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Certification for Reduced Tax Rates in Tax Treaty Countries



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What's New

Form 8802. Beginning July 5, 2004, you must file Form 8802, Application for United States Residency Certification, to request U.S. residency certification.

Introduction

Many foreign countries withhold tax on certain types of income paid from sources within those countries to residents of other countries. The rate at which any country withholds tax on each type of income is generally set by that country's statutes. Generally, tax treaties between the United States and foreign countries reduce the statutory tax rate (sometimes to zero) for income paid to residents of the United States. This reduced rate is referred to as the treaty-reduced rate.

Upon receiving certification by the U.S. Government that an individual or entity is a U.S. resident, some countries will allow withholding of tax at the treaty-reduced rate. Other countries always withhold tax at their statutory tax rate and will refund the amount that is more than the treaty-reduced rate on receiving proof of U.S. residency.

To apply for certification, you must file Form 8802. This publication is a supplement to the instructions for Form 8802.

This publication discusses:

- Eligibility for tax treaty benefits,
- Proof of U.S. residency,
- How to apply for certification (including when to seek competent authority assistance), and
- Penalties of perjury statements.

Comments and suggestions. Comments about this publication and your suggestions for future editions should be sent to:

Internal Revenue Service
Office of Tax Treaty
SE:LM:IN:TT:1
1111 Constitution Avenue, NW
Washington, DC 20224
U.S.A.

Useful Items

You may want to see:

Publication

- 54** Tax Guide for U.S. Citizens and Resident Aliens Abroad
- 519** U.S. Tax Guide for Aliens
- 901** U.S. Tax treaties

Form (and instructions)

- 8802** Application for United States Residency Certification

Eligibility for Benefits Under Tax Treaties

The United States has income tax treaties with many countries. Generally, treaty benefits are available only to residents of the United States. In addition, to be eligible for benefits, a U.S. resident must be the beneficial owner of the payment. In the case of an entity such as a corporation that is a U.S. resident, it must meet the requirements of a limitation on benefits article, if any, in a treaty.



The United States cannot certify that a limitation on benefits article has been met or that an individual or other entity is the beneficial owner of an item of income. If asked by the foreign withholding agent, the individual or other entity must document that these requirements have been met.

Many U.S. treaty partners require that the U.S. Government certify that the person claiming the benefits is a resident of the United States. The United States provides this residency certification on a computer-generated letter from the Internal Revenue Service (IRS). This letter is Form 6166, Certification of United States Residency.



You should examine the specific treaty articles to find out if any tax credit, tax exemption, reduced rate of tax, or other treaty benefit or safeguard applies.

Publication 901, U.S. Tax Treaties, gives a quick reference to tax treaty provisions between the United States and tax treaty countries.

Proof of U.S. Residency

In general, under an income tax treaty, an individual or other entity is a resident of the United States if the individual or other entity is subject to U.S. tax by reason of its residence, citizenship, place of incorporation, or other similar criteria. U.S. residents are subject to tax in the United States on their worldwide income. An entity is considered subject to tax on its worldwide income even if it is an entity that is statutorily exempt from tax, such as a pension fund or charity. Similarly, individuals are considered subject to tax even if their income is less than the amount that would require that they file an income tax return. An entity is not subject to tax, however, if the entity is a partnership, grantor trust, or other fiscally transparent entity. In such instances, the partner or owner of such entity may be entitled to certification based on the status of the partner or owner.

In general, residency certification is granted only when the IRS can verify that the individual or entity claiming residence has, for the year for which certification is requested, either:

- Filed an appropriate return, for example, a Form 1120 for a domestic corporation, or
- In the case of a year for which a return is not yet due, filed a return for the most recent year for which a return was due.

Procedures for Certification

The United States will only certify that, for the certification year (the calendar year for which certification is requested), you or the entity was a resident for purposes of U.S. taxation or, in the case of a fiscally transparent entity, that the entity, when required, filed an information return and its partners, members, or other owners filed income tax returns as residents of the United States.

Certification forms. Most treaty countries that require certification provide special forms for that purpose. These forms contain questions that you must answer followed by a statement to be completed by the country of residence certifying that you or the entity is a resident of that country.

The IRS generally does not certify U.S. residency by using forms from other countries. The IRS requires that you submit a completed Form 8802, which is used to determine eligibility for certification.

If, after processing the Form 8802, the IRS determines that you or the entity is eligible for U.S. residency certification, you will receive Form 6166, a computer-generated letter. This letter is the certification. It is on stationery bearing the U.S. Treasury Department letterhead, the U.S. Government watermark, and the copied signature of the Director, Customer Account Services (the Director), Philadelphia Accounts Management Service Center.

You can send Form 6166 to the foreign country to claim treaty benefits. Along with Form 6166, you should enclose the completed foreign country's certification form, if any.



If you are applying to the United Kingdom or Spain for treaty benefits, see the special procedures in the Form 8802 instructions.

Sending certification to a third party. If you request that Form 6166 be mailed to a third party (an appointee), you must provide written authorization for the IRS to release the certification to the third party. If the certification is for a partnership, disregarded entity, S corporation (including a QSSS), simple trust, grantor trust, or common trust fund, each partner/shareholder/owner/participant/beneficiary must also provide such written authorization.

Form 8821, Taxpayer Information Authorization, is used to authorize disclosure of taxpayer information to a designee of the taxpayer.



Form 8821 cannot be used to authorize a third party to sign Form 8802 on your behalf.

Lines 3b and 3c of Form 8802 can, in certain circumstances, be used in place of Form 8821 to appoint a third party to receive and inspect Form 6166.

Form 8802 does not authorize the third party to represent you before the IRS. If you are interested in having a third party represent you before the IRS, you must complete Form 2848, Power of Attorney and Declaration of Representative. Form 8802 applicants should note that only those individuals who are recognized to practice before the IRS can be authorized to

represent the applicant. The only individuals who can be recognized representatives are the following.

- Attorneys.
- Certified public accountants.
- Enrolled agents.
- Enrolled actuaries (who have limited authority to practice before the IRS).
- Other individuals (based on a relationship or special status with the taxpayer).

For more information, see Publication 947, Practice Before the IRS and Power of Attorney.

When to seek competent authority assistance. If the request for certification is denied and you believe that you are entitled to treaty benefits under a specific treaty article, you can request assistance from the U.S. competent authority using the procedures described in Revenue Procedure 2002-52. A request for competent authority assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the foreign competent authority to ensure consistent treatment by the United States and the applicable treaty partner.

The U.S. competent authority does not make unilateral determinations with respect to residency. Residency determinations are made by mutual agreement between the two competent authorities.

The U.S. competent authority cannot consider requests involving countries with which the United States does not have a tax treaty.



Your request for competent authority assistance should be addressed to:

Internal Revenue Service
Director, International
SE:LM:IN:T:1
1111 Constitution Avenue, NW
Washington, DC 20224.

Additional information on requesting competent authority assistance is found in Revenue Procedure 2002-52, C.B. 242. You can find Revenue Procedure 2002-52 on page 242 of Internal Revenue Bulletin 2002-31 at www.irs.gov/pub/irs-irbs/irb02-31.pdf.

General Application Procedures

To apply for U.S. residency certification, you must complete and sign Form 8802. You can apply for certification for the current and any prior calendar year. Only certain individuals have the authority to sign Form 8802. Generally, these individuals may authorize a representative to sign the Form 8802 on their behalf; they must use Form 2848 to do this. Custodians of accounts cannot be representatives and cannot be authorized to sign Form 8802 unless they are recognized to practice before the IRS. See Table 1 for a list of those who have authority to sign Form 8802.

Table 1. Who Has Authority To Sign Form 8802

IF the applicant is...	THEN the individual with authority to sign Form 8802 is...
an individual	the individual.
a married couple	both the husband and the wife.
a partnership	any partner or partners duly authorized to act for the partnership (general partner or tax matters partner). The partner must certify that he or she has such authority.
an S Corporation	any corporate officer, for example, president, vice president, treasurer, chief accounting officer, etc., duly authorized by the corporation to bind the corporation in accordance with applicable state law.
a trust, common trust fund, grantor trust or simple trust	the fiduciary (trustee, executor, administrator, receiver, or guardian).
an estate	the personal representative (executor, executrix, administrator, administratrix, or anyone who is in charge of the property of the decedent).
a corporation	any corporate officer, for example, president, vice-president, treasurer, chief accounting officer, etc., duly authorized by the corporation to bind the corporation in accordance with applicable state law.
an employee benefit plan or trust	any organization officer, for example, president, vice-president, treasurer, chief accounting officer, etc. duly authorized by the plan or trust to bind the plan or trust in accordance with applicable state law.
an exempt organization	any organization officer, for example, president, vice-president, treasurer, chief accounting officer, etc., duly authorized by the organization to bind the organization in accordance with applicable state law.
a partnership under an IRC 761(a) election	any partner or partners duly authorized to act for the partnership. The partner must certify that he or she has such authority.
a financial asset securitization investment trust (FASIT)	any corporate officer, for example, president, vice-president, treasurer, chief accounting officer, etc., duly authorized by the owner corporation to bind the owner corporation in accordance with applicable state law.
a governmental organization	an officer of the governmental organization with authority in the course of his or her official duties to bind the organization.



You must send the Form 8802 and all required statements and documentation to:

Internal Revenue Service
Philadelphia Accounts Management Center
U.S. Residency Certification Request
P.O. Box 16347
Philadelphia, PA 19114-0447
U.S.A.

You can also fax your request to the Philadelphia Service Center at 215-516-1035 or 215-516-3412. These are not toll-free numbers.

Certification requests are generally processed within 30 days from the date received. When this is not possible, you should receive notification of the delay. If you do not receive either the certification, a notification of the delay, or a denial of certification within 30 days from the time the request was mailed or faxed to the IRS, contact the certification unit at 215-516-7135. This is not a toll-free number.

Certification of U.S. residency. The United States is certifying that, for the certification year, the applicant was a U.S. resident for purposes of U.S. taxation. In the case of a fiscally transparent entity, the United States is certifying that the entity filed any required information returns and its partners, members, or other owners filed income tax returns as residents of the United States. In general, residency certification is

granted only when the IRS can verify that the applicant has, for the certification year, either:

- Filed an appropriate return, or
- In the case of a year for which a return is not yet due, filed a return for the most recent year for which a return was due.

If the applicant was not required to file a U.S. return for the tax periods on which certification will be based, other evidence of U.S. residency may be required. For more information, see the instructions for Form 8802, line 5.

Penalties of Perjury Statements

If the certification request is for the current year and/or the prior year, and a return is not yet due or is not required, you may be required to submit a penalties of perjury statement with Form 8802. You can enter the statement in the space provided under line 11 of Form 8802 or attach the statement to the form.



Penalties of perjury statements submitted independently of Form 8802 must have a valid signature. See Table 1.

Requests for current year certification. If you are requesting certification for the current

year, and the required return for the current year is not due and has not been filed, you must include a penalties of perjury statement that attests to the applicant's current residency status.

Table 2 lists the various statements that must be made under penalties of perjury when Form 8802 is submitted for the current year.

If the prior year return has not been filed or a return was not required, the penalties of perjury statement must also address your residency status in the prior year. For example, if the current year is 2004, the penalties of perjury statement must include the following: _____

[insert applicant's name and TIN] was a U.S. resident for 2003 and will continue to be throughout the current year.

Note. This statement is required of all applicants in this situation. In some instances, the applicant will not have been a resident for the prior year and therefore will only attest to residency status in the current year.

Foreign partnership not required to file Form 1065. Generally, foreign partnerships are not required to file Form 1065, U.S. Return of Partnership Income, if they do not have gross income that is effectively connected to the conduct of a trade or business within the United States or do not have income derived from sources within the United States.

However, foreign partnerships that have U.S. partners can apply for residency certifica-

tion for their U.S. partners. Applications must include the following.

- The name and taxpayer identification number (TIN) of any partner for which certification is requested.
- The type of U.S. return filed by any partner for which certification is requested.
- Authorization (for example, Form 8821) from all partners authorizing the requestor to receive their individual tax information.
- Authorization from the partnership, unless the requestor is a partner in the partnership.
- If certification is requested for the current year, all partners must provide a penalties of perjury statement. See Table 2.

The foreign partnership is also required to submit a statement signed under penalties of perjury that the partnership is not required to file Form 1065 under Regulation section 1.6031(a)-1(b).

When a partnership or pass-through entity is listed as a partner in the foreign partnership, the applicant must also provide a list of those partners, shareholders, participants, etc. and written authorization from those individuals explicitly allowing the third party requestor to receive the partner's tax information.

Disregarded entity (DRE). When the certification is for a DRE that is newly formed, was established before 2001, or was established by default (no Form 8832, Entity Classification Election, was filed), the following statement must be provided under penalties of perjury:

This certifies that:

1. _____ [insert name and TIN of corporation, partnership, or individual] trading as _____ [insert name of limited liability company] is a single-owner limited liability company that is treated as a disregarded entity for U.S. income tax purposes,
2. _____ [insert name of corporation, partnership, or individual] is the single owner of _____ [insert name of limited liability company], and
3. as such, _____ [insert name of corporation, partnership, or individual] is required to take into account all the income, gain, loss, deductions and credits of _____ [insert name of limited liability company] on (its/his/her) U.S. federal income tax or information return.

This certification is given under penalties of perjury and to the best of my knowledge and belief, the statements herein are true, correct, and complete.

FASIT. When the certification is for a FASIT that is not required to file a U.S. tax return, the following statement must be provided by the corporate owner of the FASIT.

_____ [insert name and employer identification number (EIN) of corporate owner] is the corporate owner of _____ [insert name and TIN of FASIT], which is treated as a FASIT under IRC section 860H, and as such the _____ [insert corporate owner] reports all of _____ [insert name of FASIT]'s income, gain, loss, deductions, and credits on _____ [insert name of corporate owner]'s Form 1120, U.S. Corporate Income Tax Return.

Spain. Applicants from Spain must include a statement, in addition to the applicable statement from Table 2, that the applicant does not have a permanent address in Spain.

Table 2. Current Year Penalties of Perjury Statements

IF the applicant is...	THEN the Form 8802 penalties of perjury statement must include...
an individual	a statement from the individual stating: _____ [insert name of individual] _____ [insert TIN] is a U.S. resident and will continue to be throughout the current tax year.
a partnership	<ul style="list-style-type: none"> • a statement from each individual partner for which certification is requested stating: _____ [insert name of partner] _____ [insert TIN] is a U.S. resident and will continue to be throughout the current tax year, and • a statement from a general partner stating: _____ [insert name of partnership] _____ [insert EIN] has filed its required return and the entity classification has not changed since the return was filed.
an S corporation	<ul style="list-style-type: none"> • a statement from each individual shareholder for which certification is requested stating: _____ [insert name of shareholder] _____ [insert TIN] is a U.S. resident and will continue to be throughout the current tax year, and • a statement from an officer of the corporation with the authority to legally bind the corporation stating: _____ [insert name of S corporation] _____ [insert EIN] has filed its required return and the entity classification has not changed since the return was filed.
a common trust fund, domestic nongrantor trust, or grantor trust	<ul style="list-style-type: none"> • a statement from each individual participant/beneficiary/owner stating: _____ [insert name] _____ [insert TIN] is a U.S. resident and will continue to be throughout the current tax year, and • a statement from the trustee stating: _____ [insert name of trust] _____ [insert EIN] has filed its required return and the entity classification has not changed since the return was filed. <p>Note: When the participant, beneficiary, or owner, is other than an individual, use the statement that corresponds to the type of entity.</p>
a trust	a statement from the trustee stating: _____ [insert name of trust] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year.
a corporation	a statement from an officer of the corporation with the authority to legally bind the corporation stating: _____ [insert name of corporation] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year.
an exempt organization	a statement from an officer of the organization with authority to legally bind the organization stating: _____ [insert name of organization] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year.
an estate	a statement from the personal representative stating: _____ [insert name of estate] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year.
an employee benefit plan/trust	a statement from an officer of the plan/trust with authority to legally bind the plan/trust stating: _____ [insert name of plan/trust] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year.
a partnership under an IRC section 761(a) election	<ul style="list-style-type: none"> • a statement from each partner for which certification is requested stating: _____ [insert name of partner] _____ [insert EIN] is a U.S. resident and will continue to be throughout the current tax year, and • a statement from a general partner stating: <ol style="list-style-type: none"> a. The partnership has made an election pursuant to IRC section 761(a). As a result, it is not required to file Form 1065, U.S. Partnership Return of Income, on an annual basis and all its partners report their respective shares of income, gain, loss, deductions and credits on their tax returns as required. b. The partnership's entity classification has not changed since the filing of the partners' returns.
a partnership under Regulation section 1.6031(a)-1(b)	an additional statement from a general partner stating: _____ [insert name of partnership] _____ [insert EIN] is not required to file Form 1065, U.S. Return of Partnership Income, under Regulation section 1.6031(a)-1(b) and the entity classification has not changed since the filing of the partners' returns.
a FASIT	a statement from an officer of the corporation with the authority to legally bind the corporation stating: <ol style="list-style-type: none"> a. _____ [insert name of corporation] _____ [insert EIN] is the corporate owner of _____ [insert name of FASIT], which is treated as a FASIT under IRC section 860H, and as such, the _____ [insert name of corporation] reports all of _____ [insert name of FASIT] income, gain, loss, deductions, and credits on _____ [insert name of corporate owner]'s Form 1120, U.S. Corporate Income Tax Return. b. The corporation is a U.S. resident and will continue to be throughout the current tax year.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate independently represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate toll free at 1-877-777-4778.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call 1-800-829-4059 if you are a TTY/TDD user.
- Visit the web site at www.irs.gov/advocate.

For more information, see Publication 1546, The Taxpayer Advocate Service.

Free tax services. To find out what services are available, get Publication 910, Guide to Free Tax Services. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



Internet. You can access the IRS web site 24 hours a day, 7 days a week at www.irs.gov to:

- E-file. Access commercial tax preparation and e-file services available for free to eligible taxpayers.
- Check the amount of advance child tax credit payments you received in 2003.
- Check the status of your 2003 refund. Click on "Where's My Refund" and then on "Go Get My Refund Status." Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your 2003 tax return available because you will need to know your filing status and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products on-line.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Figure your withholding allowances using our Form W-4 calculator.

- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

You can also reach us using File Transfer Protocol at ftp.irs.gov.



Fax. You can get over 100 of the most requested forms and instructions 24 hours a day, 7 days a week, by fax. Just call 703-368-9694 from your fax machine. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call 703-487-4608.

Long-distance charges may apply.



Phone. Many services are available by phone.

- Ordering forms, instructions, and publications. Call 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 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 or account 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. If you would like to check the status of your 2003 refund, call 1-800-829-4477 for automated refund information and follow the recorded instructions or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your 2003 tax return available because you will need to know your filing status and the exact whole dollar amount of your refund.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask

some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- Services. You can walk in to your local Taxpayer Assistance Center every business day to ask tax questions or get help with a tax problem. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. You can set up an appointment by calling your local Center and, at the prompt, leaving a message requesting Everyday Tax Solutions help. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to www.irs.gov 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 Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Use the address that applies to your part of the country.

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Central Area Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903
- Eastern part of U.S. and foreign addresses:
Eastern Area Distribution Center
P.O. Box 85074
Richmond, VA 23261-5074



CD-ROM for tax products. You can order IRS Publication 1796, Federal Tax Products on CD-ROM, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms and instructions.
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

Buy the CD-ROM from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders for \$22 (no handling fee)

or call 1-877-233-6767 toll free to buy the CD-ROM for \$22 (plus a \$5 handling fee). The first release is available in early January and the final release is available in late February.



CD-ROM for small businesses. IRS Publication 3207, Small Business Resource Guide, is a must for every small business owner or any taxpayer about to start a

business. This handy, interactive CD contains all the business tax forms, instructions and publications needed to successfully manage a business. In addition, the CD provides an abundance of other helpful information, such as how to prepare a business plan, finding financing for your business, and much more. The design of the CD makes finding information easy

and quick and incorporates file formats and browsers that can be run on virtually any desktop or laptop computer.

It is available in early April. You can get a free copy by calling 1-800-829-3676 or by visiting the web site at www.irs.gov/smallbiz.

