1040NR-EZ by January 31, 2011, and pay the entire balance due with your return.

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

Changes in income, deductions, or exemptions. Even if you are not required to make an estimated tax payment in April or June, your circumstances may change so that you will have to make estimated tax payments later. This can happen if you receive additional income or 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 decreased because of a change in your income or exemptions, you should adjust your remaining estimated tax payments. To do this, see the instructions for Form 1040-ES (NR) and Publication 505.

Penalty for failure to pay estimated income tax. You will be subject to a penalty for underpayment of installments of estimated tax except in certain situations. These situations are explained on Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts.

9. Tax Treaty Benefits

Introduction

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

See [Table 9-1](#) for a list of tax treaty countries.

You can generally arrange to have withholding tax reduced or eliminated on wages and other income that are eligible for tax treaty benefits. See [Income Entitled to Tax Treaty Benefits](#) in chapter 8.

Topics

This chapter discusses:

- Typical tax treaty benefits,
- How to obtain copies of tax treaties, and
- How to claim tax treaty benefits on your tax return.

Useful Items

You may want to see:

Publication

- ☐ **901** U.S. Tax Treaties

Form (and Instructions)

- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return
- ☐ **1040NR-EZ** U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- ☐ **8833** Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

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 subject to tax at a tax treaty rate not to exceed 15%. Nontreaty income is the gross income of a nonresident alien on which the tax is not limited by a tax treaty.

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 graduated rate, depending upon whether or not the income is effectively connected with your trade or business in the United States.

Your tax liability is the sum of the tax on treaty income plus the tax on nontreaty income, but cannot be more than the tax liability figured as if the tax treaty had not come into effect.

Example. Arthur Banks is a nonresident alien who is single and a resident of a foreign country that has a tax treaty with the United States. He received gross income of \$25,650 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	<u>\$1,400</u>
Compensation for personal services on which the tax is not limited by the tax treaty	<u>24,250</u>
Total gross income	<u>\$25,650</u>

Arthur was engaged in business in the United States during the tax year. His dividends are not effectively connected with that business. He has no deductions other than his own personal exemption.

His tax liability, figured as though the tax treaty had not come into effect, is \$3,096 determined as follows:

Total compensation	<u>\$24,250</u>
Less: Personal exemption	<u>3,650</u>

Taxable income	<u>\$20,600</u>
Tax determined by graduated rate (Tax Table column for single taxpayers)	<u>\$2,676</u>
Plus: Tax on gross dividends (\$1,400 × 30%)	<u>420</u>
Tax determined as though treaty had not come into effect	<u>\$3,096</u>

Arthur's tax liability, figured by taking into account the reduced rate on dividend income as provided by the tax treaty, is \$2,886 determined as follows:

Tax determined by graduated rate (same as figured above)	<u>\$2,676</u>
Plus: Tax on gross dividends (\$1,400 × 15%)	<u>210</u>
Tax on compensation and dividends	<u>\$2,886</u>

His tax liability, therefore, is limited to \$2,886, 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 IRS.gov. Technical explanations for many of those treaties are also available at that site.

Tax treaty benefits also cover income such as dividends, interest, rentals, royalties, pensions, and annuities. These types of income may be exempt from U.S. tax or may be subject to a reduced rate of tax. For more information, see Publication 901 or the applicable tax treaty.

Personal Services

Nonresident aliens from treaty countries who are in the United States for a short stay and also meet certain other requirements may be exempt from tax on their compensation received for personal services performed in the United States. Many tax treaties require that the nonresident alien claiming this exemption be present in the United States for a total of not more than 183 days during the tax year. Other tax treaties specify different periods of maximum presence in the United States, such as 180 days or 90 days. Spending part of a day in the United States counts as a day of presence.

Tax treaties may also require that:

- The compensation cannot be more than a specific amount (frequently \$3,000), and

- The individual have a foreign employer; that is, an individual, corporation, or entity of a foreign country.

Teachers, Professors, and Researchers

Under many income tax treaties, nonresident alien teachers or professors who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for teaching for the first 2 or 3 years after their arrival in the United States. Many treaties also provide an exemption for engaging in research.

Generally, the teacher or professor must be in the United States primarily to teach, lecture, instruct, or engage in research. A substantial part of that person's time must be devoted to those duties. The normal duties of a teacher or professor include not only formal classroom work involving regularly scheduled lectures, demonstrations, or other student-participation activities, but also the less formal method of presenting ideas in seminars or other informal groups and in joint efforts in the laboratory.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See [Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens](#) later under *Resident Aliens*.

Employees of Foreign Governments

All treaties have provisions for the exemption of income earned by certain employees of foreign governments. However, a difference exists among treaties as to who qualifies for this benefit. Under many treaties, aliens admitted to the United States for permanent residence do not qualify. Under most treaties, aliens who are not nationals or subjects of the foreign country do not qualify. Employees of foreign governments should read the pertinent treaty carefully to determine whether they qualify for benefits. Chapter 10 of this publication also has information for employees of foreign governments.

Students, Apprentices, and Trainees

Under some income tax treaties, students, apprentices, and trainees are exempt from tax on remittances received from abroad for study and maintenance. Also, under some treaties, scholarship and fellowship grants, and a limited amount of compensation received by students, apprentices, and trainees may be exempt from tax.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See [Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens](#), later, under *Resident Aliens*.

Capital Gains

Most treaties provide for the exemption of gains from the sale or exchange of personal property.

Generally, gains from the sale or exchange of real property located in the United States are taxable.

Resident Aliens

Resident aliens may qualify for tax treaty benefits in the situations discussed below.

U.S. Residency Under Tax Treaty "Tie-Breaker" Rule

In certain circumstances, individuals who are treated as residents of the United States under an income tax treaty (after application of the so-called "tie-breaker" rule) will be entitled to treaty benefits. (The "tie-breaker" rule is explained in chapter 1 under *Effect of Tax Treaties*.) If this applies to you, you generally will not need to file a Form 8833 for the income for which treaty benefits are claimed. This is because the income will typically be of a category for which disclosure on a Form 8833 is waived. See [Reporting Treaty Benefits Claimed](#).

In most cases, you also will not need to report the income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2, Form 1042-S, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 (for example, line 7 in the case of wages or salaries). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Also follow the above procedure for income that is subject to a reduced rate of tax, instead of an exemption, under the treaty. Attach a statement to Form 1040 showing a computation of the tax at the reduced rate, the name of the treaty country, and the treaty article that provides for the reduced tax rate. Include this tax on Form 1040, line 60. On the dotted line next to line 60, write "Tax from attached statement" and the amount of the tax.

Example. Jacques Dubois, who is a resident of the United States under Article 4 of the U.S.-France income tax treaty, receives French social security benefits. Under Article 18(1) of the treaty, French social security benefits are not taxable by the United States. Mr. Dubois is not required to file a Form 8833 for his French social security benefits or report the benefits on Form 1040.

Special Rule for Canadian and German Social Security Benefits

Under income tax treaties with Canada and Germany, if a U.S. resident receives social security benefits from Canada or Germany, those benefits are treated for U.S. income tax purposes as if they were received under the social security legislation of the United States. If you receive social security benefits from Canada or Germany, include them on line 1 of your Social

Security Benefits Worksheet for purposes of determining the taxable amount to be reported on Form 1040, line 20b or Form 1040A, line 14b. You are not required to file a Form 8833 for those benefits.

Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens

Generally, you must be a nonresident alien student, apprentice, trainee, teacher, professor, or researcher in order to claim a tax treaty exemption for remittances from abroad for study and maintenance in the United States, for scholarship, fellowship, and research grants, and for wages or other personal service compensation. Once you become a resident alien, you generally can no longer claim a tax treaty exemption for this income.

However, if you entered the United States as a nonresident alien, but you are now a resident alien for U.S. tax purposes, the treaty exemption will continue to apply if the tax treaty's saving clause (explained later) provides an exception for it and you otherwise meet the requirements for the treaty exemption (including any time limit, explained later). This is true even if you are a nonresident alien electing to file a joint return as explained in chapter 1.

Some exceptions to the saving clause apply to all resident aliens (for example, under the U.S.-People's Republic of China treaty); others apply only to resident aliens who are not lawful permanent residents of the United States (green card holders).

If you qualify under an exception to the treaty's saving clause, you can avoid income tax withholding by giving the payor a Form W-9 with the statement required by the Form W-9 instructions.

Saving clause. Most tax treaties have a saving clause. A saving clause preserves or "saves" the right of each country to tax its own residents as if no tax treaty were in effect. Thus, once you become a resident alien of the United States, you generally lose any tax treaty benefits that relate to your income. However, many tax treaties have an exception to the saving clause, which may allow you to continue to claim certain treaty benefits when you become a resident alien. Read the treaty to find out if it has a saving clause and an exception to it.

Time limit for claiming treaty exemptions. Many treaties limit the number of years you can claim a treaty exemption. For students, apprentices, and trainees, the limit is usually 4–5 years; for teachers, professors, and researchers, the limit is usually 2–3 years. Once you reach this limit, you can no longer claim the treaty exemption. See the treaty or Publication 901 for the time limits that apply.

How to report income on your tax return. In most cases, you also will not need to report the

income on your Form 1040 because the income will be exempt from U.S. tax under the treaty. However, if the income has been reported as taxable income on a Form W-2, Form 1042-S, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 (for example, line 7 in the case of wages, salaries, scholarships, or fellowships). Enter the amount for which treaty benefits are claimed in parentheses on Form 1040, line 21. Next to the amount write "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22.

Example. Mr. Yu, a citizen of the People's Republic of China, entered the United States as a nonresident alien student on January 1, 2005. He remained a nonresident alien through 2009 and was able to exclude his scholarship from U.S. tax in those years under Article 20 of the U.S.-People's Republic of China income tax treaty. On January 1, 2010, 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.-People's Republic of 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 below, for the situations where you are not required to file Form 8833.

You must file a U.S. tax return and Form 8833 if you claim the following treaty benefits.

- You claim a reduction or modification in the taxation of gain or loss from the disposition of a U.S. real property interest based on a treaty.
- You claim a credit for a specific foreign tax for which foreign tax credit would not be allowed by the Internal Revenue Code.
- 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.
6. You are claiming treaty benefits for amounts that are:
 - a. Reported to you on Form 1042-S and
 - b. Received by you:
 - i. As a related party from a reporting corporation within the meaning of Internal Revenue Code section 6038A (relating to information returns on Form 5472 filed by U.S. corporations that are 25-percent owned by a foreign person), or
 - ii. As a beneficial owner that is a direct account holder of a U.S. financial institution or qualified intermediary, or a direct partner, beneficiary, or owner of a withholding foreign partnership or trust, from that U.S. financial institution, qualified intermediary, or withholding foreign partnership or trust.

The exception described in (6) above does not apply to any amounts for which a treaty-based return disclosure is specifically required by the Form 8833 instructions.

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, 2009)

Country	Official Text Symbol ¹	General Effective Date	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246
Protocol	TIAS	Jan. 1, 2004		
Austria	TIAS	Jan. 1, 1999		
Bangladesh	TIAS	Jan. 1, 2007		
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Protocol	TIAS	Jan. 1, 2005		
Belgium	TIAS	Jan. 1, 2008		
Bulgaria	TIAS	Jan. 1, 2009		
Canada ²	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298
Protocol	TIAS	Jan. 1, 2009		
China, People's Republic of	TIAS 12065	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447
Commonwealth of Independent States ³	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314
Czech Republic	TIAS	Jan. 1, 1993		
Denmark	TIAS	Jan. 1, 2001		
Protocol	TIAS	Jan. 1, 2008		
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243
Estonia	TIAS	Jan. 1, 2000		
Finland	TIAS 12101	Jan. 1, 1991		
Protocol	TIAS	Jan. 1, 2008		
France	TIAS	Jan. 1, 1996		
Protocol	TIAS	Jan. 1, 2010 ⁴		
Germany	TIAS	Jan. 1, 1990		
Protocol	TIAS	Jan. 1, 2008		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354
Iceland	TIAS	Jan. 1, 2009		
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS 11593	Jan. 1, 1990		
Ireland	TIAS	Jan. 1, 1998		
Israel	TIAS	Jan. 1, 1995		
Italy (old treaty)	TIAS 11064	Jan. 1, 1985	1992-1 C.B. 442	1992-1 C.B. 473
Italy (new treaty)	TIAS	Jan. 1, 2010		
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291
Japan	TIAS	Jan. 1, 2005		
Kazakhstan	TIAS	Jan. 1, 1996		
Korea, South	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458
Latvia	TIAS	Jan. 1, 2000		
Lithuania	TIAS	Jan. 1, 2000		
Luxembourg	TIAS	Jan. 1, 2001		
Mexico	TIAS	Jan. 1, 1994	1994-2 C.B. 424	1994-2 C.B. 489
Protocol	TIAS	Jan. 1, 2004		
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427
Netherlands	TIAS	Jan. 1, 1994		
Protocol	TIAS	Jan. 1, 2005		
New Zealand	TIAS 10772	Nov. 2, 1983	1990-2 C.B. 274	1990-2 C.B. 303
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427
Portugal	TIAS	Jan. 1, 1996		
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
Slovenia	TIAS	Jan. 1, 2002		
South Africa	TIAS	Jan. 1, 1998		
Spain	TIAS	Jan. 1, 1991		
Sri Lanka	TIAS	Jan. 1, 2004		
Sweden	TIAS	Jan. 1, 1996		
Protocol	TIAS	Jan. 1, 2007		
Switzerland	TIAS	Jan. 1, 1998		
Thailand	TIAS	Jan. 1, 1998		
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	

Country	Official Text Symbol ¹	General Effective Date	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Tunisia	TIAS	Jan. 1, 1990		
Turkey	TIAS	Jan. 1, 1998		
Ukraine	TIAS	Jan. 1, 2001		
United Kingdom	TIAS	Jan. 1, 2004		
Venezuela	TIAS	Jan. 1, 2000		

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 For taxes withheld at source, the protocol is effective for amounts paid or credited after 2008.

10.

Employees of Foreign Governments and International Organizations

Employees of foreign governments (including foreign municipalities) have two ways to get exemption 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 pay received for services performed for a foreign government or international organization. Other U.S. income received by persons who qualify for this exemption may be fully taxable or given favorable treatment under an applicable tax treaty provision. The proper treatment of this kind of income (interest, dividends, etc.) is discussed earlier in this publication.

Exemption Under Tax Treaty

If you are from a country that has a tax treaty with the United States, you should first look at the treaty to see if there is a provision that

exempts your income. The income of U.S. citizens and resident aliens working for foreign governments usually is not exempt. However, in a few instances, the income of a U.S. citizen with dual citizenship may qualify. Often the exemption is limited to the income of persons who also are nationals of the foreign country involved.

Resident aliens from France. The United States and France have an agreement to relieve double taxation of U.S. permanent residents who receive wages and pensions for governmental services performed for the government of France. Generally, this income is taxable in the United States and France. However, the United States will allow a credit for taxes paid to France on this income.

Exemption Under U.S. Tax Law

Employees of foreign governments who do not qualify under a tax treaty provision and employees of international organizations may qualify for exemption by meeting the following requirements of U.S. tax law.



The exemption under U.S. tax law applies only to current employees and not to former employees. Pensions received by former employees living in the United States do not qualify for the exemption discussed here.

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 to U.S. government employees.

Certification. To qualify for the exemption under U.S. tax law, the foreign government for which you work must certify to the Department of State that you are their employee and that you perform services similar to those performed by employees of the United States in your country. However, see [Aliens who keep immigrant status](#), later, for a special rule that may affect your qualifying for this exemption.

Employees of international organizations.

If you work for an international organization in the United States and you are not a U.S. citizen (or you are a U.S. citizen but are also a citizen of the Philippines), your salary from that organization is exempt from U.S. tax. However, see [Aliens who keep immigrant status](#), later, for a special rule that may affect your qualifying for this exemption.

An international organization is an organization designated by the President of the United States through Executive Order to qualify for the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

You should find out if you have been made known to, and have been accepted by, the Secretary of State as an officer or an employee of that organization, or if you have been designated by the Secretary of State, before formal notification and acceptance, as a prospective officer or employee.

If you are claiming exemption, you should know the number of the Executive Order covering the international organization and should have some written evidence of your acceptance or designation by the Secretary of State.

The exemption is denied when, because the Secretary of State determines your presence in the United States is no longer desirable, you leave the United States (or after a reasonable time allowed for leaving the United States). The exemption is also denied when a foreign country does not allow similar exemptions to U.S. citizens. Then the Secretary of State can withdraw the privileges, exemptions, and immunities from the nationals of that foreign country.

Aliens who keep immigrant status. If you file the waiver provided by section 247(b) of the Immigration and Nationality Act to keep your immigrant status, you no longer qualify for the exemption from U.S. tax under U.S. tax law from the date of filing the waiver with the Attorney General.

However, you do not lose the exemption if you file the waiver, you are exempt from U.S. tax under an income tax treaty, consular agreement, or international agreement, and the exemption is not dependent upon U.S. internal revenue laws.

For more information about a specific foreign country or international organization, send an email to embassy@irs.gov.

11.

Departing Aliens and the Sailing or Departure Permit

Introduction

Before leaving the United States, all aliens (except those listed under [Aliens Not Required To Obtain Sailing or Departure Permits](#) must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040-C or Form 2063. These forms are discussed in this chapter.

To find out if you need a sailing or departure permit, first read [Aliens Not Required To Obtain Sailing or Departure Permits](#). If you do not fall into one of the categories in that discussion, you must obtain a sailing or departure permit. Read [Aliens Required To Obtain Sailing or Departure Permits](#).

Topics

This chapter discusses:

- Who needs a sailing permit,
- How to get a sailing permit, and
- Forms you file to get a sailing permit.

Useful Items

You may want to see:

Form (and Instructions)

- 1040-C** U.S. Departing Alien Income Tax Return
- 2063** U.S. Departing Alien Income Tax Statement

See [chapter 12](#) for information about getting these forms.

Aliens Not Required To Obtain Sailing or Departure Permits

If you are included in one of the following categories, you do not have to get a sailing or departure permit before leaving the United States.

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:

- Their name appears on the “White List” (a list of employees of diplomatic missions), and
- 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:

- Whose compensation for official services is exempt from U.S. tax under U.S. tax laws (described in chapter 10), and
- 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:

- Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition,
- The value of any services or food and lodging connected with this study or training,
- Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS), or
- Interest income on deposits that is not effectively connected with a U.S. trade or business. (See [Interest Income](#) in chapter 3.)

Category 4. Alien students, including their spouses and children, who enter on an “M-1” or “M-2” visa only and who receive no income from

U.S. sources while in the United States under those visas, other than:

- Income from employment authorized by the U.S. Citizenship and Immigration Services (USCIS) or
- Interest income on deposits that is not effectively connected with a U.S. trade or business. (See [Interest Income](#) in chapter 3.)

Category 5. Certain other aliens temporarily in the United States who have received no taxable income during the tax year up to and including the date of departure or during the preceding tax year. If the IRS has reason to believe that an alien has received income subject to tax and that the collection of income tax is jeopardized by departure, it may then require the alien to obtain a sailing or departure permit. Aliens in this category are:

1. Alien military trainees who enter the United States for training under the sponsorship of the Department of Defense and who leave the United States on official military travel orders,
2. Alien visitors for business on a “B-1” visa, or on 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 passports, visas, and border-crossing identification cards are not required, if they are:
 - a. Visitors for pleasure,
 - b. Visitors for business who do not remain in the United States or a U.S. possession for more than 90 days during the tax year, or
 - c. In transit through the United States or any of its possessions.

Category 6. Alien residents of Canada or Mexico who frequently commute between that country and the United States for employment, and whose wages are subject to the withholding of U.S. tax.

Aliens Required To Obtain Sailing or Departure Permits

If you do not fall into one of the categories listed under [Aliens Not Required To Obtain Sailing or Departure Permits](#), you must obtain a sailing or departure permit. To obtain a permit, file Form 1040-C or Form 2063 (whichever applies) with

your local IRS office before you leave the United States. See [Forms To File](#), later. You must also pay all the tax shown as due on Form 1040-C and any taxes due for past years. See [Paying Taxes and Obtaining Refunds](#), later.

Getting a Sailing or Departure Permit

The following discussion covers when and where to get your sailing permit.

Where to get a sailing or departure permit. If you have been working in the United States, you should get the permit from an IRS office in the area of your employment, or you may obtain one from an IRS office in the area of your departure.

When to get a sailing or departure permit. You should get your sailing or departure permit at least 2 weeks before you plan to leave. You cannot apply earlier than 30 days before your planned departure date. Do not wait until the last minute in case there are unexpected problems.

Papers to submit. Getting your sailing or departure permit will go faster if you bring to the IRS office papers and documents related to your income and your stay in the United States. Bring the following records with you if they apply.

1. Your passport and alien registration card or visa.
2. Copies of your U.S. income tax returns filed for the past 2 years. If you were in the United States for less than 2 years, bring the income tax returns you filed for that period.
3. Receipts for income taxes paid on these returns.
4. Receipts, bank records, canceled checks, and other documents that prove your deductions, business expenses, and dependents claimed on your returns.
5. A statement from each employer showing wages paid and tax withheld from January 1 of the current year to the date of departure if you were an employee. If you were self-employed, you must bring a statement of income and expenses up to the date you plan to leave.
6. Proof of estimated tax payments for the past year and this year.
7. Documents showing any gain or loss from the sale of personal property and/or real property, including capital assets and merchandise.
8. Documents relating to scholarship or fellowship grants including:
 - a. Verification of the grantor, source, and purpose of the grant.
 - b. Copies of the application for, and approval of, the grant.
 - c. A statement of the amount paid, and your duties and obligations under the grant.
 - d. A list of any previous grants.

9. Documents indicating you qualify for any special tax treaty benefits claimed.
10. Document verifying your date of departure from the United States, such as an airline ticket.
11. Document verifying your U.S. taxpayer identification number, such as a social security card or an IRS issued Notice CP 565 showing your individual taxpayer identification number (ITIN).

Note. If you are married and reside in a community property state, also bring the above-listed documents for your spouse. This applies whether or not your spouse requires a permit.

Forms To File

If you must get a sailing or departure permit, you must file Form 2063 or Form 1040-C. Employees in the IRS office can assist in filing these forms. Both forms have a “certificate of compliance” section. When the certificate of compliance is signed by an agent of the Field Assistance Area Director, it certifies that your U.S. tax obligations have been satisfied according to available information. Your Form 1040-C copy of the signed certificate, or the one detached from Form 2063, is your sailing or departure permit.

Form 2063

This is a short form that asks for certain information but does not include a tax computation. The following departing aliens can get their sailing or departure permits by filing Form 2063.

- 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.
- 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 income tax, they must file a Form 1040-C.

Aliens in either of these categories who have not filed an income tax return or paid income tax for any tax year must file the return and pay the income tax before they can be issued a sailing or departure permit on Form 2063.

The sailing or departure permit detached from Form 2063 can be used for all departures during the current year. However, the IRS may cancel the sailing or departure permit for any later departure if it believes the collection of income tax is jeopardized by that later departure.

Form 1040-C

If you must get a sailing or departure permit and you do not qualify to file Form 2063, you must file Form 1040-C.

Ordinarily, all income received or reasonably expected to be received during the tax year up to and including the date of departure must be reported on Form 1040-C and the tax on it must be paid. When you pay any tax shown as due on the Form 1040-C, and you file all returns and pay all tax due for previous years, you will receive a sailing or departure permit. However, the IRS may permit you to furnish a bond guaranteeing payment instead of paying the taxes for certain years. See [Bond To Ensure Payment](#), discussed later. The sailing or departure permit issued under the conditions in this paragraph is only for the specific departure for which it is issued.

Returning to the United States. If you furnish the IRS with information showing, to the satisfaction of the IRS, that you intend to return to the United States and that your departure does not jeopardize the collection of income tax, you can get a sailing or departure permit by filing Form 1040-C without having to pay the tax shown on it. You must, however, file all income tax returns that have not yet been filed as required, and pay all income tax that is due on these returns.

Your Form 1040-C must include all income received and reasonably expected to be received during the entire year of departure. The sailing or departure permit issued with this Form 1040-C can be used for all departures during the current year. However, the Service may cancel the sailing or departure permit for any later departure if the payment of income tax appears to be in jeopardy.

Joint return on Form 1040-C. Departing husbands and wives who are nonresident aliens cannot file joint returns. However, if both spouses are resident aliens, they can file a joint return on Form 1040-C if:

- Both spouses can reasonably be expected to qualify to file a joint return at the normal close of their tax year, and
- The tax years of the spouses end at the same time.

Paying Taxes and Obtaining Refunds

You must pay all tax shown as due on the Form 1040-C at the time of filing it, except when a bond 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 cannot provide a refund at the time of departure. If you are due a refund, you must file either Form 1040NR or Form 1040NR-EZ at the end of the tax year.

Bond To Ensure Payment

Usually, you must pay the tax shown as due on Form 1040-C when you file it. However, if you pay all taxes due that you owe for prior years, you can furnish a bond guaranteeing payment instead of paying the income taxes shown as due on the Form 1040-C or the tax return for the preceding year if the period for filing that return has not expired.

The bond must equal the tax due plus interest to the date of payment as figured by the IRS. Information about the form of bond and security on it can be obtained from your IRS office.

Filing Annual U.S. Income Tax Returns

Form 1040-C is not an annual U.S. income tax return. If an income tax return is required by law, that return must be filed even though a Form 1040-C has already been filed. Chapters 5 and 7 discuss filing an annual U.S. income tax return. The tax paid with Form 1040-C should be taken as a credit against the tax liability for the entire tax year on your annual U.S. income tax return.

12.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. Here are seven things every taxpayer should know about TAS:

- TAS is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for TAS help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- TAS employees know the IRS and how to navigate it. We will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- TAS has at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your local advocate, whose number is in your

phone book, in Pub. 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at www.irs.gov/advocate. You can also call our toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

- You can learn about your rights and responsibilities as a taxpayer by visiting our online tax toolkit at www.taxtoolkit.irs.gov.

Low Income Taxpayer Clinics (LITCs). The Low Income Taxpayer Clinic program serves individuals who have a problem with the IRS and whose income is below a certain level. LITCs are independent from the IRS. Most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or a small fee. If an individual's native language is not English, some clinics can provide multilingual information about taxpayer rights and responsibilities. For more information, see Publication 4134, Low Income Taxpayer Clinic List. This publication is available at IRS.gov, by calling 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

Free tax services. To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains lists of free tax information sources, including publications, services, and free tax education and assistance programs. It also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on your telephone.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Free help with your return. Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at www.aarp.org/money/taxaide.

For more information on these programs, go to IRS.gov and enter keyword "VITA" in the upper right-hand corner.



Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- **E-file** your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2009 refund. Go to IRS.gov and click on *Where's My Refund*. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2009 tax return available so you can provide your

social security number, your filing status, and the exact whole dollar amount of your refund.

- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, Regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- **Ordering forms, instructions, and publications.** Call 1-800-TAX FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- **Asking tax questions.** Call the IRS with your tax questions at 1-800-829-1040.
- **Solving problems.** You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- **TTY/TDD equipment.** If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- **TeleTax topics.** Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- **Refund information.** To check the status of your 2009 refund, call 1-800-829-1954 during business hours or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2009 tax return available so you can

provide your social security number, your filing status, and the exact whole dollar amount of your refund. Refunds are sent out weekly on Fridays. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.

- **Other refund information.** To check the status of a prior year refund or amended return refund, call 1-800-829-1954.

Evaluating the quality of our telephone services. To ensure 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 listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- **Products.** You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- **Services.** You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax

help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.



Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613



DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
 - The first release will ship the beginning of January 2010.
 - The final release will ship the beginning of March 2010.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).

Frequently Asked Questions

This section answers tax-related questions commonly asked by aliens.

What is the difference between a resident alien and a nonresident alien for tax purposes?

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as resident aliens and nonresident aliens. Resident aliens are taxed on their worldwide income, the same as U.S. citizens. Nonresident aliens are taxed only on their U.S. source income.

What is the difference between the taxation of income that is effectively connected with a trade or business in the United States and income that is not effectively connected with a trade or business in the United States?

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

I am a student with an F-1 Visa. I was told that I was an exempt individual. Does this mean I am exempt from paying U.S. tax?

The term "exempt individual" does not refer to someone exempt from U.S. tax. You were referred to as an exempt individual because as a student temporarily in the United States on an F Visa, you do not have to count the days you were present in the United States as a student during the first 5 years in determining if you are a resident alien under the substantial presence test. See [chapter 1](#).

I am a resident alien. Can I claim any treaty benefits?

Generally, you cannot claim tax treaty benefits as a resident alien. However, there are exceptions. See [Effect of Tax Treaties](#) in chapter 1. 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 11 conditions listed under *Form 1040NR-EZ* in chapter 7.

I came to the United States on June 30th of last year. I have an H-1B Visa. What is my tax status, resident alien or nonresident alien? What tax return do I file?

You were a dual-status alien last year. As a general rule, because you were in the United States for 183 days or more, you have met the substantial presence test and you are taxed as a resident. However, for the part of the year that you were not present in the United States, you are a nonresident. File Form 1040. Print "Dual-Status Return" across the top. Attach a statement showing your U.S. source income for the part of the year you were a nonresident. You may use Form 1040NR as the statement. Print "Dual-Status Statement" across the top. See [First Year of Residency](#) in chapter 1 for rules on determining your residency starting date. An example of a dual-status return is in chapter 6.

When is my Form 1040NR due?

If you are an employee and you receive wages subject to U.S. income tax withholding, you must generally file by the 15th day of the 4th month after your tax year ends. If you file for the 2009 calendar year, your return is due April 15, 2010.

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 2009 calendar year, file your return by June 15, 2010. For more information on when and where to file, see [chapter 7](#).

My spouse is a nonresident alien. Does he need a social security number?

A social security number (SSN) must be furnished on returns, statements, and other tax-related documents. If your spouse does not have and is not eligible to get an SSN, he must apply for an individual taxpayer identification number (ITIN).

If you are a U.S. citizen or resident and you choose to treat your nonresident spouse as a resident

and file a joint tax return, your nonresident spouse needs an SSN or an ITIN. Alien spouses who are claimed as exemptions or dependents are also required to furnish an SSN or an ITIN.

See [Identification Number](#) in chapter 5 for more information.

I am a nonresident alien. Can I file a joint return with my spouse?

Generally, you cannot file as married filing jointly if either spouse was a nonresident alien at any time during the tax year.

However, nonresident aliens married to U.S. citizens or residents can choose to be treated as U.S. residents and file joint returns. For more information on this choice, see [Nonresident Spouse Treated as a Resident](#) in chapter 1.

I have an H-1B Visa and my husband has an F-1 Visa. We both lived in the United States all of last year and had income. What kind of form should we file? Do we file separate returns or a joint return?

Assuming both of you had these visas for all of last year, you are a resident alien. Your husband is a nonresident alien if he has not been in the United States as a student for more than 5 years. You and your husband can file a joint tax return on Form 1040, 1040A, or 1040EZ if he makes the choice to be treated as a resident for the entire year. See [Nonresident Spouse Treated as a Resident](#) in chapter 1. If your husband does not make this choice, you must file a separate return on Form 1040 or Form 1040A. Your husband must file Form 1040NR or 1040NR-EZ.

Is a "dual-resident taxpayer" the same as a "dual-status taxpayer"?

No. A dual-resident taxpayer is one who is a resident of both the United States and another country under each country's tax laws. See [Effect of Tax Treaties](#) in chapter 1. You are a dual-status taxpayer when you are both a resident alien and a nonresident alien in the same year. See [chapter 6](#).

I am a nonresident alien and invested money in the U.S. stock market through a U.S. brokerage company. Are the dividends and the capital gains taxable? If yes, how are they taxed?

The following rules apply if the dividends and capital gains are not effectively connected with a U.S. trade or business.

- Capital gains are generally not 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 generally taxed at a 30% (or lower treaty) 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 from your income the part of the scholarship you use to pay for tuition, fees, books, supplies, and equipment required by the educational institution. However, the part of the scholarship you use to pay for other expenses, such as room and board, is taxable. See [Scholarships and 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, and 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 2009. Can I claim the earned income credit on my 2009 tax return?

If you are a nonresident alien for any part of the year, you cannot claim the earned income credit.

See [chapter 6](#) for more information on dual-status aliens.

I am a nonresident alien student. Can I claim an education credit on my Form 1040NR?

If you are a nonresident alien for any part of the year, you generally cannot claim the education credits. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse, you may be eligible for these credits. See [Nonresident Spouse Treated as a Resident](#) in chapter 1.

I am a nonresident alien, temporarily working in the U.S. under a J visa. Am I subject to social security and Medicare taxes?

Generally, services you perform as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if you perform the services to carry out the purpose for which you were admitted to the United States. See [Social Security and Medicare Taxes](#) in chapter 8.

I am a nonresident alien student. Social security taxes were withheld from my pay in error. How do I get a refund of these taxes?

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the

taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, *Claim for Refund and Request for Abatement*. See [Refund of Taxes Withheld in Error](#) in chapter 8.

I am an alien who will be leaving the United States. What forms do I have to file before I leave?

Before leaving the United States, aliens generally must obtain a certificate of compliance. This document, also popularly known as the sailing permit or departure permit, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040-C or Form 2063. These forms are discussed in chapter 11.

I filed a Form 1040-C when I left the United States. Do I still have to file an annual U.S. tax return?

Form 1040-C is not an annual U.S. income tax return. If an income tax return is required by law, you must file that return even though you already filed a Form 1040-C. Chapters 5 and 7 discuss filing an annual U.S. income tax return.

Appendix A—Tax Treaty Exemption Procedure for Students

This appendix contains the statements nonresident alien students and trainees 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 dependent personal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See [chapter 8](#) for more information on withholding.

Belgium

1. I was a resident of Belgium on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am present in the United States for the purpose of my education or training.
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Belgium in an amount not in excess of \$9,000 for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study or training]. For a trainee who is temporarily present in the United States for the purpose of securing training required to practice a profession or professional specialty, the treaty exemption is available only for compensation paid during a period of two years.

Bulgaria

1. I was a resident of Bulgaria on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____[insert the name of

the university or other recognized educational institution at which you study] or securing training to practice a profession or professional specialty.

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Bulgaria in an amount not in excess of \$9,000 for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study or training]. The treaty exemption for training is available only for compensation paid during a period of two years.

China, People's Republic of

1. I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen.
2. I am present in the United States solely for the purpose of my education or training.
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and the People's Republic of China in an amount not in excess of \$5,000 for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study or training]. I am claiming this exemption only for such period of time as is reasonably necessary to complete the education or training.

Cyprus

1. 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 permanently in the

United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of studying at _____[insert the name of the university or other recognized educational institution at which you study].
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Cyprus in an amount not in excess of \$2,000 (\$10,000 if you are a participant in a government sponsored program of study not exceeding one year) 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.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The \$2,000 treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

Czech Republic, Estonia, Latvia, Lithuania, and Slovak Republic

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying or

training at _____[insert the name of the university or other recognized educational institution at which you study]; or, I am temporarily present in the United States as a recipient of a grant, allowance, or award from _____[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award].

3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and _____[insert the name of the country] in the amount not in excess of \$5,000 (\$10,000 if you are a participant in a government sponsored program of study not exceeding one year) for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The \$5,000 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.

Egypt

1. 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 permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____[insert the name of the university or other recognized educational institution at which you study].
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Egypt in an amount not in excess of \$3,000 (\$10,000 if you are a participant in a government sponsored program of study

not exceeding one year) for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. I 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 \$3,000 treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date, and for such period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

France

1. I was a resident of France on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____*[insert the name of the accredited university, college, school or other educational institution]*.
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and France in an amount not in excess of \$5,000 for any taxable year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.
5. I arrived in the United States on _____*[insert the date of your last arrival in the United States before beginning study*

at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years.

Germany

1. I was a resident of Germany on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States as a student or business apprentice for the purpose of full-time study or training at _____*[insert the name of the accredited university, college, school or other educational institution]*; or, I am temporarily present in the United States as a recipient of a grant, allowance, or award from _____*[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award]*.
3. I will receive compensation for dependent personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Germany in an amount not in excess of \$9,000 for any tax year, provided that such services are performed for the purpose of supplementing funds otherwise available for my maintenance, education, or training.
4. I arrived in the United States on _____*[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of four tax years beginning with the tax year that includes my arrival date.

Iceland

1. I was a resident of Iceland on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of studying at _____*[insert the name of the university or other recognized educational institution at which you study]*; or, I am temporarily present in the United States to obtain professional training or to study or do research as a recipient of a grant, allowance, or award from _____*[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award]*.
3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Iceland in the amount not in excess of \$9,000 for any tax year.
4. I arrived in the United States on _____*[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

Indonesia

1. I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States solely for the purpose of study at _____*[insert the name of the university or other accredited educational institution at which you study]*; or, I am temporarily present in the United States as a recipient of a grant, allowance or award from _____*[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award]*.
3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption

from withholding of federal income tax under the tax treaty between the United States and Indonesia in an amount not in excess of \$2,000 for my tax year, provided such services are performed in connection with my studies or are necessary for my maintenance.

4. I arrived in the United States on _____*[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

Israel, Philippines and Thailand

1. I was a resident of the _____*[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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____*[insert the name of the university or other recognized educational institution at which you study]*.
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and _____*[insert the name of the country under whose treaty you claim exemption]* in an amount not in excess of \$3,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. I 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.

Korea, Norway, Poland, and Romania

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____[insert the name of the university or other recognized educational institution at which you study].
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and _____[insert the name of the country under whose treaty you claim exemption] in an amount not in excess of \$2,000 for any tax year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. I 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.

Morocco

1. I was a resident of Morocco on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying at _____[insert the name of

the university or other recognized educational institution at which you study].

3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Morocco in an amount not in excess of \$2,000 for any tax year. 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.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

Netherlands

1. I was a resident of the Netherlands on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of full time study at _____[insert the name of the recognized university, college, or school in the United States at which you study].
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and the Netherlands in an amount not in excess of \$2,000 for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. I am claiming this exemption only for such period of time as is reasonably necessary to complete my education.

Pakistan

1. I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant and would not otherwise be considered a resident alien for the relevant tax year.
2. 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].
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Pakistan in an amount not in excess of \$5,000 for any tax year.

Portugal and Spain

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying or training at _____[insert the name of the university or other recognized educational institution at which you study]; or, I am temporarily present in the United States as a recipient of a grant, allowance, or award from _____[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award].
3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and _____[Insert the name of the country] in the amount not in excess of \$5,000 for any tax year.
4. I arrived in the United States on _____[insert the date of

your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

Slovenia and Venezuela

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the primary purpose of studying or training at _____[insert the name of the university or other accredited educational institution at which you study or train].
3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and _____[insert the name of the country under whose treaty you claim exemption] in an amount not in excess of \$5,000 for any tax year.
4. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the taxable year that includes my arrival date, and for such period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

Trinidad and Tobago

1. I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded

the privilege of residing permanently in the United States as an immigrant.

2. I am temporarily present in the United States for the primary purpose of studying at _____ *[insert the name of the university or other accredited educational institution at which you study]*.
3. I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Trinidad and Tobago in an amount not in excess of \$2,000 (or, if you are securing training required to qualify you to practice a profession or a professional specialty, not in excess of \$5,000)

for any taxable year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.
5. I arrived in the United States on _____ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years.

Tunisia

1. I was a resident of Tunisia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the purpose of full-time study, training, or research at _____ *[insert the name of the university or other accredited educational institution at which you study, train, or perform research]*.
3. I will receive compensation for services performed in the United States. This compensation qualifies for exemption

from withholding of federal income tax under the tax treaty between the United States and Tunisia in an amount not in excess of \$4,000 for any tax year.

4. I arrived in the United States on _____ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

Appendix B—Tax Treaty Exemption Procedure for Teachers and Researchers

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 dependent personal services. For treaty countries not listed, attach a statement in a format similar to those for other treaties. See [chapter 8](#) for more information on withholding.

Belgium

1. I am a resident of Belgium. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am visiting the United States for the purpose of teaching or engaging in research at _____[insert the name of the educational or research institution at which you teach or perform research] for a period not exceeding two years. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Belgium.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning the teaching or research for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

Bulgaria

1. I was a resident of Bulgaria on the date of my arrival in the United States. I am not a U.S.

citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching or conducting research at _____[insert the name of the university, college, or other recognized educational or research institution]. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Bulgaria.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the 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.

China, People's Republic of

1. I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen.
2. I am visiting the United States for the primary 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], which is an accredited educational institution or scientific research institution. I will receive compensation for my teaching, lecturing, or research activities.
3. The teaching, lecturing, or research compensation received during the entire tax

year (or during the period from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the People's Republic of China. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, lecturer, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning your teaching, lecturing, or research activities]. The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

Commonwealth of Independent States

The treaty with former Union of Soviet Socialist Republics remains in effect for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

1. I am a resident of _____[insert the name of country]. I am not a U.S. citizen.
2. I have accepted an invitation by a governmental agency or institution in the United States, or by an educational or scientific research institution in the United States, to come to the United States for the primary purpose of teaching, engaging in research, or participating in scientific, technical, or professional conferences at _____[insert the name of governmental agency or institution, educational or scientific institution, or organization sponsoring professional conference], which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

3. The teaching, research or conference compensation received the entire tax year (or for the period from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the former Union of Soviet Socialist Republics. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, conference participant, or student before the date of my arrival in the United States.
4. Any research I perform will not be undertaken primarily for the benefit of a private person or commercial enterprise of the United States or a foreign trade organization of _____[insert the name of country], unless the research is conducted on the basis of intergovernmental agreements on cooperations.
5. 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.

Czech Republic and Slovak Republic

1. I was a resident of the _____[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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am visiting the United States for the primary purpose of teaching or conducting research at _____[insert the name of the educational or scientific institution], which is an accredited educational or research institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during

the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the _____ [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 as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____ [insert the date of your last arrival in the United States before beginning the teaching, research, or conference 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.

Egypt, Hungary, Korea, Philippines, Poland, and Romania

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by the U.S. government (or by a political subdivision or local authority thereof), or by a university or other recognized educational institution in the United States for a period not expected to exceed two years for the purpose of teaching or engaging in research at _____ [insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or for the portion of the year from _____ to _____) qualifies for exemption from withholding of federal tax under the tax

treaty between the United States and _____ [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____ [insert the date of your last arrival in the United States before beginning 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.

France

1. I was a resident of France on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by the U.S. government, or by a university or other recognized educational or research institution in the United States for the primary purpose of teaching or engaging in research at _____ [insert the name of the educational or research institution]. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or for the portion of the year from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and France. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

5. I arrived in the United States on _____ [insert the date of your last arrival in the United States before beginning 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.

Germany

1. I am a resident of Germany. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am a professor or teacher visiting the United States for the purpose of advanced study, teaching, or research at _____ [insert the name of the accredited university, college, school, or other educational institution or other research institution engaged in research for the public benefit]. I will receive compensation for my teaching, research, or study activities.
3. The compensation received during the entire tax year (or during the period from _____ to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Germany. I have not previously claimed an income tax exemption under that treaty for income received as a student, apprentice, or trainee during the immediately preceding period. (If, however, following the period in which the alien claimed benefits as a student, apprentice, or trainee, that person returned to Germany and resumed residence and physical presence before returning to the United States as a teacher or researcher, that person may claim the benefits of this treaty.)
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____ [insert the date of your last arrival into the United States before beginning the 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

1. 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 (and would not otherwise be considered a resident alien for the relevant tax year).
2. I am a professor or teacher visiting the United States for the purpose of teaching at _____ [insert the name of the other educational institution at which you teach], which is an educational institution. I will receive compensation for my teaching activities.
3. The teaching compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Greece. I have not previously claimed an income tax exemption under that treaty for income received as a teacher or student before the date of my arrival in the United States.
4. I arrived in the United States on _____ [insert the date of your last arrival in the United States before beginning the teaching services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of three years beginning on that date.

Iceland and Norway

Note. Residents of Iceland should use the following statement only if they are continuing to apply Article 21 of the old treaty because they were entitled to benefits under that article as of December 15, 2008. Under the new treaty, effective December 15, 2008, residents of Iceland will not be entitled to an exemption for income earned from teaching or conducting research in the United States.

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

2. I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States for a period not expected to exceed two years for the purpose of teaching or engaging in research at _____[insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation 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 this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will not be undertaken primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States 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.

India

1. I was a resident of India on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am visiting the United States for the purpose of teaching or conducting research at _____[insert the name of the university, college, or other recognized educational

institution]. I will receive compensation for my teaching or research activities.

3. The teaching or research compensation received during the entire tax year (or during the period from _____to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and India.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the 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.

Indonesia

1. I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by _____[insert the name of the university, college, school, or other similar educational institution] to come to the United States solely for the purpose of teaching or engaging in research at that educational institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Indonesia. I have not previously claimed an income tax exemption under that treaty for income received as a teacher or researcher before the date specified in the next paragraph.
4. I arrived in the United States on _____[insert the date of your 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.

5. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

Israel

1. I was a resident of Israel on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by the U.S. government (or by a political subdivision or local authority thereof), or by a university or other recognized educational institution in the United States, to come to the United States for a period not expected to exceed two years for the purpose of teaching or engaging in research at _____[insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or for the portion of the year from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Israel. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning 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.

Italy

Note. Residents of Italy should use the following statement only if they are electing to have the old treaty apply in its entirety for 2010. Otherwise, they should attach a statement that follows Article 20 of the U.S.–Italy treaty that entered into force on December 16, 2009.

1. I was a resident of Italy on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privilege of residing permanently in the United States as an immigrant.
2. I am 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.
3. The compensation received during the entire tax year (or during the period from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Italy. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will be undertaken in the general interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning 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.

Jamaica

1. I was a resident of Jamaica on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of

residing permanently in the United States as an immigrant.

2. I am visiting the United States for the purpose of teaching or conducting research for a period not expected to exceed two years at _____[insert the name of the 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.
3. The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Jamaica. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. 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 paid during a period of two years beginning on that date.

Luxembourg

1. I am a resident of Luxembourg. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by _____[insert the name of the educational institution at which you teach or perform research], which is a recognized educational institution, to come to the United States for the purpose of teaching or engaging in research at that institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Luxembourg. I have not

previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will not be carried on for the benefit of any person using or disseminating the results for purposes of profit.
5. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the teaching 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.

Netherlands

1. I am a resident of the Netherlands. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am visiting the United States for the purpose of teaching or engaging in research at _____[insert the name of the educational institution at which you teach or perform research] for a period not exceeding two years. I will receive compensation for my teaching or research activities.
3. The compensation received during the entire tax year (or during the period from _____ to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Netherlands. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will be undertaken in the public interest and not primarily for the benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available for compensation received during a

period of two years beginning on that date only if my visit does not exceed 2 years.

Pakistan

1. I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant and would not otherwise be considered a resident alien for the relevant tax year.
2. 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.
3. The teaching compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and 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.
4. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the teaching services for which exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

Portugal

1. I was a resident of Portugal on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by _____[insert the name of the university, college, school, or other similar educational institution] to come to the United States solely for the purpose of teaching or engaging in research at that educational institution. I will receive compensation for my

teaching or research activities.

3. The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Portugal. I have not previously claimed an income tax exemption under that treaty for income received as a teacher or researcher before the date specified in paragraph 5.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your 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.

Slovenia and Venezuela

1. 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. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am temporarily present in the United States for the purpose of teaching or carrying on research at _____[insert the name of the educational or research institution], which is a recognized educational or research institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____ to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and _____[insert the name of the country under whose treaty you claim exemption]. I have not previously claimed

an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the general interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning 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. In no event have I claimed an exemption under this treaty for income received as a teacher or researcher for more than five years.

Thailand

1. I was a resident of Thailand on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I am visiting the United States for the purpose of teaching or engaging in research at _____[insert the name of the educational or research institution at which you teach or perform research] for a period not exceeding two years. I will receive compensation for my teaching or research activities.
3. The compensation received during the entire tax year (or during the period from

_____to _____) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Thailand. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

4. Any research I perform will be undertaken in the public interest and not primarily for the benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival into the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

Trinidad and Tobago

1. I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.
2. I have accepted an invitation by the U.S. government, or by a university or other 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

education 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.

3. The teaching or research compensation received during the entire tax year (or for the period from _____to _____) 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.
4. Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.
5. I arrived in the United States on _____[insert the date of your last arrival in the United States before beginning 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.

United Kingdom

1. I was a resident of the United Kingdom on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privilege of residing permanently in the United States as an immigrant.

2. I am a professor or teacher visiting the United States for a period of not more than two years for the purpose of teaching or engaging in research at _____[insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.
3. The teaching or research compensation received during the entire tax year (or during the period from _____to _____) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the United Kingdom. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.
4. Any research I perform will be undertaken in the public interest and not primarily for the benefit of any private person or persons.
5. 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.



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