


# ABOUT IRS FORM W-8BEN

FORM #04.202

 [PDF Version of this Document](#)

## TABLE OF CONTENTS:





1. [Why must We Use It?](#)
2. [Citizenship, Domicile, and Tax Status Options Summary](#)
3. [Withholding on Nonresident Aliens](#)
4. [Why the government agrees with this article on the liabilities of "nonresident aliens" not engaged in a "trade or business"](#)
5. [Traps to Avoid with this Deceptive Form-WATCH OUT!](#)
  - 5.1 [Deliberately and deceitfully confusing "nationality" with "domicile" on federal territory](#)
  - 5.2 [You're NOT a statutory "U.S. resident", "U.S. citizen", "citizen", or "U.S. person"](#)
  - 5.3 [You're NOT a statutory "Beneficial owner"](#)
  - 5.4 [You're NOT a statutory "Individual", but rather a "transient foreigner" or "Union state Citizen"](#)
  - 5.5 [You're NOT a statutory "alien", but rather a "nonresident alien"](#)
  - 5.6 [Tricks pulled by usually unscrupulous institutions](#)
  - 5.7 [Deception in IRS Publication 519 about the definition of "United States"](#)
6. [How to Complete IRS Form W-8BEN](#)
7. [Examples](#)
8. [Opening bank accounts as a nonresident alien not engaged in a "trade or business" without a Taxpayer Identification Number](#)
9. [Situational Resources Relating to Withholding and Reporting](#)
  - 9.1 [Threatened with Backup Withholding](#)
  - 9.2 [Asked to fill out an I-9](#)
  - 9.3 [Asked for a Social Security Number for E-Verify](#)
  - 9.4 [Asked to Update an existing W-8BEN and Institution Resists Submission](#)
  - 9.5 [First W-8 Submission is rejected and asked to correct it](#)
10. [Frequently Asked Questions](#)
11. [Saving and reusing completed forms](#)
12. [Further Reading and Research](#)

## 1. Why Must We Use It?

The most important aspect of your relationship to the IRS and state taxing authorities is the withholding forms you fill out which identify your citizenship, domicile, and taxpayer status. They are the first contact most people ever have with the tax system and they can have a profound and long-lasting affect on the future interactions one might have with the government. If you either fill out the wrong withholding form or you fill out the right form incorrectly, you can severely prejudice your rights under the law. Nearly every American knows about the IRS Form W-4 withholding form because the private company they work for has most likely mandated (illegally, we might add) that it be filled out and submitted before they are allowed to start work. Not many people, however, know that this is the wrong form to fill out for most Americans and that there is another, better form that more truthfully and accurately represents their status to the payroll department. That form is the IRS Form W-8BEN. Those who submit this form are exempt from [backup withholding](#) and 1099 reporting:


*"Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) **are exempt from backup withholding and Form 1099 reporting.**"*  
*[IRS Publication 515, year 2000, p. 3]*

The IRS form W-8BEN identifies the submitter as a ["nonresident alien"](#) (OFFSITE LINK), which is the status that Americans born anywhere in the country and domiciled within constitutional states of the Union have. We won't explain here all the nuances of why this is the case, because you can read as much detail about the subject as you like in the following sources:

-  [Nonresident Alien Position, Form #05.020](#)-memorandum of law on why people domiciled in states of the Union are nonresident aliens
-  [Legal Basis for the term "Nonresident Alien", Form #05.036](#) -pamphlet
-  [Why Domicile and Becoming a "Taxpayer" Require Your Consent, Form #05.002](#)-explains why income taxes are based on "domicile" and why you don't have a "domicile" in the "United States" and therefore cannot be a "resident"
-  [Federal and State Tax Withholding Options for Private Employers, Form #09.001](#) -important pamphlet

- [You're Not a "resident" under the Internal Revenue Code](#) (OFFSITE LINK)
- [You're Not a "citizen" under the Internal Revenue Code](#) (OFFSITE LINK)

Very briefly, the reason that "[nonresident alien](#)" is the correct status for Americans born anywhere in the country and domiciled in states of the Union is that they are:

1. "nationals" under [8 U.S.C. §1101](#)(a)(21) (OFFSITE LINK) because they owe allegiance to their state, which is "[foreign](#)" (OFFSITE LINK) to the legislative jurisdiction of the federal government.  
 [Why you are a "national", "state national", and Constitutional but not Statutory Citizen, Form #05.006](#)  
<http://sedm.org/Forms/MemLaw/WhyANational.pdf>
2. "state nationals". See the pamphlet
3. Not *statutory* "citizens" as defined in [8 U.S.C. §1401](#). [Click here](#) for an article on this subject.
4. Not *statutory* "residents" or "aliens", which are equivalent, as defined in [26 U.S.C. §7701](#)(b)(1)(A) (OFFSITE LINK) . [Click here](#) (OFFSITE LINK) for an article on this subject.
5. Not "[individuals](#)". All "[individuals](#)" are federal "[public officers](#)" or "[franchisees](#)" domiciled on federal [territory](#). See:
  - 5.1 [Why Your Government is either a Thief or You Are a Public Officer for Income Tax Purposes](#), Form #05.008  
<http://sedm.org/Forms/MemLaw/WhyThiefOrEmployee.pdf>
  - 5.2 [Why Statutory Civil Law is Law for Government and not Private Persons](#), Form #05.037  
<http://sedm.org/Forms/MemLaw/StatLawGovt.pdf>
  - 5.3 [Government instituted slavery using franchises](#), Form #05.030  
<http://sedm.org/Forms/MemLaw/Franchises.pdf>

Statutory "U.S. citizen" ([8 U.S.C. §1401](#)) and "U.S. resident" ([26 U.S.C. §7701](#)(b)(1)(A)), or "national of the United States" ([8 U.S.C. §§1101](#)(a)(22)(B) and [1408](#)) status under the I.R.C. can only be acquired by those domiciled on [federal territory](#) or in U.S. possessions, or who are representing federal instrumentalities that have a domicile in these places such as federal corporations under [Fed.R.Civ.P. 17\(b\)](#). Everyone else is a statutory but not constitutional "non-citizen national" and/or "alien" under federal statutory law. Those who are "nationals" under [8 U.S.C. §§1101](#)(a)(21) and [1452](#) because domiciled in a foreign state (state of the Union) are statutory "aliens" but also constitutional "citizens of the United States" at the same time.

The IRS Form W-4 can only be used for public (government) employment withholding. This is confirmed by the content of [26 CFR §31.3121\(b\)-3](#)(c), which says that services performed outside the "[United States](#)", which is defined as [federal territory](#) in [26 U.S.C. §7701](#)(a)(9) and (a)(10) and [4 U.S.C. §110](#)(d) (definition of "The States" used in [26 U.S.C. 7701](#)(a)(9)) and not expanded anywhere else to include states of the Union, do not constitute "employment" within the meaning of I.R.C. Subtitles A and C.

*Title 26: Internal Revenue*

[PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)

[Subpart B—Federal Insurance Contributions Act \(Chapter 21, Internal Revenue Code of 1954\)](#)

[General Provisions](#)

[§ 31.3121\(b\)-3 Employment: services performed after 1954.](#)

*(a) In general. Whether services performed after 1954 constitute employment is determined in accordance with the provisions of section 3121(b).*

*(b) Services performed within the [United States](#) [federal territory not within any state of the Union].*

*Services performed after 1954 within the [United States](#) (see §31.3121(e)-1) by an employee for his employer, unless specifically excepted by section 3121(b), constitute employment. With respect to services performed within the [United States](#), the place where the contract of service is entered into is immaterial. The citizenship or residence of the employee or of the employer also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the employer may be citizens and residents of a [foreign country](#) [such as states of the Union] and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.*

*"(c) Services performed outside the United States—(1) In general. **Except as provided in paragraphs (c)(2) and (3) of this section, services performed outside the [United States](#) (see §31.3121(e)-1) do not constitute employment.**"*

Private companies, meaning those who are not instrumentalities of the U.S. government identified in [26 U.S.C. §6331](#)(a), who:

1. Complete SS-4 form and check the "employer" block. AND...
2. Are lawfully designated as "withholding agents" pursuant to [26 U.S.C. §7701](#)(a)(16) by receipt of IRS form 2678 from the Secretary of the Treasury. AND...
3. Were in fact acting as a federal instrumentality BEFORE they did the previous two steps.

..are the ONLY ones who can lawfully use the W-4 or perform tax withholding upon their PUBLIC workers. Those who do not satisfy all the above criteria are committing several crimes, including:

1. Impersonating a public officer. [18 U.S.C. §912](#)
2. Bribing the government to procure a public office. [18 U.S.C. §210](#)
3. Fraudulently filing returns under [26 U.S.C. §§7206](#) and [7207](#). Information returns such as the W-2 count as "returns" and may be prosecuted for fraud if either the company or the worker are not in fact, and in deed public officers within the U.S. government engaged in the "trade or business" franchise, which is defined in [26 U.S.C. 7701\(a\)\(26\)](#) as "the functions of a public office".

The IRS, however, unlawfully abuses tax forms to CREATE NEW public offices in the U.S. government and uses withholdings as a means to bribe the government unlawfully to procure a public office with the withholdings in violation of [18 U.S.C. §210](#). Those who fall victim to this SCAM and are unaware of it effectively become "public employers" by partaking in the governments social insurance scheme and may then CRIMINALLY cause their otherwise private workers to impersonate public officers in the government and become Kelly Girls on loan from Uncle Sam as part of this "scheme".


[IRM 5.14.10.2 \(09-30-2004\)](#)  
Payroll Deduction Agreements

**2. Private employers, states, and political subdivisions are not required to enter into payroll deduction agreements.**


*Taxpayers should determine whether their employers will accept and process executed agreements before agreements are submitted for approval or finalized.*

[SOURCE: <http://sedm.org/Exhibits/EX05.043.pdf>]





However, the IRS form W-8BEN, unlike the W-4, has many appropriate uses. It can be used:

- To stop "employment" withholding. When this form is submitted, the employer must stop ALL withholding, including Medicare, Social Security, and FICA, and Federal Income Tax.
- Change your legal "[domicile](#)" (OFFSITE LINK) to a place outside the jurisdiction of the federal government and the tax laws. See block 4 of the W-8BEN form.  [Click here](#) for an article on this important subject.
- Open tax-free accounts at financial institutions, all without a "[Taxpayer Identification Number](#)" (OFFSITE LINK)
- Change your status with the IRS to that of a "[nontaxpayer](#)" (OFFSITE LINK).
- To Stop W-2 earnings reports to the Federal Government.
- To avoid the W-4 Exempt penalty of \$500. There is no regulation that allows the submitter of a W-8BEN to be penalized for submitting it, even if it is wrong.

Most people don't know about this very useful form, and the main reason is because the government doesn't want the secret getting out! The IRS has done their best to discourage people from using this form by, for instance:

1. Emphasizing that nonresident aliens under [26 U.S.C. §871\(a\)](#), who have earnings not connected with a "[trade or business](#)" are subject to a flat 30% tax rate, even though this tax only applies to corporations involved in very specific types of transactions and does not apply to natural persons. This deceives natural persons into avoiding being nonresident aliens in order to avoid paying a usually higher tax rate, when in fact, such an approach would produce NO tax liability in most cases.
2. Not putting anything on the form about the fact that nonresident aliens with no earnings connected with a "trade or business" are not subject to withholding, even though the regulations at [26 CFR §31.3401\(a\)\(6\)-1\(b\)](#), shown below, indicate that no withholding is required. Since the form doesn't mention that nonresident aliens in most cases are not subject to withholding, then people naturally gravitate to the W-4, because it is the only IRS form that mentions an exemption from withholding. This causes them to use the WRONG form, thus maximizing the illegal flow of donations to the IRS by misinformed and deceived Americans.
3. Not putting anything on the form indicating that no Social Security Number is required in the case of nonresident aliens, even though the regulations at [26 CFR §1.1441-6\(c\)\(1\)](#) say none is required.
4. By not mentioning that nonresident aliens not engaged in a "trade or business" do not earn any "taxable income", as shown below and in [26 U.S.C. §864\(b\)\(1\)\(A\)](#), [26 U.S.C. §861\(a\)\(3\)\(C\)\(i\)](#), [26 U.S.C. §3401\(a\)\(6\)](#), [26 U.S.C. §1402\(b\)](#).
5. By not providing any other form for use by nonresident aliens that will stop withholding other than the [W-8BEN](#) and the [8233](#) and doing a very confusing job in their  [Publication 515](#) explaining the differences between these two forms. This causes most people to throw up their hands and opt for the simplest option, which of course causes them to commit perjury under penalty of perjury on the W-4 by pronouncing themselves as government employees engaged in a privileged, taxable "trade or business".

There are many reasons why the IRS form W-4 is **not** the correct form, and those reasons are beyond the scope of this article because covered much more thoroughly elsewhere. The most authoritative articles on the subject are listed below:

-  [Income Tax Withholding and Reporting Course, Form #12.004](#)
-  [Federal Tax Withholding, Form #04.102](#)
-  [Tax Withholding and Reporting: What the Law Says, Form #04.103](#)
-  [Federal and State Tax Withholding Options for Private Employers, Form #09.001, Sections 19.1 through 19.4](#) -pamphlet
- [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK), section 5.6.20: Why you aren't an "exempt" individual. **This section clearly establishes that most Americans SHOULD NOT be filing a W-4 Exempt. Read and heed!**
- [Sovereignty Forms and Instructions Online, Form #10.004, Instructions 4.13: Stop PRIVATE Employer Withholding of Income Taxes](#) (OFFSITE LINK)
- [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK), section 5.6.7: You Don't Earn "Wages" so your Earnings Can't Be Taxed
- [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK), section 5.6.8: Employment Withholding Taxes are "Gifts" to the U.S. government
- [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK), section 5.6.13: The Federal Employee Kickback Program Position
- [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK), section 5.6.15: Your Private Employer Isn't Authorized to Act as a Federal Withholding Agent

Because of the many pitfalls of using the IRS form W-8BEN, you may decide to use our alternative or Substitute W-8 form that avoids all these pitfalls below. The following form avoids the use of all of the IRS' favorite "words of art" and very clearly spells out all the applicable laws so that the clerks are properly educated about the requirements of law:

[Affidavit of Citizenship, Domicile, and Tax Status, Form #02.001](#)  
<http://sedm.org/Forms/Affidavits/AffCitDomTax.pdf>

## [2. Citizenship, Domicile, and Tax Status Options Summary](#)

The following page on this site summarizes all of the permutations of nationality and domicile under Title 8 of the U.S. Code with their corresponding tax status under Title 26 of the U.S. Code. It is extremely important to understand these relationships so that they can be confidently explained to anyone and everyone who challenges your status:

[Citizenship Status v. Tax Status, Form #10.011](#)

If you would like a single form containing all the citizenship summary information contained in the above link, please download the following:

[Citizenship, Domicile, and Tax Status Options, Form #10.003](#)  
<http://sedm.org/Forms/Emancipation/CitDomTaxStatusOptions.pdf>

## [3. Withholding on Nonresident Aliens](#)

Nonresident alien tax withholding is described in the following:

<a href="#">Withholding of Tax on Nonresident Aliens and Foreign Corporations, IRS Publication 515</a> <a href="http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub515.pdf">http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub515.pdf</a> (OFFSITE LINK)
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The IRS website contains propaganda intended to deceive private employers in the states of the Union into withholding earnings of nonresident aliens who have "income from sources within the United States" at:

<a href="#">NRA Withholding</a> <a href="http://www.irs.gov/businesses/small/international/article/0,,id=104997,00.html">http://www.irs.gov/businesses/small/international/article/0,,id=104997,00.html</a>
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This propaganda advises "withholding agents" to withhold 30% of the payments made to nonresident aliens from "sources within the United States" and to file an IRS Form 1042 documenting the amount of earnings and withholding. The information provided is deceptive and constructively fraudulent, because:

1. The term "U.S." means the statutory but not constitutional "United States" and therefore federal territory not within the limits of any constitutional state in the context of the Internal Revenue Code Subtitle A income tax. See [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and [4 U.S.C. §110\(d\)](#). They don't define this term anywhere on their website that we could find. I wonder why? This is the only logical conclusion one can reach after reading the rulings of the Supreme Court on the issue of federal jurisdiction within states of the Union such as the following:

*"It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, [247 U.S. 251, 275](#), 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the **internal** affairs of the states; and emphatically not with regard to legislation.*

*[Carter v. Carter Coal Co., [298 U.S. 238](#), 56 S.Ct. 855 (1936)]*

*"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; **but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions.** The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. *United States v. Butler, supra.*"*

[*Ashton v. Cameron County Water Improvement District No. 1*, [298 U.S. 513](#); 56 S.Ct. 892 (1936)]

2. The Internal Revenue Code is NOT positive law, but private law and religion which obligates no one in a state of the Union to do anything who doesn't first volunteer to be subject to its provisions by signing a contract called a W-4 or an SS-5. See our memorandum of law on this subject:

[Requirement for Consent](#), Form #05.003  
<http://sedm.org/Forms/MemLaw/Consent.pdf>

3. Even if the Internal Revenue Code was positive law or public law, private employers in states of the Union are not subject to federal jurisdiction and applying for an Employer Identification Number doesn't make them subject either.
4. Private employers exclusively within states of the Union are NOT the subject of the article, because they do not qualify as "[withholding agents](#)" as we pointed out earlier in section 1.
5. The federal income tax described under I.R.C. Subtitle A is measured by the receipt of "income" in connection with a "[trade or business](#)" (OFFSITE LINK). This is the privileged activity being "taxed", and it is an avoidable activity that few private employees are engaged in, because they do not in deed and in fact hold a privileged "public office" as required by [26 U.S.C. §7701\(a\)\(26\)](#). See:  
[The "Trade or Business" Scam, Form #05.001](#)

The IRS website admits some of the truths above, but you really have to dig for it. In the International Taxpayer Glossary, it says the following about withholding of those who have no income from the statutory but not constitutional "United States", meaning federal territory not within any state of the Union:

#### **Services performed outside the U.S**

*Compensation paid to a nonresident alien (other than a resident of Puerto Rico) for services performed outside the United States [federal territory] is not considered wages and is not subject to graduated withholding or 30% withholding.*

[SOURCE: <http://www.irs.gov/businesses/small/international/article/0..id=96594.00.html>]

IRS Publication 519, Year 2000 agrees with the above, by saying the following:

#### **Income Subject to Tax**

**Income from sources outside the United States that is not effectively connected with a trade or business in the United States is not taxable if you receive it while you are a nonresident alien.**

*The income is not taxable even if you earned it while you were a resident alien or if you became a resident alien or a U.S. citizen after receiving it and before the end of the year.*

[[IRS Publication 519, Year 2000](#), p. 26]

A person who meets the requirement above of being a nonresident alien with no income from the statutory "United States" (federal territory not within any state of the Union), whether connected to a trade or business or not under [26 U.S.C. §871](#), is described in the regulations as follows, under 26 CFR §871-1(b)(i):

*Title 26: Internal Revenue*  
[PART 1—INCOME TAXES](#)  
[nonresident alien individuals](#)  
[§ 1.871-1 Classification and manner of taxing alien individuals.](#)

(a) *Classes of aliens.*

*For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See §1.1-1(b). Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the*

conduct of a trade or business in the United States. However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code. Accordingly, any reference in §§1.1–1 through 1.1388–1 and §§1.1491–1 through 1.1494–1 of this part to non-resident alien individuals does not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise specifically provided. Similarly, any reference to resident aliens or U.S. residents includes those with respect to whom an election is in effect, unless otherwise specifically provided.

**(b) Classes of nonresident aliens —**

**(1) In general. For purposes of the income tax, nonresident alien individuals are divided into the following three classes:**

**(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States.**

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under §1.871–9 to be, engaged in a trade or business in the United States, and

(iii) Nonresident alien individuals who are bona fide residents of Puerto Rico during the entire taxable year.

An individual described in subdivision (i) or (ii) of this subparagraph is subject to tax pursuant to the provisions of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations thereunder. See §§1.871–7 and 1.871–8. The provisions of subpart A do not apply to individuals described in subdivision (iii) of this subparagraph, but such individuals, except as provided in section 933 with respect to Puerto Rican source income, are subject to the tax imposed by section 1 or section 1201(b). See §1.876–1.

Some important things to note at this point are:

1. There is no IRS withholding form that accurately states and reflects the fact that a nonresident alien whose earnings originate outside the U.S. [federal territory] is not subject to withholding, even though the IRS states this in IRS Publication 515 and on their website as well. This is no accident, but simply proof that the IRS wants to make it as difficult as impossible for nonresident aliens to obey the law by not withholding in cases where they aren't required to. This ensures that such protected persons have to surrender their rights and privacy by engaging in the indignity of filing a return, disclosing all their personal information, and begging for money back that never should have been withheld or reported in the first place.

**Services performed outside the U.S**

*Compensation paid to a nonresident alien (other than a resident of Puerto Rico) for services performed outside the United States [federal territory] is not considered wages and is not subject to graduated withholding or 30% withholding.*

[SOURCE: <http://www.irs.gov/businesses/small/international/article/0,,id=96594,00.html>]

2. IRS does not want to recognize the fact that one can be a nonresident alien without being an “individual” or an “alien”, even though this is in fact the case. The reason is that they don't want to recognize that the average American is beyond their reach and not subject to their jurisdiction. None of the withholding or reporting forms available from the IRS on the subject of nonresident aliens are intended for use or available for use by the average American who is NOT:
  - 2.1. A “beneficial owner”
  - 2.2. A “U.S. person”
  - 2.3. An “individual”
  - 2.4. An “alien”

When you try to add an option to the form, some recipients balk and just wrongfully **PRESUME** that there couldn't be any status OTHER than the options appearing on the form. This too is a deliberate attempt to interfere with the rights of persons not subject to federal jurisdiction by removing remedies from them to document and protect their status.

3. The only IRS form that American Nationals who are nonresident aliens can use to stop withholding is the W-8BEN.
4. The standard IRS Form W-8BEN provides no way to avoid disclosing the Beneficial Owner, even though there is no requirement in the I.R.C. itself to do so. Older versions of the W-8 form did not require disclosing the Beneficial Owner.
5. The standard IRS Form W-8BEN does not provide a block to indicate which of the above three types of nonresident aliens the submitter is as documented in 26 CFR §1.871-1(b), and this determination is very important because it affects whether withholding is or is not necessary. Those who are not “effectively connected to a trade or business” mentioned in paragraph (b)(1) above and all of whose earnings originate outside of the statutory “United States” (federal territory) would not need withholding. The IRS doesn't want to provide a form for nonresident aliens that shows how they can satisfy the class (b)(i) condition above and thereby avoid the requirement for withholding. This forces private employers to have to read the IRS

publications to find out, which few will do, or call up the IRS to ask, in which case they are sure to get LIES. The reason they will get LIES is because the courts refuse to hold the IRS responsible for anything they say, print, or do. This is discussed at:

Federal Courts and the IRS' Own IRM Say IRS is NOT RESPONSIBLE for Its Actions or its Words or For Following Its Own Written Procedures  
<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

The combination of all the above factors combine to introduce just enough ambiguity and uncertainty for private employers that they just roll over and screw their workers rather than obey what the law actually says. This also explains why, if you use the W-8BEN form to stop withholding, you should use the amended form we provide in order to avoid this trap and to carefully read sections 4 through 4.4 so you know what kind of deception you can expect from the IRS and private companies regarding this form.

#### 4. Why the government agrees with this article about the liabilities of "nonresident aliens" not engaged in a "trade or business"

Both the Internal Revenue Code and the government's own publications say that "[nonresident aliens](#)" without income from a "[trade or business](#)" in the United States" are not liable for income taxes under I.R.C. Subtitle A, do not need any information returns or W-2's filed on them.

1. A "[trade or business](#)" is defined in [26 U.S.C. §7701](#)(a)(26) as including ONLY "the functions of a public office", meaning that the person is a Congressman, President, Judge, or political appointee in receipt of excise taxable privileges.
2. All Information Returns, including the W-2, 1098, and 1099, have as a prerequisite the receipt of "trade or business" earnings. See [26 U.S.C. §6041](#).
3. "Trade or business" is further clarified in 26 U.S.C. §864 as:

[TITLE 26](#) > [Subtitle A](#) > [CHAPTER 1](#) > [Subchapter N](#) > [PART I](#) > Sec. 864  
[Sec. 864](#) - Definitions and special rules

(b) [Trade or business within the United States](#)

For purposes of [this part \[part I\], part II, and chapter 3](#), the term "trade or business within the United States" includes the performance of [personal services](#) within the United States at any time within the taxable year, but **does** not include -

(1) Performance of personal services for foreign employer

The performance of [personal services](#) -

(A) for a [nonresident alien](#) individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

Below are some brief examples demonstrating why "nonresident aliens" with no income connected with a "public office"/"trade or business" are "nontaxpayers":

1. [26 CFR §31.3401\(a\)\(6\)-1](#) says that nonresident aliens whose earnings originate from outside the statutory "United States" (federal territory) or which are not connected with a "[trade or business](#)" are not subject to withholding:

[Title 26](#)  
[PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)  
[Subpart E—Collection of Income Tax at Source](#)  
[§ 31.3401\(a\)\(6\)-1 Remuneration for services of nonresident alien individuals.](#)

(a) In general. All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, **if such remuneration otherwise constitutes wages within the meaning of §31.3401(a)-1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section.** In regard to wages paid under this section after February 28, 1979, the term "nonresident alien individual" does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

(b) Remuneration for services performed outside the United States. **Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding.**

2. [26 U.S.C. §3406\(g\)](#) and [26 CFR §31.3406\(g\)-1](#) (e) both say that foreign persons (which includes "nonresident aliens") are not

subject to [backup withholding](#) or information reporting

[TITLE 26 > Subtitle C > CHAPTER 24 > § 3406](#)  
[§ 3406. Backup withholding](#)

(g) Exceptions

(1) Payments to certain payees Subsection (a) shall not apply to any payment made to— (A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of [section 6049](#) (b)(4), or (B) any other person specified in regulations.

(2) Amounts for which withholding otherwise required Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

Title 26: Internal Revenue

[PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE](#)  
[§ 31.3406\(g\)-1 Exception for payments to certain payees and certain other payments.](#)

(e) Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others. For reportable payments made after December 31, 2000, a payor is not required to backup withhold under [section 3406](#) on a reportable payment that qualifies for the documentary evidence rule described in [§1.6049-5\(c\)\(1\)](#) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no [backup withholding](#) is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see [§1.6041-1\(d\)\(5\)](#) of this chapter.

3. [Federal Thrift Savings Plan \(TSP\) retirement system pamphlet OC-96-21](#) says:

**3. How much tax will be withheld on payments from the TSP?**

The amount withheld depends upon your status, as described below. Participant. **If you are a nonresident alien, your payment will not be subject to withholding for U.S. income taxes. (See Question 2.)** If you are a U.S. citizen or a resident alien, your payment will be subject to withholding for U.S. income taxes. If you are a U.S. citizen or resident alien when you separate, you will receive from your employing agency the tax notice "Important Tax Information About Payments From Your TSP Account," which explains the withholding rules that apply to your various withdrawal options.

[TSP Pamphlet OC-96-21, <http://tsp.gov/forms/index.html>, p. 3]

Tax Treatment of TSP Payments:

[. . .]

- o **A nonresident alien participant** who never worked for the U.S. Government in the United States will not be liable for U.S. income tax.
- o **A nonresident alien beneficiary of a nonresident alien participant** will not be liable for U.S. income tax if the participant never worked for the U.S. Government in the United States

[TSP Pamphlet OC-96-21, <http://tsp.gov/forms/index.html>, p. 2. Keep in mind that "[United States](#)" above is defined as federal territory not within any constitutional state and "worked for the U.S. government" is defined as a "[trade or business](#)" in [26 U.S.C. 7701\(a\)\(26\)](#), which is then described as "the functions of a public office"]

4. [26 U.S.C. §861\(a\)\(3\)\(C\)\(i\)](#) says that "nonresident aliens", even if they work in the statutory "United States", do not earn income from sources within the "United States", if they are not engaged in a "trade or business"

[TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter N > PART I > § 861](#)  
[§ 861. Income from sources within the United States](#)

(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**

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—**

**(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, or**

**(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.**

5. [26 U.S.C. §3401\(a\)\(6\)](#) says that "nonresident aliens" don't earn "wages" and are therefore not subject to W-2 reporting:

[TITLE 26 > Subtitle C > CHAPTER 24 > § 3401](#)  
[§ 3401. Definitions](#)

(a) For the purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee [an elected or appointed public official] to his employer...**except that such term shall not include remuneration for:**

**(6) such services, performed by a nonresident alien individual.**

6. [26 U.S.C. §1402\(b\)](#) says that "nonresident aliens" don't earn "self employment income":

[TITLE 26 > Subtitle A > CHAPTER 2 > § 1402](#)  
[§ 1402. Definitions](#)

**(b) Self-employment income**

The term "self-employment income" means the net earnings from self-employment derived by an individual (**other than a nonresident alien individual**, except as provided by an agreement under [section 233 of the Social Security Act](#)) during any taxable year; except that such term shall not include—

7.  [IRS Publication 515, entitled "Withholding of tax on Nonresident Aliens and Foreign Entities", year 2000](#), says on p. 3 the following:

"Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) are exempt from [backup withholding](#) and Form 1099 reporting."

8. [26 CFR §1.872-2: Exclusions from gross income of nonresident alien individuals](#)

Title 26: Internal Revenue  
[PART 1—INCOME TAXES](#)  
[nonresident alien individuals](#)  
[§ 1.872-2 Exclusions from gross income of nonresident alien individuals.](#)

(f) Other exclusions.

**Income which is from sources without [outside] the United States [federatl territory per 26 U.S.C. 7701(a)(9) and (a)(10) and 4 U.S.C. §110(d)], as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax**

convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section [864\(c\)\(4\)](#) and §1.864-5.

9. [26 U.S.C. §7701\(a\)\(31\): Definitions](#)

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > § 7701  
[§ 7701. Definitions](#)

(31) Foreign estate or trust

(A) Foreign estate

The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

10. [26 CFR §1.871-7\(a\)\(4\): Taxation of nonresident alien individuals not engaged in U.S. business](#)

Title 26: Internal Revenue  
[PART 1—INCOME TAXES](#)  
[nonresident alien individuals](#)  
[§ 1.871-7 Taxation of nonresident alien individuals not engaged in U.S. business.](#)

(a) Imposition of tax

(4) Except as provided in §§1.871-9 and 1.871-10, **a nonresident alien individual not engaged in trade or business in the United States during the taxable year has no income, gain, or loss for the taxable year which is effectively connected for the taxable year with the conduct of a trade or business in the United States.** See section 864(c)(1)(B) and §1.864-3.

11. 26 U.S.C. §6012(a) [1954 code] says:



Returns with respect to income taxes under subtitle A...

**(5) ...nonresident alien individuals not subject to the tax imposed by §871...may be exempted from the requirement to making returns.**

If you would like to learn more about the above, see our free Memorandum of Law below:

[The Trade or Business Scam](#)  
<http://sedm.org/Forms/MemLaw/TradeOrBusScam.pdf>

## **5. Traps to Avoid on This Deceptive Form-WATCH OUT!**

The  [Standard IRS Form W-8BEN](#) contains several tricks or traps that you should avoid like the plague because they will cause you to commit perjury under penalty of perjury on the form if you don't. Our  [Amended IRS Form W-8BEN](#) version of the form avoids these traps but you should still be very aware of them as you fill out this form.

Before we proceed, we should point out that these types of tricks are not unique. They are found throughout the world and are done by virtually every (usually corrupt) government on the planet. For instance, the [Canadian Income Tax Act, Section 2](#), imposes the income tax on "[residents](#)" and never defines what a "resident" is! They use the same definition as that in the Internal Revenue Code at 26 U.S.C. §7701(b)(1)(A), which means "alien":

[26 U.S.C. §7701\(b\)\(1\)\(A\) Resident alien](#)

(b) Definition of **resident alien** and nonresident alien

(1) In general

For purposes of this title (other than subtitle B) -

(A) **Resident alien**

**An alien individual shall be treated as a resident of the [United States](#) with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):**

(i) *Lawfully admitted for permanent residence*

*Such individual is a lawful permanent resident of the United States at any time during such calendar year.*

(ii) *Substantial presence test*

*Such individual meets the substantial presence test of paragraph (3).*

(iii) *First year election*

*Such individual makes the election provided in paragraph (4).*

The reason the [Canadian Income Tax Act](#) doesn't define the term "[resident](#)" is because if they told people what it means, which is an "alien" with a domicile in Canada, then they wouldn't have any taxpayers! Even the Canadian Revenue Agency admits that the Income Tax Act doesn't define the term "resident":

**Canadian Revenue Agency Pamphlet IT-221R3, entitled "Determination of an Individual's Residence Status"**

**¶2.** *The term "resident" is not defined in the Income Tax Act (the "Act"), however, the Courts have held "residence" to be "a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question." In determining the residence status of an individual for purposes of the Act, it is also necessary to consider subsection 250(3) of the Act, which provides that, in the Act, a reference to a person "resident" in Canada includes a person who is "ordinarily resident" in Canada. The Courts have held that an individual is "ordinarily resident" in Canada for tax purposes if Canada is the place where the individual, in the settled routine of his or her life, regularly, normally or customarily lives. In making a determination of residence status, all of the relevant facts in each case must be considered, including residential ties with Canada and length of time, object, intention and continuity with respect to stays in Canada and abroad.*

You really have to dig to find a definition of "resident", and it is found in the Immigration and Refugee Protection Act as follows:

[Immigration and Refugee Protection Act](#)  
PART 1 IMMIGRATION TO CANADA  
DIVISION 5 LOSS OF STATUS AND REMOVAL  
[Loss of Status](#)

[46.](#)

**(1) A person loses permanent resident status**

**(a) when they become a Canadian citizen;**

Therefore, you ought to expect this kind of trickery whenever you are reading tax acts from any country. The corruption is universal, throughout the world. Get used to it and get educated so you aren't victimized by it. Once you know that all income taxes throughout the world are based on the following maxim of law, you will know what you are looking for in the law itself and usually will find it somewhere, often hidden deep in the regulations.

"Citizens abroad and aliens at home."

By abroad, we mean in a foreign country under [26 U.S.C. §911](#) that is no part of any state of the Union. By "at home", we mean federal territory or the U.S. government, which is what the "United States" is defined as in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and [4 U.S.C. §110\(d\)](#). This explains a lot. For instance, it also explains why the IRS Form 1040 is not named "U.S. Citizen Income Tax Return" and why they have no legal authority to even make such a form. The [RIA Internal Revenue Code book](#) has an index which doesn't even mention anything about statutory "U.S. citizens" because it's unlawful for them to be "taxpayers" when they are "domestic" and not abroad. They only become "taxpayers" when they go abroad and interface to the Internal Revenue Code through a tax treaty with a foreign country pursuant to [26 U.S.C. §911](#).

## **5.1 Deliberately and deceitfully confusing "nationality" with "domicile" on federal territory**

The most common and usually deliberate but false presumptions that businesses and especially financial institutions engage in are:

1. That the terms "alien" and "citizen" are relative to the CONSTITUTIONAL rather than STATUTORY "United States". They are NOT.
2. That the term "[United States](#)" as used in the Internal Revenue Code is the SAME "United States" referred to in the Constitution. It is NOT. "United States" in the I.R.C. means THE GOVERNMENT, and not a geographic place.
3. That the STATUTORY "citizen" mentioned in the I.R.C. at [26 U.S.C. §911](#) and 26 CFR §1.1-1(c) is the SAME as the "citizen of the United States" mentioned in Section 1 of the Fourteenth Amendment. They not only NOT equivalent, but are mutually exclusive, non-overlapping groups. [Click here for details](#).

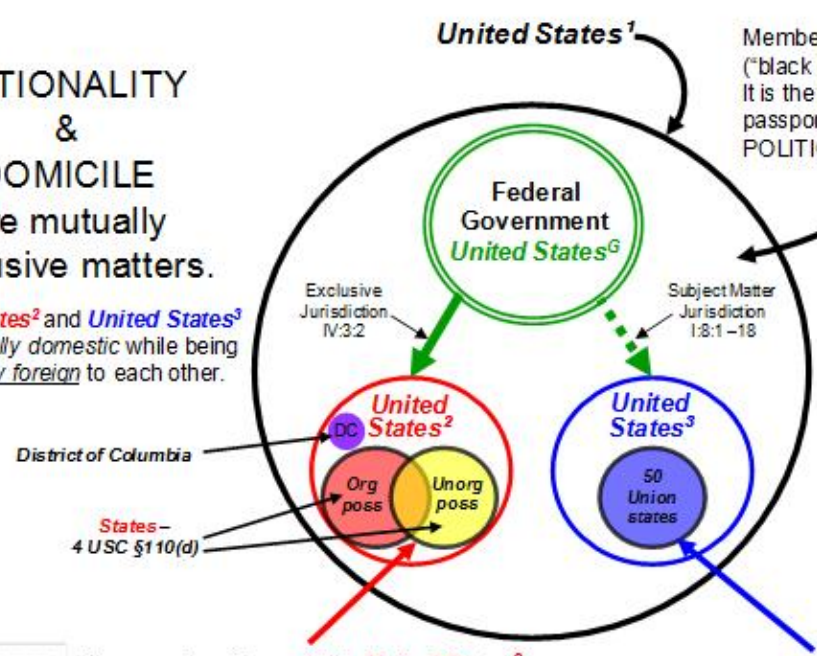
We have prepared a diagram that shows graphically EXACTLY how banks are "laundering" and unlawfully misrepresenting the status of their account holders which we hope you will use to educate your business associates to prevent the criminal acts and FRAUD that result from this confusion. This diagram has been reviewed by a retired member of the United States Supreme Court and declared TRUTHFUL!

 [Bank FRAUD and identity THEFT in a nutshell](#)

Here is a bitmap version of the above document for your perusal:

# NATIONALITY & DOMICILE are mutually exclusive matters.

*United States<sup>2</sup> and United States<sup>3</sup> are politically domestic while being territorially foreign to each other.*



Membership in *United States<sup>1</sup>* ("black circle") is NATIONALITY. It is the requirement for a passport and it establishes your POLITICAL STATUS.



26 USC §7701(a)(9) – *United States*  
The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

4 USC §110(d) – *State*  
The term "State" includes any Territory or possession of the United States.



Permanent residence in the *United States<sup>2</sup>* ("red circle") is DOMICILE. It establishes CIVIL STATUS, a.k.a. tax status. That status is "United States person," defined as a "citizen or resident of the United States." In this context, "citizen" means domicile. This is what the bank is really asking, but they believe they are inquiring about your NATIONALITY.

If you have a DOMICILE in the *United States<sup>3</sup>* ("blue circle") you are a "nonresident alien" for the purposes of the Federal Income Tax because *United States<sup>3</sup>* is territorially foreign to *United States<sup>2</sup>*.



*"U.S. person"* must *always* give a SSN.  
See 31 CFR §103.121.

A *"nonresident alien"* must provide a SSN *only* in the course of a *"trade or business."*  
See 31 CFR §103.34(a)(3)(x).

## HOW FINANCIAL INSTITUTIONS DECEIVE AND ENSLAVE THEIR CUSTOMERS:

When you go to the bank and try to claim your true and correct tax status of "nonresident alien", the bank is going to demand a passport. They are confusing NATIONALITY/POLITICAL STATUS with DOMICILE/CIVIL STATUS. The problem is that the "U.S.A." is not an available "selection" in their "drop-down" list of countries. This errant construction of the bank Customer Identification Program (CIP) has the practical effect of forcing Americans into a "United States person" tax status—a status that is 100% subject to governmental mandates. You are not being controlled at the point of a gun—rather, you are being controlled financially through a scheme of legislation designed to introduce precisely this type of misunderstanding. Financial institutions are unknowingly doing the "dirty work" for the government – driving a tax status which mandates participation in Social Security, Medicare, and the new Affordable Health Care Act. These programs are 100% voluntary, thus they are constitutional. The "nonresident alien" tax status is your remedy and protection from certain governmental mandates, but some financial institutions are blocking it.

## 5.2 You're NOT a statutory "U.S. resident", "U.S. citizen", "citizen", or "U.S. person"

As we pointed out in the introduction, the statutory term "resident" means an "alien" with a domicile on federal territory, which is what "[United States](#)" is defined as in 26 U.S.C. §7701(a)(9) and (a)(10) and 4 U.S.C. §110(d).

### [26 U.S.C. §7701\(b\)\(1\)\(A\) Resident alien](#)

(b) Definition of **resident alien** and nonresident alien

(1) In general

*For purposes of this title (other than subtitle B) -*

(A) **Resident alien**

**An alien individual shall be treated as a resident of the [United States](#)** with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) *Lawfully admitted for permanent residence*

*Such individual is a lawful permanent resident of the United States at any time during such calendar year.*

(ii) *Substantial presence test*

*Such individual meets the substantial presence test of paragraph (3).*



(iii) *First year election*

*Such individual makes the election provided in paragraph (4).*

Therefore, as a human being domiciled in a state of the Union, you are NOT:

1. A statutory "[citizen](#)" under 26 CFR §1.1-1(c) or "U.S. citizen" defined in [8 U.S.C. §1401](#) or [26 U.S.C. §3121](#)(e).
2. A statutory "[resident](#)" of the "United States" (federal territory) as defined in [26 U.S.C. §7701\(b\)\(1\)\(A\)](#).
3. A statutory "[U.S. person](#)" as defined in [26 U.S.C. §7701\(a\)\(30\)](#).

You can confirm the above yourself by reading the law found in the following insightful free references:

1. [You're Not a "citizen" under the Internal Revenue Code](#) (OFFSITE LINK)
2. [You're Not a "resident" under the Internal Revenue Code](#) (OFFSITE LINK)
3.  [Why you are a "national", "state national", and Constitutional but not Statutory Citizen](#), Form #05.006  
<http://sedm.org/Forms/MemLaw/WhyANational.pdf>
4.  [Nonresident Alien Position](#), Form #05.020  
<http://sedm.org/Forms/MemLaw/NonresidentAlienPosition.pdf>

## 5.3 You're NOT a statutory "Beneficial Owner"

The statutory term "[beneficial owner](#)" is used throughout the IRS Form W-8BEN. Some interesting facts about the "Beneficial Owner" trap:

1. The statutory term "beneficial owner" is nowhere defined in the Internal Revenue Code.
2. The statutory term "beneficial owner" did not appear on the W-8 form before 2002. It was added after we started educating people in states of the Union about their "nonresident alien" status, and we surmise that the reason this was done was to improve "voluntary compliance". Hee..hee..hee.
3. There is no statutory requirement anywhere in the I.R.C. mandating that you reveal who the "beneficial owner" is or identify any Beneficial Owner at all! This is a devious trick designed to incriminate who the owners of the income are and to create a false presumption that they are "taxpayers" so the IRS can go after them. Therefore, you can lawfully replace this term with "Nonresident alien" by lining it out, and there is no law the recipient can point to that says you can't do that. Unlike the W-4 form, there are no penalties for modifying this form because it is used by people who don't work for the government as "public officers" and therefore can't lawfully be penalized.
4. The statutory term "beneficial owner" is defined only once in the treasury regulations below:

*Title 26: Internal Revenue*

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## PART 1—INCOME TAXES

Withholding of Tax on Nonresident Aliens and Foreign Corporations and Tax-Free Covenant Bonds§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(c) Definitions—

(6) **Beneficial owner**—

(i) General rule.

This paragraph (c)(6) defines the term beneficial owner for payments of income other than a payment for which a reduced rate of withholding is claimed under an income tax treaty. **The term beneficial owner means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Internal Revenue Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nominee, agent, or custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount were income.**

(ii) Special rules—

(A) General rule.

The beneficial owners of income paid to an entity described in this paragraph (c)(6)(ii) are those persons described in paragraphs (c)(6)(ii)(B) through (D) of this section.




5. Note the use of the term "income" within the definition of "beneficial owner" above. That statutory term is defined in [26 U.S.C. §643](#)(b) as the earnings of a trust or estate ONLY. The only trust they can logically be referring to is either the "public trust" (government) or a social security trust and you are the trustee. WATCH OUT!

[TITLE 26](#) > [Subtitle A](#) > [CHAPTER 1](#) > [Subchapter J](#) > [PART I](#) > [Subpart A](#) > § 643  
[§ 643. Definitions applicable to subparts A, B, C, and D](#)

(b) **Income**

For purposes of this subpart and subparts B, C, and D, **the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.**




From the definition above, we can see that the "beneficial owner" is a statutory "taxpayer"! You can't identify yourself as a "beneficial owner" on this form if you are a "nontaxpayer". WATCH OUT! Ways around this problem, in descending order of preference:

1. Our  [Amended IRS form W-8BEN](#) solves this problem by replacing the term "beneficial owner" with "Nonresident alien".
2. Our  [Tax Form Attachment, Form #04.201](#) redefines the words on the form so they don't depend on the statutory definitions and therefore don't compromise your sovereignty. Attach this to a standard form W-8BEN or any tax form, for that matter, to protect your sovereign status as a nonresident alien nontaxpayer.
3. Use our  [Affidavit of Citizenship, Domicile, and Tax Status Form, Form #02.001](#), as a substitute for the standard IRS Form W-8BEN. It says right on the form that it is a substitute for the W-8BEN and that the submitter is NOT a statutory "beneficial owner".

## 5.4 You're NOT a statutory "Individual" but rather a "transient foreigner" or "Union state Citizen"

*"The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is prima facie territorial.' Ex parte Blain, L. R. 12 Ch. Div. 522, 528 ; State v. Carter, 27 N. J. L. 499; People v. Merrill, 2 Park. Crim. Rep. 590, 596 . Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation [e.g. "individuals" with a domicile on federal territory who are therefore subject to the civil laws of Congress], not all that the legislator subsequently may be able to catch. In the case of the present statute, the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged, but need not be discussed."*  
[\[American Banana Co. v. U.S. Fruit, 213 U.S. 347 at 357-358\]](#)

The term "individual" is provided in Block 3 of the  [Standard IRS Form W-8BEN](#). Like the "beneficial owner" scam above, it too has a malicious intent/aspect:

1. Like the statutory term "beneficial owner", it is associated with statutory creations of Congress engaged in federal privileges, "public rights", and "public offices." The only way you can be subject to the code is to voluntarily consent to the franchise contract and adopt a statute under that contract. Those who are not privileged cannot refer to themselves with any statute created or described in any government civil franchise statute, which is reserved only for government officers, agencies, and instrumentalities and not private persons. See:  
 [Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037](#)
2. The statutory term "individual" appears in [26 CFR §1.6012-1\(b\)](#), where "nonresident alien individuals" are made liable to file tax returns. However, "nonresident aliens" who are NOT "individuals" are nowhere mentioned as having any duty to do anything. Consequently, **YOU DON'T WANT TO DESCRIBE YOURSELF AS AN "INDIVIDUAL" BECAUSE THEN THEY CAN PROSECUTE YOU FOR FAILURE TO FILE A RETURN!** Some ways you can create a usually false presumption that you are an "individual" include:
  - 2.1 Filing IRS form 1040, which says "U.S. **INDIVIDUAL** Income Tax Return" in the upper left corner.
  - 2.2 Applying for a "INDIVIDUAL Taxpayer Identification Number" (ITIN) using IRS Forms W-7 or W-9. Only "resident aliens" can lawfully apply for such a number pursuant to [26 CFR §301.6109-1\(d\)\(3\)](#). If you were born in a state of the Union or on federal territory, you AREN'T an "alien". See:  
 [Why It Is Illegal for Me to Request or Use a "Taxpayer Identification Number", Form #04.205](#)
  - 2.3 Filling out the IRS Form W-8BEN and checking the box for "individual" in block 3.
  - 2.4 Filling out any other government form and identifying yourself as an "Individual". If they don't have "Union state Citizen" or "transient foreigner" as an option, then ADD IT and CHECK IT!
 Our  [Tax Form Attachment, Form #04.201](#), prevents the presumption from being created that you are an "individual" with any form you submit, even using standard IRS forms, by redefining the word "individual" so that it doesn't refer to the same word as used in any federal law, but instead refers ONLY to the common and NOT the legal definition. This, in effect, prevents what the courts call "compelled association". That is why our Member Agreement specifies that you MUST attach the Tax Form Attachment to any standard tax form you are compelled to submit: To protect you from being prosecuted for tax crimes under the I.R.C. by preventing you from being connected to any federal franchise or obligation.
3. The statutory term "**individual**", like that of "**beneficial owner**", is nowhere defined anywhere in the Internal Revenue Code and it is EXTREMELY dangerous to describe yourself as anything that isn't defined statutorily, because you just invite people to make prejudicial presumptions about your status. The term "individual" is only defined in the treasury regulations. The definition in the regulations is found at [26 CFR §1.1441-1\(c\)\(3\)\(i\)](#):

[26 CFR 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

### **(c) Definitions**

#### **(3) Individual.**

(i) Alien individual.

**The term alien individual means an individual who is not a citizen or a national of the United States. See Sec. 1.1-1(c).**

(ii) Nonresident alien individual.

The term *nonresident alien individual* means a person described in section 7701(b)(1)(B), an alien individual who is a resident of a foreign country under the residence article of an income tax treaty and Sec. 301.7701(b)-7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under Sec. 301.7701(b)-1(d) of this chapter. An alien individual who has made an election under section 6013 (g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

Do you see statutory "[U.S. citizens](#)" (which are defined under [8 U.S.C. §1401](#)) mentioned above under the definition of "[individual](#)" in 26 CFR §1.1441-1(c)(3)? They aren't there, which means the only way they can become "taxpayers" is to visit a foreign country and become an "alien" under the terms of a tax treaty with a foreign country under the provisions of [26 U.S.C. §911](#). When they do this, they attach IRS form 2555 to the IRS form 1040 that they file. Remember: The 1040 form is for statutory "U.S. persons", which includes statutory "U.S. citizens" and "residents", both of whom have a domicile on federal territory within the "[United States](#)", which is defined in [26 U.S.C. §7701](#)(a)(9) and (a)(10) and [4 U.S.C. §110](#)(d).


In fact, the only place that the term "individual" is statutorily defined that we have found is in [5 U.S.C. §552a](#)(a)(2), which means:

[TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES](#)  
[PART I > CHAPTER 5 > SUBCHAPTER II > § 552a](#)  
[§ 552a. Records maintained on individuals](#)

(a) *Definitions.*— For purposes of this section—



(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

The above statute is the Privacy Act, which regulates IRS use and protection of your tax information. Notice that:







1. "[nonresident aliens](#)" don't appear there and therefore are implicitly excluded. Expressio unius est exclusio alterius.
2. The "individual" they are referring to must meet the definitions found in BOTH 5 U.S.C. §552a(a)(2) and 26 CFR §1.1441-1(c)(3) because the Privacy Act is also the authority for protecting tax records, which means he or she or it can ONLY be a "resident", meaning an alien with a domicile in the statutory but not constitutional "United States" (federal territory per 4 U.S.C. §110(d) and 26 U.S.C. §7701(a)(9) and (a)(10)). Therefore, those who claim to be "individuals" indirectly are making a usually invisible election to be treated as a "resident", which is an alien with a domicile in the statutory "United States" (federal territory). Nonresident aliens are nowhere mentioned in the Privacy Act.
3. The code section is under [Title 5 of the U.S. Code](#), which is called "GOVERNMENT ORGANIZATION AND EMPLOYEES". They are treating you as part of the government, even though you aren't. The reason is that unless you have a domicile in the federal zone (which is what "[United States](#)" is defined as under I.R.C. Subtitle A in [26 U.S.C. §§7701](#)(a)(9) and (a)(10) and 4 U.S.C. §110(d)) or have income connected with a  [trade or business](#)", which is defined in [26 U.S.C. §7701](#)(a)(26) as "the functions of a public office", you can't be a "taxpayer" without at least volunteering by submitting an IRS form W-4, which effectively amounts to an "election" to become a "public officer" and a "Kelly Girl" on loan to your private employer from Uncle Sam.

What the IRS form W-8BEN is doing is fooling you into admitting that you are a statutory and NOT common law "[individual](#)" as defined above, which means that you just made an election or choice to become a "[resident alien](#)" instead of a "nonresident alien" and a public officer in the government. They don't have any lawful authority to maintain records on "nonresident aliens" under the Privacy Act, so you have to become a "resident" by filling out one of their forms and lying about your status by calling yourself an "individual" so they have permission from you to do so. Instead, what you really are is a "transient foreigner"

**"Transient foreigner.** *One who visits the country, without the intention of remaining.*"  
*[Black's Law Dictionary, Sixth Edition,, p. 1498]*

Our  [Amended IRS Form W-8BEN](#) solves this problem by adding an additional option indicating "Union State Citizen" under Block 3 of the form and by putting the phrase "(public officer)" after the word "individual". As an alternative, you could make your own Substitute form as authorized by  [IRS Form W-8 Instructions for Requester of Forms W-8BEN, W-8ECI, W-8EXp, and W-8IMF, Catalog 26698G](#) and add an option for Block 3 called "transient foreigner". Either way, you have deprived the IRS of the ability to keep records about you because you do not fit the definition of "individual", as required by the [Privacy Act](#) above. If you don't want to be subject to the code, you can't be submitting government paperwork and signing it under penalty of perjury that indicates that you fit the description of anyone or anything that they have jurisdiction over.

For more information about how they have to make you into a "[resident](#)" (alien) and an "individual" and a "[public officer](#)" within the government to tax you, see the following informative resources:

1.  [Why Your Government is Either a Thief or you are a "Public Officer" for Income Tax Purposes. Form #05.008](#)
2.  [Government Instituted Slavery Using Franchises. Form #05.030](#)
3.  [Proof That There Is a "Straw man". Form #05.042](#)
4.  [Why Statutory Civil Law is Law for Government and not Private Persons. Form #05.037](#)
5.  [Who are "taxpayers" and who needs a "Taxpayer Identification Number". Form #05.013](#)
6.  [Nonresident Alien Position. Form #05.020](#), Section 12 and following entitled *How "Nonresident Alien Nontaxpayers" are tricked into becoming "Resident Alien Taxpayers"*

## **5.5 You're not a statutory "alien" but a "nonresident alien"**

A popular technique promoted and encouraged by the IRS is to:

1. Deliberately confuse which context they are referring to in relation to geographic words such as "alien":
  - 1.1 The statutory context connected with federal territory ONLY.
  - 1.2 The constitutional context connected with constitutional states of the Union and NOT federal territory.
2. Confuse NATIONALITY with DOMICILE. They are NOT the same.
3. Try to get you to believe that statutory and constitutional aliens are equivalent. They ARE NOT.
4. When they use the "United States", to refuse to clarify WHICH of the three United States they mean as identified by the U.S. Supreme Court in *Hooven and Allison v. Evatt*.
5. Deliberately confuse statutory "nonresident aliens" with statutory "aliens". They are NOT equivalent.
6. Falsely tell you or imply that "nonresident aliens" are a subset of all "aliens" and include only those aliens that are not resident within the jurisdiction of the United States.
7. Refuse to define what a statutory "nonresident alien" is and what is included in the statutory definition within [26 U.S.C. §7701\(b\)\(1\)\(B\)](#).
8. Define what it ISN'T, and absolutely refuse to define what it IS.
9. Refuse to acknowledge that "nationals" as defined in [8 U.S.C. §1101\(a\)\(21\)](#) and [8 U.S.C. §1101\(a\)\(22\)](#) who are domiciled outside of federal territory are "nonresident aliens" but NOT "aliens", at least within the Internal Revenue Code.

All of the deliberate confusion and deception surrounding statutory "nonresident alien" status is introduced and perpetuated mainly in the IRS publications and the Treasury Regulations. It is not found in the Internal Revenue Code. "Nonresident aliens" and "aliens" are not equivalent in law, and confusing them has the following direct injurious consequences against those who are "non-citizen nationals":

1. Prejudicing their ability to claim "nonresident alien" status at financial institutions and employers. This occurs because without either a Treasury Regulation or IRS publication they can point to which proves that they are a "nonresident alien", they will not have anything they can show these institutions in order that their status will be recognized when they open accounts or pursue employment. This compels them in violation of the law because of the ignorance of bank clerks and employers into declaring that they are "U.S. persons" and enumerating themselves just in order to obtain the services or employment that they seek.
2. Placing non-citizen nationals into the status of having to accept the severe legal disabilities of being an "alien", which the government calls "alienage".
3. Unlawfully preventing non-citizen nationals from being able to change their domicile if they mistakenly claim to be "residents" of the United States. 26 CFR §1.871-5 says that an intention of an "alien" to change his domicile/residence is insufficient to change it whereas a similar intention on the part of a "non-citizen national" is sufficient.

The above injuries to the rights of non-citizen nationals is very important, because it is proven in the following document and elsewhere on our website that all persons born within and domiciled within the exclusive jurisdiction of a state of the Union are "non-citizen nationals" pursuant to [8 U.S.C. §1101\(a\)\(21\)](#), and so this injury is widespread and vast in its consequences:

[Why You are a "National", "State National", and Constitutional but not Statutory Citizen", Form #05.006](#)  
<http://sedm.org/Forms/FormIndex.htm>

Let's examine some of the IRS deception to disguise the availability of "nonresident alien" status to non-citizen nationals so that they don't use it. Below is the definition of "Nonresident alien", keeping in mind that the ONLY definition of "United States" within Title 26 is the District of Columbia and "The States" identified in 4 U.S.C. §110(d), all of which are federal territories and not constitutional states of the Union.

[TITLE 26 > Subtitle F > CHAPTER 79 > § 7701](#)  
[§ 7701. Definitions](#)

*(b) Definition of resident alien and nonresident alien*

(1) In general

(B) Nonresident alien

**An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).**

Below are two consistent definitions of "alien":

[26 CFR §1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

(c ) Definitions

(3) Individual.

(i) Alien individual.

The term alien individual means an individual who is not a citizen or a **national** of the United States. See Sec. 1.1-1(c).

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[TITLE 8 > CHAPTER 12 > SUBCHAPTER I > § 1101](#)  
[§ 1101. Definitions](#)

(a) As used in this chapter—

(3) The term "alien" means **any person not a citizen or national of the United States.**

Notice based on the above definitions that:

1. They define what "alien" and "nonresident alien" are **NOT**, but *not* what the **ARE**.
2. The definition of "nonresident alien" is **NOT** a subset of "alien". The two overlap, but neither is a subset of the other.
3. That there are two classes of entities that are "nonresident aliens", which include:
  - 3.1 "Aliens" with no domicile or residence within the statutory "United States", meaning federal territory.
  - 3.2 "nationals" with no domicile or residence within federal territory called the statutory "United States". These include "nationals" as defined in [8 U.S.C. §1101\(a\)\(21\)](#) domiciled in states of the Union and born there, and "nationals of the United States" as defined in [8 U.S.C. §1101\(a\)\(22\)\(B\)](#) who are domiciled in federal possessions and born there.

Item 3.2 above is corroborated by:

1. The content of IRS Publication 519, which obtusely mentions what it calls "U.S. nationals", which it then defines as persons domiciled in American Samoa and Swain's Island who do not elect to become statutory "U.S. citizens".

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

[\[IRS Publication 519: Tax Guide for Aliens, Year 2007, p. 43\]](#)

The above statement is partially **false**. A "U.S. national" is NOT an "alien", because aliens exclude "nationals of the United States" based on the definition of "alien" found in 26 CFR §1.1441-1(c)(3)(i) and 8 U.S.C. §1101(a)(3) and they are, in fact talking about such a "national of the United States", which is what "U.S. national" implies. The "U.S. national" to which they refer also very deliberately is neither mentioned nor defined anywhere in the Internal Revenue Code or the Treasury Regulations as being "nonresident aliens", even though they in fact are and Pub. 519 admits that they are. The only statutory definition of "U.S. national" is found in 8 U.S.C. §1101(a)(22)(B) and 8 U.S.C. §1408. However, the existence of this person is also found on IRS Form 1040NR itself, which mentions it as a status as being a "nonresident alien".

2. 26 U.S.C. §877(a), which describes a "nonresident alien" who lost citizenship to avoid taxes and therefore is subject to a special assessment as a punishment for that act of political dis-association. Notice the statute doesn't say a "citizen of the United States" losing citizenship, but a "nonresident alien". The "citizenship" they are referring to is the "nationality" described in 8 U.S.C. §1101(a)(21) and NOT the statutory "U.S. citizen" status found in 8 U.S.C. §1401.

[TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter N > PART II > Subpart A > § 877](#)  
[§ 877. Expatriation to avoid tax](#)

(a) *Treatment of expatriates*

(1) *In general*

**Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.**

So let's get this straight: [8 U.S.C. §1101](#)(a)(3) and 26 CFR §1.1441-1(c)(3)(i) both say that you cannot be an "alien" if you are a "national of the United States" and therefore a "U.S. national" and yet, the IRS publications such as IRS Pub 519 and the Treasury Regulations frequently identify these same "nationals" as "aliens". Earth calling IRS. Hello? Anybody home? The IRS knows that the key to being sovereign as an American National born in a state of the Union and domiciled there is being a nonresident alien not engaged in a "trade or business". So what do they do to prevent people from achieving this status? They surround the status with cognitive dissonance, lies, falsehoods, and mis-directions that will discourage people from understanding the WHOLE truth on this subject. Hence one of our favorite sayings:

*"The truth about the income tax is so precious to the government that it must be surrounded by a bodyguard of lies, confusion, and cognitive dissonance."  
[Unknown]*

Nowhere within the Internal Revenue Code, the Treasury Regulations, or IRS Pub. 519 will you find a definition of the term "national" which is mentioned in [8 U.S.C. §1101](#)(a)(21), and which describes a person born within and domiciled within a state of the Union. However, these persons are treated the same as "U.S. nationals", which means they are "nonresident aliens" and not "aliens". Consequently, unlike aliens, those who are "nationals":

1. Are not bound by any of the regulations pertaining to "aliens", because they are NOT "aliens" as legally defined..
2. Do not have to file IRS Form 8840 in order to associate with the "foreign state" they are domiciled within in order to be automatically exempt from I.R.C. Subtitle A taxes.
3. Are forbidden to file a "Declaration of Intention" to become "U.S. residents" pursuant to 26 CFR §1.871-4 and IRS Form 1078.

If you are still confused at this point about non-citizen nationals and who they are, you may want to go back to examine the diagrams and tables at the end of section 2 earlier until the relationships become clear in your mind.

Why does the IRS play this devious sleight of hand? Remember: everything happens for a reason, and here are some of the reasons:

1. IRS has a vested interest to maximize the number of "taxpayers" contributing to their scam. Taxation is based on legal domicile.

**"Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides, the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter. Of course, the situs of property may tax it regardless of the citizenship, domicile, or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located."**  
*[Miller Brothers Co. v. Maryland, [347 U.S. 340](#) (1954)]*

Therefore, IRS has an interest in compelling nonresidents domiciled in states of the Union into falsely declaring their domicile within the statutory but not constitutional "United States", meaning on federal territory. The status that implies that domicile is statutory "U.S. persons" as defined in [26 U.S.C. §7701](#)(a)(30). Statutory "U.S. persons" include either statutory "citizens of the United States" as defined in [8 U.S.C. §1401](#) or "resident aliens" as defined in [26 U.S.C. §7701](#)(b)(1)(A) and both have in common a legal domicile in the statutory but not constitutional "[United States](#)".

2. IRS does not want people born within and domiciled within constitutional states of the Union, who are "non-citizen nationals" pursuant to [8 U.S.C. §1101](#)(a)(21) but NOT statutory "U.S. nationals" per [8 U.S.C. §1101](#)(a)(22) and [8 U.S.C §1408](#) to know that "nationals" are included in the definition of "nonresident alien". This would cause a mass exodus from the tax system and severely limit the number of "taxpayers" that they may collect from.

3. IRS wants to prevent non-citizen nationals from using the nonresident alien status so as to force them, via presumption, into falsely declaring their status to be that of a "U.S. person" as defined in [26 U.S.C. §7701\(a\)\(30\)](#). This will create a false presumption that they maintain a domicile on federal territory and are therefore subject to federal jurisdiction and "taxpayers".
4. By refusing to define EXACTLY what is included in the definition of "nonresident alien" in both Treasury Regulations and IRS publications or acknowledging that "nationals" are included in the definition, those opening bank accounts at financial institutions and starting employment will be deprived of evidence which they can affirmatively use to establish their status with these entities, which in effect compels presumption by financial institutions and employers within states of the Union that they are "U.S. persons" who MUST have an identifying number, such as a Social Security Number or a Taxpayer Identification Number. This forces them to participate in a tax system that they can't lawfully participate in without unknowingly making false statements about their legal status by mis-declaring themselves to be "U.S. persons".

Below are several examples of this deliberate, malicious IRS confusion between "aliens" and "nonresident aliens" found within the IRS Publications and the Treasury Regulations that we have found so far, where "nonresident aliens" are referred to as "aliens". All of these examples are the result of a [false presumption](#) that "nonresident aliens" are a subset of all "aliens", which is NOT the case. We were able to find no such confusion within the I.R.C., but it is rampant within the Treasury Regulations.

1. [IRS Publication 515: Withholding of Tax on Nonresident Aliens and Foreign Corporations](#). This confusion is found throughout this IRS publication.
2. [IRS Publication 519: Tax Guide for Aliens](#). This publication should not even be discussion "nonresident aliens", because they aren't a subset of "aliens".
3. [26 CFR §1.864-7\(b\)\(2\)](#):

TITLE 26--INTERNAL REVENUE  
CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY  
(CONTINUED)  
PART 1\_INCOME TAXES--Table of Contents  
Sec. 1.864-7 Definition of office or other fixed place of business.

(b) Fixed facilities--

(2) Use of another person's office or other fixed place of business.

**A nonresident alien individual or a foreign corporation shall not be considered to have an office or other fixed place of business merely because such alien individual or foreign corporation uses another person's office or other fixed place of business, whether or not the office or place of business of a related person, through which to transact a trade or business, if the trade or business activities of the alien individual or foreign corporation in that office or other fixed place of business are relatively sporadic or infrequent, taking into account the overall needs and conduct of that trade or business.**

4. [26 CFR §1.864-7\(d\)\(1\)\(i\)\(b\)](#):

TITLE 26--INTERNAL REVENUE  
CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY  
(CONTINUED)  
PART 1\_INCOME TAXES--Table of Contents  
Sec. 1.864-7 Definition of office or other fixed place of business.

(d) Agent activity.

(1) Dependent agents.

(i) In general.

*In determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, the office or other fixed place of business of an agent who is not an independent agent, as defined in subparagraph (3) of this paragraph, shall be disregarded unless such agent*

*(a) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation, and regularly exercises that authority, or*

*(b) has a stock of merchandise belonging to the nonresident alien individual or foreign corporation from which orders are regularly filed on behalf of such alien individual or foreign corporation.*

A person who purchases goods from a **nonresident alien individual** or a foreign corporation shall not be considered to be an agent for **such alien individual** or foreign corporation for purposes of this paragraph where such person is carrying on such purchasing activities in the ordinary course of its own business, even though such person is related in some manner to the nonresident alien individual or foreign corporation. For example, a wholly owned domestic subsidiary corporation of a foreign corporation shall not be treated as an agent of the foreign parent corporation merely because the subsidiary corporation purchases goods from the foreign parent corporation and resells them in its own name. However, if the domestic subsidiary corporation regularly negotiates and concludes contracts in the name of its foreign parent corporation or maintains a stock of merchandise from which it regularly fills orders on behalf of the foreign parent corporation, the office or other fixed place of business of the domestic subsidiary corporation shall be treated as the office or other fixed place of business of the foreign parent corporation unless the domestic subsidiary corporation is an independent agent within the meaning of subparagraph (3) of this paragraph.

5. 26 CFR §1.872-2(b)(1):

TITLE 26--INTERNAL REVENUE  
CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY  
(CONTINUED)

PART 1\_INCOME TAXES--Table of Contents

Sec. 1.872-2 Exclusions from gross income of nonresident alien individuals.

(b) Compensation paid by foreign employer to participants in certain exchange or training programs.

(1) Exclusion from income

Compensation paid to a **nonresident alien individual** for the period that the nonresident alien individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) (relating to the admission of students into the United States) or subparagraph (J) (relating to the admission of teachers, trainees, specialists, etc., into the United States) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F) or (J)) shall be excluded from gross income if the **compensation is paid to such alien** by his foreign employer. Compensation paid to a nonresident alien individual by the U.S. office of a domestic bank which is acting as paymaster on behalf of a foreign employer constitutes compensation paid by a foreign employer for purposes of this paragraph if the domestic bank is reimbursed by the foreign employer for such payment. A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (J) includes a nonresident alien individual admitted to the United States as an "exchange visitor" under section 201 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1446), which section was repealed by section 111 of the Mutual Education and Cultural Exchange Act of 1961 (75 Stat. 538).

6. 26 CFR §1.6012-3(b)(2)(i).

7. 26 CFR §31.3401(a)(6)-1A(c).

8. 26 CFR §509.103(b)(3).

9. 26 CFR §509.108(a)(1)

It is a maxim of law that things with *similar* but not *identical* names are NOT the same in law. There is no need to invent a new term such as "nonresident alien" if the term describes the same thing as an existing term such as "alien".

*Talis non est eadem, nam nullum simile est idem.*

*What is like is not the same, for nothing similar is the same.* 4 Co. 18.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

We prove extensively on this website that the only persons who are "[taxpayers](#)" within the Internal Revenue Code are "resident aliens". Here is just one example:

NORMAL TAXES AND SURTAXES  
DETERMINATION OF TAX LIABILITY  
Tax on Individuals  
Sec. 1.1-1 Income tax on individuals.

(a)(2)(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as

amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a **married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust.** For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an **unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year.** See paragraph (b)(2) of section 1.871-8.”  
 [26 CFR § 1.1-1]

It is a self-serving, malicious attempt to STEAL from the average American for the IRS to confuse a “non-citizen national” who is a “nonresident alien” and a “nontaxpayer” with a “resident alien taxpayer”. Ditto for any attempt to deny remedies, refunds, or help to nonresident aliens as a way to force them to "elect" to become resident aliens. This sort of abuse MUST be stopped IMMEDIATELY. These sort of underhanded and malicious tactics:

1. Are a violation of constitutional rights and due process of law because they cause an injury to rights based on false presumption. See:

- 1.1 *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017  
<http://sedm.org/Forms/FormIndex.htm>

- 1.2. Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34:

(1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights. [Vlandis v. Kline (1973) [412 U.S. 441](#), 449, 93 S.Ct. 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974) [414 US 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]  
[\[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34\]](#)

- 1.3. Vlandis v. Kline, 412 U.S. 441 (1973):

**Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments.** In [Heiner v. Donnan, 285 U.S. 312, 52 S.Ct. 358, 76 L.Ed. 772 \(1932\)](#), the Court was faced with a constitutional challenge to a federal statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of a higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the taxpayer of his property without due process of law, the Court stated that it had 'held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment.' *Id.* at 329. [52 S.Ct. at 362](#). See, e.g., [Schlesinger v. Wisconsin, 270 U.S. 230, 46 S.Ct. 260, 70 L.Ed. 557 \(1926\)](#); [Hooper v. Tax Comm'n, 284 U.S. 206, 52 S.Ct. 120, 76 L.Ed. 248 \(1931\)](#). See also [Tot v. United States, 319 U.S. 463, 468-469, 63 S.Ct. 1241, 1245-1246, 87 L.Ed. 1519 \(1943\)](#); [Leary v. United States, 395 U.S. 6, 29-53, 89 S.Ct. 1532, 1544-1557, 23 L.Ed.2d 57 \(1969\)](#). Cf. [Turner v. United States, 396 U.S. 398, 418-419, 90 S.Ct. 642, 653-654, 24 L.Ed.2d 610 \(1970\)](#).  
 [Vlandis v. Kline, 412 U.S. 441 (1973)]

2. Destroy the separation of powers between the state and federal government. The states of the Union and the people domiciled therein are supposed to be foreign, sovereign, and separate from the Federal government in order to protect their constitutional rights:

"We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." *The Federalist* No. 45, pp. 292-293 (C. Rossiter ed. 1961). **This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties."** [Gregory v. Ashcroft, 501 U.S. 452, 458 \(1991\)](#) (internal quotation marks omitted). **"Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."** *Ibid.* "  
 [U.S. v. Lopez, [514 U.S. 549](#) (1995)]

3. Destroy the sovereignty of persons born and domiciled within states of the Union who would otherwise be “stateless persons”

and "foreign sovereigns" in relation to the federal government.

4. Cause a surrender of sovereign immunity pursuant to [28 U.S.C. §1605\(b\)\(3\)](#) by involuntarily connecting sovereign individuals with commerce with the federal government in the guise of illegally enforced taxation.
5. Violate the Constitutional requirement that everyone serving in the federal government must protect people domiciled in states of the Union from invasion and guarantee a republican form of government. The only thing that income taxes do is DESTROY a republican form of government, destroy personal responsibility, and elevate the government to a pagan deity with supernatural powers that can STEAL with impunity from people who don't want it's services and who believe those services are harmful to them. That's called a "protection racket".

*United States Constitution*

*Article 4, Section 4*

**The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.**

6. Causes Christians to have to serve TWO masters, being the state and federal government, by having to pay tribute to TWO sovereigns. This is a violation of the following scriptures.

*"No servant can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon."*

[\[Luke 16:13. Bible. NKJV\]](#)

## 5.6 Tricks pulled usually by unscrupulous institutions


Another trick that private employers and financial institutions will try to do when you are either opening an account or applying for employment is print their own version of the IRS form W-8 or W-8BEN. They may insist that you sign their version even if you brought along your own version. In response to that tactic, it's best to:

1. Line out all references to "beneficial owner" and replace with "nonresident alien". The Beneficial Owner is a "[taxpayers](#)" and you're not a taxpayer! The IRS introduced this term for the first time in 2002 on the W-8BEN form as a way to create false presumptions about people being "taxpayers" and to increase the number of "[taxpayers](#)". WATCH OUT!


***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. ***[A person is ALSO not a beneficial owner if he is a "nontaxpayer"! This is the part they conveniently omitted.]*** In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

 [IRS Forms W-8BEN Instructions](#)


2. Write on their COERCED W-8BEN form the following:

*"Attached W-8BEN [or Affidavit of Citizenship, Domicile, and Tax Status] supersedes this one. This form submitted under duress. I am a "nonresident alien" not engaged in a  [trade or business](#)" similar to [26 CFR §1.871-1\(b\)\(i\)](#) . I am not the nonresident alien "[individual](#)" defined there because I am not a government "public officer", employee, or instrumentality. Pursuant to [26 U.S.C. §6041](#), you are prohibited from information return reporting in my case, including [IRS Forms 1042-S](#), W-2, and [1099](#)", and you will be criminally prosecuted if you file one pursuant to [26 U.S.C. §7206](#) and [7207](#) and civilly prosecuted under equity and the common law.*

Then sign next to that statement on their form. Then attach attach your Amended IRS Form W-8BEN and staple it to the front of theirs. Then make sure you keep clean, hopefully certified copies of everything you submitted if there is a legal dispute with the bank or employer later. This is VERY important, because when IRS wants to levy an account, the first thing they will look at is the signature card of the account holder, to which this form will usually be attached. If the account is owned by a foreign person with no Social Security Number, then they can't levy it!

3. If they balk at allowing you to do this, then have give them our pamphlet " [Who are 'taxpayers' and who needs a Taxpayer Identification Number](#)" pamphlet and insist that they answer the questions at the end in writing. If the clerk won't do it, hand it to the branch manager. If the branch manager won't do it, tell them to fax it to their legal department and that you will come back tomorrow to finish the application after you have your answers.


4. If they refuse to face the fact that they are violating your First Amendment rights and violating the Thirteenth Amendment by forcing you into slavery in the process of forcing you to basically commit perjury under penalty of perjury on a form and filling it out to in a way you don't consent to, then its best to move onto another financial institution or employer. The one you are dealing with obviously doesn't believe in "customer service" and has forgotten who the REAL customer is. If we had a righteous government that protected us like they were supposed to, you would be able to lodge a complaint with the DOJ or the FTC and have the bank prosecuted for extortion. Smaller institutions tend to be much more flexible than the huge network of corporate monopolies that the government has fostered and developed with the specific intent of violating your rights.

Incidentally, these same institutions may insist on filing an  [IRS Form 1042-S](#) on money they pay you. They will do this because of [propaganda/deception](#) contained on the IRS website at the link below, which encourage them to do so so that they will recruit, or should we say "compel", more "taxpayers":

<http://www.irs.gov/businesses/small/international/article/0,,id=104997,00.html>

When they do this, we suggest following the guidelines in [Frequently Asked Question #4 below](#).

## [5.7 Deception in IRS Publication 519 about the definition of "United States"](#)

 [IRS Publication 519, Year 2005](#) (OFFSITE LINK), uses the following language to infer that the term "United States" as used in the Internal Revenue Code, includes the 50 states of the Union for the purposes of jurisdiction to tax under Subtitle A of the Internal Revenue Code:

### *Substantial Presence Test*

*Example. You were physically present in the United States on 120 days in each of the years 2003, 2004, and 2004. To determine if you meet the substantial presence test for 2005, count the full 120 days of presence in 2006, 40 days in 2004 (1/3 of 130), and 20 days in 2003 (1/6 of 120). Because the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 2005.*

*"The term United States includes the following areas.*

- *"All 50 states and the District of Columbia."*
- *"The territorial waters of the United States"*

[...]

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

[[IRS Publication 519, Year 2005, p. 4](#)

SOURCE: <http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub519-2005.pdf>]

We have several points to make about the above reference:

1. The above cite was added to the publication in about 2004 in an apparent response to the content of this website, as a way to deceive the readers and stop the spread of the nonresident alien position.
2. The definition comes from an IRS Publication, which the IRS Internal Revenue Manual admits is UNTRUSTWORTHY and not guaranteed to be accurate:

*"IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information, publications should not be cited to sustain a position."*

[[IRM, 4.10.7.2.8](#) (05-14-1999)]

See also:

Federal Courts and the IRS' Own IRM Say IRS is NOT RESPONSIBLE for Its Actions or its Words or For Following Its Own Written Procedures

<http://famguardian.org/Subjects/Taxes/Articles/IRSNotResponsible.htm>

3. The text above is an EXAMPLE which does not infer or imply or specify the context in which it may suitably be used. There are actually THREE and not ONE context in which the term "[United States](#)" could be referring to or implied and only one of them is used in the above example, which is the third one listed below:
  - 3.1. The meaning of the term "[United States](#)" within the Internal Revenue Code Subtitle A.

- 3.2. The meaning of the term "[United States](#)" within ordinary speech, which most people associate with the COUNTRY to include states of the Union.
- 3.3. The meaning of "[United States](#)" in the context of jurisdiction over aliens (not "citizens" or "nationals") temporarily present in the country "United States", which in this context includes all 50 states and the District of Columbia.

In the context of item 3.3 above, the U.S. Supreme Court has repeatedly affirmed the plenary power of Congress over Constitutional but NOT statutory aliens in this country, wherever they are located to include areas within the exclusive jurisdiction of states of the Union:

*In accord with ancient principles of the international law of nation-states, the Court in The Chinese Exclusion Case, [130 U.S. 581, 609](#) (1889), and in Fong Yue Ting v. United States, [149 U.S. 698](#) (1893), held broadly, as the Government describes it, Brief for Appellants 20, that **the power to exclude aliens is "inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers - a power to be exercised exclusively by the political branches of government . . . ." Since that time, the Court's general reaffirmations of this principle have [[408 U.S. 753, 766](#)] been legion. [6 The Court without exception has sustained Congress' "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden." Boutilier v. Immigration and Naturalization Service, \[387 U.S. 118, 123\]\(#\) \(1967\). "\[O\]ver no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens. \[Oceanic Navigation Co. v. Stranahan, 214 U.S. 320, 339\]\(#\) \(1909\). \[\[Kleindienst v. Mandel, 408 U.S. 753\]\(#\) \(1972\)\]](#)***

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*While under our constitution and form of government the great mass of local matters is controlled by local authorities, **the United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory.** The powers to declare war, make treaties, suppress insurrection, repel invasion, regulate foreign commerce, secure republican governments to the states, and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations. As said by this court in the case of Cohens v. Virginia, 6 Wheat. 264, 413, speaking by the same great chief justice: **'That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects is the government of the Union. It is their government, and in that character they have no other. America has chosen to [[130 U.S. 581, 605](#)] be in many respects, and to many purposes, a nation; and for all these purposes her government is complete; to all these objects, it is competent. The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory.***

[. . .]

**"The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract."**

[[Chae Chan Ping v. U.S., 130 U.S. 581](#) (1889)]

Therefore, in regard to control over Constitutional but NOT statutory aliens present anywhere within the American confederation, the general government legislates over all the territory of the American Union, including those of the states. However, this power does NOT extend to statutory aliens, and a "national" is a statutory but not a constitutional alien. The way the feds try to abuse this situation to unlawfully extend their jurisdiction and control over nationals in constitutional states of the Union is to confuse WHICH "United States" they mean and to try to confuse statutory and constitutional aliens to make them indistinguishable with word games. Consequently, for the purposes of determining "permanent residence" of aliens ONLY, the term "United States" as used in item 3 above must be interpreted to include the 50 states of the Union as the IRS indicates above. HOWEVER:

1. The Presence Test indicated does *not* refer to statutory “citizens” or “nationals”. The Presence Test is found in [26 U.S.C. §7701\(b\)\(3\)](#) and references ONLY statutory but not constitutional “aliens” as defined in [26 U.S.C. §7701\(b\)\(1\)\(A\)](#) and not “nonresident aliens” defined in [26 U.S.C. §7701\(b\)\(1\)\(B\)](#) or statutory “citizens” defined in 26 CFR §1.1-1(c). Therefore, a statutory alien domiciled in a state of the Union could be a “resident” within the meaning of the presence test while neither a statutory “citizen” nor a statutory “national” would be considered a “resident” under the SAME test when located in the SAME place. Under the I.R.C., one cannot be a “resident” (which is an alien with a domicile) and either a “citizen” or a “national” at the same time. This is confirmed by the Law of Nations, which the Founding Fathers used to write the Constitution:


***“Residents, as distinguished from citizens, are aliens who are permitted to take up a permanent abode in the country. Being bound to the society by reason of their dwelling in it, they are subject to its law so long as they remain there, and being protected by it, they must defend it, although they do not enjoy all the rights of citizens. They have only certain privileges which the law, or custom, gives them. Permanent residents are those who have been given the right of perpetual residence. They are a sort of citizens of a less privileged character, and are subject to the society without enjoying all its advantages. Their children succeed to their status; for the right of perpetual residence given them by the State passes to their children.”***

[[Law of Nations](#), Vattel, p. 87


SOURCE: <http://famguardian.org/TaxFreedom/CitesByTopic/Resident-LawOfNations.pdf>]

2. Remember that the only context in which “residence” is defined or described anywhere in the Internal Revenue Code is in the context of “aliens”, and not in the context of either “citizens” or “nationals”. See 26 CFR §1.871-2 and section 4 of the article below:

[Why Domicile and Becoming a "Taxpayer" Require Your Consent](#), Form #05.002  
<http://sedm.org/Forms/FormIndex.htm>

Therefore, a person who is a “national” but not a “citizen” and a  [nonresident alien](#) can NOT have a “residence” as defined anywhere in the Internal Revenue Code.

3. For the purposes of determining *tax liability and not residency of all persons*, we must defer to the definition of “United States” found in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and 4 U.S.C. §110(d), which is limited to federal territory not within any state of the Union and nowhere expanded in the I.R.C. Subtitle A to include any other place.


Based on the foregoing, we must conclude that the IRS’ statement above is a deception and a ruse intended to  [compel false presumption under the influence of CONSTRUCTIVE FRAUD](#) that will maximize the illegal flow of [PLUNDER](#) (OFFSITE LINK) to the federal government. It is provided as an example and cannot mean the legal definition of “United States” used in the Internal Revenue Code. If they wish to imply that ALL THREE of the contexts in which the term “United States” could be used are the same, then they should say so and provide statutory and regulatory authority for saying so. Until then, we must defer to the definition of “United States” found within [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and 4 U.S.C. §110(d). This is a consequence of the following doctrine of the Supreme Court:


***“Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.”***


[*Spreckels Sugar Refining Co. v. McClain*, [192 U.S. 397](#) (1904)]

## 6. How to Complete IRS Form W-8BEN

Most American companies are not familiar with the IRS form W-8BEN and are clueless how to deal with it for those who want to use it to stop withholding or open accounts without Social Security Numbers. It is very important to understand how this form is used and the proper way to fill it out. You must know more about this form than the people you encounter at private employers and financial institutions in order to earn the trust and cooperation from them that enacted law demands and requires. Therefore, you should study this subject carefully to avoid embarrassing yourself, making your business associates feel threatened, or creating a big scene in the payroll department. Below are the IRS instructions for completing this form:

 [Instructions for Form W-8BEN, IRS Catalog Number 25576H](#)-very revealing. Look at the red, highlighted text. Show this to your financial institution or withholding agent

The IRS Form W-8BEN deliberately omits key information indicating that withholding is not authorized on nonresident aliens with no  [trade or business](#) earnings because the IRS wants to incentivize private companies to use the WRONG form, the W-4 Exempt, to stop withholding. This amounts in effect to a conspiracy against rights in violation of [18 U.S.C. §241](#) and compelled

association in violation of the [First Amendment](#), we might add. However, when you use this form, the IRS should quit receiving W-2 reports, which LAWFULLY takes a you, a "nonresident alien" not engaged in a "trade or business", completely off the radar screen. Remember, the W-2 form can only contain earnings "effectively connected with a  [trade or business](#)" (public office) in the United States government, and you aren't connected with a "public office" if you don't work for the federal government. This is confirmed by [26 U.S.C. §6041\(a\)](#), which says that Information Returns, including the [W-2](#), [1098](#), and [1099](#), are only required in the case of "trade or business" earnings. Use of this form to stop withholding may therefore require the recipient to read the Treasury Regulations in order to learn that no withholding or Social Security Number is required for nonresident aliens not engaged in a "trade or business", which payroll, financial institutions, or managers are often unwilling to do. It is natural for humans to avoid and resist change, risk, or extra work, so you should expect this sort of response when you try to use this. Compounding the problem is that:

1. The [American Payroll Association \(APA\)](#) publishes information for payroll clerks that is flat out wrong on the subject of nonresident alien withholding in the case of those not engaged in a "trade or business". See the book entitled: *The Payroll Source*, 2002; American Payroll Association; Michael P. O'Toole, Esq.; ISBN 1-930471-24-6.
2. The other main source of payroll trade publications is [RIA](#), which also publishes flat out wrong information about the subject of "nonresident aliens" not engaged in a "trade or business" in the following publications: *Principles of Payroll Administration*; 2004 Edition; Debra J. Salam, CPA & Lucy Key Price, CPP; [RIA](#), 117 West Stevens Ave; Valhalla, NY 10595; ISBN 0-7913-5230-7.

You may therefore encounter some resistance by mostly uninformed payroll or management people or financial institutions if you attempt to use this form to stop withholding, because they are usually too busy or too lazy to read for themselves what the regulations say and prefer to follow the above publications that are simply wrong on the subject of nonresident alien tax withholding for those not "effectively connected with a trade or business". Try not to make them your enemy if they refuse to learn or read what the law says. You may need to go above the head of the payroll or bank clerk if you encounter such resistance, but be patient, knowledgeable, kind, and firm in demanding that they obey the law. We have made available [a link to an attachment](#) to the W-8BEN form which makes it easier to convince the skeptics you encounter that the regulations say no withholding is authorized or necessary for nonresident aliens not engaged in a ["trade or business"](#).






Whenever we complete government forms, the first thing to remember is that even the Standard government forms usually contain or promote false presumptions or statements that will prejudice one's rights and which typically would slip by unnoticed by the general public. This is especially true of the ["words of art"](#) used on the form and the perjury statement at the end of the government form. Therefore, it is usually unwise to use the government's Standard forms, and to instead use a modified or what we call an "Amended" form. Amended forms are the only kinds of forms we recommend and the [Family Guardian Website](#) contains a catalog of both the original government forms and the Amended versions below:

#### Federal Forms and Publications

<http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormsPubs.htm> (OFFSITE LINK)

Whenever possible, you must use the Amended forms or else you will suffer having your rights unjustly prejudiced by the government. All of the SEDM response letters which include government forms as exhibits or attachments include blank Amended, and not Standard, government forms, and you should *not* substitute the Standard government form unless compelled to do so. [Click here](#) to see a list of the changes made to the Standard forms to make them into the Amended forms if you are curious.

All the above preliminaries now aside, we can get to work showing you how to fill out the IRS form W-8BEN to attach to your IRS or state response letter. Below is a link to both the Standard and Amended IRS form W-8BEN, so you can compare and see the differences for yourself. The forms listed are electronically fillable with the free Acrobat Reader so that you can customize them to your own needs:

-  [Instructions for Form W-8BEN, IRS Catalog Number 25576H](#)-very revealing. Look at the red, highlighted text. Show this to your financial institution or withholding agent
-  [IRS Form W-8 Instructions for Requester of Forms W-8BEN, W-8ECI, W-8EXp, and W-8IMF, Catalog 26698G](#)-this form prescribes guidance on how to make substitute W-8BEN forms, so it must be authorized
-  [Standard IRS Form W-8BEN](#)
-  [Standard IRS Form W-8BEN Instructions](#)-watch out. They play tricks with the word "individual", "U.S. person", and "beneficial owner".
-  [Amended IRS Form W-8BEN](#)

We have taken all of the above forms and instructions and assembled them into one neat little package as a fillable Adobe Acrobat form specifically designed for you to submit to businesses and employers when you first initiate a job or business relationship with. It instructs their payroll and accounting department EXACTLY what to do with your tax withholding and reporting. It has several exhibits that include IRS publications, statutes, and regulations proving everything you want them to do so there is absolutely no room left for them to argue with you without admitting that they want to violate the law in the process.


[New Hire Paperwork Attachment, Form #04.203](#)

We have also assembled a nice summary of the relationship between being a "nonresident alien" and citizenship generally. You can use this form as additional supporting information if your business associate asks for more explanatory information beyond that attached to the above form. The form is simplified for use by payroll clerks, small business owners, and corporate counsel:


[W-8 Attachment: Citizenship, Form #04.219](#)

Remember the following requirements for filling out the IRS Form W-8BEN:

1. **About SSNs on TINs on the W-8BEN form: (IMPORTANT!)**

- 1.1 If you aren't a federal "employee" on official government business, you can't use the SSN on any government form. [20 CFR §422.103](#) says the SSN and the card are public/government property. You aren't allowed to use public property for private use and doing so makes you a criminal and a thief. The only people who can use an SSN on a W-8 form are those engaged in a type of federal employment called a "[trade or business](#)", which is defined in [26 U.S.C. §7701\(a\)\(26\)](#) as "the functions of a public office". The employment compensation for this position consists of deferred employment compensation called "Social Security Benefits", Medicare, FICA, deductions on your tax return under [26 U.S.C. §162](#), etc. This subject is covered much more thoroughly in our article entitled "[About SSNs/TINs on Tax Correspondence](#)".
- 1.2 [26 CFR §1441-6\(c\)\(1\)](#) says that TINs and SSNs are NOT REQUIRED on the W-8 form if a "certificate of residence" is provided. That certificate of residence consists of Block 4, which is the "Permanent Address". If you put anything in that block, and if the place identified is OTHER than federal territory, which is what the "United States" is defined as in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and 4 U.S.C. §110(d), then the result will be that the financial institution or private employer is NOT required to collect any identifying number. Our memorandum on "[Why income taxes and domicile are voluntary](#)" also proves that the "Permanent Address" in Block 4 is a "word of art" for "[domicile](#)" or "residence", which are both synonymous and explains how to fill out that block to avoid government jurisdiction. Below is the regulation which says this:

*Title 26: Internal Revenue*

[PART 1—INCOME TAXES](#)

[Withholding of Tax on Nonresident Aliens and Foreign Corporations and Tax-Free Covenant Bonds](#)

[Sec. 1.1441-6 Claim of reduced withholding under an income tax treaty.](#)

(c) **Exemption from requirement to furnish a taxpayer identifying number** and special documentary evidence rules for certain income.

(1) General rule.

**In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate [IRS Form W-8BEN] described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number.** In the case of payments of income described in paragraph (c)(2) of this section made outside the United States [federal zone] (as defined in Sec. 1.6049-5(e)) with respect to an offshore account (as defined in Sec. 1.6049-5(c)(1)), **a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section** or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with Sec. 1.1441-1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

2. **Block 2, "Country of incorporation or origin":** should ALWAYS say "None: Not an organization or 'individual' but a PRIVATE man or woman".
3. **Block 3, "Type of nonresident alien":** Check "Transient foreigner" on the [modified version of the form](#). DO NOT check any of the other options, including "[Individual](#)". An "Individual" is defined in [5 U.S.C. §552a\(a\)\(2\)](#) as "a citizen of the United States or an alien lawfully admitted for permanent residence;" (e.g., person with a domicile in the "United States"). Both of these

entities are "[U.S. persons](#)" defined under [26 U.S.C. §7701\(a\)\(30\)](#) who have a "domicile" in the "[United States](#)". You DON'T want to be such as person. The amended version of the form adds a new checkbox entitled "Transient foreigner", so that you don't have to check the "Individual" box. For further information on why you are not an "[individual](#)", a "[U.S. person](#)", a "[U.S. citizen](#)", or a "[resident](#) (alien)", see the following free research:

- 3.1 "[Why 'domicile' and income taxes are voluntary](#)" (OFFSITE LINK)
- 3.2 "[You're not a 'citizen' under the Internal Revenue Code](#)" (OFFSITE LINK)
- 3.3 "[You're not a 'resident' under the Internal Revenue Code](#)" (OFFSITE LINK)
- 3.4 "[Why you are a 'national', 'state national', and Constitutional but not Statutory Citizen](#)" (OFFSITE LINK)

4. **Block 4, Permanent Address:** This is the "legal address" where the receiving organization will assume you maintain a "domicile" or "residence". It is your international "tax home" pursuant to [26 U.S.C. §911](#). IMPORTANT: Please read the very important article below:

[Why domicile and becoming a "taxpayer" Require Your Consent](#), Form #05.002

<http://sedm.org/Forms/MemLaw/Domicile.pdf>

It's best to put any one of the following in this block to prevent any [presumptions](#) that might injure your constitutionally protected rights:

- o "Earth (not within any specific government or political entity)"
- o "God's government on earth (foreign government exempt from tax pursuant to [26 U.S.C. §892\(a\)\(1\)](#))"
- o "Transient foreigner (stateless person)"

Heaven has no tax treaty with any earthly country and God is a "nontaxpayer". If you put anyplace but either "None" or "Heaven" and you are submitting the form to a financial institution to open an account that will earn interest or dividends, the institution may attempt to do backup withholding of 10% and send it to the IRS, which you want to avoid. A "permanent address" outside of federal jurisdiction, outside the federal "[United States](#)", and within a state of the Union counts as a "foreign" address relative to federal jurisdiction. For such a case, one would write


"\_\_\_\_\_ Republic and NOT State of \_\_\_\_\_; See Definition of '[State](#)' at [26 U.S.C. §7701\(a\)\(10\)](#) and [4 U.S.C. §110\(d\)](#) for details."

Some misinformed financial institution and businesses may wrongfully assume that an address in a sovereign state of the Union is within federal jurisdiction and not accept the form, even though it is perfectly legitimate. This type of ignorance on the part of the financial institution may require you to patiently educate them if you choose to list an address in a state as your domicile in Block 4.

4.1 If you want an example about how to define your "permanent home" to skeptical financial institution, [click here](#) (OFFSITE LINK) .

4.2 [Click here](#) (OFFSITE LINK) to read an important article about the relationship of "domicile" to income taxation.

5. **Block 5:** If you include a mailing address that is in a state of the Union and outside the federal zone, ensure that in the "Country" block, you write your state name and the word "Republic" after it. Do NOT use the phrase "State of\_\_\_", because this area is federal territory within the exterior limits of the state of the Union. Also ensure that you put next to the street address in parenthesis "NOT a domicile or residence". For instance, if the address is in Washington state, simply write "Washington". The reason you can and should do this is that states of the Union are "foreign" with respect to the legislative jurisdiction for nearly all subject matters, and especially for the purposes of federal income taxes and the entire Internal Revenue Code. See [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK) , Chapter 5 for exhaustive evidence of why this is the case.
6. **Block 6, "U.S. taxpayer identification number":** should always say "NONE" if you are a biological person who is not filing on behalf of a business. The box "SSN or TIN" should have "SSN" lined out and "TIN circled". See the "[About SSNs/TINs on Tax Correspondence](#)" article.
7. There should be no reference numbers in block 8. It should read "NONE" so that none can later be added
8. **Blocks 9 and 10:** should be blank if you were born in a state of the Union and are a "national" but not a "citizen" under federal law, which most people born in states of the Union are.
9. Unlike the W-4Exempt form, the W-8BEN says right at the top that it is NOT sent to the IRS. Stopping withholding using this form cannot get you in trouble like a W-4 Exempt can, where the IRS commonly tries to illegally assess a \$500 false W-4 penalty. The reason it is not sent to the IRS is that they have no jurisdiction over nonresident aliens, but only over PAYMENTS to nonresident aliens originating from the U.S. government.

The W-8 form says that it is *not* submitted to the IRS and the receiving organization has no authority to dictate what you can or should put on the form. If they do, demand the implementing regulation for such authority and ask them to prove that they are designated officially as federal "Withholding agents", who are the only people who can receive the form anyway. The subject of "withholding agent" status is discussed in the " [Federal and State Tax Withholding Options for Private Employers](#)" pamphlet, Section 4 if you want to read more. Unlike the W-4 form, there are also no statutes or regulations that prevent you from modifying the form to suit your liking. If they give you a hard time about accepting the form, then present them with either of the following two pamphlets:

1.  [Who are 'Taxpayers' and who needs a 'Taxpayer Identification Number.#05.013- SEDM Form](#)

2.  [Federal Tax Withholding, Form #04.102- SEDM Form](#)

. . .and then demand that they rebut the evidence at the end with a signed affidavit under penalty of perjury. Make them prove their point that you can't do what you say you are doing. Most of the time, they wouldn't know the truth if their life depended on it because they are acting out of ignorance, fear, presumption, and laziness rather than knowledge.

## 7. Examples

Below is a blank W-8BEN with an attached example showing how a person who is a "[national](#)" (OFFSITE LINK) but not a "[citizen](#)" (OFFSITE LINK) under federal law and who was born in and is domiciled in a state of the Union, would fill out the W-8BEN form:

1.  [Example AMENDED IRS Form W-8BEN](#)
2.  [New Hire Paperwork Attachment, Form #04.203](#)

Most private companies and financial institutions have an agenda to terrorize and browbeat informed Americans into either not submitting or falsifying the W-8BEN form so that it is untrue. Consequently, you should follow our example as much as you can. Also, do not allow them to substitute their version of the form for yours, and if they insist, fill out both forms, and then on their form write "Not valid without the attached alternate W-8BEN and the attachment supersedes this entire form" and then staple them together and submit them together and keep the original copy for yourself and give them the photocopy. This will give you legal evidence that you can use at a later date if there is a dispute about your status with the institution or with the government. It will also provide proof that you were under duress when you signed the form and cannot be held accountable for the consequences.

## 8. Opening Bank Accounts as a Nonresident Alien Not Engaged in a "trade or business" without a Taxpayer Identification Number

Many people attempt to use the AMENDED IRS form W-8BEN available on this page to open bank accounts as nonresident aliens not engaged in a "trade or business" without using an SSN or TIN. They are successful doing this all the time, but it requires careful attention to detail and proper procedure that will be described in this section. The regulations under Title 31 of the U.S. Code explain why this is permissible, which say:

Title 31: Money and Finance: Treasury

[PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS](#)

[Subpart C—Records Required To Be Maintained](#)

[§ 103.34 Additional records to be made and retained by banks.](#)

**(a)(3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following:**



- (i) Agencies and instrumentalities of Federal, state, local or foreign governments;
- (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;
- (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families;
- (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families;
- (v) aliens temporarily residing in the United States for a period not to exceed 180 days;
- (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government;
- (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter,
- (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than \$10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than \$10;

and

**(x) non-resident aliens who are not engaged in a [trade or business](#) in the [United States](#).**











**In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is \$10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.**

If you are going to try to open a bank account or checking account as a "nonresident alien" not engaged in the "trade or business" franchise without a "Taxpayer Identification Number", we recommend the following procedure:



1. Use the  [New Hire Paperwork Attachment, Form #04.203](#) instead of the standard IRS form W-8BEN. This form gives detailed instructions to the institution about what they must do, and anticipates and answers all their questions with IRS publications, statutes, and regulations that they can rely on to validate everything you are asking for. It uses our Amended IRS Form W-8BEN.
2. If they won't take the above because doesn't answer all their questions, you can also give them our  [Affidavit of Citizenship, Domicile, and Tax Status, Form #02.001](#) instead of either the standard IRS form W-8BEN or the AMENDED IRS form W-8BEN. Use of this form is authorized by 26 CFR §1.1441-6(c)(1) above, which says that

[26 CFR §1.1441-6\(c\)\(1\)](#)

***"a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with Sec. 1.1441-1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States."***

3. If they will not accept our  [Affidavit of Citizenship, Domicile and Tax Status](#), then give them an  [Amended IRS Form W-8BEN](#), because you are NOT a "[beneficial owner](#)" and you would be committing perjury under penalty of perjury to describe yourself as such by using the  [STANDARD IRS W-8BEN form](#). This form is designed as a Substitute W-8BEN that is specifically authorized by and in complete compliance with  [IRS Form W-8 Instructions for Requester of Forms W-8BEN, W-8ECI, W-8EXp, and W-8IMF, Catalog 26698G](#). Nevertheless, you should STILL append to the perjury statement at the end of the  [Amended IRS Form W-8BEN](#) the language "Not valid without attached Affidavit of Citizenship, Domicile, and Tax Status" and attach the  [Affidavit of Citizenship, Domicile and Tax Status](#) form anyway.
4. If they will not take either any of your own forms but insist on using their OWN W-8BEN form, then:
  - 4.1 Use their  [STANDARD IRS form W-8BEN](#).
  - 4.2 Attach a completed version of our  [Tax Form Attachment, Form #04.201](#) completed as per the instructions as well as the  [Affidavit of Citizenship, Domicile and Tax Status, Form #02.001](#). Add language above the perjury statement of the  [STANDARD IRS Form W-8BEN](#) to read:

*"Not valid without attached Tax Form Attachment and Affidavit of Citizenship, Domicile, and Tax Status".*

5. If you are opening a interest bearing account, the bank or financial institution may try to indicate that you MUST provide an SSN or TIN so they can report the earnings to the IRS. This requirement ONLY applies to persons who are engaged in a " [trade or business](#)", which is NOT you. All such earnings reports are filed pursuant to [26 U.S.C. §6041](#) are ONLY authorized in the case of persons actually engaged in a "trade or business", which isn't you. If they try to insist that you ARE engaged in a "trade or business", simply present them with the following form and demand that they rebut the evidence and the content of the  [Affidavit of Citizenship, Domicile and Tax Status](#). If they can't, they are acting beyond their lawful authority.  
[Demand for Verified Evidence of "Trade or Business" Activity: Information Return, Form #04.007](#)  
<http://sedm.org/Forms/Tax/CorrErrInfoRtns/DmdVerEvOfTradeOrBusiness-IR.pdf>

6. Below are some good questions to ask them if they try to deny you the account or service:

6.1 "Is your decision to deny me an account a result of a legal requirement or simply bank policy?"

6.2 If they say "legal requirement", then ask them:

*"Please produce the statute AND implementing regulation authorizing you to deny the application."*



6.2 If they say "bank policy" ask them the following and later fax their response to us so we can improve this article based on it.:

*"Please provide a copy of the bank policy document."*

Below is one example of such a policy document from the Washington Mutual bank, which by the way is completely consistent with everything in this article:

 [Washington Mutual Policy Document, 3/22/2007](#)

7. You should also remind them that the ONLY circumstances when they can LAWFULLY DEMAND an identifying number from a nonresident alien is when he meets either of the following TWO constraints. Otherwise, [31 CFR §306.10](#) Footnote 2 specifically exempts a nonresident alien not engaged in a "trade or business" from the requirement to provide an identifying number, even for interest bearing accounts:

7.1 He is engaged in a " [trade or business](#)", which you are not. The  [IRS form 1042S Instructions](#), for instance, say the a TIN may ONLY be required if the person is engaged in a "trade or business". [Click here](#) for details of why you are NOT engaged in a "trade or business"

7.2 He is availing himself of a tax treaty benefit, which you are not. You SHOULD NOT fill out any part of Part II, Blocks 9 and 10 of the W-8BEN form, nor EVER identify yourself as a "Beneficial Owner", but rather a nonresident alien not engaged in a "trade or business" who is NOT availing himself of any treaty benefit.

Below is the text of that regulation:

[31 CFR §306.10](#)

**<sup>2</sup> Taxpayer identifying numbers are not required for foreign governments, nonresident aliens not engaged in trade or business within the United States, international organizations and foreign corporations not engaged in trade or business and not having an office or place of business or a financial or paying agent within the United States, and other persons or organizations as may be exempted from furnishing such numbers under regulations of the Internal Revenue Service.**


Your chances of succeeding at getting an account without an SSN or TIN as a nonresident alien not engaged in a "trade or business" will be improved if you really study and do your homework before visiting the bank. Some tactics that will also improve your chances include the following:

1. **REMEMBER:** The purpose of this exercise is FREEDOM from government slavery and obeying the law! You are a government slave not only because of your own legal ignorance, but also because of the ignorance of bank employees. No one learns the law anymore, including attorneys in law school. Instead, they are taught procedures that are a consequence more of corporate and public policy than what the law actually says. Ignorance is the enemy, not people!
  - 1.1 Don't walk into a financial institution self-righteously beating your chest and demanding your rights. This turns people off. Having rights is about people respecting other people. The essence of rights is RESPECT. You will portray yourself as a HYPOCRITE if you demand YOUR rights and disrespect those of others.

*" God resists the proud, but gives grace to the humble."*  
*[James 4:6, Bible, NKJV]*

- 1.2 Bank employees don't want to read or learn the law. Nobody likes change and everyone will be resistant to change. Don't force-feed them if they don't want to learn. Don't threaten them with a lawsuit. They just want a comfortable, SAFE place to work and to avoid any kind of liability at all costs. Be patient and reasonable with them. Appear humble and instructive at all times. Do more listening than talking. HONEY always works better than LEMON.
- 1.3 If you can't get anywhere with low-level bank clerks, then move up the food chain to a supervisor and explain your predicament. Higher level people usually read and learn more of the law than the people at the bottom of the food chain. If you want to raise a legal issue, bank managers are better candidates for this.
- 1.4 You will get a lot farther if you try to appear helpful, and distract the conversation so the employee doesn't have time to scrutinize your paperwork. Ask lots of personal questions and show interest in them to distract them from raking you over the coals. The truth and the law is more than most people are prepared to deal with, thanks to a dysfunctional public

education system that doesn't teach law anymore.

- 1.5 If you don't follow the above approach, then ultimately what most financial institutions will do is refer you to the company legal department MAILING ADDRESS. They won't give you a phone number or a street address where you could visit, but will instead instruct you to WRITE the legal department. This is a polite way to FLIP YOU OFF because they don't want to be faced with a direct confrontation about the company violating the law and don't want evidence generated that might destroy their "plausible deniability" and incur personal liability for them. Attorneys who ultimately will read your letter know they are violating the law and will therefore throw your correspondence in the trash to preserve their plausible deniability and limit their corporate and personal liability for violating the law. Then they will just claim they never saw it and that it got conveniently "lost" This is the same tactic the IRS uses, and its unscrupulous, dishonest, and malicious. If they try to pull this trick, insist on a name, a phone number, a street address where you can pay a visit, and an email address to talk to a real live person who won't evade responsibility to answer your questions or throw your correspondence in the trash because it would introduce personal liability.
2. Emphasize to the bank or financial institution that according to the  [IRS Form W-8BEN instructions](#), the reporting and/or withholding requirement only applies to income from "U.S. Sources". Show them the definition of "[United States](#)" found in [26 U.S.C. §7701](#)(a)(9) and (a)(10) and 4 U.S.C. §110(d) and ask them where states of the Union are mentioned in the definition below:

[TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701. \[Internal Revenue Code\]](#)  
[Sec. 7701. - Definitions](#)

(a) Definitions

(a)(9) United States

*The term "United States" when used in a geographical sense includes only the [States](#) and the District of Columbia.*

(a)(10) State

*The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title*

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TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES  
 CHAPTER 4 - **THE STATES**  
[Sec. 110. Same; definitions](#)

(d) **The term "State" includes any Territory or possession of the United States.**

In support of the above, you can also show them the rules of statutory construction, which say on this subject:

**"Expressio unius est exclusio alterius.** A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. **Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."  
*[Black's Law Dictionary, Sixth Edition, page 581]*

**"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.** *Meese v. Keene*, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v. Franklin*, 439 U.S. at 392-393, n. 10 ("As a rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated"); *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 502 (1945); *Fox v. Standard Oil Co. of N.J.*, 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, *Sutherland on Statutes and Statutory Construction* § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."  
[\[Stenberg v. Carhart, 530 U.S. 914 \(2000\)\]](#)

3. Before you even attempt trying to open an account as a nonresident alien not engaged in a "trade or business", do your

homework so you can forcefully present your case to any timid bank or payroll clerk you come in contact with:

- 3.1 Read and reread this article several times and make sure you understand EVERYTHING. Follow all the links contained here and verify the laws for yourself.
- 3.2 Read our free pamphlet below, so you completely understand WHY you are doing what you are doing and all the law behind it.


*Nonresident Alien Position*, Form #05.020

<http://sedm.org/Forms/MemLaw/NonresidentAlienPosition.pdf>

- 3.3 Read and understand all the forms we mention in this article so you know what they are for and what is on them without even looking at them. Fill them in, print them out, and have them ready to go when you walk into any bank. Preparedness and KNOWLEDGE is everything. The people in banks and financial institutions do what they do all day and every day. You aren't going to be able to give them any advice about how to do their job unless you are prepared and know as much as they do about what it requires.
4. Practice perfecting your approach with a friend or in another town at several smaller financial institutions. As you are perfecting your approach, start with a small bank where the people are more friendly and accommodating. As your experience grows, work your way up to the bigger bank or institution. That way you will have time to perfect your approach before you appear on a national "blacklist" somewhere. Don't give up after the first attempt, but simply keep trying and improving.
5. If the problem is with providing an identifying number and the above doesn't work, then the following alternatives may prove helpful:
  - 5.1 Ask them what you are not doing that you need to be doing in order to get an account as a nonresident alien. This may cause them to explain what aspect of either their policy or the law itself that they think you are not in compliance with so that you can converge on a solution.
  - 5.2 Ask them if they will open a NON INTEREST BEARING ACCOUNT instead without a number.
  - 5.3 Remind them that even the IRS' own website says the only case where a Nonresident Alien can be compelled to submit a TIN is the case where he is either engaged in a "trade or business" or is availing himself of a treaty benefit, and that you satisfy NEITHER criteria and therefore are specifically exempted from the requirement pursuant to [31 CFR §306.10](#), footnote 2.
  - 5.4 Attach the following pamphlet to the application and demand that they rebut the questions at the end if they disagree. Tell them you have all the time in the world to receive a response from them but that you don't want to violate the laws clearly documented therein.

*Who are "taxpayers" and who needs a "Taxpayer Identification Number"*, Form #05.013

 <http://sedm.org/Forms/MemLaw/WhoAreTaxpayers.pdf>

6. Sometimes, bank employees will be reluctant to reveal to you their real reason for denying you the account you seek. In most cases, it is a "policy" decision and judgment call that has absolutely nothing to do with the law and is intended to minimize their risk exposure. They know that if they tell you why they are denying you the account, then they may increase their risk exposure by creating an appearance that they are discriminating against certain customers or classes of customers. This can be very embarrassing and destroy the business inside the bank if other customers see that they are discriminating against you. Some factors that bank employees will use in their surreptitious "policy decision" include the following:
  - 6.1 If you say you are a nonresident alien but have a local state driver's license that you have had for years, they will assume you are lying and not want you as a customer. Remember, if you have a state driver's license, and you can't get a license in most states without an SSN, and you tell them that you don't have an SSN, then they will think you are lying but will be reluctant to admit that is what they are concluding. Consequently, it's best to say you don't have a local driver's license and either give them an international driving permit or say that you just got there and haven't been issued one yet.
  - 6.2 If the mailing address on your W-8BEN is not in a foreign country, then they will ASSume that you have a domicile in the "United States", which we know is false. That will cause them to think that you are lying about the fact that you are a "nonresident alien". We know that states of the Union are "[foreign states](#)" for the purposes of federal jurisdiction, but we also know that few bank employees, including even bank managers, have ever attempted to read the law. In response, show them the definition of "[United States](#)" right from [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) in step 2 above. Alternatively, you can give them a foreign PO box instead, but don't use the phrase "PO box" in the address. Use "Suite \_\_\_" or something like that instead so you don't draw attention to yourself.
  - 6.3 They may not believe that you do not have a Social Security Number. In response, you can show them the SSA-521 and  [Resignation of Compelled Social Security Trustee, Form #06.002](#) you sent in as a requirement of becoming a [Member](#), but make sure you remove the number at the end.
7. You shouldn't be handing them anything that would connect you to a government-issued number, including an old state-issued driver's license or passport that you got with a number. You should assume that they are going to run everything and if they find anything with a number, they are going to update their records later and add it, and then call you up and ask you why you committed FRAUD on the account application. Therefore, it's best to get a new passport without a number, get rid

of your state-issued driver's license and get an international license or privately issued license. [Click here](#) for details on how to get an international driving permit. [Click here](#) for instructions on how to apply for a passport as a "national" but not "citizen". It's not fraud to get a new passport without a number, because you were never lawfully eligible for Social Security anyway, and because such numbers can only be issued to federal employees in the official conduct of their employment duties, and you are not such a person if you are appearing to get the passport as a "private" rather than a "public" individual. See:

*Resignation of Compelled Social Security Trustee*, Form #06.002

 <http://sedm.org/Forms/AvoidingFranch/SSTrustIndenture.pdf>

8. If they don't like the content of Block 4 of the W-8BEN, which is the "Permanent Address" ([domicile](#)) because you put "None", you might instead try any one of the following alternatives, and ask them WHICH one they will accept, and why they WON'T accept any particular one. Remember that the main goal is to satisfy the requirements of [26 CFR §1.1441-6\(c\)\(1\)](#) mentioned above with *some form* of affidavit or evidence. The main purpose of this regulations is to prove that you aren't domiciled in the "United States" (federal zone) and are NOT domiciled in a foreign country and subject to the terms of an income tax treaty, because both of these would require you to submit an identifying number. A person domiciled in a state of the Union satisfies NEITHER and therefore has not requirement to provide a number:

8.1 "Transient foreigner"

8.2 "No domicile"

8.3 Religious objection to having a "domicile" and then show them the following article:

*Why Domicile and becoming a "taxpayer" require your consent*, Form #05.002

 <http://sedm.org/Forms/MemLaw/Domicile.pdf>

9. If they don't like the content of Block 5 of the IRS Form W-8BEN, the Mailing Address, then give them a foreign mailing address. Get a foreign PO box, for instance, but don't call it a PO box. This generally helps quite a bit to convince them of that you are a "foreign person". Remember that states of the Union are "[foreign states](#)" for the purposes of federal legislative jurisdiction and that they ought to be willing to accept an address within a state of the Union to satisfy the Mailing Address in Block 5. Typically, however, clerks at banks don't read the law and don't understand this concept and most are not patient enough to even allow you to explain this to them, so just make it easier for them and avoid a confrontation by simply giving them a foreign address to use. If you want to know why the states of the Union are "foreign" and they are willing to allow you to explain it, you can give them a copy of the following pamphlet and point them at section 9:

*Who are "taxpayers" and who needs a "Taxpayer Identification Number"*, Form #05.013

 <http://sedm.org/Forms/MemLaw/WhoAreTaxpayers.pdf>

10. If all else fails, remember that you can always go to a different bank or a different branch of the SAME bank. Smaller banks or more accommodating. We have done this and it works.

## 9. Situational Resources Relating to Withholding and Reporting

### 9.1 Threatened with Backup Withholding

Those who claim to be "nonresident aliens" not engaged in a "trade or business" and who are not "individuals" are sometimes subjected to unlawful backup withholding by ignorant financial institutions and private employers who refuse to read and obey the law as written. This section will provide tools and procedures to fight such forms of involuntary servitude and THEFT under the color of law.

*"The laborer is worthy of [ALL of ] his wages."*

[[1 Tim. 5:18](#), Bible, NKJV]

*"Woe to him who builds his house by unrighteousness*

*And his chambers by injustice,*

**Who [whether individual or government] uses his neighbor's service without wages**

*And gives him nothing for his work,"*

[[Jer. 22:13](#), Bible, NKJV]

*"Come now, you rich, weep and howl for your miseries that are coming upon you! Your riches are corrupted, and your garments are moth-eaten. Your gold and silver are corroded, and their corrosion will be a witness against you and will eat your flesh like fire. You have heaped up treasure in the last days.*

**<sup>4</sup>Indeed the wages of the laborers who mowed your fields, which you kept back by fraud, cry out; and the cries of the reapers have reached the ears of the Lord of Sabaoth.** <sup>5</sup>*You [the business owner who controls the purse of the workers] have lived on the earth in pleasure and luxury; you have*

fatted your hearts as<sup>b1</sup> in a day of slaughter. You have condemned, you have murdered the just; he does not resist you. "

[James 5:1-6, Bible, NKJV]

"You shall not cheat your neighbor, nor rob him. The **wages** of him who is hired shall not remain with you all night until morning. "

[Lev. 19:13, Bible, NKJV]

Any way you look at it, private employers who don't have privileged federal "employees" for workers cannot withhold against the wishes of the workers and if they do, they are STEALING and violating both man's law and God's law. There is nothing in federal law or state law that would indemnify them from such STEALING. They are no better than petty street criminals, and any payroll clerk who doesn't understand this is a sitting duck for any worker who is even mildly educated about the law and willing to defend his rights in court.

Below is a summary of the requirements for backup withholding:


1. Required by:
  - 1.1 [26 U.S.C. §3406](#)
  - 1.2 [26 CFR §31.3406-0 through 26 CFR §31.3406\(j\)-1](#)
2. Withholding set at 31% of "reportable payments". See [26 CFR §31.3406\(a\)-1\(a\)](#).
3. "reportable payments" are payments "effectively connected with a [trade or business](#)", which means a public office in the government, pursuant to:
  - 3.1 [26 U.S.C. §6041](#). All information returns filed or reported must be connected with a "trade or business" as required by paragraph (a) of this section.
  - 3.2 [26 U.S.C. §3406\(b\)](#).
  - 3.3 [26 U.S.C. §6049](#) in the case of interest payments
  - 3.4 [26 U.S.C. §6042](#) in the case of dividend payments
  - 3.5 [26 U.S.C. §6044](#) in the case of patronage dividends
4. None of the regulations talk about the "trade or business" requirement. It is ONLY found in [26 U.S.C. §6041\(a\)](#), which is where the obligation to report is established.
5. Backup withholding is specifically prohibited:
  - 5.1 On reportable payments that qualify for the documentary evidence rule found in [26 CFR §1.6049-5\(c\)\(1\)](#) or (4)
  - 5.2 For amounts already subject to withholding of 30%.

"Nonresident aliens" who are not engaged in a "trade or business" cannot lawfully become the subject of backup withholding per item 3 above. If a financial institution or private employer indicates that they want to do it anyway we suggest:

1. [26 U.S.C. §3406](#) also authorizes backup withholding in the case of those who refuse to provide a TIN. The requirement to FURNISH a TIN is described in 26 CFR §301.6109-1(b). Those who are "nonresident aliens" but not "individuals" as identified in that section are not listed as having a requirement. Neither are "nonresident alien individuals" who are NOT engaged in a "trade or business". Therefore, by the rules of statutory construction, they are not required to deduct, withhold, or report.

***"Expressio unius est exclusio alterius.*** A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** *Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.*


[Black's Law Dictionary, Sixth Edition, p. 581]

2. If the payer gives you guff when you say you don't have to provide a TIN and are not eligible, give them the following:  
 [Why it is Illegal for Me to Request or Use a "Taxpayer Identification Number", Form #04.205](#)
3. If the payer gives you guff about whether you are or can choose to be a "nonresident alien" who is not an "individual":
  - 3.1 Show them [section 4 above](#), which proves that you are a "nontaxpayer" who doesn't need to withhold or deduct because you earn no "gross income" and your estate is a "foreign estate" as described in [26 U.S.C. §7701\(a\)\(31\)](#).
  - 3.2 Show them the definition of "individual" in [26 CFR §1.1441-1\(c\)\(3\)](#) and ask them to prove that you meet the definition of "nonresident alien individual". They won't be able to prove it so they can't impose a requirement to provide either a number or withhold.
  - 3.3 Show them [26 U.S.C. §871](#), which only taxes earnings of "nonresident alien individuals", not "nonresident aliens" who are NOT "[individuals](#)".

3.4 Show them the following, which proves that you have an unalienable right to declare and establish any civil status you want and that a failure to respect that status constitutes a violation of your First Amendment right of freedom from compelled association:

 [Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008](#)

3.5 Remind them that all franchises are contracts and that contracts are unenforceable in the presence of duress. Insist on your right to not be compelled to contract with the government

by being forced to engage in federal franchises such as the  ["trade or business" franchise](#). This is covered further in the following:

 [Government Instituted Slavery Using Franchises, Form #05.030](#)

4. Showing them the legal authorities described above.

5. Submitting an [AMENDED IRS form W-8BEN](#) to a withholding agent. This causes them to not be able to withhold:

*"Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) **are exempt from backup withholding and Form 1099 reporting.**"*  
*[IRS Publication 515, year 2000, p. 3]*




The phrase "(or applicable documentary evidence)" above also covers the following form we prefer over the Standard IRS Form W-8BEN:

 [Affidavit of Citizenship, Domicile, and Tax Status, Form #02.002](#)


6. Using the following forms to educate them above what a "trade or business" and to prove that you aren't engaged in one:

 [Demand for Verified Evidence of "Trade or Business" Activity" Information Return, Form #04.007](#)

 [The "Trade or Business" Scam, Form #05.001](#)

If you are a "nonresident alien" or "foreigner" but not an "individual" or "person", DO NOT use the  [Standard IRS Form W-8BEN](#) because it contains "words of art" that will prejudice your status and make you look like a "taxpayer" as described in [section 5 earlier](#). Instead use either the  [AMENDED IRS FORM W-8BEN](#) or the  [Affidavit of Citizenship, Domicile, and Tax Status, Form #02.002](#) indicated above.

For further details on backup withholding, see the following resources:

-  [Income Tax Withholding and Reporting Course, Form #12.004](#)-contains a summary of all withholding and reporting requirements, including backup withholding. Present this to your private employers and financial institutions if they are unsure of the law
- [Backup Withholding "B" Processes](#) -IRS Website

## 9.2 Asked to Fill Out an I-9

We have prepared an amended form I-9 that defines all words of art on the form in order to remove any presumed any connection to the I.R.C. and correctly reflect your citizenship status as a non-citizen national domiciled outside the statutory but not constitutional "United States":

*I-9 Form Amended*, Form #06.028

DIRECT LINK:  <http://sedm.org/Forms/AvoidingFranch/i-9Amended.pdf>

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

If you would like to read a forum that discusses the pros and cons of our form, see the following OFFSITE link. You will need an account to view or contribute to the forum. We didn't write it, so please don't ask us questions about it:

<http://famguardian.org/forums/index.php?showtopic=4746&st=0&p=10838&hl=&quot;i-9%20form&quot;&fromsearch=1&#entry10838>

## 9.3 Asked for a Social Security Number for E-Verify

The following form deals directly with the subject of E-Verify:

*About E-Verify*, Form #04.104

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/Tax/Procedure/E-Verify/E-Verify.htm>

The subject of compelled use of Social Security Numbers for E-Verify is discussed in:

 [Federal and State Tax Withholding Options for Private Employers, Form #09.001, Section 24.6](#)


The compelled (and therefore ILLEGAL) use of government identifying numbers is described in:

[About SSNs and TINs on Government Forms and Correspondence, Form #07.004, Section 9](#)

## **9.4 Asked to update an expired W-8BEN and institution resists submission**

The following form is for those who have an existing relationship created with a W-8 and the institution asks for an updated form at the end of the three year expiration and then resists at what you submitted:


W-8 Update/Backup Withholding Threat Response, Form #04.221

-  [PDF in Member Subscriptions](#)
- [Member Subscriptions](#)

## **9.5 First W-8 submission is rejected and asked to correct it**

The following form is for those who have updated an existing W-8 and the update has been rejected and you are asked to correct it:

W-8 Update Rejection Response, Form #04.222

-  [PDF in Member Subscriptions](#)
- [Member Subscriptions](#)

## **10. Frequently Asked Questions**

Q1: I need help filling out the W-8 or substitute for a business. Can you help me?

A1: We DO NOT help with businesses or those engaged in a statutory "trade or business", but ONLY with exclusively private human beings not engaged in a statutory "trade or business". See our [Member Agreement, Form #01.001](#), Section 4, Item 1.4. Even if you need help from us personally as a human being, you must complete our [Path to Freedom, Form #09.015](#) process in section 2 up to step 14 and demonstrate full compliance before either involving us or "using" our materials to interact with third parties. If you can't or won't comply, you will have to create all your own materials or seek help from other members and NOT us by visiting our forums. We won't help you undermine or violate our Member Agreement, our Path to Freedom, or any law.

Q2: What if the financial institution or PRIVATE employer points to the W-8 Form and says the address is not "foreign" because it is in the "United States"?

A2: They obviously aren't reading the law. [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and [4 U.S.C. §110\(d\)](#) define the "United States" to mean federal territory not within any constitutional state and no place in the I.R.C. is this definition expanded to include states of the Union.




**"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.** *Meese v. Keene*, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v. Franklin*, 439 U.S. at 392-393, n. 10 ("As a rule, 'a definition which declares what a term 'means' . . . excludes any meaning that is not stated"); *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 502 (1945); *Fox v. Standard Oil Co. of N.J.*, 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, *Sutherland on Statutes and Statutory Construction* § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."  
[\[Stenberg v. Carhart, 530 U.S. 914 \(2000\)\]](#)

**"Expressio unius est exclusio alterius.** A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a

*general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*


[Black's Law Dictionary, Sixth Edition, p. 581]

You have four choices, listing in descending order of preference:

1. You can hand them the following form and ask them to prove it is wrong, because it proves that addresses within states of the Union are legislatively "foreign":  
 [Withholding Agent Questionnaire, Form #04.220](#)
2. You can demand that they produce a definition of "United States" SOMEWHERE in the I.R.C. that expressly includes the legislatively foreign state (state of the Union) you are in. They won't be able to do it because there is no such definition. If they try to argue with you about the use of the word "includes" in the definition of "United States" found in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) and [4 U.S.C. §110\(d\)](#), you may want to give them the free memorandum of law entitled " [The Meaning of the words 'includes' and 'including'](#)", Form #05.014, which proves that they cannot lawfully "presume" things that don't actually appear in the code itself and if they do, they are establishing and perpetuating a state sponsored religion in violation of the First Amendment and also are depriving you of equal protection, which requires that you have the EQUAL right to presume that the thing they want to add to a definition is NOT "included".
3. You can give them the address of a relative outside the country and have them temporarily forward mail to you. Then after the account is opened, you can change the address.
4. You can give them a foreign address outside the country, which you may have gotten as a PO box.
5. You can hand them our pamphlet entitled  "[Who are 'Taxpayers' and who needs a 'Taxpayer Identification Number'?](#)", Form #05.013, clearly showing that the states of the union are "foreign states" and therefore "foreign addresses"

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Q3: What if a financial institution won't accept my W-8 to open an account because they say I am not a "nonresident alien"?

A3: Ask them for their credentials to practice law and their statutory delegation of authority order to determine your status. They aren't allowed to make legal determinations about your status. Only you can lawfully do that, since you are the one submitting the form and since that form is under penalty of perjury. If they want to tell you what to put on the form, then make them agree to sign it instead of you, because it's going to be perjury under penalty of perjury. Then you can hand them pamphlet entitled  "[Who are 'Taxpayers' and who needs a 'Taxpayer Identification Number'?](#)" and demand that they rebut the evidence by answering the questions at the end.

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Q4: What if a financial institution says the [USA Patriot Act](#) requires them to collect a Social Security Number, even from nonresident aliens who are not required to have one?


A4: Ask them to produce a definition of "United States" within the act that includes anything other than federal territory and which includes the legislatively foreign state (state of the Union or abroad) you are in. Then ask them to show you the provision [in the act](#) that expressly requires this. Then show them the definitions of "United States" in the act itself, which does not include nonfederal land within states of the Union. You can also show them note #2 in [31 CFR §306.10](#), which says the following:

[31 CFR §306.10](#)

**<sup>2</sup> Taxpayer identifying numbers are not required for foreign governments, nonresident aliens not engaged in trade or business within the United States, international organizations and foreign corporations not engaged in trade or business and not having an office or place of business or a financial or paying agent within the United States, and other persons or organizations as may be exempted from furnishing such numbers under regulations of the Internal Revenue Service.**

You can also explain to them that:

1. You don't qualify for an SSN and never made application for a number. (your parents did, in most cases, and so this will be true.) See the following form for details on why you don't qualify for Social Security:  
 [Why You Aren't Eligible for Social Security, Form #06.001](#)
2. Show them IRS form 1042s instructions, which contains a list of all the activities that specifically require a "Taxpayer Identification Number", and then ask them to identify WHICH activity you are involved in. This is covered in [section 9 of our About SSNs and TINs on Government Forms and Correspondence](#).

3. You can show them the  [IRS form W-9](#) and explain that Part III of the form requires you to declare yourself a "U.S. person" pursuant to 26 U.S.C. §7701(a)(30) and you are NOT a "U.S. person" because you are not a statutory "citizen" or "resident".
4. You can show them [26 CFR §301.6109-1\(d\)\(3\)](#) and explain that you aren't eligible for an ITIN either because you are not an "alien". A "nonresident alien" is NOT equivalent to an "alien". A person such as yourself who is a "national" but not "citizen", for instance, can be a "nonresident alien" but not an "alien".

[26 CFR §301.6109-1\(d\)\(3\)](#)

(3) *IRS individual taxpayer identification number* --

(i) *Definition.*

*The term IRS individual taxpayer identification number means **a taxpayer identifying number issued to an alien individual** by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term IRS individual taxpayer identification number does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term alien individual means an individual who is not a citizen or national of the United States.*


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Q5: What if the financial institution or employer insists on preparing [IRS Form 1042-S](#) on my earnings even though I'm not subject to withholding and have no tax liability?

A5: The [IRS Form 1042-S](#) has only one block for reporting earnings, which is Block 2 entitled "[Gross income](#)". This is the same "gross income" identified in [26 U.S.C. §61](#), which makes you into a "[taxpayer](#)" subject to the I.R.C.! WATCH OUT! You can't earn "[gross income](#)" as defined in the I.R.C. without being a "[taxpayer](#)", and the reason the IRS will encourage financial institutions and private employers to fill out this form even in cases when it is not required, is to manufacture more "[taxpayers](#)" using false presumption to prejudice your constitutional rights. We cover this in our free pamphlet below:

[Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction](#), Form #05.017  
<http://sedm.org/Forms/MemLaw/Presumption.pdf>

If you object to this form being filed on you by a financial institution or employer, and if the payer fills this form out on you despite your hopefully vociferous objections, then you should make sure that the Exemption Code in Block 6 reads "03, which means "Not from 'U.S. sources'" and the tax rate in block 5 is "00.00". Then, when you get a copy of this form from them at the end of the year, you can file a corrected version by checking the "AMENDED" block and reporting "0" for "Gross income" in block 2. **It is VERY important to go back and fix this erroneous report with an AMENDED version of the form you file after the payee files his or you will end up being hounded by IRS computers for nonpayment. BAD NEWS.**


We must always remember that the [IRS Form 1042-S](#) is a type of Information Return, and that the only authority for demanding information returns is [26 U.S.C. §6041](#). This section says that the *only* occasion where information returns are required is in the case of those in receipt of " [trade or business](#)" income, which means income from a "public office" in the United States government. If you aren't engaged in a "public office" in the United States government and don't have earnings from the U.S. government, then there is nothing to report and no report need be filed, and if a report IS mistakenly filed, then the "[Gross income](#)" block must be zero and the tax rate must be zero. This is consistent with the content of [26 U.S.C. §871](#) and [26 CFR §1.872-2](#), which says:

*Title 26: Internal Revenue*  
[PART 1—INCOME TAXES](#)  
[nonresident alien individuals](#)  
[§ 1.872-2 Exclusions from gross income of nonresident alien individuals.](#)

(f) *Other exclusions.*

**Income which is from sources without [outside] the United States [federal territory per 26 U.S.C. 7701(a)(9) and (a)(10) and 4 U.S.C. 110(d)], as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. To determine specific exclusions in the case of**

other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section [864\(c\)\(4\)](#) and §1.864-5.

Don't take our word for it. Read [the instructions for the form](#) yourself. It should also be pointed out that instructions for the form say that if you aren't engaged in a " [trade or business](#)", which is everyone except federal employees and federal business entities and contractors participating in "social insurance" (e.g. SOCIALIST INSECURITY), then you don't have to provide a Social Security Number either:

#### **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.

[[IRS Form 1042-S Instructions](#), p. 14]


## **11. Saving and reusing completed forms**

The form W-8BEN is frequently used when corresponding with the IRS and state taxing authorities as a way to remind the government that a person is not a "resident" and does not maintain a [domicile](#) (OFFSITE LINK) within the federal United States. Once you have completed the form, it is best to keep the original in a safe place and reuse it by photocopying it and attaching it to correspondence. This will save you lots of work and time. We scan in ours and make it into an Adobe Acrobat PDF and just reprint it whenever we need it.

## **12. Further reading and research**

1. [Citizenship Status v. Tax Status, Form #10.011](#)-very important!
2.  [Citizenship Diagrams, Form #06.030](#)- simplifies citizenship and jurisdiction issues for the legally inexperienced, such as withholding agents and managers
3.  [W-8 Attachment: Citizenship, Form #04.219](#)-use this form to explain the various citizenship statuses and corresponding tax statuses. Intended for payroll clerks and corporate counsel.
4. [W-8 Update/Backup Withholding Threat Response, Form #04.221](#)-use this form to respond to a request by a financial institution to update an existing W-8 on file at the end of the three year expiration.
  - o  [PDF in Member Subscriptions](#)
  - o [Member Subscriptions](#)
5.  [Withholding Agent Questionnaire, Form #04.220](#)-Hand this to those who argue with you about submitting a W-8 form, about whether the address is within the "United States", or about refusal to use a TIN.
6.  [Legal Basis for the term "Nonresident Alien", Form #05.036](#) (OFFSITE LINK) -pamphlet from neutral third party with a PhD which reinforces everything here.
7.  [Federal and State Tax Withholding Options for Private Employers, Form #09.001](#) book- detailed information about income tax withholding and reporting. Family Guardian
8.  [Your Exclusive Right to Declare and Establish Your Civil Status, Form #13.008](#)-proves that payroll clerks and private companies acting as public officers called "withholding agents" cannot lawfully interfere with, change, or coerce any change in any government form you submit.
9.  [IRS Form W-8 Instructions for Requester of Forms W-8BEN, W-8ECI, W-8Exp, and W-8IMF, Catalog 26698G](#)
10.  [IRS Instructions for Form W-8BEN, Catalog 25576H](#)
11. [A Treatise of Law on Non-Residents and Foreign Corporations](#) (OFFSITE LINK) - book on non-residents. Google Books. By Conrad Reno, 1892.
12.  [Flawed Tax Arguments to Avoid, Form #08.004](#) -sections 6.1, 6.5, and 7.14 cover issues relating to nonresident aliens. Family Guardian Website
13.  [Nonresident Alien Position, Form #05.020](#)-memorandum of law on why people domiciled in states of the Union are nonresident aliens
14.  [Federal tax withholding, Form #04.002](#) -memorandum of law. Section 5 covers nonresident alien withholding.
15.  [Income Tax Withholding and Reporting Course, Form #12.004](#) -short Powerpoint presentation that summarizes the laws

on withholding and reporting

16.  [The "Trade or Business" Scam, Form #05.001](#)-proves that I.R.C. Subtitle A describes an indirect excise tax upon privileged federal "public office"
17. [About SSNs/TINs on Tax Correspondence, Form #07.004](#)-why you don't want to put an identifying number on the correspondence
18. [Backup Withholding "B" Processes](#) -IRS Website
19. [You're Not a "citizen" under the Internal Revenue Code](#) (OFFSITE LINK)
20. [You're Not a "resident" under the Internal Revenue Code](#) (OFFSITE LINK)
21. Treasury Withholding regulations relating to those who file W-8BEN forms:
  - o [26 CFR §1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons- IMPORTANT!](#)
  - o [26 CFR §1.1441-2 Amounts subject to withholding.](#)
  - o [26 CFR §1.1441-7 General provisions relating to withholding agents](#)
22. [International Taxpayer](#) (OFFSITE LINK)-IRS. For use by "nonresident aliens", who are the only persons that can use this website
23. [Taxation of Nonresident Aliens](#) (OFFSITE LINK)- IRS. For use by "nonresident aliens", who are the only persons that can use this website. HOWEVER, anything that reads "taxpayer" does not pertain to you.
24. [Sovereignty Forms and Instructions Online, Form #10.004, Instruction 3.13: Change Your U.S. Citizenship Status](#) (OFFSITE LINK)-Family Guardian Website,
25. [Sovereignty Forms and Instructions Online, Form #10.004, Instruction 3.14: Change Your Filing Status to Nonresident Alien and Denumber Yourself](#) (OFFSITE LINK)-Family Guardian Website
26. [Sovereignty Forms and Instructions Online, Form #10.004, Instruction 4.13: Stop employer withholding of Income Taxes](#) (OFFSITE LINK)-Family Guardian Website.
27. [Nonresident Alien Withholding](#) (OFFSITE LINK)- IRS Website
28. [Withholding Agent](#) (OFFSITE LINK) -IRS Website
29. [Internal Revenue Manual Section 4.6: Payer Compliance \[information returns\]](#) (OFFSITE LINK) - IRS Website
30. [Internal Revenue Manual Section 2.7.7: Information Return Reporting](#) (OFFSITE LINK) - IRS Website
31. [Information Returns Processing](#) (OFFSITE LINK) -IRS Website

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