

**POLICY RE:
REQUESTS FOR FUNDS FOR EXPERTS AND INVESTIGATORS**

1. PRESENTATION OF REQUEST FOR FUNDS

- a. The *Declaration/Request for Funds* shall be presented to the Supervising Criminal Judge. If the request is made pursuant to Penal Code §987.9, it shall be presented in a sealed envelope on which is placed the name and number of the case and the attorney's name and address; the envelope shall be marked "Confidential" "*Declaration/Request for Funds.*"

2. REVIEW PANEL AND PROCEDURE

- a. The Supervising Criminal Judge or his/her designee may act as a one-judge panel when he/she determines that a two-judge panel is not necessary for review.
- b. When a two-judge panel is needed to review *Requests for Funds* for experts and investigators, including Penal Code §987.9 requests, and *Requests for Funds* under Evidence Code §730 and §1017. The two-judge panel shall be composed of the Supervising Criminal Judge or his/her designee and one other judge from the Criminal Team selected by the Supervising Criminal Judge.
- c. No judge who considers a P.C. §987.9 request shall serve as trial judge in such case. Court file shall note which judges have reviewed fund requests so that no such judge will act as trial judge.
- d. All *Requests* will be ruled on in writing within seven (7) court days if acted upon by only the Supervising Criminal Judge, and within eight (8) court days if a panel review is deemed necessary.
- e. The approved or denied *Order Form* (Exhibit B) will be referred to the Supervising Legal Clerk of the Criminal Division who will maintain the confidential file and distribute the approval or denial.
- f. All *Requests for Funds* will be considered without oral input from counsel/pro per

defendant, except in those cases where the panel, within its discretion, deems it necessary to have a hearing with counsel/ pro per defendant present.

- g. If counsel objects to the ruling on a *Request for Funds*, he/she may request reconsideration by submitting supplemental written supporting declaration or requesting an In-Camera Hearing on the record. However an In-Camera Hearing will not be scheduled if the Court based its denial or modification on a need for more information. In such a case, the information must first be provided in writing or the Court must be provided with Points and Authorities supporting the applicant's position.
- h. Any *Request* that does not satisfy the guidelines set forth herein may be returned to counsel with or without instructions regarding corrections.

3. CONTENTS OF REQUEST FOR FUNDS

- a. The *Declaration/Request for Funds* shall be presented on a form pre-approved by the court. The *Declaration* which shall contain the following information:
 - 1) A factual statement of the case from which the panel can evaluate and determine the reasonableness and necessity for the fund request;
 - 2) A statement of the viable defenses that pertain to any requested funds;
 - 3) A detailed itemization of anticipated expenditures;
 - 4) The amount of prior funding authorized by the court, the purpose for which the funds were authorized with an itemization detailing how the funds were expended to date; and
 - 5) A statement that the attorney is retained, appointed by the court, a public defender, or that the defendant is pro per and/or indigent.
 - 6) A statement whether there are co-defendants, and if so, the names of the co-defendant(s) and defense counsel.
- b. The *Declaration* must be candid and specific about the funds requested and the specific reasons therefore. The *Declaration* must include the name of the person sought, an hourly rate, the number of hours needed, and the specific function to be served.
- c. A sample *Declaration/Request for Funds and Order Form* is attached (see Exhibit A and B).

4. REQUEST FOR INVESTIGATORS AND FEES

- a. The *Declaration* must detail specifically what the investigator will do. General statements, such as "investigate the case" or "interview witnesses" are insufficient. If the investigator must travel, a detailed explanation of the reasons for the travel is

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required and why travel is preferable to hiring an investigator in the foreign area.

- b. Any in-court, during proceedings services must be specified and justified.
- c. Investigators are to perform only investigative services and are not to act as a legal runner, secretary or messenger.
- d. Fee for investigators shall not exceed \$50.00 per hour.
- e. Counsel shall direct and monitor the work of the investigator to see his/her investigative time is reasonably necessary.

5. REQUEST FOR EXPERTS AND EXPERT FEES

- a. A complete description of the expert, his/her expertise, and his/her function shall be stated in the *Declaration*. There must be a rational justification for the type of expert based on the specific facts of the case. That justification must be set out in the *Declaration* and supported by Points and Authorities, if unusual. The *Declaration* shall include the hourly cost or other charge for the expert, and the number of hours contemplated for each specific service.
- b. The hourly rate paid for Medical and Psychological Forensic Evaluation and Consultation shall not exceed \$250.00 per hour. The request for the above shall specify how much time will be spent on:
 - consultation,
 - file review,
 - in-court observing or assisting,
 - research,
 - interviews (specify name, location, purpose and anticipated length), and
 - testifying. Be as specific as possible as to why each needs to be done.
- c. The hourly rate for Accident Reconstruction and all other experts shall not exceed \$200.00 per hour. The same specificity and justification indicated in "b" above shall be required for this section.
- d. The hourly rate for Pathology Experts shall not exceed \$250.00. The same specificity and justification indicated in "b" above shall be required for this section.
- e. Request for Interpreters Used Out of Court
 - i. The Declaration/Request for Funds must detail which persons need the use of an interpreter and the approximate length of time of the interview.
 - ii. Non certified and non registered interpreters will be used unless circumstances warrant the use of certified and registered interpreters. The

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need for certified or registered interpreters must be set forth in the declaration.

- iii. Fees for interpreters shall be:

Non-certified and Non-registered per hour	\$25.00
Certified and Registered per hour	\$40.00

- iv. Mileage will be paid for out of county interpreters only. Mileage will be computed using the current Internal Revenue Service rate. Use of an out of county interpreters will be authorized only upon a showing that an in county resource was not available.

- v. Interpreters that are used during normal business hours (when accepting an appointment would deprive them of receiving the statutory per diem rate) will be paid as follows:

Certified and Registered	\$286.82/full day or \$159.08/half day
Non-certified and Non-registered	\$175/full day or \$92/half day

The declaration shall state why the interview must take place during normal business hours and that the interpreter would be foregoing court work in accepting the assignment. Interpreters employed by the court (Court Interpreter Pro Tem) receiving a per diem from the court may not charge an additional per diem or hourly rate when accepting an assignment during normal business hours.

- e. Upon extraordinary good cause being shown an increased fee for “b”, “c”, and “d” will be considered.

- f. The Courts will not fund “out of state” or “out of county” experts unless justification is shown as to why an in-state or in-county expert is insufficient or unavailable.

- g. This policy **does not** replace the *Fee Schedule for Psychiatric & Other Examinations* (Exhibit F).

6. MULTIPLE DEFENDANT CASES

In cases in which there are two or more indigent defendants represented by different counsel, all counsel shall confer and designate one attorney to be “Lead Counsel” for fund request purposes.

All requests for investigation or expert witness funds shall be made by lead counsel unless:

- a. Lead counsel refuses to do so. A detailed declaration stating the circumstances why Lead Counsel refuses to make the request shall accompany the declaration in support of the fund request.

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- b. The requesting counsel establishes good cause in a detailed declaration stating why he/she did not ask Lead Counsel to make the fund request. A conclusionary statement stating only that it is a conflict of interest to ask lead counsel to make such requests will not be deemed good cause. Specific facts will be required. This declaration shall accompany the request for funds.
- c. All declarations for funds shall include a statement of whether there are co-defendants, and if so, are they joined for trial or elsewhere in the litigation proceedings.

7. REQUESTS DURING TRIAL

- a. An attorney/pro per defendant may make a request for investigative or expert fee funds during a trial. The request should be made to the Supervising Criminal Judge. However, in a non-death penalty case, the request may be made to the trial judge only if the need for funding is considered to be an emergency and the request cannot be made to the Supervising Criminal Judge due to time constraints. The trial judge shall not grant funding previously denied unless good cause has been shown.
- b. In any request to a trial judge, the attorney shall fully justify the need and shall inform the trial judge of all funds previously approved and/or denied.
- c. If time is of the essence, the attorney/pro per defendant may make an oral declaration on the record in a closed proceeding and the court will immediately make its decision on the record. In such a case, the attorney/pro per defendant shall submit an Order within one week.

8. TRAVEL EXPENSES

- a. The *Declaration* must detail the nature of the travel, why it is necessary, the number of persons making each trip, and the justification therefore. It shall include an explanation of why phone communications or someone in that locality cannot be utilized in lieu of a trip.
- b. Local mileage, defined as within Stanislaus County, is not reimbursable.
- c. Mileage outside Stanislaus County will be reimbursed at the current Internal Revenue Service rate for mileage.
- d. Alcohol or in-room movies or other incidentals will not be reimbursed.
- e. The County reimbursement rate for meals at the time the claim is submitted shall be the rate that will be used for meal reimbursement.

9. MISCELLANEOUS

Miscellaneous expenses will not be funded unless approved in advance.

10. COSTS NOT ALLOWED

- a. Attending conventions, seminars or workshops.
- b. Cleaning charges.
- c. Cash or personal items for defendant.
- d. Items intended to improve defendant's personal appearance (e.g., haircuts, dental plates, cosmetics).
- e. General office expenses such as typing, paper, photocopying and telephone.
- f. Any expenditure not previously approved by the Supervising Criminal Judge or his/her designee.
- g. Charges for alcoholic beverages or in room movies.

11. SUBSEQUENT REQUESTS WHEN ORIGINAL APPROVAL WAS NOT SUFFICIENT

When the original amount approved is insufficient, the subsequent *Declaration* must cover not only what is needed to be done, but what has been done previously.

12. SUBMISSION OF FEE CLAIM

- a. After the work is performed, the *Fee Claim* (Exhibit D) must be submitted to assigned counsel for review, approval and initialing, then to the Court Operations Assistant Court Executive Officers or his/her designee. The fee claim shall be submitted within 30 days following date of the last service rendered or termination of the case, whichever is later. Any late submissions may be denied.

All *Fee Claims* must contain a detailed description of the work performed. Specifically, names of witnesses or contacts interviewed, as well as the location where and when the work was done, must be included. All billings must be sufficiently detailed to permit a reasonable audit on conclusion of the case.

- b. All *Fee Claims* for payment of court authorized experts/investigators shall be on a court

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provided form together with a declaration by counsel that he/she has reviewed the claim and that he/she approves or disapproves of the claim. Counsel shall specifically note any item in the claim of which he/she disapproves.

- c. A copy of the *Order Form* (Exhibit B) authorizing such expenditures shall be presented with the claim.
- d. Form copies of the *Declaration/Request for Funds and Order Form* (Exhibit A & B), the *Time Sheet* (Exhibit C), *Fee Claim* (Exhibit D), and the *Blue Claim* form (Exhibit E) are attached.
- e. All Fee Claims for payment shall be delivered to either of the Assistant Court Executive Officers or his/her designee.

13. CONFIDENTIALITY

The Court will treat all requests and bills as confidential until 60 days after the conclusion of the case. The County Auditor will only receive page 4 of the *Declaration/Request for Funds and Order Form*, and the *Blue Claim*, not the detailed Fee Claim (Exhibit D), prior to conclusion of the case. During this time, all such records will be maintained in a locked file. Sixty (60) days after the conclusion of the case, all records will be subject to inspection or audit by anyone authorized by the Court or the County Auditor.

1 SUPERIOR/MUNICIPAL COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF STANISLAUS
3
4

5 THE PEOPLE OF THE STATE
6 OF CALIFORNIA,

7 Plaintiff,

8 vs.

9 Defendant.
10

Case No. _____

DECLARATION/REQUEST
FOR FUNDS and
ORDER FORM

C O N F I D E N T I A L

Hearing: _____
11

12 I, _____, declare that:

13 1. I am an attorney at law appointed by the Court to represent the above-named
14 defendant.

15 2. This application is made pursuant to: _____
16 (specify code section or case law).

17 3. The defendant is charged with: _____

18 4. The matter is presently set for (preliminary hearing / jury trial) on:

19 _____, 19____.

20 5. There (have / have not) been any affidavits of prejudice from the defense or the
21 prosecution or any judicial recusals on this case. (For this reason, Judge _____
22 cannot act on this request.)

23 6. It is necessary for the complete and full defense that the Court appoint an (expert /
24 investigator) to assist counsel in the preparation of this case for trial for the following reasons:

25 _____
26 _____
27 _____
28 _____

1 well as the location where the work took place. I agree to direct and monitor the work to be able
2 to assure the Court that it was reasonably necessary.

3 I hereby declare under penalty of perjury that the foregoing is true and correct.

4

5 DATED: _____ Signature of Declarant

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7 Attachment - Order Form

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STANISLAUS COUNTY SUPERIOR COURT
INDIGENT DEFENSE - REQUEST FOR FUNDS
ORDER FORM

D.A. No. _____ Case No. _____

Defendant(s) Name(s) _____

Defense Counsel _____

Offense(s) Charged _____

AUTHORIZATION FOR THE FOLLOWING APPOINTED INDIVIDUAL

Name: _____

Phone: _____

Address: _____

Total number of hours authorized: _____

Amount authorized: _____

DENIED. Reason: _____

DATE: _____

JUDGE

A DETAILED BILLING MUST BE SUBMITTED WITH THE REQUEST FOR FEE PAYMENT.

**STANISLAUS COUNTY SUPERIOR COURT
DAILY TIME SHEET / TIME RECAPITULATION**

People vs. _____ Case No. _____ Attorney _____

DESCRIPTION OF ACTIVITY	DATE	TIME IN/OUT	TIME IN 1/10 (.1)	DAILY TOTAL

TOTAL TIME EXPENDED _____

COUNTY OF STANISLAUS BLUE CLAIM

INSTRUCTIONS TO CLAIMANT: BOARD RESOLUTION #91-1449 STATES THAT "THE AUDITOR SHOULD NOT PAY COUNTY WARRANTS OR RELEASE COUNTY FUNDS UNLESS THE AUDITORS OFFICE HAS A SIGNED AGREEMENT OR DOCUMENT AUTHORIZING SUCH ACTION AND A BOARD OF SUPERVISORS RESOLUTION OR RECORD SHOWING THE MATTER WAS APPROVED BY THE ENTIRE BOARD OF SUPERVISORS." DEPARTMENTS MUST CERTIFY/APPROVE ALL CLAIMS PRIOR TO SUBMITTING TO COUNTY AUDITOR FOR PAYMENT. ALL CLAIMS MUST BE ITEMIZED WITH DATE OF SERVICE RENDERED, QUANTITIES, UNIT PRICE AND DESCRIPTION OF ARTICLES FURNISHED OR DELIVERED.

ORACLE ACCOUNT CODING STRIP

BATCH NAME	PREPARED BY:	DEPT/OFFICE:
AUDITED BY:	DATE	PHONE:
DATE	KEYED BY:	DATE:
		PHONE:

SUPPLIER _____	DATE _____	INVOICE # _____	(Invoice must be attached)
SITE/ADDRESS _____	TOTAL _____	TERMS _____	PAY ALONE Y/N _____
PHONE: _____			
SUPPLIER #: _____			

LINE	PO#	AMOUNT	FUND	ORG.	ACCT.	G/L PROJ.	LOCATION	MISC.	OTHER	DESCRIPTION

EXPLANATION: _____

Court Order Amount: \$ _____	Court Order Date: _____ (Copy of Court Order must be attached)
Amount Previously Used: \$ _____	Harris Motion Appt. _____ "Y" or "N" (Yes or No)
Remaining Balance on Court Order: \$ _____	

AUTHORIZED ATTORNEY'S SIGNATURE: _____

I hereby certify this claim to be a correct and legal County charge, that I have reviewed the contract (which has been approved in accordance with the provisions of the Govt. Code, Stanislaus County Code, and IRS Revenue Ruling 87-41) concerning these services (if applicable) and that the services identified on this claim comply with the terms of the contract, that an appropriation for this expenditure was approved during the budget process or by a specific Board Resolution which is on file in my office. I also certify the funds needed to pay this are available in my department budget. Government Code Section #24054 establish personal liability for illegal allowances of claims.

The undersigned approves this claim for any of the following reasons:
 1) Department Head of authorized management representative staff must also approve any transaction exceeding \$75,000. 2) Auditor's Office administrative staff must also approve any transaction exceeding \$75,000. 3) The Auditor Controller or administrative staff must approve expense reimbursement claims for Dept. Heads. 4) The CEO or the Board of Supervisors must approve expense reimbursement claims for the Auditor Controller; 5) Any claim questioned by the Auditor Controller regarding legal property will be sent to the County Counsel's office for review and approval prior to being paid.

The undersigned, under penalty of perjury, states that the above claim and the items, amounts and statements as set out are true and correct, that no part has been previously paid, and that the amount claimed is justly due and is presented within one year since the last item accrued.

AUTHORIZED DEPARTMENTAL SIGNATURE _____	DATE _____	AUDITOR APPROVING SIGNATURE _____	DATE _____	CLAIMANT _____	DATE _____
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REPORTABLE: Y or N	BOX #:	SITE NAME:
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Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your Income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see Instructions) ▶ _____	Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)																			
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="9" style="text-align: center;">Social security number</th> </tr> <tr> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> </tr> </table>	Social security number																	
Social security number																			
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="9" style="text-align: center;">Employer identification number</th> </tr> <tr> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> <td style="width: 30px; height: 25px;"> </td> </tr> </table>	Employer identification number																	
Employer identification number																			

Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below), and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.	

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.
Future developments. The IRS has created a page on www.irs.gov/w9 for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and
 4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1448 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity,
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust, and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* on page 1.

What is FATCA reporting? The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulation section 301.7701-2(c)(2)(iii). Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Note. Check the appropriate box for the U.S. federal tax classification of the person whose name is entered on the "Name" line (individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the U.S. federal tax classification in the space provided. If you are an LLC that is treated as a partnership for U.S. federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation, as appropriate. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for U.S. federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required U.S. federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the *Exemptions* box, any code(s) that may apply to you. See *Exempt payee code* and *Exemption from FATCA reporting code* on page 3.

Exempt payee code. Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

- A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
- B—The United States or any of its agencies or instrumentalities
- C—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
- E—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
- F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

- G—A real estate investment trust
- H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
- I—A common trust fund as defined in section 584(a)
- J—A bank as defined in section 581
- K—A broker
- L—A trust exempt from tax under section 664 or described in section 4947(a)(1).
- M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.