

Instructions for Completing the Certificate of Foreign Status for Federal Tax Withholding (Berkeley Lab W-8BEN)

You have been asked to complete the Certificate of Foreign Status for Federal Tax Withholding form because you are a non-U.S. citizen receiving payments from Berkeley Lab. Under Federal tax laws, all non-U.S. citizens are classified as either resident aliens or nonresident aliens. Berkeley Lab must establish your proper classification with respect to residency for Federal tax purposes in order to determine the proper tax withholding and file the appropriate reports with the Internal Revenue Service. By completing the information on the form, Berkeley Lab can determine whether you should be classified for Federal tax purposes as a resident alien or a nonresident alien. The Instructions below will assist you in completing this form. Please note that you must complete this form at the time of hire, rehire, or if there are any changes in your visa status.

SECTION A. IDENTIFICATION OF PAYEE

1. **NAME** – Enter your full name (Last, First, Middle).
2. **EMPLOYEE ID. NUMBER** – Berkeley Lab employees enter your 6-digit Berkeley Lab employee identification number. If you are a nonemployee, leave this field blank.
3. **TAXPAYER ID. NUMBER** – Check the box that applies to your taxpayer ID. Number: SSN (Social Security Number), ITIN (Individual Taxpayer Identification Number), or EIN (Employer Identification Number). (*If you are a Canadian, do not enter the social security number issued by the Canadian government*). An individual otherwise ineligible to obtain a SSN may obtain an ITIN. You may obtain an ITIN, if you are eligible, by filing Form W-7, Application for Individual Taxpayer Identification Number, along with necessary documentation with the IRS Service Center in Austin, TX. You may obtain the Form W-7 from the IRS web site, www.irs.gov.
4. **BERKELEY LAB DIVISION** – Enter the name of the Berkeley Lab division compensating you or providing the fellowship grant to you.
5. **EMAIL ADDRESS** – Enter your email address.
6. **BERKELEY LAB STATUS** – Check all that apply.
7. **STREET ADDRESS IN U.S.** – Enter your current mailing address. Utilize Employee Self-Service to change your address.
8. **PERMANENT RESIDENCE ADDRESS** – Enter your permanent address in the country where you claim to be a resident for purposes of that country's income tax. (Do not use a Berkeley Lab address, P.O. Box, or in-care of address). If your permanent address is the same as stated in #7, you may leave #8 blank.

SECTION B. HEALTH INSURANCE INFORMATION

1. **NAME OF U.S. HEALTH INSURANCE CARRIER** – Enter the name of your health insurance provider in the U.S.

SECTION C. IMMIGRATION INFORMATION

1. **VISA Classification** – Check the box that applies to your classification. For F or J visa classifications, this information can be found on your Form I-20, DS-2019, Notice of Action, or I-94. (Please note that if your visa classification is H, O, or TN, you must be paid by the employer that filed and received approval of your petition).
2. **ORIGINAL DATE YOU ENTERED U.S.** – Enter the date on which you first entered the U.S. F and J visa holders please note that you may enter and leave the U.S. many times during the period of your study, teaching, or research in the U.S. (i.e., vacations, holidays, or summer breaks) but the original date of entry into the U.S. on your current visa is the first date that you arrived in the U.S. to begin your study, teaching, research, etc., not the last date that you entered the U.S.
3. **EXPIRATION DATE OF CURRENT VISA** – Enter the expiration date of your current visa (F visa holders this information can be found in Part 5 of the I-20 or the EAD card if on practical training. J visa holders this information can be found on the DS-2019 form in Box 3.). All other visa statuses check your Notice of Action, or I-94.

SECTION D. SUBSTANTIAL PRESENCE TEST

Step 1: Read the statements and check the box that corresponds to your status. Proceed to the step indicated by your choice.

Step 2: Complete each row and column in this chart. In the first column, enter the applicable calendar year. In the second column, enter the periods when you were or expect to be physically present in the U.S. In the third column, enter only "countable" days of physical presence in the U.S. In this connection, you should not count:

- Days spent solely commuting to work in the U.S. from a residence in Canada or Mexico.
- Days spent in the U.S. for less than 24 hours while in transit between two places, which are located outside the U.S.
- Days you were unable to leave the U.S. because of a medical condition that developed while in the U.S.

- Days in which you were exempt from having to count days as a student on an F-1, J-1, M-1, or Q-1 visa or as a teacher, researcher or trainee on a J-1 or Q-1 visa.

For each year, multiply the number of **TOTAL COUNTABLE DAYS OF U.S. PRESENCE** by the **CALCULATION FACTOR** indicated to arrive at the **DAYS TO COUNT** in the far right column. Add the number of days in the right hand column to calculate the Total.

SECTION E. SUMMARY OF FOREIGN STATUS FOR FEDERAL TAX WITHHOLDING

Check the appropriate box based on the Total Days to Count reported in Step 2 above.

SECTION F. CLOSER CONNECTION TEST

You may be eligible to claim the closer connection exception with the IRS if you can answer yes to the following three questions:

- Will you be in the U.S. for fewer than 183 days in the current year?
- Do you pay income taxes in your country of residency?
- Do you have a closer connection with the foreign country in which a tax home is maintained than to the U.S.?

These factors are used to determine if you meet the requisite closer connection requirements. You must file Form 8840 with the IRS to establish your claim that you are a nonresident alien. Additional information regarding the closer connection exception is set forth in the IRS Form 8840, Closer Connection Exception Statement for Aliens and Publication 519, U.S. Tax Guide for Aliens. You may obtain this form and publication from the IRS web site at the following address: www.irs.gov. You must provide a copy of the IRS closer connection determination letter upon receipt to the Payroll Department.

SECTION G. CLAIM OF TAX TREATY BENEFITS

You may be eligible for exemption from Federal income tax withholding under a tax treaty between the U.S. and your country of residence. If you wish to claim the benefits of a tax treaty you must: 1) be receiving a type of income (e.g., wages, fellowship award, royalty, etc.) that is exempt under a specific provision of the tax treaty; and 2) meet all treaty eligibility requirements. In addition to completing this form, nonresident aliens receiving a fellowship or royalty payment who want to claim the tax treaty exemption must complete the information requested in Section G to claim the exemption. Nonresident alien employees (including students, teachers, and researchers) claiming tax exemption for wages are required to submit to LBNL a Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Service of a Nonresident Alien Individual, **and** must provide an additional tax treaty statement (as required under Revenue Procedures 87-8, 87-9, 93-22, and 93A). Nonresident alien independent contractors must also submit a Form 8233 to claim tax treaty benefits. Resident aliens who are claiming a tax treaty exemption of any kind must complete a Form W-9, Request for Taxpayer Identification Number and Certification. Tax treaty forms may be available from your Payroll Department.

SECTION H. WORKING OUTSIDE THE UNITED STATES

Compensation paid to a nonresident alien for services performed entirely outside of the U.S. is considered to be foreign source income; therefore, no U.S. tax withholding is required. If the services are performed both within and out of the U.S., the total amount of the compensation must be prorated based on the total time associated with the performance of service within and out of the U.S. This exclusion is applicable to both employee wages and independent contractor compensation. If you meet the above criteria, you must complete the information requested in Section H to claim this exclusion. You may obtain additional information from the IRS web site at the following address: www.irs.gov.

SECTION I. CERTIFICATION

Sign and date the form. Return the completed form to the Berkeley Lab Procurement Specialist that issued it to you.

ADDITIONAL INFORMATION

CALIFORNIA PERSONAL INCOME TAX - Regardless of your Federal income tax status, you are subject to California Personal Income Tax in the same manner as U.S. citizens.

CHANGE IN CIRCUMSTANCES

If a change in circumstances makes the information on this form incorrect, you are required to immediately correct the information in GLACIER, Berkeley Lab's tax compliance software tool. If you become a Lawful Permanent Resident (LPR), please contact Berkeley Lab Payroll.

EXPIRATION OF FORM

This form will remain in effect for a period of three years from the date that it is signed.

Frequently Asked Questions

1. What is the difference between a resident alien and a nonresident alien for tax purposes?

The Internal Revenue Service (IRS) classifies all foreign nationals as either resident aliens or nonresident aliens. Resident aliens are, for the most part, taxed in the same manner as U.S. citizens. The Internal Revenue Code (IRC), however, imposes an entirely different tax system on nonresident aliens. There are many differences between the two tax regimes, but perhaps the most significant is that resident aliens, like U.S. citizens, are taxed on their worldwide income, while nonresident aliens are taxed only on their U.S.-sourced income. In addition, different income tax withholding and reporting requirements are imposed on payments made to nonresident aliens.

2. What are the "green card" and "substantial presence test"?

These are the two tests that the IRS uses to classify a foreign national as either a resident alien or a nonresident alien. Generally, if either test is met, the person is a resident alien.

Under the green card test, a foreign national is classified as a resident alien on the date that the person is officially granted green card status. Resident alien status remains in effect until such time as the green card is rescinded or abandoned.

The substantial presence test measures the extent of a foreign national's physical presence in the U.S. to determine whether the person has been present in the U.S. for a sufficient amount of time to be classified as a resident alien. The substantial presence test (which is used only for tax purposes, not for immigration classification purposes) is met if the foreign national is physically present in the U.S. for a total of at least 183 days, taking into account all days of physical presence in the current year and in the two immediately preceding years. In addition, the person must be physically present for at least 31 days during the calendar year being tested. In making the 183-day calculation, the individual must count:

- The total number of days of physical presence in the U.S. during the current year;
- 1/3 of the number of days of physical presence in the U.S. during the 1st year preceding the current calendar year; and
- 1/6 of the number of days of physical presence in the U.S. during the 2nd year preceding the current calendar year.

This calculation is set forth in Section D, Step 2 of the Certificate of Foreign Status for Federal Tax Withholding (Berkeley Lab W-8BEN) form. For a non-exempt foreign national, the substantial presence test must be applied each calendar year to determine whether the foreign national will be treated as a resident or a nonresident alien for the year. Thus, a person's classification may change from year to year.

3. Who is an "exempt individual" for tax purposes?

The term "exempt individual" does not refer to exemption from U.S. income tax; rather, it describes certain foreign national students, teachers, researchers, or trainees who are exempt from having to count days of physical presence in the U.S. toward the substantial presence test. The result of being an exempt individual is that the period of time that the person is classified as a nonresident alien is extended. In order to qualify as an exempt individual, the person must be temporarily present in the U.S. and be in substantial compliance with the conditions of his or her visa. In addition, the individual must fit one of the following profiles:

- Present in the U.S. as a teacher/researcher/trainee or postdoctoral fellow on a J or Q visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt individual for any part of two or more of the previous six calendar years. In making the two-out-of-six year determination, the person must take into account any part of the year in which he or she was (1) a teacher, researcher, trainee, or postdoctoral fellow under a J-1 or Q-1 visa, and (2) a student under an F-1, J-1, M-1, or Q-1 visa.
- Present in the U.S. as a student on an F-1, J-1, M-1, or Q-1 visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt individual for any part of five calendar years throughout the person's lifetime. In making the five-year determination, the person must take into account any part of a calendar year that he or she was previously present in the U.S. as (1) a student under an F-1, J-1, M-1, or Q-1 visa, and (2) a teacher, researcher, trainee, postdoctoral fellow under a J-1 or Q-1 visa.

4. What if I no longer qualify as an "exempt individual" and meet the substantial presence test — are there other ways I may be considered a nonresident alien for tax purposes?

If a foreign national no longer qualifies as an exempt individual and meets the substantial presence test, he or she may still be classified as a nonresident alien under two exceptions set forth in the IRC.

- CLOSER CONNECTION EXCEPTION. If an individual meets the closer connection exception as described in the Instructions for Section F, the Form 8840 must be filed with the IRS so that the individual can establish his claim that he is a nonresident alien of the U.S. by reasons of the closer connection exception. The Form 8840 must be attached to Form 1040NR or Form 1040NR-EZ, if filing a tax return, or the Form can be mailed directly to the Internal Revenue Service Center, Philadelphia, PA 19255 by the due date for filing Form 1040NR or Form 1040NR-EZ.
- STUDENTS PRESENT LONGER THAN 5 CALENDAR YEARS. An individual may continue to extend his or her student exempt individual status beyond the 5-year lifetime maximum if he or she meets both of the following conditions:
 1. The individual does not plan to reside permanently in the U.S. (In making this determination, the IRS looks at the same factors used to determine the "closer connection" exception described above, and whether the person has taken any

affirmative steps to file for status as a lawful permanent resident).

2. The individual is in substantial compliance with the requirements of his or her current student visa.

5. What is FICA?

The Federal Insurance Contributions Act, (FICA) taxes are imposed on wages paid to employees. FICA taxes and benefits consist of two parts: Social Security or Old Age Survivors and Disability Insurance (OASDI) and Hospital Insurance for senior citizens and the disabled (Medicare). The tax is imposed on both the employer and the employee. The employer is required to withhold the applicable FICA tax from the employee's wages and, in addition, contribute a like amount from its own funds. The FICA tax is imposed on U.S. citizens, resident aliens, and nonresident alien employees, but the IRC provides a FICA tax exemption for some student and nonresident alien employees (see below).

Am I exempt from FICA tax withholding?

A student employed by Berkeley Laboratory is exempt from FICA if he or she is:

- Enrolled at the University of California on at least a half-time basis, and not in a career employee position.

A nonresident alien employee is exempt from FICA tax if he or she is:

- Present in the U.S. under an F-1, J-1, M-1 or Q-1 visa, and
- Performing services in accordance with the primary purpose of the visa's issuance. In connection with these two FICA tax exemptions, please note that:
 - An individual can qualify for both. Thus, a nonresident alien student who is later reclassified as a resident alien will no longer qualify for the FICA tax exemption under the nonresident alien FICA tax exemption, but may qualify under the student employee exemption.
 - The spouse and dependents of the primary visa holder (i.e., F-2, J-2, or M-2, or Q-2 visa holders) are not eligible for the nonresident alien FICA tax exemption.

6. Why do I need an SSN or ITIN?

A resident or nonresident alien employed by the Berkeley Lab must obtain a Social Security Number (SSN). Any individual not eligible to obtain an SSN must obtain an Individual Taxpayer Identification Number (ITIN) by filing a Form W-7, Application for IRS Individual Taxpayer Identification Number. The requirement to obtain an ITIN applies primarily to nonresident aliens who receive honoraria or other payments for independent contractor services or who are recipients of scholarship or fellowship grants.

7. What is an Income Tax Treaty?

An income tax treaty is a bilateral agreement between two governments under which each country agrees to limit or modify the application of its domestic tax laws in an attempt to avoid double taxation. When the U.S. enters into a tax treaty agreement with a foreign country, **the treaty supersedes Federal tax laws** and provides tax benefits to aliens who are residents of the treaty country. Such aliens may be eligible for reduced tax rates or for exemption from Federal tax withholding, if they meet the requirements of the particular treaty. Berkeley Lab is a research institution for the purposes of claiming a tax treaty.

8. How may I obtain more information about my Federal and State tax status?

For more information on your Federal tax status, contact the **IRS** on the web at: www.irs.gov or call (800) 829-1040.

For more information on your State tax status, contact the **Franchise Tax Board** on the web at: www.ftb.ca.gov or call (800) 852-5711.