



# Miscellaneous 1099 Issues

Prepared by:  
Jennifer A. Driskill, CPA, M.B.A.  
James Dee Johnson & Company, CPAs, P.C.



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Prepared by: Jennifer A. Driskill, CPA, M.B.A.

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# Miscellaneous Issues

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## **Foreign Reporting**

### **Form W-8BEN**

Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of:

- Interest (including certain original issue discount (OID));

- Dividends;

- Rents;

- Royalties;

- Premiums;

- Annuities;

- Compensation for, or in expectation of, services performed;

- Substitute payments in a securities lending transaction; or

- Other fixed or determinable annual or periodical gains, profits, or income.

This tax is imposed on the gross amount paid and is generally collected by withholding under section 1441. A payment is considered to have been made whether it is made directly to the beneficial owner or to another person, such as an intermediary, agent, or partnership, for the benefit of the beneficial owner.

In addition, section 1446 requires a partnership conducting a trade or business in the United States to withhold tax on a foreign partner's distributive share of the partnerships effectively connected taxable income. Generally, a foreign person that is a partner in a partnership that submits a Form W-8BEN for purposes of section 1441 or 1442 will satisfy the documentation requirements under section 1446 as well.

Form **W-8BEN**

(Rev. February 2014)

Department of the Treasury  
Internal Revenue Service**Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)**

► For use by individuals. Entities must use Form W-8BEN-E.  
► Information about Form W-8BEN and its separate instructions is at [www.irs.gov/formw8ben](http://www.irs.gov/formw8ben).  
► Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

**Do NOT use this form if:**

- You are NOT an individual . . . . . W-8BEN-E
- You are a U.S. citizen or other U.S. person, including a resident alien individual . . . . . W-9
- You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the U.S. (other than personal services) . . . . . W-8ECI
- You are a beneficial owner who is receiving compensation for personal services performed in the United States . . . . . 8233 or W-4
- A person acting as an intermediary . . . . . W-8IMY

**Instead, use Form:****Part I Identification of Beneficial Owner (see instructions)**

<b>1</b> Name of individual who is the beneficial owner _____ _____ _____	<b>2</b> Country of citizenship _____ _____
<b>3</b> Permanent residence address (street, apt. or suite no., or rural route). <b>Do not use a P.O. box or in-care-of address.</b> _____ _____ City or town, state or province. Include postal code where appropriate. Country _____	
<b>4</b> Mailing address (if different from above) _____ _____ City or town, state or province. Include postal code where appropriate. Country _____	
<b>5</b> U.S. taxpayer identification number (SSN or ITIN), if required (see instructions) _____	<b>6</b> Foreign tax identifying number (see instructions) _____
<b>7</b> Reference number(s) (see instructions) _____	<b>8</b> Date of birth (MM-DD-YYYY) (see instructions) _____

**Part II Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)**

**9** I certify that the beneficial owner is a resident of \_\_\_\_\_ within the meaning of the income tax treaty between the United States and that country.

**10** Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article \_\_\_\_\_ of the treaty identified on line 9 above to claim a \_\_\_\_\_ % rate of withholding on (specify type of income): \_\_\_\_\_

Explain the reasons the beneficial owner meets the terms of the treaty article: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Part III Certification**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the individual that is the beneficial owner (or am authorized to sign for the individual that is the beneficial owner) of all the income to which this form relates or am using this form to document myself as an individual that is an owner or account holder of a foreign financial institution.
  - The person named on line 1 of this form is not a U.S. person.
  - The income to which this form relates is:
    - (a) not effectively connected with the conduct of a trade or business in the United States,
    - (b) effectively connected but is not subject to tax under an applicable income tax treaty, or
    - (c) the partner's share of a partnership's effectively connected income.
  - The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country, and
  - For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
- Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner. I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.

**Sign Here**

Signature of beneficial owner (or individual authorized to sign for beneficial owner)	Date (MM-DD-YYYY)
_____	_____
Print name of signer	Capacity in which acting (if form is not signed by beneficial owner)
_____	_____

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 25047Z

Form **W-8BEN** (Rev. 2-2014)

## **Form W-8ECI**

Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. However, no withholding under section 1441 or 1442 is required on income that is, or is deemed to be, effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the tax year.

This withholding exemption does not apply to personal services income and income subject to withholding under section 1445 (dispositions of U.S. real property interests) or section 1446 (foreign partner's share of effectively connected income).

Income effectively connected with the conduct of a trade or business in the United States is not a withholdable payment under chapter 4 and thus is not subject to withholding under sections 1471 or 1472. If you receive effectively connected income from sources in the United States, you must provide Form W-8ECI to:

1. Establish that you are not a U.S. person,
2. Claim that you are the beneficial owner of the income for which Form W-8ECI is being provided or are an entity engaged in a U.S. trade or business submitting Form W-8ECI on behalf of your owners or partners, and
3. Claim that the income is effectively connected with the conduct of a trade or business in the United States.

If you expect to receive both income that is effectively connected and income that is not effectively connected from a withholding agent, you must provide Form W-8ECI for the effectively connected income and Form W-8BEN, Form W-8BEN-E, Form W-8EXP, or Form W-8IMY (as appropriate) for income that is not effectively connected.



Form **W-8ECI**

(Rev. February 2014)

Department of the Treasury  
Internal Revenue Service

**Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States**

▶ Section references are to the Internal Revenue Code.  
▶ Information about Form W-8ECI and its separate instructions is at [www.irs.gov/formw8eci](http://www.irs.gov/formw8eci).  
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

**Note.** Persons submitting this form must file an annual U.S. income tax return to report income claimed to be effectively connected with a U.S. trade or business (see instructions).

**Do not use this form for:**

- A beneficial owner solely claiming foreign status or treaty benefits . . . . . **W-8BEN or W-8BEN-E**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) . . . . . **W-8EXP**
- A foreign partnership or a foreign trust (unless claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States) . . . . . **W-8BEN-E or W-8IMY**
- A person acting as an intermediary . . . . . **W-8IMY**

**Note.** See instructions for additional exceptions.

**Part I Identification of Beneficial Owner** (see instructions.)

1 Name of individual or organization that is the beneficial owner		2 Country of incorporation or organization	
3 Name of disregarded entity receiving the payments (if applicable)			
4 Type of entity (check the appropriate box):			
<input type="checkbox"/> Partnership	<input type="checkbox"/> Simple trust	<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation
<input type="checkbox"/> Government	<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate
<input type="checkbox"/> Private foundation	<input type="checkbox"/> International organization	<input type="checkbox"/> Central bank of issue	<input type="checkbox"/> Tax-exempt organization
5 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.			
City or town, state or province. Include postal code where appropriate.			Country
6 Business address in the United States (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.			
City or town, state, and ZIP code			
7 U.S. taxpayer identification number (required—see instructions)		8 Foreign tax identifying number	
<input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN			
9 Reference number(s) (see instructions)		10 Date of birth (MM-DD-YYYY)	
11 Specify each item of income that is, or is expected to be, received from the payer that is effectively connected with the conduct of a trade or business in the United States. (attach statement if necessary)			

**Part II Certification**

**Sign Here**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or I am authorized to sign for the beneficial owner) of all the payments to which this form relates.
- The amounts for which this certification is provided are effectively connected with the conduct of a trade or business in the United States.
- The income for which this form was provided is includible in my gross income (or the beneficial owner's gross income) for the taxable year, and
- The beneficial owner is not a U.S. person.

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

I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.

Signature of beneficial owner (or individual authorized to sign for the beneficial owner) \_\_\_\_\_ Print name \_\_\_\_\_ Date (MM-DD-YYYY) \_\_\_\_\_

☐ I certify that I have the capacity to sign for the person identified on line 1 of this form.

## Allocations in Settlement Agreements – Taxable VS Nontaxable

Some settlements may be all or partly taxable and that decides which box to report the payments in. See the following table:

<u>Type of Damage</u>	<u>Taxable to the Client as Income?</u>	<u>Who Says?</u>
Lost wages/back pay and front pay	Yes	26 U.S.C. § 104(a)(2); <i>Commissioner v. Schleier</i> , 515 U.S. 323 (1995).
Compensatory damages for emotional distress, pain and suffering  (NOT associated with personal physical injury and NOT including medical expenses from emotional distress)	Yes	26 U.S.C. § 104(a)(2)
Compensatory damages for emotional distress, pain, and suffering  (associated with personal physical injury)	No	26 U.S.C. § 104(a)(2)
Medical expenses associated with emotional distress	No	26 U.S.C. § 104(a)(2)
Punitive damages  <b>EVEN IF ASSOCIATED WITH PHYSICAL INJURY</b>	Yes	26 U.S.C. § 104(a)(2)
Damages arising from a personal physical injury or sickness	No	26 U.S.C. § 104(a)(2)
Liquidated damages (such as FLSA, FMLA, ADEA)	Yes	<i>Commissioner v. Schleier</i> , 515 U.S. 323 (1995) (where liquidated damages are punitive in nature, they are taxable under 26 U.S.C. § 104(a)(2)).
Attorneys' fees and costs of suit associated with employment discrimination claims	No	26 U.S.C. § 62(a)(20); (e)  (this is the first CRTRA)

On Form 1099-misc, taxable portions of a settlement for severance pay are reported in Box 7, Non-Employee Compensation. Other taxable settlement amounts that are not for services are reported in Box 3, Other Income. Examples of these are:

Generally, all punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages. Report punitive damages even if they relate to physical injury or physical sickness. Generally, report all compensatory damages for nonphysical injuries or sickness, such as employment discrimination or defamation. However, do not report damages (other than punitive damages):

- a. Received on account of personal physical injuries or physical sickness;
- b. That do not exceed the amount paid for medical care for emotional distress;
- c. Received on account of nonphysical injuries (for example, emotional distress) under a written binding agreement, court decree, or mediation award in effect on or issued by September 13, 1995; or
- d. That is for a replacement of capital, such as damages paid to a buyer by a contractor who failed to complete construction of a building.

Damages received on account of emotional distress, including physical symptoms such as insomnia, headaches, and stomach disorders, are not considered received for a physical injury or physical sickness and are reportable unless described in b or c above. However, damages received on account of emotional distress due to physical injuries or physical sicknesses are not reportable. Also report liquidated damages received under the Age Discrimination in Employment Act of 1967.

**Questions?????**



