

Instructions for Form 8802

(Rev. September 2006)

Application for United States Residency Certification



Department of the Treasury
Internal Revenue Service

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

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What's New

User fee. A user fee will be charged to process all Forms 8802 received with a postmark date on or after November 1, 2006. For more information, see *User Fee* on page 2.

Payments must be received prior to the processing of a request. Payment must be sent with Form 8802 and attachments to the address shown on page 2, *Where to Apply*.

Fax services. Effective November 1, 2006, you can no longer fax Form 8802 applications.

Publication 686 is obsolete. Publication 686, Certification for Reduced Tax Rates in Tax Treaty Countries, is now obsolete. All relevant information pertaining to U.S. residency certification is included in these instructions.

U.S. Residency Certification

Income Tax Treaty

Many foreign countries withhold tax on certain types of income paid from sources within those countries to residents of other countries. The rate of withholding is set by that country's internal law. An income tax treaty between the United States and a foreign country often reduces the withholding rates (sometimes to zero) for certain types of income paid to residents of the United States. This

reduced rate is referred to as the treaty reduced rate. For more information on reduced rates, see *Tax Treaty Tables* in Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Many U.S. treaty partners require the IRS to certify that the person claiming treaty benefits is a resident of the United States for federal tax purposes. The IRS provides this residency certification on Form 6166, a letter of U.S. residency certification. Form 6166 is a computer-generated letter printed on stationary bearing the U.S. Department of Treasury letterhead, and the facsimile signature of the Field Director, Philadelphia Accounts Management Center.

Form 6166 will only certify that, for the certification year (the period for which certification is requested), you were a resident of the United States for purposes of U.S. taxation, or in the case of a fiscally transparent entity, that the entity, when required, filed an information return and its partners/members/owners/beneficiaries filed income tax returns as residents of the United States.

Upon receiving Form 6166 from the IRS, unless otherwise directed, you should send Form 6166 to the foreign withholding agent or other appropriate person in the foreign country to claim treaty benefits. Some foreign countries will withhold at the treaty reduced rate at the time of payment, and other foreign countries will initially withhold tax at their statutory rate and will refund the amount that is more than the treaty-reduced rate on receiving proof of U.S. residency.

Other conditions for claiming treaty benefits. In order to claim a benefit under a tax treaty, there are other requirements in addition to residence. These include the requirement that the person claiming a treaty reduced rate of withholding be the beneficial owner of the item of income and meet the limitation on benefits article of the treaty, if applicable.

The IRS cannot certify whether you are the beneficial owner of an item of income or that you meet the limitation on benefits article, if any, in the treaty. You may, however, be required by a foreign withholding agent to establish directly with the agent that these requirements have been met.



You should examine the specific income tax treaty to determine if any tax credit, tax exemption, reduced rate of tax, or other treaty benefit or safeguards apply.

Value Added Tax (VAT)

Form 6166 may also be used as proof of U.S. tax residency status for purposes of obtaining an exemption from a VAT imposed by a foreign country. In connection with a VAT request, the United States can certify only to certain matters in relation to your U.S. federal income tax status, and not that you meet any other requirements for a VAT exemption in a foreign country.

General Instructions

Purpose of Form

Form 8802 is used to request Form 6166, a letter of U.S. residency certification for purposes of claiming benefits under an income tax treaty or VAT exemption. You cannot use Form 6166 to substantiate that U.S. taxes were paid for purposes of claiming a foreign tax credit.

You cannot claim a foreign tax credit to reduce your U.S. tax liability with respect to foreign taxes that have been reduced or eliminated by reason of a treaty. If you receive a refund of foreign taxes paid with the benefit of Form 6166, you may need to file an amended return with the IRS adjusting any foreign tax credits previously claimed for those taxes.

When To Apply

You should mail your application, including full payment of the user fee, at least 45 days before the date you need Form 6166. We will contact you within 30 days if there will be a delay in processing your application. You can call 215-516-2000 (not a toll free number) and select the U.S. residency option if you have questions regarding your application.

Early submission for a current year certification. The IRS cannot accept an early submission for a current year Form 6166 that has a postmark date before December 1. Requests received with a postmark date earlier than December 1 will be returned to the sender. For example, a Form 6166 request for 2007:

- Received with a postmark date before December 1, 2006, cannot be processed.
- Received with a postmark date on or after December 1, 2006, can be processed with the appropriate documentation.

Where To Apply

Send Form 8802, all required attachments, and payment of the user fee by mail to:

Internal Revenue Service
P.O. Box 42530
Philadelphia, PA 19101-2530

Or, by private delivery service to:

Citibank
Attn: IRS Lockbox Operations
1617 Brett Road
New Castle, DE 19720-2425

Who Is Eligible for Form 6166

In general, under an income tax treaty, an individual or entity is a resident of the United States if the individual or entity is subject to U.S. tax by reason of residence, citizenship, place of incorporation, or other similar criteria. U.S. residents are subject to tax in the United States on their worldwide income. An entity may be considered subject to tax on its worldwide income even if it is statutorily exempt from tax, such as a pension fund or charity. Similarly, individuals are considered subject to tax even if their income is less than the amount that would require that they file an income tax return.

In general, Form 6166 is issued only when the IRS can verify that for the year for which certification is requested one of the following applies:

- You filed an appropriate income tax return (for example, Form 1120 for a domestic corporation),
- In the case of a certification year for which a return is not yet due, you filed a return for the most recent year for which a return was due, or
- You are not required to file an income tax return for the tax period on which certification will be based and other documentation is provided.

Who Is Not Eligible for Form 6166

In general, you are not eligible for Form 6166 if, for the tax period for which your Form 6166 is based, any of the following applies:

- You did not file a required U.S. return.
- You filed a return as a nonresident (including Form 1040NR, U.S. Nonresident Alien Income Tax Return; Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents; Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation; or any of the U.S. possession tax forms).

- You are a dual resident individual who has made (or intends to make), pursuant to the tie breaker provision within an applicable treaty, a determination that you are not a resident of the United States and are a resident of the other treaty country. For more information and examples, see Reg. section 301.7701(b)-7.
- You are a fiscally transparent entity organized in the United States (that is, a domestic partnership, domestic grantor trust, or domestic LLC disregarded as an entity separate from its owner) and you do not have any U.S. partners, beneficiaries, or owners.
- The entity requesting certification is an exempt organization that is not organized in the United States.

User Fee

Payment schedule. Form 8802 application(s) will not be processed until the user fee is paid. A single user fee of \$35 per Form 8802 submitted will cover a request for up to 20 original Forms 6166 issued under a single taxpayer identification number (TIN), regardless of the country for which certification is requested or the tax period to which the certification applies. An additional \$5 will cover a request on the same Form 8802 for up to 20 additional Forms 6166 issued under the same TIN. For example, if you request on Form 8802:

Number of Forms 6166	User Fee
1 - 20	\$ 35.00
21 - 40	\$ 40.00
41 - 60	\$ 45.00
61 - 80	\$ 50.00

Additional request. Additional requests for Form 6166 submitted on a separate Form 8802, following the procedures established on page 3, will require the payment of a \$35 user fee for the first 20 certifications issued.



Applicants are advised to request all Forms 6166 on a single Form 8802 to avoid paying the \$35 user fee charged for processing a second Form 8802.

Method of payment. Form 8802 must be accompanied by a check or money order in U.S. dollars, payable to the United States Treasury, in the appropriate amount. Do not send cash.

Custodians. Custodians submitting multiple Forms 8802 may submit a single check or money order payment to cover the aggregate amount of user fee charges for all Forms 8802.

Payment by check. If you pay by check, it will be converted into an electronic funds transfer (EFT). This

means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement. You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check.

Special Rules

Form 8802 Filed Before Return Posted by the IRS

If your return has not been posted by the IRS by the time you file Form 8802, you will receive a request to provide a signed copy of your most recent return. If you recently filed your return, it may take less time to process your application if you include a copy of the income tax return with your Form 8802. Write "COPY — do not process" on the tax return.

Individuals With Residency Outside the United States

If you are in any of the following categories for the year for which certification is requested, you must submit a statement and documentation, as described below, with Form 8802.

1. You are a resident under the internal law of both the United States and the treaty country for which you are requesting certification (you are a dual resident).
2. You are a green card holder or U.S. citizen who filed Form 2555, Foreign Earned Income.
3. You are a bona fide resident of a U.S. possession.

If you are a dual resident described in category 1, above, your request may be denied unless you submit evidence to establish that you are a resident of the United States under the tie breaker provision in the residence article of the treaty with the country for which you are requesting certification.

If you are described in category 2 or 3, attach a statement and documentation to establish why you believe you should be entitled to certification as a resident of the U.S. for purposes of the relevant treaty. Under many U.S. treaties, U.S. citizens or green card holders who do not have a substantial presence, permanent home, or habitual abode in the United States during the tax year are not entitled to treaty benefits. U.S. citizens or green card holders who reside outside the United States must examine the specific treaty to determine if they are

eligible for treaty benefits and U.S. residency certification. See *Exceptions*, below.

Exceptions

You do not need to attach the additional statement or documentation requested if you:

- Are a U.S. citizen or green card holder; and
- Are requesting certification only for Cyprus, Hungary, India, Kazakhstan, Russia, South Africa, or Ukraine; and
- The country for which you are requesting certification and your country of residence are not the same.

Form 1116, Foreign Tax Credit

If you have filed or intend to file a Form 1116, Foreign Tax Credit, claiming either a foreign tax credit amount in excess of \$5,000 U.S. or a foreign tax credit for any amount of foreign earned income for the tax period for which certification is requested, you must submit evidence that you were (or will be if the request relates to a current year) a resident of the United States and that the foreign taxes paid were not imposed because you were a resident of the foreign country.

In addition, individuals who have already filed their federal income tax return must submit a copy of it, including any information return(s) relating to income, such as a Form W-2 or Form 1099, along with the Form 1116. Your request for U.S. residency certification may be denied if you do not submit the additional materials.

United Kingdom

If you are applying for relief at source from United Kingdom (U.K.) income tax or filing a claim for repayment of U.K. income tax, you may need to complete a U.K. certification form (US/Individual 2002 or US/Company 2002) in addition to Form 8802. For copies of these forms, contact HM Revenue and Customs:

- On the Internet at www.hmrc.gov.uk/cnr/usdownload_2002.htm, or
- Telephone at: 44-151-210-2222 if calling from outside the U.K., or 0845-070-0040 if calling from the U.K.

Send the completed U.K. form to the IRS with your completed Form 8802.

Specific Instructions

Check Boxes at Top of Page 1

Additional Requests

Check this box if Form 8802 is being submitted to request additional Form(s) 6166 for a tax period for which the IRS has previously issued to you a Form 6166. The appropriate user fee for the request is dependent upon the number of additional Form(s) 6166 requested. Follow the fee schedule on page 2.

An applicant can only use this additional request procedure if there are no changes to the applicant's tax information provided on the original Form 8802. An applicant may use this procedure to obtain a Form 6166 for any country or countries, whether or not the country was identified on a previously filed Form 8802. An additional request for Form 6166 using this procedure must be made within 12 months of the most recently issued Form 6166 relating to the same tax period.

Additional documentation. If you are requesting certification for a previously identified country and if additional documentation was necessary for the original application, it does not need to be resubmitted with the request for an additional Form 6166. In the signature line of the additional request form, write "See attached copy of the original Form 8802." Attach a copy of the original Form 8802.

If you are requesting Form 6166 for a country not identified on a previously filed Form 8802 that requires documentation not previously submitted, you must include that documentation with the additional request. Sign and date the additional request form. Attach a copy of the original Form 8802.

Additional request made by third party appointees. Third party appointees cannot use this special procedure to request additional Form(s) 6166 for countries that were not originally authorized by the taxpayer in their previously signed and dated Form 8802. If you anticipate using the additional request procedure to authorize a third party appointee to request additional Forms 6166 for a country not identified in your current Form 8802, you must include in line 10, a written statement authorizing the third party appointee to request Form 6166 covering the same tax period for any country.

Foreign Claim Form

Check the box if you have included with Form 8802 a foreign claim form sent to you by a foreign country. The submission or omission of a foreign claim form will not affect your residency certification. If the IRS does not have an agreement with the foreign country to date stamp, or otherwise process the form, we will not process it and such foreign claim form will be mailed back to you.

Note. For more information about foreign countries with which the IRS has an agreement to process a foreign claim form, call the U.S. residency certification unit at 215-516-2000 (not a toll-free number).

Applicant's Name and U.S. Taxpayer Identification Number

As part of certifying U.S. residency, the IRS must be able to match the name(s) and taxpayer identification number(s) (TIN(s)) on this application to those previously verified on either the U.S. return filed for the tax period for which certification is to be based or on other documentation you provide.

Enter the applicant's name and TIN **exactly** as they appear on the U.S. return filed for the tax period(s) for which certification will be based. If the applicant was not required to file a U.S. return, enter the applicant's name and TIN as they appear on documentation previously provided to the IRS (for example, Form 8832, Entity Classification Election) or on documentation provided by the IRS (for example, a determination letter).

Joint return. If a joint income tax return was filed for a tax period for which certification will be based, enter the spouse's name and TIN **exactly** as they appear on the return filed.

Change in taxpayer's name. If the taxpayer's name has changed since the most recent Form 8802 was filed with the IRS, the Form 8802 and tax disclosure authorization for each individual or entity must be submitted under the taxpayer's new name. In addition, documentation of the name change must be submitted with Form 8802 (for example, trust agreement, corporate charter).

Certification will not be issued if the name change has not been updated in the IRS database. For information on how to update the IRS on your new name, contact customer service. For businesses, the number is 1-800-829-4933. For individuals, the number is 1-800-829-1040.

Line 2. Applicant's Address

Enter your address for the calendar year for which you are requesting certification. Certification may be denied if the applicant enters a P.O. Box or C/O address. If you are an individual who lived outside the United States during the year for which certification is requested, the special rules under *Individuals With Residency Outside the United States*, on page 3, may apply to you.

Lines 3a. Mailing Address

Form 6166 may be mailed to you, or to a third party appointee. If you do not indicate a mailing address on line 3a, the Form 6166 will be mailed to the address on line 2.

Line 3b. Third Party Appointee's Information

If the mailing address entered on line 3a is for a third party appointee, you must provide written authorization for the IRS to release the certification to the third party. By filling out the appointee's information in lines 3a and 3b (name and address), written authorization will be deemed to have been provided when you sign and date the Form 8802. You are not required to enter a phone number or a fax number of your third party appointee. However, by providing a phone number or fax number, you are authorizing the IRS to call or fax your third party appointee.

The Centralized Authorization File (CAF) contains information on third parties authorized to represent taxpayers before the IRS and/or receive and inspect confidential tax information. If your appointee has a CAF number, enter it on line 3b.

Form 8821, Taxpayer Information Authorization, and Form 2848, Power of Attorney and Declaration of Representative. Form 8821 is used to authorize disclosure of tax information to a third party designee of the taxpayer. Form 8821 cannot be used to authorize a third party to sign Form 8802 on your behalf, and it does not authorize a third party to represent you before the IRS. Pursuant to section 6103(c) and the regulations thereunder, authorization on Form 8821 will not be accepted if it covers matters other than federal tax matters.

Form 2848 authorizes a third party to represent you before the IRS. Only individuals who are recognized to practice before the IRS can be authorized to represent you. The only

individuals who can be recognized representatives are the following:

- Attorneys
- Certified Public Accountants
- Enrolled Agents
- Enrolled Actuaries (who have limited authority to practice before the IRS)
- Certain individuals who have a special relationship or status with the taxpayer.

For more information, see Pub. 947, Practice Before the IRS and Power of Attorney. In general, you do not need to fill out line 3b if you have attached Form 2848 or Form 8821. In line 3b, write "See attached authorization." Attach a Form 8821 or 2848 for each additional third party that you wish to authorize to receive your tax information.

Line 4a. Individual

Green card holder. If you are a resident alien with lawful permanent resident status who recently arrived in the United States and you have not yet filed a U.S. income tax return, you should provide a copy of your current Form I-551, Alien Registration Receipt Card (green card). Instead of a copy of your green card, you can attach a statement from U.S. Citizenship and Immigration Services (USCIS) that gives your alien registration number, the date and port of entry, date of birth, and classification. For more information in determining your U.S. resident status for tax purposes, see *Nonresident Alien or Resident Alien*, in Pub. 519, U.S. Tax Guide for Aliens.

Substantial presence test. An individual who is not a lawful permanent resident of the United States but who meets the "substantial presence test" under section 7701(b) is a resident alien for purposes of U.S. taxation. If you are a resident alien under the substantial presence test and you have not yet filed a U.S. income tax return for the year for which certification is requested, you must attach a copy of your current Form I-94, Arrival-Departure Record. Enter the date (YYYYMMDD) your status changed on the line provided. For information on determining your period of residency, see *Substantial Presence Test* in Pub. 519.

Students, teachers, and trainees. If you filed Form 1040, U.S. Individual Income Tax Return, and you are in the United States under an "A1," "F1," "J1," "M1," or "Q1" visa, include the following with Form 8802:

1. A statement explaining why Form 1040 was filed.
2. A statement and documentation showing that you reported your worldwide income.

Dual-status alien. An individual is a dual-status alien for U.S. tax purposes if the individual is a part-year resident alien and a part-year nonresident alien during the calendar year(s) for which certification is requested. Dual-status generally occurs in the year an individual acquires status as a U.S. resident or terminates such status. For example, you are a dual-status alien if you are a U.S. citizen or green card holder and you lost citizenship or green card holder status during the same calendar year. You may also be a dual-status alien if you are a non-resident alien but due to meeting the substantial presence test become a resident alien during the same calendar year.

The dual-status alien classification does not occur merely due to a temporary absence from the United States, nor will multiple periods of temporary absence and re-entry into the United States create multiple periods of U.S. resident and non-resident status. For information and examples on the dual-status alien and to determine your period of residency, see Pub. 519.

If you checked the dual-status box, enter the dates (YYYYMMDD) that correspond to the period that you were a resident of the United States during the year(s) for which certification is requested.

First-year election. If you are an individual who made or intends to make the first-year election under section 7701(b)(4) applicable to the year for which certification is requested, enter the date (YYYYMMDD) your status as a U.S. resident for tax purposes will begin. For more information regarding the first-year election and determining your period of residency, see *First-Year Choice* in Pub. 519.

- If you have made a first-year residence election under section 7701(b)(4) applicable to the year for which you are requesting certification, attach to Form 8802 the election statement you filed with your income tax return for the taxable year of election.
- If, for the calendar year for which certification is requested, you have not yet filed a first-year residence election statement, attach to Form 8802 a statement that you intend to file such statement and that you are eligible to make the election.

Partial-year Form 2555 filer. Check this box if you filed a Form 2555 that covered only part of a year for which certification is requested. For each year that this applies, enter the eight-digit dates (YYYYMMDD) that correspond to the beginning and ending of the period

you were a resident of the United States.

Sole proprietor. Include on line 6 the type of tax return, name, TIN, and any other information that would be required if certification were being requested for the individual owner that filed the Schedule C, Profit or Loss From Business.

Line 4b. Partnership

Partnerships are not considered U.S. residents within the meaning of the residence article of U.S. income tax treaties. Treaty benefits are only available to a partner who is a U.S. resident.

Note. The Form 6166 issued to partnerships will include an attached list of partners that are U.S. residents. The IRS does not certify the percentage of ownership interest of the listed partners. It is the responsibility of the partnership to provide such information to the withholding agent.

Include the following with Form 8802:

1. The name and TIN of each partner for which certification is requested and any additional information that would be required if certification were being requested for each of those partners.
2. Authorization (for example, Form 8821) from each partner, including all partners listed within tiered partnerships. Each authorization must explicitly allow the third party requester to receive the partner's tax information and must not address matters other than federal tax matters.
3. Unless the requester is a partner in the partnership during the tax year for which certification is requested, authorization from the partnership must explicitly allow the third party requester to receive the partnership's tax information. The authorization must not address matters other than federal tax matters.

An LLC that is classified as a partnership follows the above procedures. Members of the LLC are treated as partners.

Nominee partnership. Do not check the partnership box on line 4b. Instead, check line 4j and attach the information required by the instructions.

Line 4c. Trust

Domestic and foreign grantor trusts and simple trusts can be certified for U.S. residency, to the extent the owner of the grantor trust or beneficiaries of simple trusts are U.S. residents. Domestic complex trusts may be certified without regard to the residence of the settler or beneficiaries.

A trust is domestic if a court within the U.S. is able to exercise primary supervision over the administration of the trust and one or more U.S. persons has authority to control all substantial decisions of the trust.

Grantor trust. Include the following with Form 8802:

1. The name and TIN of each owner and any information that would be required if certification were being requested for each owner.
2. Authorization (for example, Form 8821) from each owner. Each authorization must explicitly allow the third party requester to receive the owner's tax information and must not address matters other than federal tax matters.
3. Unless the requester is a trustee of the trust, authorization from the trust must explicitly allow the third party requester to receive the trust's tax information. The authorization must not address matters other than federal tax matters.
4. If the grantor trust is a foreign trust, also include a copy of Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner, and a copy of the foreign grantor trust ownership statement.

Domestic complex trust. Unless the requester is a trustee of the trust during the tax year for which certification is requested, authorization from the trust must explicitly allow the third party requester to receive the trust's tax information. The authorization must not address matters other than federal tax matters.

Simple trust. Include the following with Form 8802:

1. The name and TIN of each beneficiary and any information that would be required if certification were being requested for each beneficiary.
2. Authorization (for example, Form 8821) from each beneficiary. Each authorization must explicitly allow the third party requester to receive the beneficiary's tax information and must not address matters other than federal tax matters.
3. Unless the requester is a trustee of the trust, authorization from the trust must explicitly allow the third party requester to receive the trust's tax information. The authorization must not address matters other than federal tax matters.

Group trust arrangement, described in Rev. Rul. 81-100. A group trust arrangement that has received a determination letter recognizing its exempt status under section 501(a) must attach a copy of that letter to Form 8802.

A group trust arrangement that is seeking benefits from Switzerland with respect to dividends paid by a Swiss corporation must also attach to Form 8802 the name of each participant and a statement that each participant listed is a trust forming part of a plan described in section 401(a), 403(b), or 457(b).

IRA. Domestic individual retirement arrangements (individual retirement accounts within the meaning of section 408(a) and Roth IRAs within the meaning of section 408A) (collectively referred to as IRAs) may be certified as residents (without regard to the residence of the IRA holder). Either the IRA holder or the trustee of the IRA may request certification on behalf of the IRA.

An IRA holder requesting certification on behalf of an IRA must provide the IRA account name (that is, the IRA holder's name) and number, the IRA holder's TIN, and a copy of Form 8606, Nondeductible IRAs, or Form 5498, IRA Contribution Information. Complete the remainder of Form 8802 as if certification were being requested by the IRA.

A bank or financial institution acting as the trustee for IRAs may request certification for multiple IRAs grouped by year and by country for which certification is requested. The bank or financial institution must include the following with Form 8802:

1. A list of IRA account names and account numbers for which certification is requested.
2. A statement that each IRA account name and number listed is an IRA within the meaning of section 408(a) or 408A.
3. A statement that the bank or financial institution is a trustee of the IRA.

Common trust fund as defined in section 584. Include the following with Form 8802:

1. The name and TIN of each participant and any information that would be required if certification were being requested for each participant.
2. Authorization (for example, Form 8821) from each participant. Each authorization must explicitly allow the third party requester to receive the participant's tax information and must not address any matters other than federal tax matters. If a pass-through entity is a participant, you must list the partners/shareholders/owners/participants/members/beneficiaries in the pass-through entity and obtain authorization from each such participant.
3. Unless the requester is a trustee of the trust, authorization from the trust

must explicitly allow the third party requester to receive the trust's tax information. The authorization must not address matters other than federal tax matters.

A common trust fund that is seeking benefits from Switzerland with respect to dividends paid by a Swiss corporation must also attach to Form 8802 the name of each participant and a statement that each participant listed is a trust forming part of a plan that is described in section 401(a), 403(b), or 457(b), or is a trust forming part of a plan described in section 401(a), 403(b), or 457(b) that is within a group trust arrangement described in IRS Rev. Rul. 81-100, 1981-13, I.R.B. 33, as clarified and modified by 2004-67, 2004-28, I.R.B. 28.

Line 4d. Estate

If you are filing a Form 8802 on behalf of the estate of a decedent, you must include proof that you are the executor or administrator of the decedent's estate. Form 8802 can be submitted on behalf of an estate for the year of the taxpayer's death or any prior year. Proof can include a court certificate naming you executor or administrator of the estate. U.S. residency certification will be based on the tax information and residency of the decedent.

Line 4e. Corporation

Generally, a corporation that is not incorporated in the United States is not entitled to U.S. residency certification. However, there are exceptions for certain corporations that are treated as U.S. corporations under sections 269B, 943(e)(1), 953(d), or 1504(d). Only Canadian and Mexican corporations are eligible to be treated as domestic corporations under section 1504(d).

Corporations requesting U.S. residency certification on behalf of their subsidiaries must attach a list of the subsidiaries and the Form 851, Affiliations Schedule, filed with the corporation's consolidated return.

Dual-resident corporation. If you are requesting certification for treaty benefits in the other country of residence named on line 4e, certification depends on the terms of the residence article of the relevant treaty. If the treaty provides that benefits are available only if the competent authorities reach a mutual agreement to that effect, request competent authority assistance in accordance with Rev. Proc. 2002-52, 2002-31 I.R.B. 242, prior to seeking certification.



Effective January 1, 2005, the special rules for financial asset securitization investment trusts (FASITs) were repealed. However, the special rules still apply to any FASIT in existence on October 22, 2004, to the extent that regular interests issued by the FASIT before that date continue to remain outstanding in accordance with the original terms of issuance.

Line 4f. S Corporation

S corporations are not considered U.S. residents within the meaning of the residence article of U.S. income tax treaties. Treaty benefits are only available to a shareholder who is a U.S. resident for purposes of the applicable treaty.

Include the following with Form 8802:

1. The name and TIN of each shareholder for which certification is requested and any additional information that would be required if certification were being requested for each of those shareholders.
2. Authorization (for example, Form 8821) from each shareholder. Each authorization must explicitly allow the third party requester to receive the shareholder's tax information and must not address any matters other than federal tax matters.
3. Unless the requester is a shareholder in the S corporation during the tax year for which certification is requested, authorization from an officer with legal authority to bind the corporation must explicitly allow the third party requester to receive the corporation's tax information. The authorization must not address matters other than federal tax matters.

Line 4g. Employee Benefit Plan/Trust

Trusts that are part of an employee benefit plan that is required to file Form 5500 must include a copy of the following with Form 8802:

1. The signed Form 5500, Annual Return/Report of Employee Benefit Plan.
2. Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, identifying the name and TIN of the entity for which certification is being requested.

An employee plan that is not subject to the Employee Retirement Income Security Act (ERISA) or is not otherwise required to file Form 5500 must include with Form 8802 a copy of the employee benefit plan determination letter.

An employee plan that is not required to file Form 5500 and does not

have a determination letter must provide evidence that it is entitled to certification. It must also provide a statement under penalties of perjury explaining why it is not required to file Form 5500 and why it does not have a determination letter.

Line 4h. Exempt Organization

Generally, an organization that is exempt from U.S. income tax must attach to Form 8802 a copy of either the organization's determination letter from the IRS or the determination letter for the parent organization.

An exempt organization that is not required to file a U.S. income tax return and that has not received a determination letter will not be issued a Form 6166, unless such organization has other means of proving U.S. residency for tax treaty purposes. For such an entity, include with Form 8802 the entity's bylaws, corporate charter, trust agreement, partnership agreement, etc.

Governmental entity. Federal, state, or local government agencies requesting U.S. residency certification that have not obtained a determination letter, private letter ruling, revenue ruling, etc., can submit in writing, on official government letterhead, a letter under penalties of perjury from a legally authorized government official stating that the organization is a government agency.

Line 4i. Disregarded Entity

Disregarded entities (DRE) are not considered U.S. residents within the meaning of the residence article of U.S. income tax treaties. Treaty benefits will only be available to a DRE owner who is a U.S. resident. The DRE type must be specified on line 4i.

Note. See line 5 for more information regarding the DRE's owner information that may be required to be included with your Form 8802.

Line 4j. Nominee Applicant

If you act as a nominee for another person or entity, you must provide all certification information required for each individual or entity for which you are acting as a nominee. For example, if you are acting as a nominee for a resident alien, you must attach the information required of applicants that are resident aliens. Similarly, if one of the entities for which you are acting as a nominee is a partnership, then you must submit the certification information for each of the partners requesting certification. In addition, you must include the following with Form 8802.

1. Authorization (for example, Form 8821) from each individual or entity. Each authorization must explicitly allow the nominee applicant to receive the

individual's or entity's tax information and must not address any matters other than federal tax matters.

2. A statement under penalties of perjury signed by an individual with legal authority to bind the nominee applicant, explicitly stating the nominee applicant is acting as an agent on behalf of the above-named individual(s) or entity(ies) for whom the Form 6166 is being requested.

Note. If you are a nominee partnership, please do not provide information concerning your partners. The residence of your partners will not be verified.

Line 5. Statement Required If Applicant Did Not File a U.S. Income Tax Return

If the applicant was not required to file a U.S. income tax return for the tax period(s) for which certification will be based, check the applicable box next to "No." If the applicant does not fit in any of the categories listed, check "Other" and on the dotted line that follows, enter the code section that exempts the applicant from the requirement to file a U.S. return. See Table 1 for the additional information that may be required.

Table 1. Statement Required If Applicant Did Not File a U.S. Income Tax Return

IF the applicant was not required to file a U.S. income tax return and the applicant is...	THEN ...
an individual	attach proof of income (for example, an income statement) and an explanation of why the individual is not required to file an income tax return for the tax period(s) for which certification is based.
a minor child, under the age of 14 (18 at the end of 2006) whose parent(s) elected to report the child's income on their return	attach a signed copy of the Form 8814, Parents' Election To Report Child's Interest and Dividends.
a qualified subchapter S subsidiary (QSub) (include the parent S corporation information on line 6 of Form 8802)	attach proof of the election made on Form 8869, Qualified Subchapter S Subsidiary Election, and all other requirements listed in the instructions for line 4f that apply to the parent S corporation.
a trust or estate	attach an explanation of why the trust or estate is not required to file Form 1041.
a common trust fund	attach a copy of the determination letter or proof that a participant is not required to file.
a group trust arrangement	attach a copy of the determination letter or private letter ruling.
a partnership described in section 761(a)	attach a copy of the section 761(a) election submitted with Form 1065, or a statement from a general partner that is signed and dated under penalties of perjury. See Table 2, Current Year Penalties of Perjury Statement.

IF the applicant was not required to file a U.S. income tax return and the applicant is...	THEN ...
a financial asset securitization investment trust (FASIT) (include the parent C corporation information on line 6 of Form 8802) ¹	attach a copy of the statement of election made by the parent C corporation requesting that the entity be treated as a FASIT under section 860L(a)(3). See Table 2.
a government entity	submit in writing, on official government letterhead, an explanation of why the government entity is exempt from a filing requirement. The letter must be signed and dated under penalty of perjury by a government official with the authority to bind the organization or agency.
a foreign partnership	include all information indicated in the instructions for line 4b for each partner requesting certification.
a domestic disregarded entity (domestic DRE)	include the entity's single owner information on line 6 of Form 8802. Include with Form 8802: the owner's name and entity type (e.g., corporation, partnership), TIN, and all other certification information required for the owner's type of entity. If the DRE is either newly formed, was established before 2001, or was established by default (no Form 8832 was filed), also include a statement from the owner, signed under penalties of perjury (see Table 2).
a foreign disregarded entity (foreign DRE)	For tax years beginning on or after January 1, 2004, if the disregarded entity is organized outside the United States and the owner is a U.S. person, attach a copy of the Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities, filed with the U.S. owner's income tax return for the calendar year(s) for which certification is requested. If the owner has not identified the foreign DRE on the Form 8858, the foreign DRE cannot be certified. Include the foreign DRE's owner information on line 6. Include with Form 8802, the owner's name and entity type, TIN, and all other certification information required for the owner's type of entity. If certification is being requested for tax years prior to January 1, 2004, the U.S. owner is not required to attach a copy of the Form 8858, but must attach proof that the foreign DRE is owned by a U.S. resident. For example, if the foreign DRE is owned by a U.S. corporation, attach a copy of Schedule N (Form 1120), Foreign Operations of U.S. Corporations, filed with the owner's income tax return for the calendar year for which certification is requested. If the owner has not identified the DRE on an attachment to its Schedule N, the foreign DRE cannot be certified.

¹ See *Caution* on page 6.

Line 6. Parent or Parent Organization

If you answered "Yes" to line 5, do **not** complete line 6.

If you answered "No" to line 5, you must complete line 6.

If you answered "Yes" to line 6, check the appropriate box and enter the parent's, parent organization's, or owner's information. If the applicant is a minor child, enter the name, address, and TIN of the parent who reported the child's income.

If you answered "No" to line 6, attach proof of the parent's, parent organization's, or owner's income and an explanation of why the parent is not required to file a tax return for the tax period(s) for which certification is based.

Line 7. Calendar Year of Request

The certification period is generally 1 year. You can request certification for both the current year and any number of prior years.

If you entered the most recent prior year on this line, see *Form 8802 Filed Before Return Posted by the IRS* on page 3.

Enter the four-digit (YYYY) calendar year(s) for which you are requesting

certification. However, see the *Exception* below.

Exception. If you were a dual-status alien during any year for which you are requesting certification, enter instead the eight-digit dates (YYYYMMDD) that correspond to the beginning and ending of the period you were a resident of the United States. You must show the specific period of residence for each year for which you are requesting certification. For information on determining your period of residency, see Pub. 519.

Current year certification. If certification is requested for any period during the current calendar year or a year for which a tax return is not yet required to be filed with the IRS, penalties of perjury statement(s) will be required from all U.S. residents stating that such resident is a U.S. resident and will continue to be so throughout the calendar year. See Table 2 for the current year penalties of perjury statement you must include with Form 8802.

Line 8. Tax Period

Enter the four-digit year and two-digit month (YYYYMM) for the end of the tax period(s) for which you were required to file your return that correspond(s) to the year(s) for which you are requesting certification (the certification year).

Example 1. A Form 1040 filer who is completing Form 8802 for certification year 2007 on January 1, 2007, would enter 200512 on line 8. This is because on January 1, 2007, the 2005 Form 1040 is the latest return required to have been filed by an individual requesting certification for 2007.

Example 2. On May 1, 2007, the same Form 1040 filer would enter 200612 as the tax period for a certification year of 2006 (the 2006 Form 1040 was required to have been filed before May 1, 2007).

Example 3. On January 1, 2007, a Form 1040 filer completing Form 8802 for a certification year of 2004 would enter 200412.

VAT. Certification for VAT purposes can be issued only for a year for which a return was filed. Therefore, the tax period entered here must be the same as the certification year (for example, 200612 for the 2006 certification year).

Line 9. Purpose of Certification

You must indicate the purpose of the certification. Your application will be returned to you for completion if you do not include a purpose on the application.

Income tax treaty. If you are requesting certification to obtain

benefits under an income tax treaty but you have requested certification for a non-treaty country, your application will be returned to you for correction.

VAT. The North American Industry Classification System (NAICS) codes can be found in the instructions for your tax return (for example, Form 1120 or Schedule C (Form 1040)). If you do not provide a NAICS code on Form 8802 and one was not provided on the return you filed, one will not be entered automatically. Form 6166 will only certify that you filed a return with a particular NAICS code if it matches the

NAICS code on your application. If you provide a code that does not match, Form 6166 will state that you represent that your NAICS code is as stated on Form 8802.

Line 10. Attachments and Penalties of Perjury Statement

If additional information is required to be submitted with Form 8802, use the space provided in line 10 or attach the information to the form.

Penalties of perjury statements may be submitted in the space provided under line 10 or as an attachment. Penalties of perjury statements submitted independently of Form 8802 must have a valid signature and date.

Note. If any attachment is prepared by someone other than the person signing Form 8802, the attachment must contain the penalties of perjury statement signed and dated by the same individual signing Form 8802.

Table 2. Current Year Penalties of Perjury Statements

IF the applicant is...	THEN the Form 8802 penalties of perjury statement must include...	STATING: "This certification is given under penalties of perjury and to the best of my knowledge and belief, the statements are true, correct, and complete."
an individual	a statement from the individual	<i>[Insert name of individual and TIN]</i> is a U.S. resident and will continue to be throughout the current tax year.
a partnership	a statement from each individual partner for which certification is requested	<i>[Insert name of partner and TIN]</i> is a U.S. resident and will continue to be throughout the current tax year, and
	a statement from a general partner	<i>[Insert name of partnership and EIN]</i> has filed its required return and the entity classification has not changed since the return was filed.
an S corporation	a statement from each individual shareholder for which certification is requested	<i>[Insert name of shareholder and TIN]</i> is a U.S. resident and will continue to be throughout the current tax year, and
	a statement from an officer of the corporation with the authority to legally bind the corporation	<i>[insert name of S corporation and EIN]</i> has filed its required return and the entity classification has not changed since the return was filed.
a common trust fund, grantor trust, or simple trust	a statement from each individual participant/beneficiary/owner	<i>[Insert name and TIN]</i> is a U.S. resident and will continue to be throughout the current tax year, and
	a statement from the trustee with authority to legally bind the trust	<i>[insert name of trust and EIN]</i> has filed its required return and the entity classification has not changed since the return was filed. Note: When the participant, beneficiary, or owner, is other than an individual, use the statement that corresponds to the type of entity.
a trust	a statement from the trustee with authority to legally bind the trust	<i>[Insert name of trust and EIN]</i> is a U.S. resident and will continue to be throughout the current tax year.
a corporation	a statement from an officer of the corporation with the authority to legally bind the corporation	<i>[Insert name of corporation and EIN]</i> is a U.S. resident and will continue to be throughout the current tax year.

IF the applicant is...	THEN the Form 8802 penalties of perjury statement must include...	STATING: "This certification is given under penalties of perjury and to the best of my knowledge and belief, the statements are true, correct, and complete."
an exempt organization	a statement from an officer of the organization with authority to legally bind the organization	[Insert name of organization and EIN] is a U.S. resident and will continue to be throughout the current tax year.
an estate of a decedent	a statement from the personal representative	[Insert name of estate and EIN] is a U.S. resident and will continue to be throughout the current tax year.
an employee benefit plan/trust	a statement from an officer of the plan/trust with authority to legally bind the plan/trust	[Insert name of plan/trust and EIN] is a U.S. resident and will continue to be throughout the current tax year.
a partnership under IRC section 761(a) election	a statement from each partner for which certification is requested	[Insert name of partner and TIN] is a U.S. resident and will continue to be throughout the current tax year, and
	a statement from a general partner	a. [Insert name of partnership and EIN] has made an election pursuant to IRC section 761(a). As a result, it is not required to file Form 1065, U.S. Partnership Return of Income, on an annual basis and all of its partners report their respective shares of income, gain, loss, deductions, and credits on their tax returns as required. b. The [insert name of partnership]'s entity classification has not changed since the filing of the partners' returns.
a partnership under Regulations section 1.6031(a)-1(b)	an additional statement from a general partner	[Insert name of partnership and EIN] is not required to file Form 1065, U.S. Return of Partnership Income, under Regulations section 1.6031(a)-1(b) and the entity classification has not changed since the filing of the partners' returns.
a financial asset securitization investment trust (FASIT) ¹	a statement from an officer of the corporation with the authority to legally bind the corporation	a. [Insert name of corporation and EIN] is the corporate owner of [insert name of FASIT and EIN] which is treated as a FASIT under IRC section 860H, and as such, [insert name of corporation] reports all of [insert name of FASIT]'s income, gain, loss, deductions, and credits on [insert name of corporate owner]'s Form 1120, U.S. Corporate Income Tax Return. b. The corporation is a U.S. resident and will continue to be throughout the current tax year.
a FASIT not required to file a U.S. tax return ¹	a statement from an officer of the corporation with the authority to legally bind the corporation	[Insert name of corporation and EIN] is the corporate owner of [insert name of FASIT and EIN] which is treated as a FASIT under IRC section 860H, and as such, [insert corporate owner] reports all of [insert name of FASIT]'s income, gain, loss, deductions, and credits on [insert name of corporate owner]'s Form 1120, U.S. Corporate Income Tax Return.
a disregarded entity (DRE)	a statement from the owner of the DRE	This certifies that [insert name and TIN of the owner of the DRE corporation, partnership, or individual] trading as [insert name of limited liability company] is a single-owner limited liability company that is treated as a disregarded entity for U.S. income tax purposes, that [insert name of corporation, partnership, or individual] is the single owner of [insert name of limited liability company], and, as such, [insert name of corporation, partnership, or individual] is required to take into account all the income, gain, loss, deductions, and credits of [insert name of limited liability company] on its/his/her U.S. federal income tax or information return.
a nominee	a statement from each individual or entity for whom the nominee is acting	[insert name and TIN of individual(s)/entity(ies) on whose behalf the nominee is acting] is a U.S. resident and will continue to be throughout the current year.

¹ See *Caution* on page 6.

Signature and Date

Form 8802 will not be considered complete and valid if the application is not signed and dated by an individual who has the authority to sign Form 8802. A third party representative with authorization to sign Form 8802 must

attach documentation (for example, Form 2848) of the authorization. See Table 3 to determine who has authority to sign Form 8802.

To avoid processing delays and possible rejection of Form 8802, if Form 8802 is signed by an individual who is

not identified in the instructions, attach a statement in line 10 and any appropriate documentation to indicate such individual's authority to sign Form 8802. If you are granting authority to a third party, you must sign and date the documentation.

Table 3. Who Has Authority To Sign Form 8802

IF the applicant is...	THEN the individual with authority to sign Form 8802 is...
an individual	the individual.
a married couple	both the husband and the wife.
a minor child who cannot sign	either parent by signing the child's name and adding "By (your signature), parent for minor child."
a minor child under age 14 (18 for 2006) whose parent(s) reported the child's income on Form 8814	the parent who filed Form 8814 with his/her income tax return.
a partnership	any partner or partners duly authorized to act for the partnership (general partner or tax matters partner). Each partner must certify that he or she has such authority.
an S Corporation	any corporate officer, for example, president, vice president, treasurer, chief accounting officer, etc., duly authorized by the corporation to bind the corporation in accordance with applicable state law.
a trust, common trust fund, grantor trust or simple trust	the fiduciary (trustee, executor, administrator, receiver, or guardian).
an estate of a decedent	the personal representative (executor or administrator).
a corporation	any corporate officer, for example, president, vice president, treasurer, chief accounting officer, etc., duly authorized by the corporation to bind the corporation in accordance with applicable state law.
an employee benefit plan or trust	any organization officer, for example, president, vice president, treasurer, chief accounting officer, etc. duly authorized by the plan or trust to bind the plan or trust in accordance with applicable state law.
an exempt organization	any organization officer, for example, president, vice president, treasurer, chief accounting officer, etc., duly authorized by the organization to bind the organization in accordance with applicable state law.
a partnership under an IRC 761(a) election	any partner or partners duly authorized to act for the partnership. Each partner must certify that he or she has such authority.
a financial asset securitization investment trust (FASIT) ¹	any corporate officer, for example, president, vice president, treasurer, chief accounting officer, etc., duly authorized by the owner corporation to bind the owner corporation in accordance with applicable state law.
a governmental organization	an officer of the governmental organization with authority in the course of his or her official duties to bind the organization.

¹ See *Caution* on page 6.

Daytime Phone Number

Providing your daytime phone number can help speed the processing of Form 8802. We may have questions about items on your application, such as the NAICS code, type of applicant, etc. By answering our questions over the phone, we may be able to continue processing your Form 8802 without mailing you a letter. If you are filing a joint application, you can enter either your or your spouse's daytime phone number.

Line 11. User Fee

Effective November 1, 2006, applicants must pay a user fee. The user fee is based on the number of Forms 6166 requested. For more information, see *User Fee* on page 2.

Country for Which Certification is Requested

Generally, the country or countries for which certification is requested will not be identified on Form 6166. Listed below are two exceptions.

- In the case of individuals who file Form 2555, or Form 1116 instead of Form 2555, for the calendar year(s) for

which certification is requested, and who are requesting certification for Cyprus, Hungary, India, Kazakhstan, Russia, South Africa, and/or Ukraine, the country or countries will be identified on Form 6166.

- In the case of dual-resident corporations that are residents of Australia, Belgium, Canada (only for dual-incorporated entities), China (including dual-resident companies that would be resident in a third country under a treaty with China), Denmark, Estonia, Finland, France, Germany, India, Ireland, Israel, Italy, Jamaica, Kazakhstan, Latvia, Lithuania, Luxembourg, Mexico, Morocco,

Netherlands, New Zealand, Pakistan, Portugal, Russia, Slovenia (only for dual-incorporated entities), Spain, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, Uzbekistan, or Venezuela, the country will not be identified on Form 6166, but the form will prohibit its use in the dual-resident corporation's other country of residence.

Enter the number of Forms 6166 (certifications) needed for each country listed in Columns A, B, C, and D.

Line 12. Total Number of Forms 6166 Requested

Add the number of Forms 6166 requested for each column (line 11, columns A, B, C, and D) and enter the total on line 12.

Line 13. Total User Fee

To determine the appropriate user fee, use the total from line 12 and compare it to the payment schedule on page 2.

When To Seek U.S. Competent Authority Assistance

If your request for Form 6166 is denied and you believe you are entitled to treaty benefits under a specific treaty article, you can request assistance from the U.S. competent authority following the procedures established in Rev. Proc. 2002-52, 2003-31 I.R.B. 242. A request for U.S. competent authority assistance regarding a residency issue will be accepted for consideration only if it is established that the issue requires consultation with the foreign competent authority to ensure consistent treatment by the United States and the applicable treaty partner. The U.S. competent authority does not make unilateral determinations with respect to residency. Residency determinations are made by mutual agreement between the two competent authorities.



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

Your request for U.S. competent authority assistance should be mailed to the address indicated in Rev. Proc. 2002-52 which is found at www.irs.gov/pub/irs-irbs/irb02-31.pdf.

Comments and Suggestions

Do **not** send Form 8802 to this address. This address is only for comments or suggestions about Form 8802 and its separate instructions.

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

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form under sections 6103 and 6109 of the Internal Revenue Code. You are required to provide the information requested on this form only if you wish to have your U.S. residency for tax purposes certified in order to claim certain benefits under a tax treaty between the United States and the foreign country (countries) indicated on Form 8802. We need this information to determine if the applicant, in order to obtain benefits under a tax treaty, can be certified as a U.S. resident for tax purposes for the period specified. Failure to provide the requested information may prevent certification. Providing false or fraudulent information may subject you to penalties. If you designate an appointee to receive Form 6166, but do not provide all of the information requested, we may be unable to honor the designation.

We may disclose the information to the tax authorities of other countries

pursuant to a tax treaty. We may disclose this information to the Department of Justice for civil and criminal litigation. We may also disclose this information to cities, states, and the District of Columbia for use in administering their tax laws, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

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

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

Recordkeeping	52 min.
Learning about the law or the form	1 hr., 24 min.
Preparing the form	1 hr., 7 min.
Copying, assembling, and sending the form to the IRS	48 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do **not** send the form to this address. Instead, see *Where To Apply* on page 2.