



IRS Introduces Form 8802 to Apply for US Residency Certification

Marcum & Kliegman LLP | Certified Public Accountants & Consultants | Literary Services GroupSM

Robert M. Pesce, CPA
Partner, Literary Services
Direct Dial (212) 981-3016
Email rpesce@mkllp.com

New York
Tel (212) 981-3000
Fax (212) 981-3001
655 Third Ave., 16th Floor
New York, NY 10017

New York- BCRS Group
Tel (212) 440-0800
Fax (212) 440-0810
100 Wall Street
New York, NY 10005

Woodbury
Tel (516) 390-1000
Fax (516) 390-1001
130 Crossways Park Drive
Woodbury, NY 11797

Greenwich
Tel (203) 861-9700
115 E. Putnam Ave.
Greenwich, CT 06830

Riverhead
400 West Main Street
Riverhead, NY 11901
Tel (631) 208-1600
Fax (631) 208-1666

Grand Cayman
Cayman Corporate Centre
27 Hospital Road
P.O. Box 1748
George Town, Grand Cayman
Cayman Islands BWI

Email: literary@mkllp.com

Web: www.mkllp.com

MOST LITERARY AGENTS and authors are aware of the procedures involved in requesting what is commonly known as Form 6166 Certification. Form 6166 is a letter printed on U.S. Department of Treasury stationery certifying that the individuals or entities listed are residents of the United States for income tax purposes. This form is generally used to claim income tax treaty benefits in foreign countries. The process involves a written request with specific language and information as outlined in Publication 686, "Certification for Reduced Tax Rates in Tax Treaty Countries." Unfortunately, in many cases the process can take weeks, and even months, because the Internal Revenue Service will often request additional information from the applicant.

Recently, the IRS announced a new form and procedures for requesting the certification of residency. The new Form 8802 is designed to streamline the processing of certification requests by soliciting all relevant information at the outset and allowing a more accurate determination to be made. The IRS expects the form will reduce the time it takes to get a certification and decrease the number of cases requiring additional information or correspondence.

Information Required

Generally, a Form 6166 certification has required the following information:

1. The taxpayer's name, address, and social security number (SSN), or taxpayer identification number (TIN);
2. The type of income tax return filed by the taxpayer (e.g., Form 1040, 1120S, 1065, etc.);
3. The year for which Form 6166 is being requested; and
4. The name of the country for which certification is requested.

While the above information is now requested on Form 8802, some additional information will be required in order to obtain certification. This information is generally set forth in the instructions to Form 8802. In addition, a soon to be revised IRS Publication 686 will provide guidance on several issues to further assist agents and authors.

Penalty of Perjury Statement

Form 8802 applications are required to be signed under penalties of perjury. By signing, applicants are attesting to their current residency. The type of entity that is requesting the certification determines the exact language of this declaration. (Individual, Corporation, Partnership, LLC, etc.)

Taxpayer Information Authorization

Form 8802 contains a section that in certain instances replaces the need to file a Form 8821, "Taxpayer Information Authorization," which is currently used to authorize disclosure of taxpayer information to a designee of the taxpayer. This section allows the taxpayer to appoint a third party to receive and inspect the Form 6166 on their behalf.

Processing of Requests Under the New Procedures

Use of the new form became mandatory July 5, 2004. As is the current procedure, taxpayers may submit Form 8802, and any additional required documentation, via fax. After an initial transition period, the IRS anticipates, the expected 30 day processing time of the form to be reduced.

While the intention of the new form and procedures is to streamline the certification process, there are several special requirements not fully discussed here. Therefore, whether you are an author or an agency, it is important to consult your tax advisor to ensure your Form 6166 certification is processed as efficiently as possible.



Robert M. Pesce is a Partner in Marcum & Kliegman LLP's Literary Services Group. He specializes in providing accounting and consulting services to authors, literary agents and publishers. For more information, please contact Robert at Marcum & Kliegman LLP's New York City office at (212) 981-3016 or rpesce@mkllp.com.

