

The Ultimate Guide to Non-resident Taxes in the U.S.

We specialize in making non-resident taxation as straightforward and understandable as possible.

Below are the topics that we will be discussing to improve your understanding of non-resident taxation:

Overview:

- What is a Non-Resident Alien for Tax Purposes
- Do you have to file a return
- Tax exemptions
- Tax Treaties
- Tax documents
 - Pre-employment documents
 - Income tax forms
 - Tax filing
 - US ITIN application forms
- Key U.S. tax dates
- Filing a non-resident tax return
- Tax deadline
- What if I don't file?
- Getting a tax refund
- Married filing jointly
- Filing from abroad

What is a non-resident alien for tax purposes?

If not a U.S. Citizen, you are considered a non-resident alien unless you pass one of two tests. These two tests are the Green Card Test or the Substantial Presence Test. This requirement also applies to those in the U.S. on F-1, J-1, M-1, Q-1, or Q-2 visas.

Green Card Test

For U.S. federal tax purposes, you are a resident alien if you are a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test.

You are a lawful permanent resident of the United States, at any time, if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the U.S. Citizenship and Immigration Services (USCIS) issued you a Permanent Resident Card, Form I-551, also known as a "green card."

You continue to have U.S. Resident Alien status under this test, unless:

- You voluntarily renounce and abandon this status in writing to the USCIS,
- The USCIS administratively terminate your immigrant status
- A U.S. federal court judicially terminates your immigrant status.

Substantial Presence Test

You will be considered a United States Resident Alien for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States (U.S.) on **at least**:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the two years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.

Example:

You were physically present in the U.S. on 120 days in 2019, 2020, and 2021. To determine if you meet the substantial presence test for 2021, count the full 120 days of presence in 2021, 40 days in 2020 (1/3 of 120), and 20 days in 2019 (1/6 of 120). Since the total for the three years is 180 days, you are not considered a Resident Alien under the substantial presence test: for 2021.

Days of Presence in the United States

You are treated as present in the U.S. on any day you are physically present in the country, at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the U.S. for the substantial presence test:

- Days you commute to work in the U.S. from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.
- Days you are in the U.S. for less than 24 hours, when you are in transit between two places outside the United States.
- Days you are in the U.S. as a crew member of a foreign vessel.

- Days you cannot leave the U.S. because of a medical condition that develops while you are in the United States.
- Days you are an exempt individual (see below).

For details on days excluded from the substantial presence test for other than exempt individuals, refer to [Publication 519, U.S. Tax Guide for Aliens](#).

The term United States (U.S.) includes the following areas:

- All 50 states and the District of Columbia.
- The territorial waters of the United States.
- The seabed and subsoil of those submarine areas adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

The term does not include U.S. territories or U.S. airspace.

The U.S. Territories are:

- [Puerto Rico](#)
- [Guam](#)
- [U.S. Virgin Islands](#)
- [Northern Mariana Islands](#)
- [American Samoa](#)
- [Midway Atoll](#)
- [Palmyra Atoll](#)
- [Baker Island](#)
- [Howland Island](#)
- [Jarvis Island](#)
- [Johnston Atoll](#)
- [Kingman Reef](#)
- [Wake Island](#)
- [Navassa Island](#)

U.S. Class A airspace is generally the airspace from **18,000 feet mean sea level (M.S.L.) up to** and including flight level (FL) 600, including the airspace overlying the waters within 12 nautical miles (N.M.) of the coast of the 48 contiguous states and Alaska.

Exempt Individual

Do not count days for which you are an exempt individual. The term "exempt individual" does **not** refer to someone exempt from U.S. tax but to anyone in the following categories:

- An individual temporarily present in the U.S. as a [foreign government-related individual](#) under an "A" or "G" visa, other than individuals holding "A-3" or "G-5" class visas.
- A [teacher or trainee](#) temporarily present in the U.S. under a "J" or "Q" visa, who substantially complies with the visa requirements.
- A [student](#) temporarily present in the U.S. under an "F," "J," "M," or "Q" visa, who substantially complies with the requirements of the visa.
- A [professional athlete temporarily](#) in the U.S. to compete in a **charitable** sports event.

Suppose you exclude days of presence in the U.S. for purposes of the substantial presence test because you were an exempt individual or were unable to leave the U.S. because of a medical condition or medical problem. In that case, you must include [Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition](#), with your income tax return. If you do not have to file an income tax return, send Form 8843 to the address indicated in the instructions for Form 8843 by the due date for filing an income tax return.

Why is the Filing of the Form 8843 Important?

If you do not timely file Form 8843, you cannot exclude the days you were present in the U.S. as an exempt individual or because of a medical condition that arose while you were in the U.S. This does not apply if you show that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements by clear and convincing evidence.

Closer Connection Exception to the Substantial Presence Test

Even if you met the Substantial Presence Test, you could still be treated as a non-resident of the United States for U.S. tax purposes if you qualify for one of the following exceptions:

1. The closer connection exception. Please refer to [Closer Connection Exception to the Substantial Presence Test](#).
2. The closer connection exception is available only to students. Please refer to [The Closer Connection Exception to the Substantial Presence Test for Foreign Students](#).

Residency Starting Date Under the Green Card Test

Suppose you meet the [green card test](#) at any time during a calendar year but do not meet the [substantial presence test](#) for that year, your residency starting date is the first day in the calendar year on which you are present in the United States as a lawful permanent resident (the date on which the United States Citizenship and Immigration Services (USCIS) officially approved your petition to become an immigrant).

If you receive your green card while living abroad, then the residency starting date is your first day of physical presence in the United States after receiving your green card.

If you were a U.S. resident during any part of the preceding calendar year and you are a U.S. resident for any part of the current year, you will be considered a U.S. resident at the beginning of the current year.

If you meet both the Green Card Test and the Substantial Presence Test in the same year, your residency starting date is the earlier of:

- The first day you are present in the United States during the year you pass the substantial presence test, or
- The first day you are present in the U.S. as a lawful permanent resident (green card holder).

CAUTION! If you were a resident alien for any part of the current year and were a resident alien during any part of the following year, you will be taxed as a Resident alien through the end of the current year. This applies whether you have a [closer connection to a foreign country](#) during the current year, whether you are a U.S. resident under the substantial presence test, or whether you are a U.S. resident under the green card test.

Residency Starting Date Under the Substantial Presence Test

If you meet the [Substantial Presence Test](#) for a calendar year, your residency starting date is generally the first day you are present in the United States during that calendar year.

If you were a U.S. resident during any part of the preceding calendar year and you are a U.S. resident for any part of the current year, you will be considered a U.S. resident at the beginning of the current year.

If you meet both the green card test and the substantial presence test in the same year, your residency starting date is the earlier of:

- The first day you are present in the United States during the year you pass the substantial presence test, or
- The first day you are present in the U.S. as a lawful permanent resident (green card holder).

Note: Because a person who is an "[exempt individual](#)" for purposes of the substantial presence test is not considered to be "present in the United States," such an individual's residency starting date under the substantial presence test may be later than when the "exempt individual" arrived in the United States. For an example of this situation, see Example 2 in [Alien Residency Examples](#).

CAUTION! If you were a resident alien for any part of the current year and were a resident alien during any part of the following year, you will be taxed as a Resident alien through the end of the current year. This applies whether you have a [closer connection to a foreign country](#) during the current year, whether you are a U.S. resident under the substantial presence test, or whether you are a U.S. resident under the green card test.

Residency Starting Date Under the First-Year Choice

If you do not meet either the green card test or the substantial presence test for the current year (for example, 2020) or the prior year (2019), and you did not choose to be treated as a U.S. resident for part of the preceding year (2019), but you meet the substantial presence test in the following year (2021), you can attach a statement to your income tax return choosing to be treated as a U.S. resident for part of the current year (2020). To make this [first-year choice](#), you must:

- (1) Be present in the United States for at least 31 days in a row in the current year, and
- (2) Be present in the United States for at least 75% of the number of days, beginning with the first day of the 31-day period and ending with the last day of the current year. (For purposes of this 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.)

When counting the days of presence in (1) and (2) above, do not include any days in the United States as an exempt individual under any of the days of presence in the United States exceptions to the [Substantial Presence Test](#).

If you make the first-year choice, your residency starting date for the current year is the first day of the earliest 31-day period (described in (1) above) that you use to qualify for the choice. You are then treated as a U.S. resident for the rest of the year.

If you are present for more than one 31-day period and you satisfy condition (2) above for each of those periods, your residency starting date is the first day of the first 31-day period. Suppose you are present for more than one 31-day period, but you satisfy condition (2) above only for a later 31-day period. In that case, your residency starting date is the first day of the later 31-day period.

Residency Starting Date Under the Terms of an Income Tax Treaty

In general, your residency starting date under the terms of an income tax treaty is the date on which you first satisfy the definition of a resident under the terms of the treaty. Generally, each treaty looks first to the domestic tax law of each country to define residency for that country. If dual residency in both countries results, most treaties contain "tie-breaker" rules to determine a single country of residence.

Residency Ending Date Under the Green Card Test

Your last day of presence in the United States as a lawful permanent resident of the U.S. is the residency ending date under the immigration laws of the United States.

However, you are still considered to be a resident alien of the United States for U.S. income tax purposes until you: (1) voluntarily turn in your green card to USCIS and renounce your U.S. immigrant status; (2) have your immigrant status administratively revoked by USCIS; or (3) have your immigrant status judicially revoked by a United States federal court.

CAUTION! A lawful permanent resident (green card holder) for at least 8 of the last 15 years who ceases to be a U.S. lawful permanent resident may be subject to special reporting requirements and tax provisions. Refer to [Expatriation Tax](#).

Residency Ending Date Under the Substantial Presence Test

In general, if you meet the substantial presence test, your residency ending date is your last day of presence in the United States, followed by a period during which:

1. You are not present in the United States,
2. You have a closer connection to a foreign country than to the United States, and
3. You are not a resident of the United States during the calendar year following that of your last day of presence in the United States.

Under the general rule, the residency ending date is 31st December of the calendar year you left the United States.

However, your residency ending date is the last day during the calendar year that you are physically present in the United States if, for the remainder of the calendar year:

- your [tax home](#) is in a foreign country (cf. Rev. Rul. 93-86), and
- you maintain a closer connection to that foreign country than to the United States (cf. Treas. Reg. § 301.7701(b)-2(d)).

Note: An "[exempt individual](#)" is not considered "present in the United States" for purposes of determining the residency ending date under the substantial presence test. This rule may result in situations in which a person who was once a resident under the substantial presence test and later becomes an "exempt individual" can become a non-resident alien once more without ever having left the United States. See Example 6 in [Alien Residency Examples](#).

Statement Required to Establish Your Residency Termination Date

You must file a statement with the I.R.S. to establish your residency termination date. You must sign and date this statement and include a declaration made under penalties of perjury.

The statement must be attached to your income tax return. If you are not required to file an income tax return, send the statement to the Department of the Treasury, Internal Revenue Service, Austin, Texas 73301-0215, on or before the due date for filing your income tax return.

The statement must contain the following information (as applicable):

1. Your name, address, U.S. taxpayer identification number (if any), and U.S. visa type and number (if any).
2. Your passport number and the name of the country that issued your passport.
3. The tax year for which the statement applies.
4. The last day you were present in the United States during the year.
5. Enough facts to establish that you maintained your tax home in and had a closer connection to a foreign country following your last day of presence in the United States during the year (or, if applicable, following the abandonment or rescission of your status as a lawful permanent resident during the year).
6. The date that your status as a lawful permanent resident was abandoned or rescinded.
7. Enough facts (including copies of relevant documents) to establish that your status as a lawful permanent resident has been abandoned or rescinded.
8. If you can exclude days under the de minimis presence rule (refer to [Publication 519, U.S. Tax Guide for Aliens](#)), state the dates you are excluding and include enough facts to establish that you maintained your tax home in and had a closer connection to, a foreign country during the period you are excluding.

Note: If you do not file the required statement, you cannot claim a closer connection to a foreign country or countries. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

For additional information regarding residency beginning and ending dates, refer to [Publication 519, U.S. Tax Guide for Aliens](#).

Alien Tax Status- First-Year Choice

If you do not meet either the green card test or the substantial presence test for the current year (for example, 2021) or the prior year (2020), and you did not choose to be treated as a U.S. resident for part of the preceding year (2020), but you meet the substantial presence test in the following year (2022), you can choose to be treated as a U.S. resident for part of the current year (2021) and be taxed as a [dual-status alien](#) for the current year (2021). To make this first-year choice, you must:

1. Be present in the United States for at least 31 days in a row in the current year (2021), and

2. Be present in the United States for at least 75% of the number of days following the 31-day period, beginning with the first day of the 31-day period and ending with the last day of the current year (2021). (For purposes of this 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.)

When counting the days of presence in (1) and (2) above, do not include the days you were present in the U.S. as an exempt individual.

If you make the first-year choice, your residency starting date for the current year (2021) is the first day of the earliest 31-day period (described in (1) above) that you use to qualify for the choice. You are then treated as a U.S. resident for the rest of the year.

If you are present for more than one 31-day period and you satisfy condition (2) above for each of those periods, your residency starting date is the first day of the first 31-day period. Suppose you are present for more than one 31-day period, but you satisfy condition (2) above only for a later 31-day period. In that case, your residency starting date is the first day of that later 31-day period.

Residency Examples

Example 1. J is a citizen of a foreign country who came to the U.S. for the first time on 1st November 2020 and was here 31 consecutive days (from 1st November through 1st December 2020). J returned to the foreign country on the 1st December and returned to the United States on the 17th December 2020. J stayed in the United States for the rest of the year. During the following year (2021), J was a resident of the United States under the substantial presence test. J can make the first-year choice for 2020 because J was in the United States in 2020 for 31 days in a row (1st November through 1st December) and for at least 75% of the days following (and including) the first day of those 31 days (46 total days of presence in the United States divided by 61 days in the period from 1st November through 31st December equals 75.4%). If J makes the first-year choice, J's residency starting date will be 1st November 2020.

Example 2. The facts are the same as in Example 1, except that J was absent from the United States on December 24, 25, 29, 30, and 31. J can make the first-year choice for 2020 because up to 5 days of absence are considered days of presence for purposes of the 75% (0.75) requirement.

Closer Connection Exception to the Substantial Presence Test

Even if you met the substantial presence test, you could still be treated as a non-resident alien if you:

- Were present in the United States less than 183 days during the year, and

- Had a closer connection during the year to one foreign country in which you have a tax home other than to the United States (unless you have a closer connection to two foreign countries, discussed next), and
- Maintained a tax home in that foreign country during the entire year (see Chapter 28 of [Publication 17](#) for a discussion of the tax home concept), and
- Had not taken steps toward, and did not have an application pending for, lawful permanent resident status (green card).

Closer Connection to Two Foreign Countries

You can demonstrate that you had a closer connection to two foreign countries (but not more than two) if you meet all the following conditions:

- You maintained a tax home beginning on the first day of the year in one foreign country,
- You changed your tax home during the year to a second foreign country,
- You continued to maintain your tax home in the second foreign country for the rest of the year,
- You had a closer connection to each foreign country than to the United States for the period during which you maintained a tax home in that foreign country, and
- You were subject to tax as a resident under the tax laws of either foreign country for the entire year or subject to tax as a resident in both foreign countries for the period during which you maintained a tax home in each foreign country.

Establishing A Closer Connection

You will be considered to have a closer connection to a foreign country than to the United States if you or the I.R.S. establishes that you have maintained more significant contacts with the foreign country than with the United States. In determining whether you have maintained more significant contacts with the foreign country than with the United States, the facts and circumstances to be considered include, but are not limited to, the following:

- The country of residence you designate on forms and documents
- The types of official forms and documents you file, such as [Form W-9, Request for Taxpayer Identification Number and Certification](#), [W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding](#), or [W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States](#).
- The location of:
 - Your permanent home,
 - Your family,
 - Your personal belongings, such as cars, furniture, clothing, and jewelry,
 - Your current social, political, cultural, or religious affiliations,
 - Your business activities (other than those that constitute your tax home),
 - The jurisdiction in which you hold a driver's license,
 - The jurisdiction in which you vote, and
 - Charitable organizations to which you contribute.

Note: It does not matter whether your permanent home is a house, an apartment, or a furnished room, and it also does not matter whether you rent or own it. However, it is essential that your home be available at all times, continuously, and not solely for short stays.

When You Cannot Claim Closer Connection to a Foreign Country

You cannot claim you have a closer connection to a foreign country if either of the following applies:

- You personally used or took other steps during the year to change your status to that of a Lawful Permanent Resident, or
- You had an application pending for adjustment of status to Lawful Permanent Resident during the year.

Indications of Intent to Change Your Status

Suppose you filed any of the following forms during or before the year in question. In that case, this indicates your intent to become a Lawful Permanent Resident of the United States and that you are not eligible for the Closer Connection Exception.

- Form I-508, Waiver of Rights, Privileges, Exemptions, and Immunities
- Form I-485, Application to Register Permanent Residence or Adjust Status
- Form I-130, Petition for Alien Relative
- Form I-140, Immigrant Petition for Alien Worker
- Form ETA-750, Application for Alien Employment Certification
- Form OF-230, Application for Immigrant Visa and Alien Registration

How to Claim the Closer Connection Exception

You must file [Form 8840, Closer Connection Exception Statement for Aliens](#), to claim the Closer Connection Exception. If you are filing a U.S. federal income tax return, please attach Form 8840 to the income tax return. If you do not have to file a U.S. federal income tax return, send Form 8840 to the Internal Revenue Service Center (indicated in the instructions attached to Form 8840) by the due date for filing the income tax return.

The requirement to File Form 8840

Suppose you do not timely file [Form 8840, Closer Connection Exception Statement for Aliens](#), you cannot claim the closer connection exception to the substantial presence test unless you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

The Closer Connection Exception for Students

Suppose you are a student and do not qualify for the closer connection exception described above using Form 8840. In that case, you may be eligible for the closer connection exception for

students only. Refer to [The Closer Connection Exception to the Substantial Presence Test for Foreign Students](#).

The Closer Connection Exception to the Substantial Presence Test for Foreign Students

Even though an international student may meet the substantial presence test, an exception exists in U.S. law, allowing the international student to continue being treated as a non-resident alien.

The Internal Revenue Code (I.R.C.) contains two exceptions to the substantial presence test, which can be used to maintain non-resident status. First, there is the general exception to the substantial presence test available to all aliens under I.R.C. § 7701(b)(3)(B) and (C) and Treas. Reg. § 301.7701(b)-2 (known as the closer connection exception). However, most international students cannot use this exception because of the requirement that the individual not have been physically present in the United States during the current year on more than 182 days. Their tax home is located outside the United States.

The second exception to the substantial presence test is outlined in I.R.C. § 7701(b)(5)(D) and (E) and Treas. Reg. § 301.7701(b)-3(b)(7)(iii). The exception is available only to students (not teachers/researchers, etc.) and contains four requirements, all of which must be met:

1. The student does not intend to reside permanently in the United States.
2. The student has substantially complied with the immigration laws and requirements relating to his student non-immigrant status.
3. The student has not taken any steps to change their non-immigrant status in the United States toward becoming a lawful permanent resident of the United States.
4. The student has a closer connection to a foreign country than to the United States, as evidenced by the factors listed in Treas. Reg. § 301.7701(b)-2(d)(1).

The burden is on the student to prove they met the four requirements. To claim the exception for students on an income tax return, a student should attach [Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition](#) to their Form 1040NR.

Foreign Students, Scholars, Teachers, Researchers, and Exchange Visitors

Who Must File

Aliens temporarily present in the United States as students, trainees, scholars, teachers, researchers, exchange visitors, and cultural exchange visitors are subject to special rules concerning the taxation of their income.

No minimum dollar amount of income triggers a filing requirement for a non-resident alien, including an international student or a foreign scholar.

Filing is required by non-resident alien students and scholars who have:

1. A taxable scholarship or fellowship grant, as described in Chapter 1 of [Publication 970, Tax Benefits for Education](#);
2. Income partially or totally exempt from tax under the terms of a tax treaty; and/or
3. Any other income that is taxable under the Internal Revenue Code.

Filing IS NOT required by non-resident alien students and scholars who have income ONLY from:

1. Foreign sources;
2. Interest Income from a:
 - a. U.S. bank
 - b. U.S. savings & loan institution
 - c. U.S. credit union
 - d. U.S. insurance company
3. An investment that generates Portfolio Interest (Described in Chapter 3 "Exclusions From Gross Income" - "Interest Income" – "Portfolio interest" of [Publication 519, U.S. Tax Guide for Aliens](#));
4. A scholarship or fellowship grant that is entirely a Tax-Free Scholarship or Fellowship Grant as described in Chapter 1 of Publication 970, Tax Benefits for Education; and/or
5. Any other income that is nontaxable under the Internal Revenue Code. However, income that is not taxable because of an income tax treaty must be reported on a U.S. income tax return even though no income tax is due on the U.S. income tax return.

Filing Form 1040

You must attach a statement to Form 1040 to make the first-year choice. The statement must contain your name and address and specify the following:

- You are making the first-year choice for the current year (2020).
- You were not a U.S. resident in the prior year (2019).
- That you qualified as a U.S. resident under the substantial presence test in the following year (2021).
- The number of days of presence in the U.S. during the current year (2020).
- The date or dates of your 31-day period of presence and the period of continuous presence in the U.S. during the current year (2020).
- If any, the date or dates of absence from the U.S. during the current year (2020) that you are treating as days of presence under the first-year choice – see (2), above.

You cannot file Form 1040 or the statement for the current year (2020) until you meet the substantial presence test in the following year (2021). If you have not met the test for the next year (2021) as of 15th April of 2021 (the filing due date of the current year), you can request an extension of time for filing your Form 1040 for the current year (2020) until a reasonable period after you have met that test for the following year (2021). To request an extension to file, use [Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return](#).

Once you make the first-year choice, you may not revoke it without the approval of the Internal Revenue Service.

Note: If you do not follow the procedures discussed here for making the first-year choice, you will be treated as a non-resident alien for the entire tax year. However, this does not apply if you can show clear and convincing evidence that you took reasonable actions to become aware of the filing procedures and significant steps to comply with the procedures.

Non-resident Spouse

Suppose at the end of your tax year, you are married, and one spouse is a U.S. citizen or a [U.S. resident](#) within the meaning of Internal Revenue Code (I.R.C.) section 7701(b)(1)(A). The other is not; you can choose to treat the non-resident spouse as a U.S. resident for tax purposes. This includes situations in which one of you was not a U.S. resident at the beginning of the tax year but was at the end of the year, and the other was not a U.S. resident at the end of the year.

If you and your spouse do not choose to treat the [non-resident](#) spouse as a U.S. resident, you may be able to use the head of household filing status. To use this status, you must pay more than half the cost of maintaining a household for certain dependents or relatives other than your non-resident spouse. For more information, see [Head of Household](#) and [Publication 501, Dependents, Standard Deduction, and Filing Information](#).

Election to File Joint Return

If you make this choice, the following rules apply:

- For federal income tax purposes, you and your spouse are treated as U.S. residents for all tax years that the choice is in effect. However, for Social Security and Medicare tax withholding purposes, the non-resident spouse may still be treated as a non-resident. Refer to [Individuals Employed in the U.S. – Social Security Taxes](#).
- You must file a joint income tax return for the year you make the choice (but you and your spouse can file joint or separate returns in later years).
- Each spouse must report their entire worldwide income for the year you choose and for all later years unless the choice is ended or suspended.
- Generally, neither you nor your spouse can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect. However, the exception to

the saving clause of a tax treaty might allow a tax treaty benefit on a certain specified income.

Example:

S has been a U.S. citizen for many years and is married to T, who is neither a U.S. citizen nor a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A). S and T choose to treat T as a U.S. resident by attaching a statement to their joint return. S and T must report their worldwide income for the year they choose and for all later years unless the choice is ended or suspended. Although S and T must file a joint return for the year they make a choice, so long as one spouse is a U.S. citizen or a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A), they can file either joint or separate returns for later years.

CAUTION! If you file a joint return under this provision, dual-status taxpayers' special instructions and restrictions do not apply to you.

How to Make the Choice

Attach a statement signed by both spouses to your joint return for the first tax year the choice applies. It should contain the following information:

1. A declaration that on the last day of the tax year, one spouse was neither a U.S. citizen nor a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A) and the other spouse was, and that you choose to be treated as U.S. residents for the entire tax year.
2. The name, address, and identification number of each spouse. (If one spouse died, include the name and address of the person making a choice for the deceased spouse.)

Amended Return

You generally make this choice when you file your joint return. However, you can also choose by filing a joint amended return on [Form 1040X, Amended U.S. Individual Income Tax Return](#), within three years from the date you filed your original U.S. income tax return or two years from the date you paid your income tax for that year, whichever is later. If you choose with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made a choice.

Suspending the Choice

The choice to be treated as a U.S. resident does not apply to any later tax year if neither of you is a U.S. citizen or a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A) at any time during the later tax year.

Example:

D was a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A) on 31st December 2020 and married to E, who was neither a U.S. citizen nor a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A). They chose to treat E as a U.S. resident and filed a joint 2020 income tax return. Because D left the United States on 10th January 2021 and did not return during the year, D was not a U.S. resident for the tax year 2021, and E remained a non-resident for that year. Since neither D nor E was a U.S. resident at any time during 2021, their choice to treat E as a U.S. resident is suspended for that year. For 2021, both are treated as non-residents. If D becomes a U.S. Resident gain in 2022, their choice to treat E as a U.S. resident is no longer suspended, and they must file either joint or separate income tax returns reporting their worldwide income for the tax year 2022.

Ending the Choice

Once made, the choice to be treated as a U.S. resident for federal income tax and withholding purposes applies to all later years unless suspended (as explained above) or ended in one of the ways shown below:

- Revocation by either spouse
- Death of either spouse
- Legal separation
- Inadequate records

For a more detailed explanation of these items, refer to the section titled "Ending the Choice" in Chapter 1 of [Publication 519, U.S. Tax Guide for Aliens](#).

CAUTION! If the choice is ended for any of the reasons listed above, neither spouse can make it in any later tax year, even if married to a different individual – it is a once-in-a-lifetime choice.

Social Security Number

Suppose your spouse is neither a U.S. citizen nor a U.S. resident within the meaning of I.R.C. section 7701(b)(1)(A), and you file a joint or separate return. In that case, your spouse must have either a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). Apply at a social security office or U.S. consulate to get an SSN for your spouse. You must complete Form SS-5. You must also provide original or certified copies of documents to verify your spouse's age, identity, and citizenship. If your spouse cannot get an SSN, they can file Form W-7 with the I.R.S. to apply for an ITIN. Refer to [Taxpayer Identification Numbers \(TIN\)](#) for more information.

Non-resident Alien Students and the Tax Home Concept

The tax home concept can affect whether the [capital gain income](#) of a non-resident alien student will be taxable in the United States.

A non-resident alien who is present in the United States for 183 days or more is taxed on U.S. source capital gains only if the alien's tax home is in the United States. This provision affects mainly foreign government-related individuals, international students, and foreign scholars, all individuals who typically remain in the United States for long periods as non-residents.

Most foreign government-related individuals are employed before they come to the United States. Most are employed in the United States after they arrive in the United States, thus establishing their tax home in the United States upon their arrival in the United States (unless their stay in the United States is expected to last less than one year).

Likewise, most foreign scholars (teachers/researchers) are employed before they come to the United States and are employed in the United States after they arrive in the United States, thus establishing their tax home in the United States upon their arrival in the United States (unless their stay in the United States is expected to last less than one year).

However, many international students are not employed or engaged in a trade or business before arriving in the United States. Many of them are not employed in the United States after arriving in the United States. In this situation, the issue arises as to what constitutes an international student's tax home--his residence or his place of employment?

The activity of being a student does not constitute a trade or business under the Internal Revenue Code and thus, in and of itself, cannot establish a tax home. If the student receives a scholarship or similar payment, they may have a U.S. trade or business. In general, a non-resident alien individual who is not engaged in trade or business within the United States and who is temporarily present in the United States as a non-immigrant on an F, J, M, or Q visa, is treated as a non-resident alien individual engaged in trade or business within the United States, and any U.S.-source scholarship income, which such individual receives, is treated as effectively connected with the conduct of a trade or business within the United States.

This means that a non-immigrant temporarily present in the United States in F, J, M, or Q status is considered engaged in a U.S. trade or business to tax any income from scholarships or fellowships they may have. The tax home of non-immigrants temporarily present in the United States in F, J, M, or Q status, and who have U.S.-sourced scholarship/fellowship income, is in the United States if such non-immigrants intend to remain in the United States for a period longer than one year.

The tax home of a non-resident alien who is a foreign university degree candidate, and who is in the United States during his summer vacation under an on-the-job training program intended to supplement his education but not required by the university in his native country with which the United States has no tax treaty, is the location of his training.

Suppose an international student has no employment, trade, business, or activity in the United States and receives no scholarship or fellowship income. In that case, they may have no U.S. tax home at all.

For a more detailed discussion of "tax home," refer to section 1, *Travel*, in [Publication 463, Travel, Entertainment, Gift, and Car Expenses](#).

Based on all the above, the following statements can be made concerning the issue of the tax home of international students:

1. A non-resident alien student temporarily present in the United States in F, J, M, or Q status who, at the time of his arrival in the United States, intended to remain in the United States for a period longer than one year, and who is employed in the United States (or self-employed even if illegally under the immigration law) has established his tax home in the United States beginning on the date his employment or self-employment begins if such employment or self-employment is expected to last for a period longer than one year. Such a non-resident alien student shall be taxable on his U.S.--sourced capital gains income in any calendar year in which his presence in the United States equals or exceeds 183 days.
2. A non-resident alien student temporarily present in the United States in F, J, M, or Q status who, at the time of his arrival in the United States, intends to remain in the United States for a period longer than one year, and who is the recipient of a U.S. source scholarship or fellowship has established his tax home in the United States beginning on the first date he is eligible to receive such scholarship or fellowship income if his eligibility to receive such scholarship or fellowship income is expected to last for a period longer than one year. The non-resident alien student shall be taxable on his U.S. source capital gains income in any calendar year in which his presence in the United States equals or exceeds 183 days.

A non-resident alien student temporarily present in the United States in any non-immigrant status who is not employed (or self-employed even if illegally under the immigration law) and is not the recipient of a U.S. source scholarship or fellowship, has not established a tax home in the United States. The non-resident alien student shall not be taxable on his U.S. source capital gains income in any calendar year in which his presence in the United States does not equal or exceed

Do you have to file a return?

If you live in the U.S. or soon live there, you will have tax-filing responsibilities.

You may have two types of filing responsibilities – federal and state level.

Essentially, if you are any of the following, you must file a federal tax return:

- A non-resident alien had received income or engaged in trade or business in the U.S. during the year.

- A non-resident alien individual not engaged in a trade or business in the U.S. but had U.S. income on which the tax liability was not satisfied by the withholding of tax at the source.
- **Even if you didn't receive any income, you must still file Form 8843**
- you are exempt from S.P.T. (you may be an exempt individual if you are on F, M, J, or Q visas or you are with a medical condition preventing you from leaving the U.S. on time)

As well as this, you may have state tax filing requirements depending on the state you reside in.

Nine states don't have any tax-filing requirements. These are:

- Alaska
- Florida
- Nevada
- New Hampshire (taxes only investment income, not earned income)
- South Dakota
- Tennessee (taxes only investment income, not earned income)
- Texas
- Washington
- Wyoming

You can [find out more about state tax at this blog](#).

Important documents

Put simply – it depends!

Below is a list of forms you'll need to familiarise yourself with:

Pre-employment documents:

W-8BEN

Form W-8BEN is generally used for claiming treaty benefits on income sources such as scholarship, royalties, or other passive income.

If you are in receipt of a taxable scholarship during your stay and are eligible to claim a tax treaty on this income, then you may need to fill out the W-8BEN.

This, in turn, can help to claim a reduced rate of tax withholding on your scholarship income if you are eligible to claim a tax treaty.

8233

Form 8233 is used to claim a tax treaty benefit between the U.S. and your country of residence.

This form is used to claim a tax treaty withholding exemption for part or all of your compensation from independent personal services, dependent personal services (or wages), and personal services income.

It may also be used for a compensatory scholarship or fellowship income. E.g., If you are receiving a stipend or room and board allowance in return for performing services as a teaching assistant.

Income tax forms

Form 1042-S

Your employer-issued this annual tax form to show income paid and tax withheld.

If you received a scholarship, fellowship, grant, or any other source of U.S. income subject to tax, this form is for you.

This form should be provided to you by whoever you received the income off.

W-2

You'll need to know the W2 form if you work on or off-campus.

Your employer will give this form to you by the deadline, and it will outline all your income from the previous year.

It is also divided into state and federal sections, and there are fields with employer information and income details.

1099 forms

If you received income from U.S. sources other than employee salary, you would likely receive a Form 1099.

This is used to report rental income or income for services or commissions you may have paid.

There are several different 1099's that report the different types of income you receive throughout the year:

1099-NEC records income you received if you are self-employed. You will be issued a 1099-NEC form by your clients if they have paid you at least \$600 that year.

1099-DIV is issued to report dividends and distributions from any investments you received throughout the year, and you must report the form on your tax filing.

1099-INT will be given to you if you have other forms of investments, such as interest payments. You will likely receive the form from your bank, where you have interest-bearing accounts.

Tax filing documents

Form 8843

This is **not an income tax return**.

You will need to file this form if you are in the U.S. on an **F-1, F-2, J-1, or J-2** non-immigrant status, and you are exempt for a certain period from a substantial presence test.

This applies whether you received U.S. income or not.

You are also required to file this if you do not have to file an income tax return.

You will also need to file pre-employment documents – these ensure you claim tax treaty benefits and determine how much tax you pay.

Below is a list of pre-employment documents you may need to file.

1040NR

You should use this form to file your tax return.

Form 1040NR is essential for determining if you are due a tax refund.

And remember, if you need some help with your taxes, you can easily prepare your non-resident tax return online with [Legacy Tax's 1040NR software!](#)

US TIN application forms

SS-5 and W-7

The SSN is the most common type of identifier if you are allowed to work on or off-campus in the U.S.

Essentially, you won't be able to work in the U.S. if you do not have a number that the I.R.S. can use to identify you for tax purposes.

To apply for a Social Security Card, you must complete an SS-5.

When submitting your SS-5, you will also need to bring original documentation showing your age, identity, immigration status, and entitlement to work in the U.S.

Meanwhile, you will need to fill out a W-7 form when applying for an ITIN (Individual Taxpayer Number).

Key tax dates in the U.S.

1st January

This is the start of the U.S. tax year

15th April

This is the U.S. tax filing deadline without an extension.

15th April

First Estimated Payment is due if you choose to make estimated quarterly payments

15th June

Second Estimated Payment is due if you choose to make estimated quarterly payments

15th September

Third Estimated Payment is due if you choose to make estimated quarterly payments

15th October

This would be the filing deadline if you applied for an extension.

31st December

This is the end of the U.S. tax year.

15th January of Subsequent Year

Fourth Estimated Payment is due if you choose to make estimated quarterly payments

Filing a non-resident tax return

Necessary documents

This is often where non-residents get confused – many are unsure what documents they need to file.

When filing your tax return, you may be asked for any of the following:

- Passport
- ITIN/SSN
- Income documents such as 1042-S, W2, 1099s
- Tax filing documents such as 8843 and 1040NR

While you'll need to file your federal tax return, the obligation to file your state tax return depends on the state you live in and the relevant rules there.

How to file a non-resident tax return

You can always choose to file your tax return yourself with the necessary documents, such as forms **W2, 1042-S, and/or 1099**.

However, many non-residents choose to use Legacy Tax to file their tax returns!

Once you finish the easy Legacy Tax questionnaire and proceed through the order breakdown and payment stage, you will be ready to E-file your U.S. tax return.

You will be required to provide an online signature and proof of identity before your return can be prepared.

**Prepare your non-resident tax return with Legacy Tax Returns.
Create an account to get started.**

[**Create my account**](#)

Tax filing deadline

The tax deadline generally falls on **15th April** every year.

If you owe money to the tax office and don't file your tax return by this deadline, the tax authorities (I.R.S.) have the option to impose delayed filing penalties and interest on the amount you owe.

What happens if I don't file?

It's a good idea to try and always have your tax affairs in order before the U.S. tax deadline.

That is because many non-residents in the U.S. leave their tax filing till late and become overwhelmed with the unfamiliar process

You leave yourself open to penalties or fines from the I.R.S. – the U.S. tax authority by not filing.

This late filing penalty is generally **5%** of the unpaid taxes for each month that it is late.

The penalty will begin the day after the tax filing due date and not exceed **25%** of your unpaid taxes.

However, **by filing more than 60 days after the due date** or extended due date, the minimum penalty is either **\$435** or **100%** of the unpaid tax, whichever is less.

It could also impact the success of your future visa or Green Card applications.

Can I get a tax refund?

Yes!

Not many non-residents are aware that they can apply for a tax refund!

The time it takes for the refund to arrive in your bank account depends on the I.R.S.

Typically, the processing time for paper tax returns is 4-6 weeks, but it might take up to 6 months for the I.R.S. to process the tax return and then send the tax refund.

The average Federal Tax refund with Legacy Tax is **\$1,126**, while the average State Tax refund is **\$464**.

Can I file jointly with my spouse?

That depends on your personal circumstances.

If you were married on or before the last day of the tax year, you do not have the option to file a return jointly with your spouse if both you and your spouse are deemed as non-resident aliens.

If you file [Form 1040NR](#), you will see that the only available option is to file as single on the tax return.

You can file a joint tax return if you or your spouse is a resident for tax purposes.

I've left the U.S. – can I still file?

Yes, you can still file from outside the U.S.

The I.R.S. has recently approved Legacy Tax to facilitate Federal tax returns filed electronically (also known as **E-Filing**).

That means it has never been easier to file your U.S. Federal tax return from abroad!

If you also need to submit a state tax return, Legacy Tax can help you prepare your fully compliant state tax return!

Then all you need to do is download, print, sign your documents, and send them to the tax office.

Why is Legacy Tax the best option for filing?

You always have the option to file your tax return by yourself.

However, many non-residents aren't totally comfortable taking care of their tax requirements by themselves.

That's why the best way to prepare your U.S. tax return is with [Legacy Tax](#)!

Our system ensures that you will prepare a fully compliant Federal and State tax return and maximize any tax refund you may be due!

What's more – Legacy Tax is now **approved by the I.R.S.** for E-Filing!

In short, this means you no longer need to download, print and mail a physical copy of your tax return to the U.S. tax office.

Instead, you now have the option to file your federal tax return without ever having to leave the house!

So why not file with Legacy Tax today?

[File my taxes with Legacy Tax](#)