



Instructions for Form 1042-S

Foreign Person's U.S. Source Income Subject to Withholding

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

General Instructions



Use the 2002 Form 1042-S only for income paid during 2002. Do not use the 2002 Form 1042-S for income paid during 2001.

Change To Note

New transmittal form. New Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, is used to transmit paper Forms 1042-S to the Internal Revenue Service. See **Where, When, and How To File** on this page.

Purpose of Form

Use Form 1042-S to report income described under **Amounts Subject to Reporting on Form 1042-S** on page 4 and to report amounts withheld under Chapter 3 of the Internal Revenue Code.

Note: Every person required to deduct and withhold any tax under Chapter 3 of the Code is liable for such tax.

Copy A is filed with the Internal Revenue Service. Copies B, C, and D are for the recipient. Copy E is for your records.

Do not use Form 1042-S to report an item required to be reported on—

- **Form W-2**, (i.e., wages and other compensation made to employees (other than compensation for dependent personal services for which the beneficial owner is claiming treaty benefits) including wages in the form of group-term life insurance),
- Form 1099, or
- **Form 8288-A**, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, or **Form 8805**, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Withholding agents otherwise required to report a distribution partly on a Form 8288-A or Form 8805 and partly on a Form 1042-S may instead report the entire amount on Form 8288-A or Form 8805.

Who Must File

Every withholding agent (defined on page 2) must file an information return on Form 1042-S to report amounts paid during the preceding calendar year that are described under **Amounts Subject to Reporting on Form 1042-S** on page 4. However, withholding agents who are individuals are not required to report a payment on Form 1042-S if they are not

making the payment as part of their trade or business and no withholding is required to be made on the payment. For example, an individual making a payment of interest that qualifies for the portfolio interest exception from withholding is not required to report the payment if the portfolio interest is paid on a loan that is not connected to the individual's trade or business. However, an individual paying an amount that has actually been subject to withholding (e.g., U.S. source alimony) to a nonresident alien is required to report the payment, whether or not the individual actually withholds because the individual is required to withhold on the payment. See **Multiple Withholding Agent Rule** on page 10 for exceptions to reporting when another person has reported the same payment to the recipient.

You must file a Form 1042-S even if you did not withhold tax because the income was exempt from tax under a U.S. tax treaty or the Code, including the exemption for income that is effectively connected with the conduct of a trade or business in the United States, or you released the tax withheld to the recipient. For exceptions, see **Amounts That Are Not Subject to Reporting on Form 1042-S** on page 4.

Amounts paid to residents of U.S. possessions and territories are not subject to reporting on Form 1042-S if the beneficial owner of the income is a U.S. citizen, national, or resident alien.

Note: If you are required to file Form 1042-S, you must also file **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. See **Form 1042** for more information.

Where, When, and How To File

Forms 1042-S, whether filed on paper, on magnetic media, or electronically, must be filed with the Internal Revenue Service by March 17, 2003. You are also required to furnish Form 1042-S to the recipient of the income on or before March 17, 2003.

Send any paper Forms 1042-S with **Form 1042-T**, Annual Summary and Transmittal of Forms 1042-S, to the Internal Revenue Service Center, Philadelphia, PA 19255. You must use Form 1042-T to transmit paper Forms 1042-S. Use a separate Form 1042-T to transmit each type of Form 1042-S. See **Payments by U.S. Withholding Agents** on page 5 and the Form 1042-T

instructions for more information. If you have 250 or more Forms 1042-S to file, follow the instructions under **Magnetic Media/Electronic Reporting** below.

Extension of time to file. To request an extension of time to file Forms 1042-S file **Form 8809**, Request for Extension of Time To File Information Returns, with the address shown on that form. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S. A request for an extension of time to file Form 1042-S is not automatically approved. If your request for an extension is approved, you will have an additional 30 days to file Form 1042-S. If you need more time, a second Form 8809 may be submitted before the end of the initial extended due date. See Form 8809 and **Pub. 1187**, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Magnetically or Electronically, for more information.

Note: If you are a magnetic media / electronic transmitter requesting extensions of time to file for more than 50 withholding agents or payers, you must submit the extension requests magnetically or electronically. For instructions on submitting extension requests on magnetic media, see **Pub. 1187**.

Magnetic Media/Electronic Reporting

You must use magnetic media if you are required to file 250 or more Forms 1042-S. Acceptable forms of magnetic media are magnetic tape, tape cartridge, and 3 1/2-inch diskettes.

Electronic submissions are filed using the Filing Information Returns Electronically (FIRE) System. The FIRE System operates 24 hours a day, 7 days a week, and is accessed using your personal computer and modem at 304-262-2400 (not a toll-free number). For more information, see **Pub. 1187**.

Note: Filing electronically will satisfy the magnetic media filing requirements. Any reference to magnetic media in these instructions includes electronic filing.

The magnetic media/electronic filing requirement applies separately to originals and corrections. Any person, including a corporation, partnership, individual, estate, and trust, that is required to file 250 or more Forms 1042-S must file such returns magnetically /

electronically. The filing requirement applies individually to each reporting entity as defined by its separate taxpayer identification number (TIN). This requirement applies separately to original and corrected returns. For example, if you have 300 original Forms 1042-S, they must be filed magnetically/electronically. However, if 200 of those forms contained erroneous information, the corrections may be filed on paper forms because the number of corrected Forms 1042-S is less than the 250-or-more filing requirement. If you are filing 250 or more Form 1042-S corrections, they must be filed magnetically/electronically.



If you file on magnetic media, do not file the same returns on paper. Duplicate filing may cause penalty notices to be generated.

Note: Even though as many as 249 Forms 1042-S may be submitted on paper to the IRS, the IRS encourages filers to transmit forms magnetically / electronically.

Hardship waiver. To receive a hardship waiver from the required filing of Forms 1042-S on magnetic media, submit **Form 8508**, Request for Waiver From Filing Information Returns on Magnetic Media. Waiver requests should be filed at least 45 days before the due date of the returns. See Form 8508 for more information.

For additional information and instructions on filing Forms 1042-S on magnetic media, extensions of time to file (Form 8809), and hardship waivers (Form 8508), see Pub. 1187. You may also call the Martinsburg Computing Center Information Reporting Program at 304-263-8700 (not a toll-free number) Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time. The Martinsburg Computing Center Information Reporting Program may also be reached by e-mail at mccirp@irs.gov.

Additional Information

For details on withholding of tax, see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities. To order this publication and other publications and forms, call 1-800-TAX-FORM (1-800-829-3676). You can also download forms and publications from the IRS Web Site at www.irs.gov.

Need assistance? The IRS operates a centralized call site to answer questions related to the filing of information returns on magnetic media. Among the topics covered are Forms 1042-S, questionable Forms W-4, Forms 8027, and backup withholding due to missing or incorrect TINs. For assistance, you may call 304-263-8700 (not a toll-free number) Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time, or fax 304-264-5602. You may also reach the Call Site via e-mail at mccirp@irs.gov.

Note: This call site does not answer tax law questions concerning the requirements for withholding of tax on

payments of U.S. source income to foreign persons under Chapter 3 of the Code. If you need such assistance, you may call 215-516-2000 (not a toll-free number) from 6:00 a.m. to 2:00 a.m. Eastern time or write to: Internal Revenue Service, International Section, P.O. Box 920, Bensalem, PA 19020-8518.

Record Retention

Withholding agents should retain a copy of the information returns filed with the IRS, or have the ability to reconstruct the data, for at least 3 years after the reporting due date. See Pub. 1187.

Substitute Forms

The official Form 1042-S is the standard for substitute forms. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. The IRS provides several means of obtaining the most frequently used tax forms. These include the Internet, fax-on-demand, CD-ROM, and an electronic forms bulletin board. For details on the requirements of substitute forms, see **Pub. 1179**, Rules and Specifications for Private Printing of Substitute Forms 1096, 1098, 1099, 5498, and W-2G (and 1042-S).

Note: You are permitted to use substitute payee copies of Form 1042-S (i.e., copies B, C, and D) that contain more than one income line for boxes 1 through 8. This will reduce the number of Forms 1042-S you send to the recipient. **Under no circumstances, however, may the copy of the form filed with the IRS (copy A) contain more than one income line.**

Deposit Requirements

For information and rules concerning Federal tax deposits, see **Depositing Withheld Taxes** in Pub. 515, or the Form 1042 instructions.

Definitions

Withholding agent. A withholding agent is any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity. The term withholding agent also includes, but is not limited to, a qualified intermediary (QI), a nonqualified intermediary (NQI), a withholding foreign partnership, a withholding foreign trust, a flow-through entity, a U.S. branch of a foreign insurance company or foreign bank that is treated as a U.S. person, and an authorized foreign agent. A person may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has already withheld the required amount from a payment.

Note: Generally, the U.S. person who pays (or causes to be paid) the item of U.S. source income to a foreign person

(or to its agent) must withhold. However, other persons may be required to withhold. For example, if a payment is made by a QI (whether or not it assumes primary withholding responsibility) that knows that withholding was not done by the person from which it received the payment, that QI is required to do the appropriate withholding. In addition, withholding must be done by any QI that assumes primary withholding responsibility under Chapter 3 of the Code, a withholding foreign partnership, a withholding foreign trust, a U.S. branch of a foreign insurance company or foreign bank that agrees to be treated as a U.S. person, or an authorized foreign agent. Finally, if a payment is made by an NQI or a flow-through entity that knows, or has reason to know, that withholding was not done, that NQI or flow-through entity is required to withhold since it also falls within the definition of a withholding agent.

Beneficial owner. For payments other than those for which a reduced rate of withholding is claimed under an income tax treaty, the beneficial owner of income is, generally, the person who is required under U.S. tax principles to include the income in gross income on a tax return. A person is not a beneficial owner of income, however, to the extent that person is receiving the income as a nominee, agent, or custodian, or to the extent the person is a conduit whose participation in a transaction is disregarded. In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

Foreign partnerships, foreign simple trusts, and foreign grantor trusts are not the beneficial owners of income paid to the partnership or trust. The beneficial owners of income paid to a foreign partnership are generally the partners in the partnership, provided that the partner is not itself a partnership, foreign simple or grantor trust, nominee, or other agent. The beneficial owner of income paid to a foreign simple trust (i.e., a foreign trust that is described in section 651(a)) is generally the beneficiary of the trust, if the beneficiary is not a foreign partnership, foreign simple or grantor trust, nominee or other agent. The beneficial owner of a foreign grantor trust (i.e., a foreign trust to the extent that all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679) is the person treated as the owner of the trust. The beneficial owner of income paid to a foreign complex trust (i.e., a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

The beneficial owner of income paid to a foreign estate is the estate itself.

Note: A payment to a U.S. partnership, U.S. trust, or U.S. estate is treated as a payment to a U.S. payee that is not subject to 30% foreign-person

withholding. A U.S. partnership, trust, or estate should provide the withholding agent with a **Form W-9, Request for Taxpayer Identification Number and Certification**.

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. The term also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a QI. 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 individual. Additionally, an alien 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 the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, is a nonresident alien individual. See **Pub. 519, U.S. Tax Guide for Aliens**, for more information on resident and nonresident alien status.

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.*

Withholding certificate. The term "withholding certificate" generally refers to Form W-8 or Form W-9.

Note: *Throughout these instructions, a reference to or mention of "Form W-8" is a reference to Forms W-8BEN, W-8ECI, W-8EXP, and/or W-8IMY.*

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

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

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

Private arrangement intermediary (PAI). A QI may enter into a private arrangement with another intermediary under which the other intermediary generally agrees to perform all of the obligations of the QI. See Section 4 of

Rev. Proc. 2000-12 for details. You can find Rev. Proc. 2000-12 on page 387 of Internal Revenue Bulletin 2000-4 at www.irs.gov.

Withholding foreign partnership or withholding foreign trust. A withholding foreign partnership or trust is a foreign partnership or trust that has entered into a withholding agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners.

Authorized foreign agent. An agent is an authorized foreign agent only if **all four** of the following apply.

1. There is a written agreement between the withholding agent and the foreign person acting as agent.
2. The IRS International Section (see address at the end of the **Note** under **Additional Information** on page 2) has been notified of the appointment of the agent before the first payment for which the authorized agent acts on behalf of the withholding agent.
3. The books and records and relevant personnel of the foreign agent are available to the IRS so that the IRS may evaluate the withholding agent's compliance with its withholding and reporting obligations.
4. The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available.

For further details, see Regulations section 1.1441-7(c)(2).

Payer. A payer is the person for whom the withholding agent acts as a paying agent pursuant to an agreement whereby the withholding agent agrees to withhold and report a payment.

Presumption rules. The presumption rules are those rules prescribed under Chapter 3 and Chapter 61 of the Code that a withholding agent must follow to determine the status of a beneficial owner (e.g., as a U.S. person or a foreign person) when it cannot reliably associate a payment with valid documentation. See, for example, Regulations sections 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e), 1.1441-9(b)(3), and 1.6049-5(d). Also see Pub. 515.

U.S. branch treated as a U.S. person. The following types of U.S. branches (of foreign entities) may reach an agreement with the withholding agent to treat the branch as a U.S. person: **(a)** a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or **(b)** a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, Territory, or the District of Columbia.

The U.S. branch must provide a Form W-8IMY evidencing the agreement with the withholding agent.

Note: *A U.S. branch that is treated as a U.S. person is treated as such solely for purposes of determining whether a payment is subject to withholding. The branch is, for purposes of information reporting, a foreign person and payments to such a branch must be reported on Form 1042-S.*

Recipient. A recipient is **any** of the following:

- A beneficial owner of income.
- A QI.
- A withholding foreign partnership or withholding foreign trust.
- An authorized foreign agent.
- A U.S. branch of certain foreign banks or insurance companies that is treated as a U.S. person.
- A foreign partnership or a foreign trust (other than a withholding foreign partnership or withholding foreign trust), but only to the extent the income is effectively connected with its conduct of a trade or business in the United States.
- A payee who is not known to be the beneficial owner, but who is presumed to be a foreign person under the presumption rules.
- A PAI.

A recipient does **not** include **any** of the following:

- An NQI.
- A nonwithholding foreign partnership, if the income is not effectively connected with its conduct of a trade or business in the United States.
- A disregarded entity.
- A foreign trust that is described in section 651(a) (a foreign simple trust) if the income is not effectively connected with the conduct of a trade or business in the United States.
- A foreign trust to the extent that all or a portion of the trust is treated as owned by the grantor or other person under sections 671 through 679 (a foreign grantor trust).
- A U.S. branch that is not treated as a U.S. person unless the income is, or is treated as, effectively connected with the conduct of a trade or business in the United States.

Flow-through entity. A flow-through entity is a foreign partnership (other than a withholding foreign partnership), a foreign simple or grantor trust (other than a withholding foreign trust), or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

Fiscally transparent entity. An entity is treated as fiscally transparent with respect to an item of income for which treaty benefits are claimed to the extent that the interest holders in the entity must, on a current basis, take into account separately their shares of an item of income paid to the entity, whether or not distributed, and must determine the character of the items of income as if they

were realized directly from the sources from which realized by the entity. For example, partnerships, common trust funds, and simple trusts or grantor trusts are generally considered to be fiscally transparent with respect to items of income received by them.

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.

Exempt recipient. Generally, an exempt recipient is any payee that is not required to provide Form W-9 and is exempt from the Form 1099 reporting requirements. See the **Instructions for the Requester of Form W-9** for a list of exempt recipients.

Non-exempt recipient. A non-exempt recipient is any person who is not an exempt recipient.

Amounts Subject to Reporting on Form 1042-S

Amounts subject to reporting on Form 1042-S are amounts paid to foreign persons (including persons presumed to be foreign) that are subject to withholding, even if no amount is deducted and withheld from the payment because of a treaty or Code exception to taxation or if any amount withheld was repaid to the payee. Amounts subject to withholding are amounts from sources within the United States that constitute **(a)** fixed or determinable annual or periodical (FDAP) income; **(b)** certain gains from the disposal of timber, coal, or domestic iron ore with a retained economic interest; and **(c)** gains relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property. Amounts subject to reporting include, but are not limited to, the following U.S. source items.

- **Corporate distributions.** The entire amount of a corporate distribution (whether actual or deemed) must be reported, irrespective of any estimate of the portion of the distribution that represents a taxable dividend. Any distribution, however, that is treated as gain from the redemption of stock is not an amount subject to reporting.
- **Interest.** This includes the portion of a notional principal contract payment that is characterized as interest.
- **Rents.**
- **Royalties.**
- **Compensation for independent personal services performed in the United States.**
- **Compensation for dependent personal services performed in the United States for which the beneficial owner is claiming treaty benefits.**
- **Annuities.**
- **Pension distributions and other deferred income.**
- **Most gambling winnings.** However, proceeds from a wager placed in blackjack, baccarat, craps, roulette, or

big-6 wheel are not amounts subject to reporting.

- **Cancellation of indebtedness.**

Income from the cancellation of indebtedness must be reported unless the withholding agent is unrelated to the debtor and does not have knowledge of the facts that give rise to the payment.

- **Effectively connected income (ECI).**

ECI includes amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States even if no withholding certificate is required, as, for example, with income on notional principal contracts. Note that bank deposit interest, which generally is not subject to Form 1042-S reporting, is subject to Form 1042-S reporting if it is effectively connected income.

- **Notional principal contract income.**

Income from notional principal contracts that the payor knows, or must presume, is effectively connected with the conduct of a U.S. trade or business is subject to reporting. The amount to be reported is the amount of cash paid on the contract during the calendar year. Any amount of interest determined under the provisions of Regulations section 1.446-3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable as interest and not as notional principal contract income.

- **Students, teachers, and researchers.**

Amounts paid to foreign students, trainees, teachers, or researchers as scholarship or fellowship income, and compensation for personal services (whether or not exempt from tax under an income tax treaty), must be reported. However, amounts that are exempt from tax under section 117 are not subject to reporting.

- **Amounts paid to foreign governments, foreign controlled banks of issue, and international organizations.**

These amounts are subject to reporting even if they are exempt under section 892 or 895.

- **Foreign targeted registered obligations.** Interest paid on registered obligations targeted to foreign markets paid to a foreign person other than a financial institution or a member of a clearing organization is an amount subject to reporting.

- **Original issue discount (OID) from the redemption of an OID obligation.**

The amount subject to reporting is the amount of OID actually includible in the gross income of the foreign beneficial owner of the income, if known. Otherwise, the withholding agent should report the entire amount of OID as if the recipient held the instrument from the date of original issuance. To determine the amount of OID reportable, a withholding agent may rely on **Pub. 1212**, List of Original Issue Discount Instruments.

- Certain dispositions described under **Withholding on Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Real Estate Investment Trusts (REITs)** on page 5.

- Certain dispositions described under **Publicly Traded Partnerships (Section 1446 Withholding Tax)** on page 5.

For more details on the types of income that are subject to withholding, see Pub. 515.

Amounts That Are Not Subject to Reporting on Form 1042-S

1. Interest on deposits. Generally, no withholding (or reporting) is required on interest paid to foreign persons on deposits if such interest is not effectively connected with the conduct of a trade or business in the United States. For this purpose, the term "deposits" means amounts that are on deposit with a U.S. bank, savings and loan association, credit union, or similar institution, and from certain deposits with an insurance company.

Exception for interest payments to Canadian residents who are not U.S. citizens. If you pay \$10 or more of U.S. source bank deposit interest to a nonresident alien who is a resident of Canada, you generally must report the interest on Form 1042-S. This reporting requirement applies to interest on a deposit maintained at a bank's office in the United States. However, it does not include interest on certain bearer certificates of deposit if paid outside the United States. Although you only have to report payments you make to residents of Canada, you can comply by reporting bank deposit interest to all foreign persons if that is easier.

When completing Form 1042-S, use income code 29 in box 1 and exemption code 02 in box 6.

On the statements furnished to the Canadian recipients, you must include an information contact phone number in addition to the name and address in box 10 on Form 1042-S. You must also include a statement that the information on the form is being furnished to the United States Internal Revenue Service and may be provided to the government of Canada.

2. Interest and OID from short-term obligations. Interest and OID from any obligation payable 183 days or less from the date of original issue should not be reported on Form 1042-S.

3. Registered obligations targeted to foreign markets. Interest on a registered obligation that is targeted to foreign markets and qualifies as portfolio interest is not subject to reporting if it is paid to a registered owner that is a financial institution or member of a clearing organization and you have received the required certifications.

4. Bearer obligations targeted to foreign markets. Do not file Form 1042-S to report interest not subject to withholding on bearer obligations if a Form W-8 is not required.

5. Notional principal contract payments that are not ECI. Amounts paid on a notional principal contract that are not effectively connected with the conduct of a trade or business in the United States should not be reported on Form 1042-S.

6. Accrued interest and OID. Interest paid on obligations sold between interest payment dates and the portion of the purchase price of an OID obligation that is sold or exchanged in a transaction other than a redemption is not subject to reporting unless the sale or exchange is part of a plan, the principal purpose of which is to avoid tax, and the withholding agent has actual knowledge or reason to know of such plan.

Exception for Amounts Previously Withheld Upon. A withholding agent should report on Form 1042-S any amounts, whether or not subject to withholding, that are paid to a foreign payee and that have been withheld upon, including backup withholding, by another withholding agent under the presumption rules.

Example. A withholding agent (WA) makes a payment of bank deposit interest to a foreign intermediary that is a nonqualified intermediary (NQI-B). NQI-B failed to provide any information regarding the beneficial owners to whom the payment was attributable. Under the presumption rules, WA must presume that the amounts are paid to a U.S. non-exempt recipient. WA withholds 30% of the payment under the backup withholding provisions of the Code and files a Form 1099-INT reporting the interest as paid to an unknown recipient. A copy of Form 1099-INT is sent to NQI-B. The beneficial owners of the bank deposit interest are two customers of NQI-B, X and Y. Both X and Y have provided NQI-B with documentary evidence establishing that they are foreign persons and therefore not subject to backup withholding. NQI-B must file a Form 1042-S reporting the amount of bank deposit interest paid to each of X and Y and the proportionate amount of withholding that occurred.

Withholding on Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Real Estate Investment Trusts (REITs)

Regulations section 1.1445-8 provides rules for withholding required on the disposition of a U.S. real property interest by a publicly traded trust or a REIT. The special rules of Regulations section 1.1445-8 only apply to distributions by a publicly traded trust or a REIT.

In general, when a publicly traded trust or a REIT makes a distribution to a foreign person attributable to the

disposition of a U.S. real property interest, it must withhold tax under section 1445. However, this withholding liability is shifted to the person who pays the distribution to a foreign person (or to the account of the foreign person) if the special notice requirement of Regulations section 1.1445-8(f) and other requirements of Regulations section 1.1445-8(b)(1) are satisfied.

The amount subject to withholding for a distribution by a publicly traded trust is determined under the large trust rules of Regulations section 1.1445-5(c)(3).

The amount subject to withholding for a distribution by a REIT generally is the amount of each share or beneficial interest designated by the REIT as a capital gains dividend, multiplied by the number of shares or certificates of beneficial interests owned by a foreign person. If the withholding liability is shifted to the payer of the distribution under Regulations section 1.1445-8(b), the payer will receive notice as described in Regulations section 1.1445-8(f) of the amount of the distribution subject to withholding.

The rate of withholding is as follows:

1. Distribution by a publicly traded trust that makes recurring sales of growing crops and timber – 10%.
2. Distribution by a publicly traded trust not described in 1 above – 35%.
3. Distribution by a REIT – 35%.

To determine whether an interest holder is a foreign person, see Regulations section 1.1445-8(e).

Use Forms 1042-S and 1042 to report and pay over the withheld amounts. All other withholding required under section 1445 is reported and paid over using Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

Publicly Traded Partnerships (Section 1446 Withholding Tax)

A “publicly traded partnership” is any partnership in which interests are regularly traded on an established securities market (regardless of the number of its partners). However, it does not include a publicly traded partnership treated as a corporation under the general rule of section 7704(a).

A publicly traded partnership that has effectively connected income must pay a withholding tax under section 1446 from distributions to a foreign partner and file Form 1042-S, unless an election is made to pay a withholding tax based on effectively connected taxable income allocable to foreign partners. See Pub. 515 for details.

A **nonpublicly** traded partnership that has effectively connected gross income

allocable to foreign partners must pay a withholding tax under section 1446. These amounts are reported on Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), and Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax.

Payments by U.S. Withholding Agents

In general. U.S. withholding agents making payments described under **Amounts Subject to Reporting on Form 1042-S** on page 4 must file a separate Form 1042-S for each recipient who receives the income. Furthermore, withholding agents filing paper Forms 1042-S are not permitted to use multiple income lines on Copy A filed with the IRS. These filers must use a separate Form 1042-S for information reportable on a single income line.



These filers cannot use a single Form 1042-S to report income if that income is reportable under different income, recipient, or exemption codes or is subject to different rates of withholding.

A withholding agent may be permitted to use substitute payee copies of Form 1042-S (i.e., copies B, C, and D) that contain more than one income line (i.e., boxes 1 through 8). See **Substitute Forms** on page 2 for details.

See **Payments Made to Persons Who Are Not Recipients** on page 7 if the payment is made to a foreign person that is not a recipient.

Payments to Recipients

1. Payments directly to beneficial owners. If a U.S. withholding agent is making a payment directly to a beneficial owner, it must complete Form 1042-S treating the beneficial owner as the recipient. Boxes 17 through 20 should be left blank. A U.S. withholding agent should complete box 21 only if it is completing Form 1042-S as a paying agent acting pursuant to an agreement.

Under a grace period rule, a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent waits for a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file Form 1042-S to report all payments during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends.

In the case of foreign joint owners, you may provide a single Form 1042-S made out to the owner whose status you relied upon to determine the applicable rate of withholding (i.e., the owner subject to the highest rate of withholding). If, however, any one of the owners requests its own

Form 1042-S, you must furnish a Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners and the tax withheld on those payments.

2. Payments to a qualified intermediary, withholding foreign partnership, or withholding foreign trust. A U.S. withholding agent that makes payments to a QI (whether or not the QI assumes primary withholding responsibility), a withholding foreign partnership, or a withholding foreign trust should generally complete Forms 1042-S treating the QI, withholding foreign partnership, or withholding foreign trust as the recipient. However, see **Payments allocated, or presumed made, to U.S. non-exempt recipients** below for exceptions. The U.S. withholding agent must complete a separate Form 1042-S for each withholding rate pool of the QI, withholding foreign partnership, or withholding foreign trust. For this purpose, a withholding rate pool is a payment of a single type of income, determined in accordance with the income codes used to file Form 1042-S, that is subject to a single rate of withholding. A QI that does not assume primary withholding responsibility provides information regarding the proportions of income subject to a particular withholding rate to the withholding agent on a withholding statement associated with Form W-8IMY. A U.S. withholding agent making a payment to a QI, withholding foreign partnership, or withholding foreign trust must use recipient code 12 (qualified intermediary) or 04 (withholding foreign partnership or withholding foreign trust). A U.S. withholding agent must not use recipient code 13 (private arrangement intermediary withholding rate pool—general), 14 (private arrangement intermediary withholding rate pool—exempt organizations), 15 (qualified intermediary withholding rate pool—general), or 16 (qualified intermediary withholding rate pool—exempt organizations). Use of an inappropriate recipient code may cause a notice to be generated.

Note: A QI, withholding foreign partnership, or withholding foreign trust is required to act in such capacity only for designated accounts. Therefore, such an entity may also provide a Form W-8IMY in which it certifies that it is acting as an NQI or flow-through entity for other accounts. A U.S. withholding agent that receives a Form W-8IMY on which the foreign person providing the form indicates that it is **not** acting as a QI, withholding foreign partnership, or withholding foreign trust may not treat the foreign person as a recipient. A withholding agent must not use the EIN that a QI, withholding foreign partnership, or withholding foreign trust provides in its capacity as such to report payments that are treated as made to an

entity in its capacity as an NQI or flow-through entity. In that case, use the EIN, if any, that is provided by the entity on its Form W-8IMY in which it claims that it is acting as an NQI or flow-through entity.

Payments allocated, or presumed made, to U.S. non-exempt recipients. You may be given Forms W-9 or other information regarding U.S. non-exempt recipients from a QI together with information allocating all or a portion of the payment to U.S. non-exempt recipients. You must report income allocable to a U.S. non-exempt recipient on the appropriate Form 1099 and not on Form 1042-S, even though you are paying that income to a QI.

You may also be required under the presumption rules to treat a payment made to a QI as made to a payee that is a U.S. non-exempt recipient from which you must withhold 30% of the payment under the backup withholding provisions of the Code. In this case, you must report the payment on the appropriate Form 1099. See **General Instructions for Forms 1099, 1098, 5498, and W-2G.**

Example 1. WA, a U.S. withholding agent, makes a payment of U.S. source dividends to QI, a qualified intermediary. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 95% of the payment to a 15% withholding rate pool and 5% of the payment to C, a U.S. individual. QI provides WA with C's Form W-9. WA must complete a Form 1042-S, showing QI as the recipient in box 13 and recipient code 12 (qualified intermediary) in box 12, for the dividends allocated to the 15% withholding rate pool. WA must also complete a Form 1099-DIV reporting the portion of the dividend allocated to C.

Example 2. WA, a withholding agent, makes a payment of U.S. source dividends to QI, a qualified intermediary. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 40% of the payment to a 15% withholding rate pool and 40% to a 30% withholding rate pool. QI does not provide any withholding rate pool information regarding the remaining 20% of the payment. WA must apply the presumption rules to the portion of the payment (20%) that has not been allocated. Under the presumption rules, that portion of the payment is treated as paid to an unknown foreign payee. WA must complete three Forms 1042-S: one for dividends subject to 15% withholding, showing QI as the recipient in box 13 and recipient code 12 (qualified intermediary) in box 12; one for dividends subject to 30% withholding, showing QI as the recipient in box 13 and recipient code 12 (qualified intermediary) in box 12; and one for dividends subject to 30% withholding, showing QI as the recipient in box 13 and recipient code 20 (unknown recipient) in box 12.

3. Amounts paid to certain U.S. branches. A U.S. withholding agent

making a payment to a "U.S. branch treated as a U.S. person" (defined on page 3) completes Form 1042-S as follows:

- If a withholding agent makes a payment to a U.S. branch that has provided the withholding agent with a Form W-8IMY that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent treats the U.S. branch as the recipient.
- If a withholding agent makes a payment to a U.S. branch that has provided a Form W-8IMY to transmit information regarding recipients, the U.S. withholding agent must complete a separate Form 1042-S for each recipient whose documentation is associated with the U.S. branch's Form W-8IMY. If a payment cannot be reliably associated with recipient documentation, the U.S. withholding agent must complete Form 1042-S in accordance with the presumption rules.
- If a withholding agent cannot reliably associate a payment with a Form W-8IMY from a U.S. branch, the payment must be reported on a single Form 1042-S treating the U.S. branch as the recipient and reporting the income as effectively connected income.

Note: The rules above apply only to U.S. branches treated as U.S. persons (defined on page 3). In all other cases, payments to a U.S. branch of a foreign person are treated as payments to the foreign person.

4. Amounts paid to authorized foreign agents. If a withholding agent makes a payment to an authorized foreign agent, the withholding agent files Forms 1042-S for each type of income (determined by reference to the income codes used to complete Form 1042-S) treating the authorized foreign agent as the recipient, provided that the authorized foreign agent reports the payments on Forms 1042-S to each recipient to which it makes payments. If the authorized foreign agent fails to report the amounts paid on Forms 1042-S for each recipient, the U.S. withholding agent remains responsible for such reporting.

Use recipient code 17 in box 12 if you make a payment to an authorized foreign agent.

5. Amounts paid to an estate or complex trust. If a U.S. withholding agent makes a payment to a foreign complex trust or a foreign estate, a Form 1042-S must be completed showing the complex trust or estate as the recipient. Use recipient code 05 (trust) or 10 (estate). See **Payments Made to Persons Who Are Not Recipients** on page 7 for the treatment of payments made to foreign simple trusts and foreign grantor trusts.

6. Dual claims. A withholding agent may make a payment to a foreign entity (e.g., a hybrid entity) that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the

payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. If the claims are consistent and the withholding agent has accepted the multiple claims, a separate Form 1042-S must be filed for the entity for those payments for which the entity is treated as claiming a reduced rate of withholding and separate Forms 1042-S must be filed for each of the interest holders for those payments for which the interest holders are claiming a reduced rate of withholding. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, a separate Form 1042-S must be filed for the person(s) being treated as the recipient(s).

7. Special instructions for U.S. trusts and estates. Report the entire amount of income subject to reporting, irrespective of estimates of distributable net income.

Payments Made to Persons Who Are Not Recipients

1. Disregarded entities. If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid Form W-8BEN or W-8ECI from a foreign person that is the single owner of the disregarded entity, the withholding agent must file a Form 1042-S in the name of the foreign single owner. The taxpayer identifying number (TIN) on the Form 1042-S, if required, must be the foreign single owner's TIN.

Example. A withholding agent (WA) makes a payment of interest to LLC, a foreign limited liability company. LLC is wholly-owned by FC, a foreign corporation. LLC is treated as a disregarded entity. WA has a Form W-8BEN from FC on which it states that it is the beneficial owner of the income paid to LLC. WA reports the interest payment on Form 1042-S showing FC as the recipient. The result would be the same if LLC was a domestic entity.

Note: *A disregarded entity can claim to be the beneficial owner of a payment if it is a hybrid entity claiming treaty benefits. See Form W-8BEN and its instructions for more information. If a disregarded entity claims on a valid Form W-8BEN to be the beneficial owner of treaty benefitted income, the U.S. withholding agent must complete a Form 1042-S treating the disregarded entity as a recipient and use recipient code 02 (corporation).*

2. Amounts paid to a nonqualified intermediary or flow-through entity. If a U.S. withholding agent makes a payment to an NQI or a flow-through entity, it must complete a separate Form 1042-S for each recipient on whose behalf the NQI or flow-through entity acts as indicated by its withholding statement and the documentation associated with its Form W-8IMY. If a payment is made through tiers of NQIs or flow-through entities, the withholding agent must nevertheless

complete Form 1042-S for the recipients to which the payments are remitted. A withholding agent completing Form 1042-S for a recipient that receives a payment through an NQI or a flow-through entity must include in boxes 17 through 20 of Form 1042-S the name, country code, address, and TIN, if any, of the NQI or flow-through entity from whom the recipient directly receives the payment. A copy of the Form 1042-S need not be provided to the NQI or flow-through entity unless the withholding agent must report the payment to an unknown recipient. See **Example 4** on page 8.

If a U.S. withholding agent makes payments to an NQI or flow-through entity and cannot reliably associate the payment, or any portion of the payment, with a valid withholding certificate (Forms W-8 or W-9) or other valid appropriate documentation from a recipient (either because a recipient withholding certificate has not been provided or because the NQI or flow-through entity has failed to provide the information required on a withholding statement), the withholding agent must follow the appropriate presumption rules for that payment. If, under the presumption rules, an unknown recipient of the income is presumed to be foreign, the withholding agent must withhold 30% of the payment and report the payment on Form 1042-S. For this purpose, if the allocation information provided to the withholding agent indicates an allocation of more than 100% of the payment, then no portion of the payment should be considered to be associated with a Form W-8, Form W-9, or other appropriate documentation. The Form 1042-S should be completed by entering "Unknown Recipient" in box 13 and recipient code 20 in box 12.

Pro-rata reporting. If the withholding agent has agreed that an NQI may provide information allocating a payment to its account holders under the alternative procedure of Regulations section 1.1441-1(e)(3)(iv)(D) (i.e., no later than February 14, 2003) and the NQI fails to allocate more than 10% of the payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file Forms 1042-S for each recipient in the pool on a pro-rata basis. If, however, the NQI fails to timely allocate 10% or less of the payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file Forms 1042-S for each recipient for which it has allocation information and report the unallocated portion of the payment on a Form 1042-S issued to "unknown recipient." In either case, the withholding agent must include the NQI information in boxes 17 through 20 on that form. See **Example 6** and **Example 7** on page 8.

The following examples illustrate Form 1042-S reporting for payments made to NQIs and flow-through entities.

Example 1. NQI, a nonqualified intermediary, has three account holders, A, B, and QI. All three account holders invest in U.S. securities that produce interest and dividends. A and B are foreign individuals and have provided NQI with Forms W-8BEN. QI is a qualified intermediary and has provided NQI with a Form W-8IMY and the withholding statement required from a qualified intermediary. QI's withholding statement states that QI has two withholding rate pools: one for interest described by income code 01 (interest paid by U.S. obligors—general) and one for dividends described by income code 06 (dividends paid by U.S. corporations—general). NQI provides WA, a U.S. withholding agent, with its own Form W-8IMY, with which it associates the Forms W-8BEN of A and B and the Form W-8IMY of QI. In addition, NQI provides WA with a complete withholding statement that allocates the payments of interest and dividends WA makes to NQI among A, B, and QI. All of the interest and dividends paid by WA to NQI is described by income code 01 (interest paid by U.S. obligors—general) and income code 06 (dividends paid by U.S. corporations—general). WA must file a total of six Forms 1042-S: two Forms 1042-S (one for interest and one for dividends) showing A as the recipient, two Forms 1042-S (one for interest and one for dividends) showing B as the recipient, and two Forms 1042-S (one for interest and one for dividends) showing QI as the recipient. WA must show information relating to NQI in boxes 17 through 20 on all six Forms 1042-S.

Example 2. The facts are the same as in Example 1, except that A and B are account holders of NQI2, which is an account holder of NQI. NQI2 provides NQI with a Form W-8IMY with which it associates the Forms W-8BEN of A and B and a complete withholding statement that allocates the interest and dividend payments it receives from NQI to A and B. NQI provides WA with its Form W-8IMY and the Forms W-8IMY of NQI2 and QI and the Forms W-8BEN of A and B. In addition, NQI associates a complete withholding statement with its Form W-8IMY that allocates the payments of interest and dividends to A, B, and QI. WA must file six Forms 1042-S: two Forms 1042-S (one for interest and one for dividends) showing A as the recipient, two Forms 1042-S (one for interest and one for dividends) showing B as the recipient, and two Forms 1042-S (one for interest and one for dividends) showing QI as the recipient. The Forms 1042-S issued to A and B must show information relating to NQI2 in boxes 17 through 20 because A and B receive their payments directly from NQI2, not NQI. The Forms 1042-S issued to QI must show information relating to NQI in boxes 17 through 20.

Example 3. FP is a nonwithholding foreign partnership and therefore a flow-through entity. FP establishes an

account with WA, a U.S. withholding agent, from which FP receives interest described by income code 01 (interest paid by U.S. obligors—general). FP has three partners, A, B, and C, all of whom are individuals. FP provides WA with a Form W-8IMY with which it associates the Forms W-8BEN from each of A, B, and C. In addition, FP provides a complete withholding statement with its Form W-8IMY that allocates the interest payments among A, B, and C. WA must file three Forms 1042-S, one each for A, B, and C. The Forms 1042-S must show information relating to FP in boxes 17 through 20.

Example 4. NQI is a nonqualified intermediary. It has four customers: A, B, C, and D. NQI receives Forms W-8BEN from each of A, B, C, and D. NQI establishes an account with WA, a U.S. withholding agent, in which it holds securities on behalf of A, B, C, and D. The securities pay interest that is described by income code 01 (interest paid by U.S. obligors—general) and that may qualify for the portfolio interest exemption from withholding if all the requirements for that exception are met. NQI provides WA with a Form W-8IMY with which it associates the Forms W-8BEN of A, B, C, and D. However, NQI does not provide WA with a complete withholding statement in association with its Form W-8IMY. Because NQI has not provided WA with a complete withholding statement, WA cannot reliably associate the payments of interest with the documentation of A, B, C, and D and must apply the presumption rules. Under the presumption rules, WA must treat the interest as paid to an unknown recipient that is a foreign person. The payments of interest are subject to 30% withholding. WA must complete one Form 1042-S, entering “Unknown Recipient” in box 13 and recipient code 20 in box 12. WA must include information relating to NQI in boxes 17 through 20 and must provide the recipient copies of the form to NQI. Because NQI has failed to provide all the information necessary for WA to accurately report the payments of interest to A, B, C, and D, NQI must report the payments on Form 1042-S. See **Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities** on page 10. The results would be the same if WA’s account holder was a flow-through entity instead of an NQI.

Example 5. The facts are the same as in Example 4, except that NQI provides the Forms W-8BEN of A and B, but not the Forms W-8BEN of C and D. NQI also provides a withholding statement that allocates a portion of the interest payment to A and B but does not allocate the remaining portion of the payment. WA must file three Forms 1042-S: one showing A as the recipient in box 13, one showing B as the recipient in box 13, and one showing “Unknown Recipient” in box 13 (and recipient code 20 in box 12) for the unallocated portion of the payment

that cannot be associated with valid documentation from a recipient. In addition, WA must send this form (i.e., the Form 1042-S for the unknown recipient) to NQI. All Forms 1042-S must contain information relating to NQI in boxes 17 through 20. The results would be the same if WA’s account holder were a flow-through entity instead of a nonqualified intermediary.

Example 6. NQI is a nonqualified intermediary. It has four customers: A, B, C, and D. NQI receives Forms W-8BEN from each of A, B, C, and D. NQI establishes an account with WA, a U.S. withholding agent, in which it holds securities on behalf of A, B, C, and D. The securities pay interest that is described by income code 01 (interest paid by U.S. obligors—general) and that may qualify for the portfolio interest exemption from withholding if all the requirements for that exception are met. NQI provides WA with a Form W-8IMY with which it associates the Forms W-8BEN of A, B, C, and D. WA and NQI agree that they will apply the alternative procedures of Regulations section 1.1441-1(e)(3)(iv)(D). Accordingly, NQI provides a complete withholding statement that indicates that it has one 0% withholding rate pool. WA pays \$100 of interest to NQI. NQI fails to provide WA with the allocation information by February 14, 2003. Therefore, WA must report 25% of the payment to each of A, B, C, and D using pro-rata basis reporting. Accordingly, for each of the Forms 1042-S, WA must enter \$25 in box 2 (gross income), “30.00” in box 5 (tax rate), and \$0 in box 7 (U.S. Federal tax withheld). In addition, WA must check the PRO-RATA BASIS REPORTING box at the top of the form and include NQI’s name, address, country code, and TIN, if any, in boxes 17 through 20. WA must enter “30.00” in box 5 (tax rate) because without allocation information, WA cannot reliably associate the payment of interest with documentation from a foreign beneficial owner and therefore may not apply the portfolio interest exception. See the instructions for box 6 (exemption code) on page 12 for information on completing that box.

Example 7. The facts are the same as in Example 6, except that NQI timely provides WA with information allocating 70% of the payment to A, 10% of the payment to B, and 10% of the payment to C. NQI fails to allocate any of the payment to D. Because NQI has allocated 90% of the payment made to the 0% withholding rate pool, WA is not required to report to NQI’s account holders on a pro-rata basis. Instead, WA must file Forms 1042-S for A, B, and C, entering \$70, \$10, and \$10, respectively in box 2 (gross income), “-0-” in box 5 (tax rate), exemption code 05 (portfolio interest) in box 6, and \$0 in box 7 (U.S. Federal tax withheld). WA must apply the presumption rules to the \$10 that NQI has

not allocated and file a Form 1042-S showing “Unknown Recipient” in box 13 and recipient code 20 in box 12. On that Form 1042-S, WA must also enter “30.00” in box 5 (tax rate) because the portfolio interest exemption is unavailable and \$0 in box 7 (U.S. Federal tax withheld) because no amounts were actually withheld from the interest. In addition, WA must send this form (i.e., the Form 1042-S for the unknown recipient) to NQI. All Forms 1042-S must contain information relating to NQI in boxes 17 through 20.

Payments allocated, or presumed made, to U.S. non-exempt recipients. You may be given Forms W-9 or other information regarding U.S. non-exempt recipients from an NQI or flow-through entity together with information allocating all or a portion of the payment to U.S. non-exempt recipients. You must report income allocable to a U.S. non-exempt recipient on the appropriate Form 1099 and not on Form 1042-S, even though you are paying that income to an NQI or a flow-through entity.

You may also be required under the presumption rules to treat a payment made to an NQI or flow-through entity as made to a payee that is a U.S. non-exempt recipient from which you must withhold 30% of the payment under the backup withholding provisions of the Code. In this case, you must report the payment on the appropriate Form 1099. See **General Instructions for Forms 1099, 1098, 5498, and W-2G**.

Example 1. FP is a nonwithholding foreign partnership and therefore a flow-through entity. FP establishes an account with WA, a U.S. withholding agent, from which FP receives interest described by income code 01 (interest paid by U.S. obligors—general). FP has three partners, A, B, and C, all of whom are individuals. FP provides WA with a Form W-8IMY with which it associates Forms W-8BEN from A and B and a Form W-9 from C, a U.S. person. In addition, FP provides a complete withholding statement in association with its Form W-8IMY that allocates the interest payments among A, B, and C. WA must file two Forms 1042-S, one each for A and B, and a Form 1099-INT for C.

Example 2. The facts are the same as in Example 1, except that the payment made by WA is described by income code 31 (short-term OID) and FP does not provide any documentation from its partners. Because WA cannot reliably associate the short-term OID with documentation from a payee, it must apply the presumption rules. Under the presumption rules, the OID is deemed paid to an unknown U.S. non-exempt recipient. WA must, therefore, apply backup withholding at 30% to the payment of OID and report the payment on Form 1099-INT. WA must file a Form 1099-INT and send a copy to FP.

Amounts Paid by Qualified Intermediaries

In general. A QI reports payments on Form 1042-S in the same manner as a U.S. withholding agent. However, payments that are made by the QI directly to foreign beneficial owners (or that are treated as paid directly to beneficial owners) may generally be reported on the basis of reporting pools. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, or recipient code as determined on Form 1042-S. A QI may not report on the basis of reporting pools in the circumstances described in **Recipient-by-Recipient Reporting** on this page. A QI may use a single recipient code 15 (qualified intermediary withholding rate pool—general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which recipient code 16 should be used. Note, however, that a QI should only use recipient code 16 for pooled account holders that have claimed an exemption based on their tax-exempt status and not some other exemption (e.g., treaty or other Code exception). See **Amounts Paid to Private Arrangement Intermediaries** below, if a QI is reporting a withholding pool paid to a PAI.

Example 1. QI, a qualified intermediary, has four direct account holders, A and B, foreign individuals, and X and Y, foreign corporations. A and X are residents of a country with which the United States has an income tax treaty and have provided documentation that establishes that they are entitled to a lower treaty rate of 15% on withholding of dividends from U.S. sources. B and Y are not residents of a treaty country and are subject to 30% withholding on dividends. QI receives U.S. source dividends on behalf of its four customers. QI must file one Form 1042-S for the 15% withholding rate pool. This Form 1042-S must show income code 06 (dividends paid by U.S. corporations—general) in box 1, “15.00” in box 5 (tax rate), recipient code 15 (qualified intermediary withholding rate pool—general) in box 12, and “Withholding rate pool” in box 13 (recipient’s name). QI must also file one Form 1042-S for the 30% withholding rate pool that contains the same information as the Form 1042-S filed for the 15% withholding rate pool, except that it will show “30.00” in box 5 (tax rate).

Example 2. The facts are the same as in Example 1, except that Y is an organization that has tax-exempt status in the United States and in the country in which it is located. QI must file three Forms 1042-S. Two of the Forms 1042-S will contain the same information as in Example 1. The third Form 1042-S will contain information for the withholding rate pool consisting of the amounts paid to Y. This Form 1042-S will show income code 06 (dividends paid by U.S.

corporations—general) in box 1, “-0-” in box 5 (tax rate), exemption code 02 (exempt under an Internal Revenue Code section (income other than portfolio interest)) in box 6, recipient code 16 (qualified intermediary withholding rate pool—exempt organizations) in box 12, and “Zero rate withholding pool—exempt organizations,” or similar designation, in box 13 (recipient’s name).



*Under the terms of its withholding agreement with the IRS, the QI may be required to report the amounts paid to U.S. non-exempt recipients on Form 1099 using the name, address, and TIN of the payee to the extent those items of information are known. These amounts must **not** be reported on Form 1042-S. In addition, amounts paid to U.S. exempt recipients are not subject to reporting on Form 1042-S or Form 1099.*

Amounts Paid to Private Arrangement Intermediaries

A QI generally must report payments made to each private arrangement intermediary (PAI) (defined on page 3) as if the PAI’s direct account holders were its own. Therefore, if the payment is made directly by the PAI to the recipient, the QI may report the payment on a pooled basis. A separate Form 1042-S is required for each withholding rate pool of each PAI. The QI must, however, use recipient code 13 or 14 for PAIs and must include the name and address of the PAI in box 13. If the PAI is providing recipient information from an NQI or flow-through entity, the QI may not report the payments on a pooled basis. Instead, it must follow the same procedures as a U.S. withholding agent making a payment to an NQI or flow-through entity.

Example. QI, a qualified intermediary, pays U.S. source dividends to direct account holders that are foreign persons and beneficial owners. It also pays a portion of the U.S. source dividends to two private arrangement intermediaries, PAI1 and PAI2. The private arrangement intermediaries pay the dividends they receive from QI to foreign persons that are beneficial owners and direct account holders in PAI1 and PAI2. All of the dividends paid are subject to a 15% rate of withholding. QI must file a Form 1042-S for the dividends paid to its own direct account holders that are beneficial owners. QI must also file two Forms 1042-S, one for the dividends paid to the direct account holders of each of PAI1 and PAI2. Each of the Forms 1042-S that QI files for payments made to PAI1 and PAI2 must contain recipient code 13 (private arrangement intermediary withholding rate pool—general) in box 12 and the name and address of PAI1 or PAI2 in box 13 (recipient’s name and address).

Recipient-by-Recipient Reporting

If a QI is not permitted to report on the basis of reporting pools, it must follow the same rules that apply to a U.S. withholding agent. A QI may not report the following payments on a reporting pool basis, but rather must complete Form 1042-S for each appropriate recipient.

1. Payments made to another QI, withholding foreign partnership, or withholding foreign trust. The QI must complete a Form 1042-S treating the other QI, withholding foreign partnership, or withholding foreign trust as the recipient.

2. Payments made to an NQI (including an NQI that is an account holder of a PAI). The QI must complete a Form 1042-S for each recipient who receives the payment from the NQI. A QI that is completing Form 1042-S for a recipient that receives a payment through an NQI must include in boxes 17 through 20 the name, country code, address, and TIN, if any, of the NQI from whom the recipient directly receives the payment.

3. Payments made to a flow-through entity. The QI must complete a Form 1042-S for each recipient who receives the payment from the flow-through entity. A QI that is completing a Form 1042-S for a recipient that receives a payment through a flow-through entity must include in boxes 17 through 20 the name, country code, address, and TIN, if any, of the flow-through entity from which the recipient directly receives the payment.

Example 1. QI, a qualified intermediary, has NQI, a nonqualified intermediary, as an account holder. NQI has two account holders, A and B, both foreign persons who receive U.S. source dividends from QI. NQI provides QI with a valid Form W-8IMY, with which it associates Forms W-8BEN from A and B and a complete withholding statement that allocates the dividends paid to NQI between A and B. QI must complete two Forms 1042-S, one for A and one for B, and include information relating to NQI in boxes 17 through 20.

Example 2. QI, a qualified intermediary, has FP, a foreign nonwithholding partnership, as an account holder. QI pays interest described by income code 01 (interest paid by U.S. obligors—general) to FP. FP has three partners, A, B, and C, all of whom are individuals. FP provides QI with a Form W-8IMY with which it associates the Forms W-8BEN from each of A, B, and C. In addition, FP provides a complete withholding statement in association with its Form W-8IMY that allocates the interest payments among A, B, and C. QI must file three Forms 1042-S, one each for A, B, and C. The Forms 1042-S must show information relating to FP in boxes 17 through 20.

Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities

An NQI and a flow-through entity are withholding agents and must file Forms 1042-S for amounts paid to recipients. However, an NQI or flow-through entity is not required to file Form 1042-S if it is not required to file Form 1042-S under the **Multiple Withholding Agent Rule** on this page. An NQI or flow-through entity must report payments made to recipients to the extent it has failed to provide to another withholding agent the appropriate documentation and complete withholding statement, including information allocating the payment to each recipient.

Forms 1042-S must be filed in any case where the NQI or flow-through entity is making a payment to a recipient and tax has been withheld on the payment by another withholding agent that did not report the payment on Form 1042-S to the recipient, even if the recipient should have been exempt from taxation. Failure to file Forms 1042-S may not only result in penalties for the NQI or flow-through entity, but may result in the denial of any refund claim made by a recipient.

If another withholding agent has withheld tax on an amount that should have been exempt (e.g., where the withholding agent applied the presumption rules because it did not receive proper documentation or other required information from the NQI or flow-through entity), the NQI or flow-through entity should report the tax rate and U.S. Federal tax withheld in boxes 5 and 7 and should enter the applicable exemption code using the instructions for box 6 on page 12.

NQI or flow-through entity provides correct and complete information to another withholding agent yet the withholding agent underwithholds. In this case, assuming that the NQI or flow-through entity knows that the withholding agent underwithheld, the NQI or flow-through entity must withhold additional amounts to bring the total withholding to the correct amount. Furthermore, the NQI or flow-through entity must complete Form 1042-S and must include in boxes 5 and 7 the correct tax rate and the combined amount of U.S. Federal tax withheld by the NQI or flow-through entity and any other withholding agent in the chain of payment that has withheld on the payment. See **Example 2** below.

Example 1. A foreign bank acts as a nonqualified intermediary (NQI) for four different foreign persons (A, B, C, and D) each of whom own securities from which they receive interest. The interest is paid by a U.S. withholding agent (WA) as custodian of the securities for NQI. A, B, C, and D each own a 25% interest in the securities. NQI has furnished WA a Form W-8IMY to which it has attached Forms

W-8BEN from A and B. NQI's Form W-8IMY contains an attachment stating that 25% of the securities are allocable to each of A and B, and 50% to undocumented owners. WA pays \$100 of interest during the calendar year. WA treats the \$25 of interest allocable to A and the \$25 of interest allocable to B as portfolio interest and completes a Form 1042-S for A and for B as the recipients. WA includes information relating to NQI in boxes 17 through 20 on the Forms 1042-S for A and B. WA subjects the remaining \$50 of interest to 30% withholding under the presumption rules and reports the interest on a Form 1042-S by entering "Unknown Recipient" in box 13 (and recipient code 20 in box 12), "30.00" in box 5 (tax rate), and \$15 as the amount withheld in box 7. WA also includes information relating to NQI in boxes 17 through 20 of the Form 1042-S and sends a copy of the form to NQI. Because NQI has not provided WA with beneficial owner information for C and D, NQI must report the interest paid to C and D on Forms 1042-S. (Note that under the multiple withholding agent rule, NQI is not required to file a Form 1042-S for A or B.) The Forms 1042-S for C and D should show \$25 in box 2 (gross income) and \$7.50 in box 7 (U.S. Federal tax withheld). The rate of tax NQI includes on the Form 1042-S for C and D depends on the rate of withholding to which they should be subject. Thus, if C and D provided NQI with documentation prior to the payment of interest that would qualify the interest as portfolio interest, the rate entered in box 5 should be "-0-." If they do not qualify for a reduced rate of withholding, NQI should enter "30.00" in box 5. In any event, NQI must also enter "99" in box 6 (exemption code) of the Forms 1042-S it prepares for C and D. See instructions for box 6 on page 12.

Example 2. A U.S. withholding agent (WA) makes a \$100 dividend payment to a foreign bank (NQI) that acts as a nonqualified intermediary. NQI receives the payment on behalf of A, a resident of a treaty country who is entitled to a 15% rate of withholding, and B, a resident of a country that does not have a treaty with the United States and who is subject to 30% withholding. NQI provides WA with its Form W-8IMY to which it associates the Forms W-8BEN from both A and B and a complete withholding statement that allocates 50% of the dividend to A and 50% to B. A's Form W-8BEN claims a 15% treaty rate of withholding. B's Form W-8BEN does not claim a reduced rate of withholding. WA, however, mistakenly withholds only 15%, \$15, from the entire \$100 payment. WA completes a Form 1042-S for each A and B as the recipients, showing on each form \$50 of dividends in box 2, a withholding rate of "15.00" in box 5 (tax rate), and \$7.50 as the amount withheld in box 7. Under the multiple withholding agent rule, NQI is not required to file a Form 1042-S for A. However, because NQI knows (or should

know) that B is subject to a 30% rate of withholding, and assuming it knows that WA only withheld 15%, the multiple withholding agent rule does not apply to the dividend paid to B and NQI must withhold an additional 15% from the payment to B. NQI must then file a Form 1042-S for B showing \$50 of dividends in box 2, "30.00" in box 5 (the correct tax rate), and \$15 withheld in box 7 (the combined amount withheld). NQI must also enter "00" in box 6 (exemption code). See instructions for box 6 on page 12.

Example 3. A withholding agent (WA) receives a Form W-8IMY from a nonqualified intermediary (NQI). NQI's Form W-8IMY relates to payments of bank deposit interest. NQI collects the bank deposit interest on behalf of A, B, C, and D, but does not associate Forms W-8, W-9, or other documentary evidence with the Form W-8IMY that NQI provides WA. A, B, and C are foreign persons for whom NQI has valid documentation establishing their foreign status. D is a U.S. person and has provided NQI with a Form W-9. Under the presumption rules, WA must treat the bank deposit interest as being paid to an unknown U.S. person and apply backup withholding at 30%. WA must complete one Form 1099 for an unknown payee showing 30% backup withholding. A copy of the form must be sent to NQI. Because NQI failed to provide the requisite documentation to WA and because the amounts have been subject to withholding, NQI must report the amounts paid to A, B, C, and D. Accordingly, NQI must file a Form 1042-S for each A, B, and C showing deposit interest (income code 29) as the type of payment in box 1; "-0-" in box 5 (correct tax rate); the actual amount withheld from the payment allocable to A, B, and C in box 7; and exemption code 99 in box 6. NQI must also file a Form 1099 for D to report the actual amounts paid and withheld.

Multiple Withholding Agent Rule

A withholding agent is not required to file Form 1042-S if a return is filed by another withholding agent reporting the same amount to the same recipient (the multiple withholding agent rule). If an NQI or flow-through entity has provided another withholding agent with the appropriate documentation from foreign beneficial owners, QIs, withholding foreign partnerships, and withholding foreign trusts, and has also provided a complete withholding statement associated with its Form W-8IMY to those persons, the NQI or flow-through entity may presume that the other withholding agent filed the required Forms 1042-S unless the NQI or flow-through entity knows, or has reason to know, that the required Form 1042-S reporting has not been done.

The multiple withholding agent rule does not relieve withholding agents from

Form 1042-S reporting responsibility in the following circumstances.

- Any withholding agent making a payment to a QI, withholding foreign partnership, or withholding foreign trust must report that payment as made to the QI, withholding foreign partnership, or withholding foreign trust.
- Any U.S. withholding agent making a payment to an authorized foreign agent must report that payment to the authorized foreign agent.
- Any withholding agent making a payment to a U.S. branch treated as a U.S. person must report the payment as made to that branch.
- Any withholding agent making a payment to a flow-through entity must report the payment as made to a beneficial owner, QI, withholding foreign partnership, or withholding foreign trust that has a direct or indirect interest in that entity.
- Any withholding agent that withholds an amount from a payment under Chapter 3 of the Code must report that amount to the recipient from whom it was withheld, unless the payment is reportable on another IRS form.

Furthermore, the multiple withholding agent rule does not relieve the following from Form 1042-S reporting responsibility.

- Any QI required to report an amount to a withholding rate pool **and**
- An NQI or flow-through entity that has not transmitted a valid Form W-8 or other valid documentation to another withholding agent together with the required withholding statement.

Penalties

The following penalties apply to the person required to file Form 1042-S. The penalties apply to both paper filers and to magnetic media/electronic filers.

1. Late filing of correct Form 1042-S.

A penalty may be imposed for failure to file each correct and complete Form 1042-S when due (including extensions), unless you can show that the failure was due to reasonable cause and not willful neglect. The penalty, based on when you file a correct Form 1042-S, is:

- \$15 per Form 1042-S if you correctly file within 30 days; maximum penalty \$75,000 per year (\$25,000 for a small business). A small business, for this purpose, is defined as having average annual gross receipts of \$5 million or less for the 3 most recent tax years (or for the period of its existence, if shorter) ending before the calendar year in which the Forms 1042-S are due.
- \$30 per Form 1042-S if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$150,000 per year (\$50,000 for a small business).
- \$50 per Form 1042-S if you file after August 1 or you do not file correct Forms 1042-S; maximum penalty \$250,000 per year (\$100,000 for a small business).

If you intentionally disregard the requirement to report correct information, the penalty per Form 1042-S is increased to \$100 or, if greater, 10% of the total amount of items required to be reported, with no maximum penalty.

2. Failure to furnish correct Form 1042-S to recipient. If you fail to provide correct statements to recipients and cannot show reasonable cause, a penalty of \$50 may be imposed for each failure to furnish Form 1042-S to the recipient when due. The penalty may also be imposed for failure to include all required information or for furnishing incorrect information on Form 1042-S. The maximum penalty is \$100,000 for all failures to furnish correct recipient statements during a calendar year. If you intentionally disregard the requirement to report correct information, each \$50 penalty is increased to \$100 or, if greater, 10% of the total amount of items required to be reported, and the \$100,000 maximum does not apply.

3. Failure to file on magnetic media. If you are required to file on magnetic media but fail to do so, and you do not have an approved waiver on record, you may be subject to a \$50 penalty per return for failure to file information returns on magnetic media unless you establish reasonable cause. The penalty applies separately to original returns and corrected returns.

Specific Instructions for Withholding Agents

Note: All amounts must be reported in U.S. dollars.

Rounding Off to Whole Dollars

To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. If you have to add two or more amounts to figure the amount to enter on a line, include cents when adding and only round off the total.

VOID and CORRECTED Boxes at Top of Form

See **Correcting Paper Forms 1042-S** on page 14.

PRO-RATA BASIS REPORTING Box

Withholding agents must check this box to notify the IRS that an NQI that used the alternative procedures of Regulations section 1.1441-1(e)(3)(iv)(D) failed to properly comply with those procedures. See **Pro-rata reporting** on page 7 for additional information and examples.

Box 1, Income Code

All filers must enter the appropriate 2-digit income code from the list on page 13. Use the income code that is the most specific. For example, if you are paying bank deposit interest, you should use code 29, not code 01 (interest paid by U.S. obligors—general). If you paid more than one type of income to or on behalf of the same recipient, you must complete a separate Form 1042-S for each income type.

Note: Although income codes are provided for deposit interest, short-term OID, and notional principal contract income, those items are not always subject to reporting on Form 1042-S. For example, bank deposit interest is reportable if it is income effectively connected with the conduct of a U.S. trade or business or is paid to a resident of Canada. Short-term OID or bank deposit interest may need to be reported by an NQI or flow-through entity if those amounts are paid to foreign persons and another withholding agent backup withheld on those amounts under the presumption rules. (See **Example 3** on page 10.) Notional principal contract income is reportable if it is income effectively connected with the conduct of a trade or business in the United States. For more information, see the regulations under Chapter 3 of the Code and Pub. 515.

Box 2, Gross Income

Enter the gross amount you paid to or on behalf of the recipient during calendar year 2002, including withheld tax. The following special procedures apply to the reporting of gross income.

- You must report the entire amount of a corporate distribution made with respect to stock even if you elect to reduce the amount of withholding on the distribution because all or a portion of the distribution is nontaxable or represents a capital gain dividend or exempt-interest dividend distributed by a regulated investment company.
- You must report the entire amount of a payment if you do not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment.
- You must report the entire amount of gains relating to the disposal of timber, coal, or domestic iron ore with a retained economic interest and gains relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.
- You must report only the amount of cash paid on notional principal contracts.

Box 3, Withholding Allowances

This box should only be completed if the income code reported in box 1 is 15

(scholarship or fellowship grants) or 16 (compensation for independent personal services). See Pub. 515 for more information.

Box 4, Net Income

Complete this box only if you entered an amount in box 3. Otherwise, leave it blank.

Box 5, Tax Rate

Enter the correct rate of withholding that applies to the income in box 2 (gross income) or box 4 (net income), as appropriate. The correct tax rate should be included even if you withheld less than that rate. For example, if an NQI is reporting dividends paid to a beneficial owner who is a resident of a country with which the United States does not have a treaty and a U.S. withholding agent paid the dividend and withheld only 15% (rather than the required 30%) and the NQI withholds an additional 15%, the NQI should report "30.00" in box 5. See **Example 2** on page 10.

Enter the tax rate using the following format: two digits, a decimal, and two digits (e.g., "30.00" for 30%). However, if the income is exempt from tax under a U.S. tax treaty or the Code, enter "-0-". If the tax rate is less than 10%, enter a zero before the tax rate (e.g., enter "04.00" for 4%).

Note: If you withheld at more than one tax rate for a specific type of income that you paid to the same recipient, you **must** file a separate Form 1042-S for each amount to which a separate rate was applied.

Box 6, Exemption Code

Note: If you are filing a Form 1042-S to correct certain information already provided to you by another withholding agent on a Form 1099 or Form 1042-S (e.g., as required under **Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities** on page 10), see item 5 below.

Generally, if the tax rate you entered in box 5 is 0% (-0-), you should enter the appropriate exemption code (01 through 09) from the list on page 13.

If an amount was withheld under Chapter 3 of the Code (i.e., the tax rate you entered in box 5 is greater than zero and is not due to backup withholding), enter "00" in box 6. If the tax rate you entered in box 5 is due to backup withholding, leave box 6 blank.

1. If exemption code 01 (income effectively connected with a U.S. trade or business) may apply, you **must** enter the recipient's U.S. TIN in box 14. If the recipient's U.S. TIN is unknown or unavailable, you must withhold tax at the foreign-person rate of 30% (30.00) and enter "00" in box 6.

2. A withholding agent should use exemption code 06 (qualified intermediary that assumes primary withholding

responsibility) **only** if it is making a payment to a QI that has represented on its Form W-8IMY that it is assuming primary withholding responsibility under Chapter 3 of the Code.

3. A withholding agent should use exemption code 07 (withholding foreign partnership or withholding foreign trust) **only** if it is making a payment to a foreign partnership or trust that has represented that it is a withholding foreign partnership or trust.

4. A withholding agent should use exemption code 09 (qualified intermediary represents income is exempt) **only** if it makes a payment to a QI that has **not** assumed primary withholding responsibility under Chapter 3 of the Code or primary backup withholding responsibility, but has represented on a withholding statement associated with its Form W-8IMY that the income is exempt from withholding.

5. If you have failed to provide another withholding agent with appropriate information regarding the status of the person to whom you are making a payment, the other withholding agent may be required to withhold on the payment based on the presumption rules. If the income is in fact exempt from withholding, you must submit a Form 1042-S providing the correct information. In this situation, you must:

- Indicate the correct rate at which the income should have been subject to withholding in box 5 (usually 0% (-0-)),
- Enter "99" in box 6, and
- Enter the actual amount of U.S. Federal tax withheld by the other withholding agent in box 7.

You must also provide the correct recipient code in box 12 and the name and address of the actual recipient in box 13.

Box 7, U.S. Federal Tax Withheld

Note: Box 7 **must** be completed in all cases, even if no tax has actually been withheld.

Enter the total amount of U.S. Federal tax actually withheld. If no tax has been withheld on the payment by any withholding agent, enter "-0-." If you are a withholding agent filing a Form 1042-S to report income that has already been subject to withholding by another withholding agent, enter the aggregate amount of tax withheld by you and any other withholding agent (see instructions for box 6 above).

Box 8, Amount Repaid to Recipient

This box should be completed only if:

- You repaid a recipient an amount that was overwithheld and
- You are going to reimburse yourself by reducing, by the amount of tax actually repaid, the amount of any deposit made

for a payment period in the calendar year following the calendar year of withholding.

You must also state on a timely filed Form 1042 for the calendar year of overwithholding that the filing of the Form 1042 constitutes a claim for refund.

Box 9, Withholding Agent's Employer Identification Number (EIN)

You are required to enter your EIN. However, if you are filing Form 1042-S as a QI, withholding foreign partnership, or withholding foreign trust, enter your QI-EIN. Enter the number and check the applicable box.

If you do not have an EIN, you should apply for one on **Form SS-4**, Application for Employer Identification Number. You can get Form SS-4 by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at www.irs.gov. File corrected Forms 1042-S when you receive your EIN.

To get a QI-EIN, submit Form SS-4 with your Application for QI Status (completed in accordance with Section 3 of the preamble of Rev. Proc. 2000-12. You can find Rev. Proc. 2000-12 on page 387 of Internal Revenue Bulletin 2000-4 at www.irs.gov.) **Do not** send an application for a QI-EIN to the Philadelphia Service Center; it will not be processed.

Box 10, Withholding Agent's Name and Address

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

Note: On statements furnished to Canadian recipients of U.S. source deposit interest, in addition to your name and address, you must include the telephone number of a person to contact. This number must provide direct access to an individual who can answer questions about the statement. The telephone number is not required on Copy A of paper forms or on magnetic media filed with the IRS. You must also include a statement that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

Box 11, Recipient's Account Number

You may use this box to enter the account number assigned by you to the recipient.

Box 12, Recipient Code

Enter the recipient code from the list on page 13. The following special instructions apply.

- If applicable, use recipient code 09 (artist or athlete) instead of recipient code 01 (individual), 02 (corporation), or 03 (partnership other than a withholding foreign partnership).
- Use recipient code 12 if you are making a payment to a QI and 04 if you are making a payment to a withholding foreign partnership or a withholding foreign trust.
- If you are making a payment to an NQI or flow-through entity, you generally must use the recipient code that applies to the type of recipient who receives the income from the NQI or flow-through entity.
- Use recipient code 03 (partnership other than a withholding foreign partnership) **only** if you are reporting a

payment of income that is effectively connected with the conduct of a trade or business of a nonwithholding foreign partnership in the United States. Otherwise, follow the rules that apply to payments to flow-through entities.

- Use recipient code 20 (unknown recipient) only if you have not received a withholding certificate or other documentation for a recipient **or** you cannot determine how much of a payment is reliably associated with a specific recipient. Do not use this code because you cannot determine the recipient's status as an individual, corporation, etc. The regulations under Chapter 3 of the Code provide rules on how to determine a recipient's status when a withholding

agent does not have the necessary information.

- Only QIs may use recipient codes 13 (private arrangement intermediary withholding rate pool—general), 14 (private arrangement intermediary withholding rate pool—exempt organizations), 15 (qualified intermediary withholding rate pool—general), and 16 (qualified intermediary withholding rate pool—exempt organizations). A QI should only use recipient code 14 or 16 for pooled account holders that have claimed an exemption based on their tax exempt status and not some other exemption (e.g., treaty or other Code exception). A U.S. withholding agent making a payment to a QI should use recipient code 12.

Income Codes, Exemption Codes, and Recipient Codes

Box 1. Enter the appropriate income code.

Code Interest Income

- 01 Interest paid by U.S. obligors—general
- 02 Interest paid on real property mortgages
- 03 Interest paid to controlling foreign corporations
- 04 Interest paid by foreign corporations
- 05 Interest on tax-free covenant bonds
- 29 Deposit interest
- 30 Original issue discount (OID)
- 31 Short-term OID

Code Dividend Income

- 06 Dividends paid by U.S. corporations—general
- 07 Dividends qualifying for direct dividend rate
- 08 Dividends paid by foreign corporations

Code Other Income

- 09 Capital gains
- 10 Industrial royalties
- 11 Motion picture or television copyright royalties
- 12 Other royalties (e.g., copyright, recording, publishing)
- 13 Real property income and natural resources royalties
- 14 Pensions, annuities, alimony, and/or insurance premiums
- 15 Scholarship or fellowship grants
- 16 Compensation for independent personal services¹
- 17 Compensation for dependent personal services¹
- 18 Compensation for teaching¹
- 19 Compensation during studying and training¹
- 20 Earnings as an artist or athlete²
- 24 Real estate investment trust (REIT) distributions of capital gains
- 25 Trust distributions subject to IRC section 1445
- 26 Unsevered growing crops and timber distributions by a trust subject to IRC section 1445
- 27 Publicly traded partnership distributions subject to IRC section 1446
- 28 Gambling winnings
- 32 Notional principal contract income³
- 50 Other income

Box 6. If the tax rate entered in box 5 is 0%, you must generally enter the appropriate exemption code from the list below (but see the **Caution** below).

Code Authority for Exemption

- 01 Income effectively connected with a U.S. trade or business
- 02 Exempt under an Internal Revenue Code section (income other than portfolio interest)
- 03 Income is not from U.S. sources⁴
- 04 Exempt under tax treaty
- 05 Portfolio interest exempt under an Internal Revenue Code section
- 06 Qualified intermediary that assumes primary withholding responsibility
- 07 Withholding foreign partnership or withholding foreign trust
- 08 U.S. branch treated as a U.S. person
- 09 Qualified intermediary represents income is exempt

Caution: See the instructions for box 6 on page 12 for information on additional codes (“00” and “99”) that may be required.

Box 12. Enter the appropriate recipient code.

Code Type of Recipient

- 01 Individual²
- 02 Corporation²
- 03 Partnership other than a withholding foreign partnership²
- 04 Withholding foreign partnership or withholding foreign trust
- 05 Trust
- 06 Government or international organization
- 07 Tax-exempt organization (IRC section 501(a))
- 08 Private foundation
- 09 Artist or athlete²
- 10 Estate
- 11 U.S. branch treated as U.S. person
- 12 Qualified intermediary
- 13 Private arrangement intermediary withholding rate pool—general⁵
- 14 Private arrangement intermediary withholding rate pool—exempt organizations⁵
- 15 Qualified intermediary withholding rate pool—general⁵
- 16 Qualified intermediary withholding rate pool—exempt organizations⁵
- 17 Authorized foreign agent
- 20 Unknown recipient

¹ If compensation that otherwise would be covered under Income Codes 16–19 is directly attributable to the recipient's occupation as an artist or athlete, use Income Code 20 instead.

² If Income Code 20 is used, Recipient Code 09 (artist or athlete) should be used instead of Recipient Code 01 (individual), 02 (corporation), or 03 (partnership other than withholding foreign partnership).

³ Use appropriate Interest Income Code for embedded interest in a notional principal contract.

⁴ Non-U.S. source income paid to a nonresident alien is not subject to U.S. tax. Use Exemption Code 03 when entering an amount for information reporting purposes only.

⁵ May be used only by a qualified intermediary.

Box 13, Recipient's Name and Address

Name. Enter the complete name of the recipient.

- If you do not know the name of the recipient, enter "Unknown Recipient."
- If Form 1042-S is being completed by a QI for a withholding rate pool, enter "Withholding rate pool" in box 13. No address is necessary.
- A QI reporting payments made to a PAI on a withholding rate pool basis must include the name and address of the PAI in box 13.

Address. For addresses **outside** the United States or its possessions or territories, enter the complete address in the following order: street address, city or town, province or state, and country. Follow the foreign country's practice for entering the postal code. Do not abbreviate the country name.

For addresses **within** the United States, enter the address in the following order: street address (number, street, apartment number, or rural route), city or town, state, and ZIP code. Use the U.S. Postal Service 2-letter abbreviation for the state name. Do not enter "United States" or "U.S."

Box 14, Recipient's U.S. Taxpayer Identification Number (TIN)

You must obtain and enter a U.S. taxpayer identification number (TIN) for:

- Any recipient whose income is effectively connected with the conduct of a trade or business in the United States.

Note: For these recipients, exemption code 01 should be entered in box 6.

- Any foreign person claiming a reduced rate of, or exemption from, tax under a tax treaty between a foreign country and the United States, unless the income consists of dividends and interest from stocks and debt obligations that are actively traded; dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940; dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933, and amounts paid with respect to loans of such securities.
- Any nonresident alien individual claiming exemption from tax under section 871(f) for certain annuities received under qualified plans.
- A foreign organization claiming an exemption from tax solely because of its status as a tax-exempt organization under section 501(c) or as a private foundation.
- Any QI.
- Any withholding foreign partnership or withholding foreign trust.
- Any nonresident alien individual claiming exemption from withholding on

compensation for independent personal services.

- Any foreign grantor trust with five or fewer grantors.
- Any U.S. branch of a foreign bank or foreign insurance company that is treated as a U.S. person.

If a foreign person provides a TIN on a Form W-8, but is not required to do so, the withholding agent **must** include the TIN on Form 1042-S.

Box 15, Recipient's Country of Residence for Tax Purposes

Enter the unabbreviated name of the recipient's country of residence for tax purposes.

Box 16, Recipient's Country Code

You must enter the code (from the list that begins on page 15) for the country of which the recipient claims residency under that country's tax laws. Enter "OC" (other country) **only** when the country of residence does not appear on the list or the payment is made to an international organization (e.g., the United Nations). Enter "UC" (unknown country) **only** if the payment is to an unknown recipient. If you are making a payment to a QI or if you are a QI and are making a payment to a QI withholding rate pool, enter the country code of the QI.

Note: If exemption code 04 appears in box 6 or if a reduced rate of withholding based on a treaty is entered in box 5, the country code entered in box 16 **must** be a country with which the United States has entered into an income tax treaty.

Boxes 17 Through 20, Nonqualified Intermediary's (NQI's)/ Flow-Through Entity's Name, Country Code, Address, and TIN

If you are reporting amounts paid to a recipient whose withholding certificates or other documentation has been submitted to you with a Form W-8IMY provided by an NQI or flow-through entity, you must include the name, address, and TIN, if any, of the NQI or flow-through entity with whose Form W-8IMY the recipient's Form W-8 or other documentation is associated.

Note: An NQI or flow-through entity will leave these boxes blank unless it is making the payment to an NQI or flow-through entity.

For box 18, you must enter the country code from the list that begins on page 15 for the country where the NQI or flow-through entity is located.

Box 21, Payer's Name and Taxpayer Identification Number (TIN)

See the definition of a payer on page 3. Include the payer's name and TIN if different from that in boxes 9 and 10.

Boxes 22 Through 24, State Income Tax Withheld and Related Information

Include in these boxes information relating to any state income tax withheld.

Correcting Paper Forms 1042-S

If you filed a Form 1042-S with the IRS and later discover you made an error on it, you must correct it as soon as possible. To correct a previously filed Form 1042-S, you will need to file two Forms 1042-S. See the **Step-by-Step Instructions** on this page.

To determine whether you are required to submit corrections on magnetic media, see **Magnetic Media/Electronic Reporting** on page 1 and in Pub. 1187.

Note: If you fail to correct Form(s) 1042-S, you may be subject to a penalty. See **Penalties** on page 11.

If any information you correct on Form(s) 1042-S changes the information you previously reported on Form 1042, you must also correct the Form 1042 by filing an amended return. To do this, see the Form 1042 instructions.

VOID box. Enter an "X" in the VOID box of a Form 1042-S that shows the same information, including errors, as the form you previously filed with the IRS. This will identify the Form 1042-S you want the IRS to disregard. An "X" in the VOID box will not correct a previously filed Form 1042-S. See **Step-by-Step Instructions** below.

CORRECTED box. Enter an "X" in the CORRECTED box of Copy A only if you are correcting a Form 1042-S you previously filed with the IRS. Enter an "X" in the CORRECTED box you give to the recipient only if you are correcting a Form 1042-S previously furnished to the recipient. You must provide statements to recipients showing the corrections as soon as possible.

Step-by-Step Instructions

To correct a previously filed Form 1042-S, prepare two Forms 1042-S following the steps below.

Step 1. To identify the Form 1042-S you want the IRS to disregard, enter an "X" in the VOID box at the top of Copy A of the original Form 1042-S that you filed or do the following:

- Prepare a Form 1042-S,
- Enter all the information exactly as it appeared on the original Form 1042-S, and
- Enter an "X" in the VOID box at the top of the form.

Step 2. To correct Form 1042-S:

- Prepare a new Form 1042-S.
- Enter all the correct information on the form, including the recipient name and address, money amounts, and codes.
- Enter an "X" in the CORRECTED box at the top of the form.

Step 3. To file the VOID and CORRECTED Forms 1042-S, see the Form 1042 instructions.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Sections 1441, 1442, and 1446 require withholding agents to report and pay over to the IRS taxes withheld from certain U.S. source income of foreign persons. Form 1042-S is used to report the amount of income and withholding to the payee. Form 1042 is used to report the amount of withholding that must be paid over to

the IRS. Section 6109 requires you to provide your employer identification number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may give the information to foreign countries pursuant to tax treaties. We may also disclose this information to Federal, state, or local agencies that investigate or respond to acts or threats of terrorism or participate in intelligence or counterintelligence activities concerning terrorism. If you fail to provide this information in a timely manner, you may be liable for penalties and interest.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating

to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is 25 minutes.

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 form to this address. Instead, see **Where, When, and How To File** on page 1.

Country Codes

Select the appropriate code from the following list and enter it in box 16 (country code of recipient). Also use the following codes to complete box 18 (country code of NQI), if applicable. See the instructions for box 16 (and box 18, if applicable) on page 14 before selecting a country code.
Note: Countries italicized are those with which the United States had entered into an income tax treaty at the time these instructions were printed.

Country	Code
Abu Dhabi	TC
Afghanistan	AF
Albania	AL
Algeria	AG
American Samoa	AQ
Andorra	AN
Angola	AO
Anguilla	AV
Antarctica	AY
Antigua and Barbuda	AC
Argentina	AR
Armenia ¹	AM
Aruba	AA
Ashmore and Cartier Islands ²	AT
Australia	AS
Austria	AU
Azerbaijan ¹	AJ
Azores	PO
Bahamas, The	BF
Bahrain	BA
Baker Island	FQ
Balearic Islands (Mallorca, etc.)	SP
Bangladesh	BG
Barbados	BB
Bassas da India	BS
Belarus ¹	BO
Belgium	BE
Belize	BH
Benin (Dahomey)	BN

Bermuda	BD	Cyprus	CY	Haiti	HA
Bhutan	BT	Czech Republic	EZ	Heard Island and McDonald Islands	HM
Bolivia	BL	Denmark	DA	Honduras	HO
Bonaire	NT	Djibouti	DJ	Hong Kong ⁵	HK
Bosnia-Herzegovina	BK	Dominica	DO	Howland Island	HQ
Botswana	BC	Dominican Republic	DR	Hungary	HU
Bouvet Island	BV	Dubai	TC	Iceland	IC
Brazil	BR	Ecuador	EC	India	IN
British Indian Ocean Territory	IO	Egypt	EG	Indonesia (including Bali, Belitung, Flores, Java, Moluccas, Sumatra, Timor, etc.)	ID
Brunei	BX	Eleuthera Island	BF	Iran	IR
Bulgaria	BU	El Salvador	ES	Iraq	IZ
Burkina Faso (Upper Volta)	UV	Equatorial Guinea	EK	Ireland, Republic of (Eire)	EI
Burma	BM	Eritrea	ER	Isle of Man	IM
Burundi	BY	Estonia	EN	Israel	IS
Cambodia (Kampuchea)	CB	Ethiopia	ET	Italy	IT
Cameroon	CM	Europa Island	EU	Jamaica	JM
Canada	CA	Falkland Islands (Islas Malvinas)	FK	Jan Mayen	JN
Canary Islands	SP	Faroe Islands	FO	Japan	JA
Cape Verde	CV	France	FR	Jarvis Island	DQ
Cayman Islands	CJ	French Guiana ³	FG	Jersey	JE
Central African Republic	CT	French Polynesia (Tahiti)	FP	Johnston Atoll	JQ
Chad	CD	French Southern and Antarctic Lands	FS	Jordan	JO
Chile	CI	Gabon	GB	Juan de Nova Island	JU
China, People's Republic of (including Inner Mongolia, Tibet, and Manchuria)	CH	Gambia, The	GA	Kazakhstan	KZ
Christmas Island (Indian Ocean) ²	KT	Gaza Strip	GZ	Kenya	KE
Clipperton Island	IP	Georgia ¹	GG	Kingman Reef	KQ
Cocos (Keeling) Islands ²	CK	Germany	GM	Kiribati (Gilbert Islands)	KR
Colombia	CO	Ghana	GH	Korea, Democratic (North)	KN
Comoros	CN	Gibraltar	GI	Korea, Republic of (South)	KS
Congo (Brazzaville)	CF	Glorioso Islands	GO	Kosovo	YO
Congo, Democratic Republic of (Zaire)	CG	Great Britain (United Kingdom)	UK	Kurile Islands	RS
Cook Islands	CW	Greece	GR	Kuwait	KU
Coral Sea Islands Territory ²	CR	Greenland	GL	Kyrgyzstan ¹	KG
Corsica	VP	Grenada (Southern Grenadines)	GJ	Laos	LA
Costa Rica	CS	Guadeloupe ³	GP	Latvia	LG
Cote D'Ivoire (Ivory Coast)	IV	Guam	GQ	Lebanon	LE
Croatia	HR	Guatemala	GT	Lesotho	LT
Cuba	CU	Guernsey	GK	Liberia	LI
Curacao	NT	Guinea	GV	Libya	LY
		Guinea-Bissau	PU	Liechtenstein	LS
		Guyana	GY	Lithuania	LH

<i>Luxembourg</i>	LU	Northern Mariana Islands	CQ	Singapore	SN	<i>Uzbekistan</i> ¹	UZ
Macau	MC	<i>Norway</i>	NO	<i>Slovakia</i>	LO	Vanuatu	NH
Macedonia (former Yugoslav Republic of)	MK	Oman	MU	<i>Slovenia</i>	SI	Vatican City	VT
Madagascar (Malagasy Republic)	MA	<i>Pakistan</i>	PK	Solomon Islands	BP	<i>Venezuela</i>	VE
Malawi	MI	Palau	PS	Somalia	SO	Vietnam	VM
Malaysia	MY	Palmyra Atoll	LQ	<i>South Africa</i>	SF	Virgin Islands (British)	VI
Maldives	MV	Panama	PM	South Georgia and the South Sandwich Islands	SX	Virgin Islands (U.S.)	VQ
Mali	ML	Papua New Guinea	PP	<i>Spain</i>	SP	Wake Island	WQ
Malta	MT	Paracel Islands	PF	Spratly Islands	PG	Wallis and Futuna	WF
Marshall Islands	RM	Paraguay	PA	Sri Lanka	CE	West Bank	WE
<i>Martinique</i> ³	MB	Peru	PE	Sudan	SU	Western Sahara	WI
Mauritania	MR	<i>Philippines</i>	RP	Suriname	NS	Western Samoa	WS
Mauritius	MP	Pitcairn Island	PC	Svalbard (Spitsbergen)	SV	Windward Islands	VC
Mayotte	MF	<i>Poland</i>	PL	Swaziland	WZ	Yemen (Aden)	YM
<i>Mexico</i>	MX	<i>Portugal</i>	PO	<i>Sweden</i>	SW	Yugoslavia (Kosovo, Montenegro, Serbia)	YO
Micronesia, Federated States of	FM	Puerto Rico	RQ	<i>Switzerland</i>	SZ	Zaire (Democratic Republic of Congo)	CG
Midway Islands	MQ	Qatar (Katar)	QA	Syria	SY	Zambia	ZA
<i>Moldova</i> ¹	MD	Redonda	VI	Taiwan	TW	Zimbabwe	ZI
Monaco	MN	<i>Reunion</i> ³	RE	<i>Tajikistan</i> ¹	TI	Other Country	OC
Mongolia	MG	<i>Romania</i>	RO	Tanzania	TZ	Unknown Country	UC
Montenegro	YO	<i>Russia</i>	RS	<i>Thailand</i>	TH		
Montserrat	MH	Rwanda	RW	Togo	TO		
<i>Morocco</i>	MO	Ryukyu Islands	JA	Tokelau	TL		
Mozambique	MZ	St. Helena (Ascension Island and Tristan de Cunha Island Group)	SH	Tonga	TN		
Namibia	WA	St. Kitts (St. Christopher and Nevis)	SC	Tortola	VI		
Nauru	NR	St. Lucia	ST	<i>Trinidad and Tobago</i>	TD		
Navassa Island	BQ	St. Pierre and Miquelon	SB	Tromelin Island	TE		
Nepal	NP	St. Vincent and the Grenadines (Northern Grenadines)	VC	<i>Tunisia</i>	TS		
<i>Netherlands</i>	NL	San Marino	SM	<i>Turkey</i>	TU		
Netherlands Antilles	NT	Sao Tome and Principe	TP	<i>Turkmenistan</i> ¹	TX		
New Caledonia	NC	Sarawak	MY	Turks and Caicos Islands	TK		
<i>New Zealand</i>	NZ	Saudi Arabia	SA	Tuvalu	TV		
Nicaragua	NU	Senegal	SG	Uganda	UG		
Niger	NG	Serbia	YO	<i>Ukraine</i>	UP		
Nigeria	NI	Seychelles	SE	United Arab Emirates	TC		
Niue	NE	Sierra Leone	SL	<i>United Kingdom (England, Wales, Scotland, No. Ireland)</i>	UK		
<i>Norfolk Island</i> ²	NF			Uruguay	UY		
<i>Northern Ireland</i> ⁴	UK						

¹ These countries are parties to the United States treaty with the Commonwealth of Independent States.

² These countries are covered under the United States treaty with Austrailia.

³ These countries are covered under the United States treaty with France.

⁴ Northern Ireland is covered under the United States treaty with the United Kingdom.

⁵ Hong Kong is **not** covered under the United States treaty with China.