Form **8233**

(Rev. September 2018)

Department of the Treasury
Internal Revenue Service

Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual

▶ Go to *www.irs.gov/Form8233* for instructions and the latest information. ▶ See separate instructions.

OMB No. 1545-0795

Who Should Use This Form? **Note:** For definitions of terms used in this section and detailed instructions on required withholding forms for each type of income, see ***Definitions*** in the instructions.	**IF** you are a nonresident alien individual who is receiving. . .	**THEN,** if you are the beneficial owner of that income, use this form to claim. . .
	Compensation for independent personal services performed in the United States	A tax treaty withholding exemption (Independent personal services, Business profits) for part or all of that compensation.
	Compensation for dependent personal services performed in the United States	A tax treaty withholding exemption for part or all of that compensation.
	Noncompensatory scholarship or fellowship income **and** personal services income **from the same withholding agent**	A tax treaty withholding exemption for part or all of **both** types of income.
DO NOT Use This Form. . .	**IF** you are a beneficial owner who is. . .	**INSTEAD,** use. . .
	Receiving compensation for dependent personal services performed in the United States **and** you are **not** claiming a tax treaty withholding exemption for that compensation	Form W-4 (See the Instructions for Form 8233 for how to complete Form W-4.)
	Receiving noncompensatory scholarship or fellowship income **and** you are **not** receiving any personal services income **from the same withholding agent**	Form W-8BEN or, if elected by the withholding agent, Form W-4 for the noncompensatory scholarship or fellowship income
	Claiming only foreign status or treaty benefits with respect to income that is **not** compensation for personal services	Form W-8BEN

This exemption from withholding of federal income tax is applicable for compensation for calendar year _____ , or other tax year beginning _____ and ending _____ .

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual ~~who is the beneficial owner~~	**2** Identification number	**3** Foreign tax identification number, if any
4 ~~Permanent~~ residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box.**		
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)
5 Address in the United States (street, apt. or suite no., or rural route). **Do not use a P.O. box.**		
City or town, state, and ZIP code		

Note: Citizens of Canada or Mexico are not required to complete lines 7a and 7b.

6 U.S. visa type	**7a** Country issuing passport	**7b** Passport number
8 Date of entry into the United States	**9a** Current nonimmigrant status	**9b** Date your current nonimmigrant status expires

10 If you are a foreign student, trainee, professor/teacher, or researcher, check this box . . . . . ▶ ☐
Caution: See the **line 10 instructions** for the required additional statement you must attach.

Part II Claim for Tax Treaty Withholding Exemption

11 Compensation for independent (and certain dependent) personal services:

a Description of personal services you are providing Private sector employment not associated with any work in connection with a statutory "Trade or Business" defined at IRC 7701 (a) (26) to mean "the performance of the functions of a Public Office." Public Offices are creations of the US Congress. All personal services are performed sans federal nexus as American in private sector.

b Total compensation you expect to be paid for these services in this calendar or tax year $ NOT APPLICABLE

12 If compensation is exempt from withholding based on a tax treaty benefit, provide:

a Tax treaty on which you are basing exemption from withholding NOT APPLICABLE

b Treaty article on which you are basing exemption from withholding

c Total compensation listed on line 11b above that is exempt from tax under this treaty $

d Country of residence

Note: Do not complete lines 13a through 13d unless you also received compensation for personal services **from the same withholding agent.**

13 Noncompensatory scholarship or fellowship income:

a Amount $

b Tax treaty on which you are basing exemption from withholding NOT APPLICABLE

c Treaty article on which you are basing exemption from withholding

d Total income listed on line 13a above that is exempt from tax under this treaty $

14 Sufficient facts to justify the exemption from withholding claimed on line 12 and/or line 13 (see instructions) Personal Services are performed as an employee of or under a contract with a private sector employer. Neither myself nor my employer are engaged in a (statutory) "Trade or Business" within the (statutory) "United States" [the District of Columbia]. The FIT was only levied upon the National Government. No levy of FIT upon Americans due to USSC in the Pollock decision for omission of Rule of Apportionment. IRC 861 (a) (3) states in part "...compensation for labor or personal services performed in the United States (meaning the District of Columiba only per IRC 7408 (d)) [NOTE: This statutory United States does not include the 50 states of the Union] SHALL NOT be deemed as income from sources within the (statutory) United States if --" The 26 USC Section 861 (a) (3) (C) continues with "the compensation for labor or services performed as an employee of or under contract with -- (i) a nonresident alien not engaged in a (statutory) 'Trade or Business' in the (statutory) United States." Thus, a Nonresident Alien is free from any withholding for a FIT. ** A Revocation of Election (IRC 6013 (g)(4)(A)) has been recorded with the IRS granting this NRA termination of any IRS FIT claim.** The IRC obtusely defines a NONRESIDENT ALIEN to be one who is neither a U.S. citizen nor resident alien (IRC 7701 (b)(1)(B). This statute subsection never tells the reader what a Nonresident Alien actually is but only what it is not. The term is a statutory creation of the US Congress to obfuscate the real parties referenced by this oblique expression. The statutory US Citizen is defined at 8 USC Sec 1401 (a) & 3C Am Jur 2d Section 2689 to be "one born in territory belonging to the Government" (US Territories only). A NONRESIDENT ALIEN is defined in 26 CFR Section 1.871-1 (a) to mean one born in the Constitutional Republic, the 50 states. It is best clarified at 26 CFR Sec. 1-871-1 (b) (4) describing Expatriation from the Republic. No withholding of income for FIT can occur.

Part III Certification

Under penalties of perjury from without the United States [28 USC§1746 (1)], I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that I meet at least one of the following criteria:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates.
- The beneficial owner is not a U.S. person.
- The beneficial owner is a resident of the treaty country listed on line 12a and/or 13b above within the meaning of the income tax treaty between the United States and that country, or was a resident of the treaty country listed on line 12a and/or 13b above at the time of, or immediately prior to, entry into the United States, as required by the treaty.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here ▶ Signature of Nonresident Alien Individual | Date

Part IV Withholding Agent Acceptance and Certification

Name	**Employer identification number**
Address (number and street) (Include apt. or suite no. or P.O. box, if applicable.)	
City, state, and ZIP code	Telephone number

Under penalties of perjury, I certify that I have examined this form and any accompanying statements, that I am satisfied that an exemption from withholding is warranted, and that I do not know or have reason to know that the nonresident alien individual is not entitled to the exemption or that the nonresident alien's eligibility for the exemption cannot be readily determined.

Signature of withholding agent ▶ Date ▶

26 U.S. CODE § 861 - INCOME FROM SOURCES WITHIN THE UNITED STATES

The statutory term **"*United States*" is defined at IRC 7408(d) to mean only the District of Columbia and its US Territories.**

(d) Citizens and residents outside the United States ***"If any citizen or resident of the United States does not reside in, and does not have his principal place of business in, any United States judicial district, such citizen or resident shall be treated for purposes of this section as residing in the District of Columbia."***

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(a) Gross income from sources within United States
The following items of gross income shall be treated as income from sources within the United States:

(3) Personal services – [Discussion on Nonresident Alien Individuals having no federal income tax liability]
Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,
(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the **compensation** is for labor or services **performed as an employee** of or under a contract with—
(i) a **nonresident alien**, foreign partnership, or foreign corporation, **not engaged in trade or business** within the **United States**…

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A Nonresident alien is defined statutorily in IRC 7701 (b)(1)(B) "***An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States.***" [This only states what it is not rather than what it is]

26 CFR 1.871-1(a) "Nonresident alien individuals are taxable only on certain income from sources within and without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States."

26 CFR 1.871-1(b) (4) Expatriation to avoid tax, "For special rules applicable in determining the tax of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes."

NOTE:

(A) In the IRC 7701 (b)(1)(B), you see that a nonresident alien individual cannot be either a U.S. citizen nor a resident alien.
(B) In 26 CFR 1.871-1(b) (4) Expatriation to avoid tax, you see that a Nonresident alien individual can lose their U.S. citizenship and lose it by expatriation.
(C) There is only one group of individuals that can have a U.S. citizenship and lose it by expatriation. Those are Americans born in the Constitutional Republic or naturalized there.

In a separate jurisdiction, the District of Columbia, you find the following:

The statutory term **"United States" means the District of Columbia.** Now substitute that understanding for the statutes.

A statutory U.S. citizen is defined at 8 USC section 1401(a) "a person born in the United States, and subject to the jurisdiction thereof;"

A statutory U.S. citizen is defined in the American Journal of Jurisprudence at 3C Am Jur 2d Section 2689, Who is born in United States and subject to United States jurisdiction, "A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if his or her birth occurs in territory over which the United States is sovereign…."

Those born in the Constitutional Republic are not 'subject to the jurisdiction of the National Government' as they 'are not born in territory belonging to the statutory United States' [the National Government]. The Constitutional Republic is a separate and distinct jurisdiction from that of the territory belonging to the statutory United States, the District of Columbia. The District of Columbia is not a state of the Union. Private Sector Employers cannot be presumed as Federal.

A statutory trade or business is defined at IRC 7701(a)(26) "includes [consists of to the exclusion of all other terms] **the performance of the functions of a public office."** [All public offices are those created by the US Congress for IRC purposes]

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