



The taxpayer - that's someone who works for the federal government but doesn't have to take the civil service examination.

(Ronald Reagan)



## Classification of Taxpayers for U.S. Tax Purposes

U.S. law treats U.S. persons and foreign persons differently for tax purposes. Therefore, it is important to be able to distinguish between these two types of taxpayers.

### United States Persons

The term "United States person" means:

- A citizen or resident of the United States
- A domestic partnership
- A domestic corporation
- Any estate other than a foreign estate
- Any trust if:
  - A court within the United States is able to exercise primary supervision over the administration of the trust, and
  - One or more United States persons have the authority to control all substantial decisions of the trust
- Any other person that is not a foreign person.

### Foreign Persons

A foreign person includes:

- Nonresident alien individual
- Foreign corporation
- Foreign partnership
- Foreign trust
- A foreign estate
- Any other person that is not a U.S. person

Generally, the U.S. branch of a foreign corporation or partnership is treated as a foreign person. Refer to Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust..

### Check-the-box Entities (See Form 8832 and Instructions)

For Federal tax purposes, certain business entities automatically are classified as corporations. Other business entities may choose how they are classified for Federal tax purposes. Except for a business entity automatically classified as a corporation, a business entity with at least two members can choose to be classified as either an association taxable as a corporation or a partnership, and a business entity with a single member can choose to be classified as either an association taxable as a corporation or disregarded as an entity separate from its owner.

**Note:** Changes to Treasury Regulation section 301.7701-2(c)(2)(iv) provide that, with respect to wages paid after December 31, 2008, a disregarded entity is treated as a separate entity for purposes of employment taxes imposed under Subtitle C of the Internal Revenue Code and related reporting requirements. In addition, the separate entity is treated as a corporation for purposes of employment taxes imposed under Subtitle C and related reporting requirements. Therefore, the entity, rather than the owner, is considered to be the employer of any individual performing services for the entity.

These recent changes adversely impact the FICA and FUTA exceptions that apply to family employment (per IRC sections 3121(b)(3) and 3306(c)(5)) and situations in which both the employer and the employee are members of a religious faith (per IRC section 3127) because the recent changes regard a disregarded entity as a separate entity and treats the separate entity as a corporation for employment tax purposes. However, new temporary regulations extend the exceptions from taxes under IRC sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) to entities that are disregarded as separate from their owners for federal tax purposes. For more details, refer to T.D. 9554, Extending Religious and Family Member FICA and FUTA Exceptions to Disregarded Entities.

The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406.

#### References/Related Topics

- Foreign Persons
- Foreign Governments and Certain Other Foreign Organizations

*Note: This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the Tax Code, Regulations, and Official Guidance page. To access any Tax Court case opinions issued after September 24, 1995, visit the Opinions Search page of the United States Tax Court.*

*Page Last Reviewed or Updated: 05-May-2015*

<http://www.irs.gov/Individuals/International-Taxpayers/Classification-of-Taxpayers-for-U.S.-Tax-Purposes>

## 26 U.S. Code § 7701 – Definitions

### (14) Taxpayer

The term “taxpayer” means any person subject to any internal revenue tax.

### (26) Trade or business

The term “trade or business” includes the performance of the functions of a public office.

