



Topic 851 - Resident and Non-Resident Aliens

Since resident and nonresident aliens are taxed differently, it is important for you to determine your status. You are considered a nonresident alien for any period that you are neither a United States citizen nor a United States resident alien.

You are considered a resident alien if you met one of two tests for the calendar year.

The first test is the "green card test." If at any time during the calendar year you were a lawful permanent resident of the United States according to the immigration laws, and this status has not been rescinded or administratively or judicially determined to have been abandoned, you are considered to have met the green card test.

The second test is the "substantial presence test". For the purposes of this test, the term United States 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 that are 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. possessions and territories or U.S. airspace.

To meet the substantial presence test, you must have been physically present in the United States on at least 31 days during the current year, and 183 days during the 3 year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement, count all of the days you were present in the current year, and one-third of the days you were present in the first year before the current year, and one-sixth of the days you were present in the second year before the current year. Do not count any day you were present in the United States as an "exempt individual" or commute from Canada or Mexico to work in the United States on more than 75% of the workdays during your working period. An exempt individual may be anyone in the following categories:

- A foreign government-related individual,
- A teacher or trainee with a J or Q visa who substantially complies with the requirements of the visa,
- A student with an F, J, M, or Q visa who substantially complies with the requirements of the visa; or
- A professional athlete temporarily present to compete in a charitable sports event.

Also, do not count any days you intended to leave, but could not leave the United States because of a medical condition that developed while you were in the United States.

Even if you meet the substantial presence test, you can be treated as a nonresident alien if you are present in the United States for fewer than 183 days during the current calendar year, you maintain a tax home in a foreign country during the year, and you have a closer connection to that country than to the United States. This does not apply if you have applied for status as a lawful permanent resident of the United States, or you have an application pending for adjustment of status. Sometimes, a tax treaty between the United States and another country will provide special rules for determining residency for purposes of the treaty. An alien whose status changes during the year from resident to nonresident, or vice versa, generally has a dual status for that year, and is taxed on the income for the two periods under the provisions of the law that apply to each period.

If you are a **nonresident alien**, you must file [Form 1040NR](#) (PDF) or [Form 1040NR-EZ](#) (PDF) if you are engaged in a trade or business in the United States, or have any other U.S. source income on which the tax was not fully paid by the amount withheld. If you had wages subject to income tax withholding, the return is due by April 15, provided you file on a calendar-year basis. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day. If you did not have wages subject to withholding and file on a calendar-year basis, you are required to file your return by June 15th. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day. File Form 1040NR or Form 1040NR-EZ with the Internal Revenue Service Center, Austin, TX 73301-0215.

If you are a resident alien, you must follow the same tax laws as U.S. citizens. You are taxed on income from all sources, both within and outside the United States. You will file [Form 1040EZ](#) (PDF), [Form 1040A](#) (PDF), or [Form 1040](#) (PDF) depending on your tax situation. The return is due by April 15, and should be filed with the service center for your area. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.

For more information refer to [Publication 519, U.S. Tax Guide for Aliens](#). If the tax information you need relating to this topic is not addressed in Publication 519, you may call the IRS International Tax Law hotline. The number is (215) 516-2000. This is not a toll-free number.

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