

Instructions for Form W-8A



Department of the Treasury
Internal Revenue Service

(October 1998)

Foreign Person's Claim of Income Effectively Connected With the Conduct of a Trade or Business Within the United States

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

General Instructions

Purpose of form. Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. However, no withholding is required on income (other than personal services income and income subject to withholding under section 1445 (dispositions of U.S. real property interests) or section 1446 (foreign partner's share of effectively connected income)) that is, or is deemed to be, effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year.

If you receive income from sources within the United States, you must provide Form W-8A to:

- Establish that you are a foreign person;
- Claim that you are the beneficial owner of the income for which Form W-8A is being provided; and
- Claim that the income is effectively connected with the conduct of a trade or business within the United States.

If you expect to receive both income that is effectively connected and income that is not effectively connected from a withholding agent, you must provide Form W-8A for the effectively connected income and Form W-8 (or W-8B or W-8C) for income that is not effectively connected.

Note: You may use Form W-8A to claim that income from a notional principal contract is **not** effectively connected with the conduct of a trade or business in the United States. See the instructions to **line 9** of this form.

If you are a foreign partnership with effectively connected income, you may submit Form W-8A without attaching Forms W-8 or other documentation for your foreign partners.

A withholding agent or payer of the income may rely on a properly completed Form W-8A to treat the payment associated with the Form W-8A as a payment to a foreign person who beneficially owns the amounts paid and is entitled to an exemption from withholding because the income is effectively connected with the conduct of a trade or business within the United States.

Failure by a beneficial owner to provide a Form W-8A when requested may lead to withholding of a 30% or 31% amount from the payment. It may also lead to a 30% or 31% tax assessment on the withholding agent or payer as well as interest and penalties for lack of compliance.

Who must file. You must give Form W-8A to the withholding agent or payer if you are a foreign person and you are the beneficial owner of U.S. source income that is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States.

DO NOT use Form W-8A if:

- You are a nonresident alien individual who claims exemption from withholding on compensation for independent (and certain dependent) personal services performed in the United States. Instead, provide **Form 8233**, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien or **Form W-4**, Employee's Withholding Allowance Certificate.
- You are claiming an exemption from withholding for a reason other than a claim that the income is effectively connected with the conduct of a trade or business within the United States. For example, if you are a foreign person and the beneficial owner

of U.S. source income that is not effectively connected with a U.S. trade or business and are claiming a reduced rate of withholding as a resident of a foreign country with which the United States has an income tax treaty in effect, do not use this form. Instead, provide Form W-8 or W-8B.

- You are claiming an exemption from withholding under an income tax treaty because your income is business profits (or industrial and commercial profits) not attributable to a permanent establishment within the United States. Instead, provide Form W-8 or W-8B.
- You are acting as an intermediary (i.e., acting not for your own account or for that of your partners, but for the account of others as an agent, nominee, or custodian). Instead, provide Form W-8C.
- You are a foreign withholding partnership. A foreign withholding partnership is, generally, a foreign partnership that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for each partner's distributive share of income subject to withholding that is paid to the partnership. Instead provide Form W-8C.
- You are a foreign corporation that is a personal holding company receiving compensation described in section 543(a)(7). Such compensation is not exempt from withholding as effectively connected income, but may be exempt from withholding on another basis.
- You are a foreign partner in a domestic partnership and the income you receive from the partnership is effectively connected with the conduct of a trade or business within the United States. See section 1446. A Form W-8, Form W-8B, or W-8C is required, however, for income that is not effectively connected.

Giving Form W-8A to the withholding agent. Give Form W-8A to the person who is requesting it from you. Generally, this will be the person from whom you receive the payment or who credits your account. Give Form W-8A to the person requesting it before the payment is made to you or credited to your account. If you do not provide this form, the withholding agent may have to withhold at a 30% (nonresident alien withholding) or 31% (backup withholding) rate. A separate Form W-8A must be given to each withholding agent.

DO NOT send Form W-8A to the IRS.

Change in status. If a change in circumstances makes any information on the Form W-8A you have submitted incorrect, you must notify the withholding agent or payer within 30 days of the change in circumstances and you **must** file a new Form W-8A. For example, if during the taxable year any part or all of the income is no longer effectively connected with the conduct of a trade or business within the United States, your Form W-8A is no longer valid. You must notify the withholding agent and provide Form W-8, W-8B, or Form W-8C.

If you become a citizen or a resident of the United States after you submit Form W-8A, you are no longer subject to the 30% withholding rules applicable to foreign persons. You must notify the withholding agent or payer within 30 days of becoming a U.S. citizen or resident. For more information, see the **Instructions for Form W-9**.

Definitions

Beneficial owner. The beneficial owner is the person who is the owner of the income for tax purposes and who beneficially owns the income. Thus, a person receiving income as a nominee,

custodian or agent for another person is not the beneficial owner of the income. Generally, a person is treated as the owner of the income to the extent it is required under U.S. tax principles to include the amount paid in gross income on a tax return. A person who is the owner of income is considered the beneficial owner of that income unless that person is a conduit entity whose participation in a transaction can be disregarded. Generally, the principles of section 7701(l) and Regulations section 1.881-3 apply to determine if a person is a conduit entity.

The beneficial owners of income paid to a partnership are those persons who, under U.S. tax principles, are the owners of the income for tax purposes in their separate or individual capacities and who beneficially own the income. However, it is not necessary for a foreign partner in a foreign partnership that is engaged in a trade or business within the United States to give a Form W-8A to a withholding agent if the foreign partnership has provided a Form W-8A.

Effectively connected income. Generally, when a foreign person engages in a trade or business within the United States, all income from sources within the United States other than fixed or determinable annual or periodic (FDAP) income (e.g., interest, dividends, rents, and certain similar amounts) is considered income effectively connected with a U.S. trade or business. FDAP income may or may not be effectively connected with a U.S. business. Factors to be considered to determine whether FDAP income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include whether:

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

There are special rules for determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business. See section 864(c)(4)(B)(ii) and Regulations section 1.864-4(c)(5)(ii) for more information.

Effectively connected income, after allowable deductions, is taxed at graduated rates applicable to U.S. citizens and residents, rather than at the 30% nonresident alien withholding rate. You must report this income on an annual tax return as follows:

- **Individuals**—Use **Form 1040NR**, U.S. Nonresident Alien Income Tax Return.
- **Corporations**—Use **Form 1120-F**, U.S. Income Tax Return of a Foreign Corporation.
- **Partnerships**—Use **Form 8804**, Annual Return for Partnership Withholding Tax (Section 1446).
- **Trusts or estates**—Use **Form 1041**, U.S. Income Tax Return for Estates and Trusts.

Foreign person. A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a qualified intermediary. Generally, a payment to a U.S. branch of a foreign person is a payment to a foreign person.

Nonresident alien individual. Any individual who is not a citizen or resident of the United States is a nonresident alien individual. An alien individual meeting either the "green card test" or the "substantial presence test" for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien. Additionally, an individual who is a resident of a foreign country under the residence article of an income tax treaty, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual.

Note: *Even though a nonresident alien individual married to a U.S. citizen or resident alien may choose to be treated as a resident alien for certain purposes (e.g., filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes on all income except wages.*

See **Pub. 519**, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

Disregarded entity. A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner.

Withholding agent. Any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches of certain foreign banks and insurance companies. Generally, the person who pays (or causes to be paid) the item of U.S. source income to the foreign person (or to its agent) must withhold.

Specific Instructions

Part I

Line 1. Enter your name. If you are a disregarded entity, enter the name of your foreign single owner.

Note: *If you own the income or account jointly with one or more other persons, the income or account will be treated by the withholding agent as owned by a foreign person only if Forms W-8A are provided by all of the owners. If a withholding agent or payer who does not receive a Form W-8A from all of the joint owners or if he/she receives a Form W-9 from any one of the joint owners, he/she must treat the payment as made to U.S. persons.*

Line 2. Check the box that applies. By checking a box, you are representing that you qualify for this classification. You must check the box that represents your classification (e.g., corporation, partnership, trust or estate, etc.) under U.S. tax principles. If you are a disregarded entity, you must check the disregarded entity box. Do not check the box that describes the status of your single owner.

Line 3. Enter the country of incorporation if you are a corporation. If you are another type of entity, enter the country under whose laws you are created, organized, or governed.

Line 4. Your permanent residence address is the address in the country where you claim to be a resident for that country's income tax. Do not show the address of a financial institution, a post office box, or an address used solely for mailing purposes. If you are an individual who does not have a tax residence in any country, your permanent residence is where you normally reside. If you are not an individual and you do not have a tax residence in any country, the permanent residence address is where you maintain your principal office.

Line 5. Enter your business address in the United States. Do not show a post office box.

Line 6. You must provide a U.S. taxpayer identification number (TIN) for this form to be valid. A U.S. taxpayer identification number is a Social Security Number (SSN), Employer Identification Number (EIN), or IRS Individual Taxpayer Identification Number (ITIN). Check the appropriate box for the type of taxpayer identification number you are providing.

Contact a Social Security Administration (SSA) office to find out if you are eligible to get an SSN. If you do not have an SSN but are eligible to get one, apply on **Form SS-5**, Application for a Social Security Card. If you do not have, **and are not eligible to obtain**, an SSN, you may apply for an ITIN using **Form W-7**, Application for IRS Individual Taxpayer Identification Number.

If you are other than an individual (including a foreign estate or trust), or you are an individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, use **Form SS-4**, Application for Employer Identification Number, to obtain an EIN. If you are a foreign wholly-owned entity, enter the TIN of your foreign single owner.

Line 7. If your country of residence for tax purposes has issued you a tax identifying number, enter it here. For example, if you are a resident of Canada, enter your Social Insurance Number.

Line 8. List all account numbers with the same withholding agent or payer unless the withholding agent or payer requires you to submit a separate Form W-8A for each account.

Line 9. You must specify the items of income that are effectively connected with the conduct of a trade or business within the United States. You will generally have to provide Form W-8, Form W-8B or Form W-8C for those items from sources within the United States that are not effectively connected with the conduct of a trade or business within the United States. See Form W-8 and its instructions for more details.

Note: *If you receive income from a notional principal contract that is not effectively connected with the conduct of a trade or business within the United States, state the following on line 9: "I certify that the income specified on this form is income from a notional principal contract and is not effectively connected with the conduct of a trade or business within the United States."*

Part II

Signature. Form W-8A must be signed and dated by the beneficial owner of the income, or, if the beneficial owner is not an individual, by an authorized representative or officer of the beneficial owner. If Form W-8A is completed by an agent acting under a duly authorized power of attorney, the form must be accompanied by the power of attorney in proper form or a copy thereof specifically authorizing him to represent his principal in making, executing and presenting the form. Form 2848 may be used for this purpose. The agent, as well as the beneficial owner, may incur liability for the penalties provided for an erroneous, false, or fraudulent form.

Instructions for the Withholding Agent or Payer

Responsibilities of the Withholding Agent. Your receipt of Form W-8A serves as a representation by the payee or beneficial owner that all the income with which this form is associated is effectively connected with the conduct of a trade or business within the United States. Therefore, if a beneficial owner provides you with a Form W-8A, you may treat all of the U.S. source income identified on line 9 (other than certain income from notional principal contracts) paid to that beneficial owner as effectively connected with the conduct of a trade or business within the United States. Such income must be reported on **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding.

If you pay items of income that are not listed in line 9 as effectively connected with the conduct of a trade or business within the United States, such as payments of interest, dividends, rents, royalties, commissions, nonemployee compensation, or certain other amounts (including broker and barter exchange transactions, and certain payments made by fishing boat operators), you are generally required to obtain from the payee either a Form W-9 with a TIN or a Form W-8, W-8A, W-8B, or W-8C. If you receive a Form W-9 with a TIN, you must generally make an information return on Form 1099. If you receive a Form W-8, W-8A, W-8B, or W-8C, you are exempt from reporting on Form 1099, but you may have to file Form 1042-S and withhold under the rules applicable to payments made to foreign persons. See the **Instructions for Form 1042-S** for more information.

Generally, you can rely on a Form W-8, Form W-8A, Form W-8B, or Form W-8C only to the extent you can reliably associate a payment with it. You can reliably associate a payment with a Form W-8, Form W-8A, Form W-8B, or Form W-8C if, for that payment, you hold a valid form, you can reliably determine how much of the payment relates to the form, and you have no actual knowledge or reason to know that any of the information or certifications on the form are incorrect.

If you do not receive Form W-8, Form W-8A, Form W-8B, Form W-8C, or Form W-9, or if you cannot reliably associate the payment with a Form W-8, Form W-8A, Form W-8B, or Form W-8C, you must determine whether a payment should be treated as made to a U.S. person or to a foreign person. Generally, you must rely on the presumption rules set forth in Regulations sections 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d), 1.1441-5(e), 1.1441-9(b)(3), and 1.6049-5(d) if a payee required to provide Form W-8, Form W-8A, Form W-8B, Form W-8C, or Form W-9 does not provide the form or the form is incorrect. Generally, the payee is treated as a U.S. person and you are required to report to the IRS on Form 1099 and apply 31% backup withholding.

Note: *Certain payees known as "exempt recipients" are not required to provide a Form W-9 and are exempt from backup withholding. If you make a payment to an exempt recipient, you do not have to obtain a Form W-9 and you have no Form 1099 reporting requirement. However, if the exempt recipient has an employer identification number (EIN) beginning with "98" or shows a foreign mailing address, the name of the payee indicates that it is on the per se corporation list in Regulations section 301.7701-2(b)(8)(i), or the payment is made outside of the United States, treat the recipient as a foreign person. In that case, 30% withholding may apply. See the Instructions for Requester of Form W-9 for a list of exempt recipients.*

Special rules. You may not treat an amount as income effectively connected with the conduct of a trade or business within the United States unless the beneficial owner gives you a valid Form W-8A. However, there are exceptions for income paid on notional principal contracts and payments made to certain U.S. branches.

Notional principal contracts. Withholding at a 30% rate is not required on amounts paid under the terms of a notional principal contract whether or not a Form W-8A is provided. A payment made in the United States to a foreign person on a notional principal contract is effectively connected with the conduct of a trade or business within the United States unless the beneficial owner specifically states on line 9 of Form W-8A that the income is not effectively connected. A payment to a foreign financial institution is also not treated as effectively connected with the conduct of a trade or business within the United States if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swaps and Derivatives Association Agreement) or in the confirmation on the particular notional principal contract transaction that the counterparty is a U.S. person or a non-U.S. branch of a foreign person. If the income is effectively connected, it is reportable by the withholding agent on Form 1042-S.

Payments to certain U.S. branches. A payment to a U.S. branch of certain foreign persons is presumed to be effectively connected with the conduct of a trade or business within the United States even if the foreign person (or its U.S. branch) does not give you a Form W-8A. The U.S. branches to which this presumption applies are:

- A U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board; and
- A U.S. branch of a foreign insurance company required to file an NAIC annual statement with the insurance department of a state, a territory, or the District of Columbia.

A payment to a U.S. branch described above, however, is not treated as effectively connected income if the branch provides a Form W-8C on which it indicates that the income it receives is not effectively connected with the conduct of a trade or business in the United States and that it is using Form W-8C either to transmit appropriate documentation for persons for whom the branch receives the payment or as evidence of its agreement with the withholding agent to be treated as a U.S. person. If Form W-8C is not provided and the income received by the branch is not effectively connected income, then the branch must withhold, whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity.

Requesting Form W-8A. You must request Form W-8A from any foreign persons or organizations to which you are making a payment if they are the beneficial owners of the income and they claim that the income is effectively connected with the conduct of a trade or business within the United States. You must do so before making a payment so that you hold the form when making the payment.

When you receive a completed Form W-8A, you must review it for completeness and accuracy. You may rely on the information and certifications provided on the form (including the status of the beneficial owner as an individual, corporation, etc.) unless you have actual knowledge or reason to know that the information is untrue. You have reason to know that the information is untrue or incorrect if you have knowledge of relevant facts or statements contained in the withholding certificate or other documentation that would cause a reasonably prudent person in the position of the withholding agent to question the claims made. For example, if you have information in your records that contradicts information provided on the form, you may not rely on the form. If you know or have reason to know that any information is untrue or incorrect, you must obtain a new Form W-8A or other appropriate documentation.

If you do not receive a valid W-8A and do not withhold, you will generally be liable for the tax imposed under section 1461 without the benefit of a reduced rate unless you can demonstrate to the District Director or the Assistant Commissioner (International) that:

1. The income is effectively connected with the conduct of a trade or business within the United States;
2. The income was included in the Federal income tax return of the beneficial owner; and
3. The proper amount of tax, if any, was paid to the IRS.

Proof of payment may be established on the basis of a Form 4669 showing the amount of tax, if any, actually paid by the beneficial owner of the income. You may be liable for interest and penalties whether or not any tax was due.

Due diligence requirements. You are responsible for ensuring that all information relating to the type of income for which Form W-8, W-8A, W-8B, or W-8C is submitted is complete and appears accurate.

Expiration of Form W-8A. Generally, a Form W-8A will remain in effect for a 3-year period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8A signed on September 30, 1999, remains valid through December 31, 2002. Upon the expiration of the 3-year period, you must obtain a new Form W-8A.

Do not send Form W-8A to the IRS. Instead, keep Form W-8A in your records for as long as it may be relevant to the determination of your tax liability under section 1461. Use the information on Form W-8A to prepare **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding.

Substitute Forms W-8

You may develop and use your own Form W-8A (a substitute Form W-8A) if its content is substantially similar to the IRS's official Form W-8A (to the extent required by these instructions) and it satisfies certain certification requirements. You may develop and use a substitute Form W-8A that is in a foreign language, provided that the substitute form also provides the English version of the statements and information otherwise required to be included in the substitute form. You may combine Forms W-8, W-8A, W-8B, and W-8C into a single substitute form.

You may incorporate a substitute Form W-8A into other business forms you customarily use, such as account signature cards, provided the required certifications are clearly set forth.

You may not:

1. Use a substitute Form W-8A that requires the payee, by signing, to agree to provisions unrelated to the required certifications; or

2. Imply that a person may be subject to 30% withholding or 31% withholding unless that person agrees to provisions on the substitute form that are unrelated to the required certifications.

Content of substitute form. The substitute Form W-8A must contain all of the information required in Part I, other than lines 7 or 8.

The certifications in Part II of Form W-8A must be included in a substitute form.

A substitute Form W-8A is valid only if it contains the same penalties of perjury statement as the official form and the required signature. However, if the substitute form is contained in some other business form, the words "information on this form" may be modified to refer to that portion of the business form containing the substitute Form W-8A information. The design of the substitute form must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained in the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to establish your status as a foreign person and that the income for which the form is provided is effectively connected with the conduct of a trade or business within the United States."

The substitute form must contain instructions that adequately inform the beneficial owner what is meant by permanent residence address and beneficial ownership. You are, however, encouraged to provide all relevant instructions, especially if the payee requests them.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to receive exemption from withholding on compensation for independent (and certain dependent) personal services, you are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, XX min.; **Learning about the law or the form**, XX min.; **Preparing and sending the form to IRS**, XX min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, give it to your withholding agent.