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# Nonresident Alien, Resident Alien or U.S. Citizen





# Objectives

- Differentiate between residency status under U.S. immigration law and U.S. tax law.
- Identify which individuals need an individual taxpayer identification number (ITIN).
- Determine the filing requirements for nonresident aliens, resident aliens and dual status aliens.





# U.S. Citizen

- Born in the U.S. or in the U.S. territories of Puerto Rico, U.S. Virgin Islands, Guam, or The Commonwealth of the Northern Mariana Islands.
- Born abroad to U.S. citizen parent(s)
- Granted a Certificate of Naturalization by United States Citizenship and Immigration Services (USCIS)

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# Categories of Aliens Under U.S. Immigration Law

- Immigrants (aka lawful permanent resident or green card holder)
- Nonimmigrants
- Undocumented Aliens

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# Categories of Aliens Under U.S. Tax Law

- Resident Alien (RA)
  - Lawful permanent resident (LPR)
  - Substantial presence test (SPT)
  - First-year election under IRC § 7701(b)(4)
- Dual-status alien
- Nonresident alien (NRA)





# The Rules About Tax Residency

- First, apply IRC § 7701(b) and regulations.
- Then, consider residence articles in income tax treaties.
- If the alien would be treated as a tax resident of both the U.S. and treaty country under domestic law, apply the treaty's tie-breaker rule.





# LPR Status

As long as an alien's LPR status is still valid, his U.S. status continues even if he or she lives in a foreign country.

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# Loss of LPR Status

An alien is an LPR until:

- LPR status is voluntarily abandoned by filing USCIS Form I-407; or
- USCIS administratively or a federal court judicially determines LPR status has been abandoned; or
- USCIS or a federal court rescinds LPR status; or
- treated as an NRA pursuant to the tiebreaker provisions of an income tax treaty.





# Substantial Presence Test

- If not an LPR, then apply SPT to determine U.S. tax status.
- **GENERAL RULE:** Start counting days of presence in the U.S. on the date the alien first arrived.
- A day of presence is any day on which the alien was present in the U.S. at any time during the day.

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# Counting Days for SPT

Physically present in the United States:

- At any time during the day on at least 31 days during the year in question, and
- At least 183 days during 3-year period, counting:
  - All days present in U.S. during year in question, and
  - 1/3 of days present in U.S. during prior year, and
  - 1/6 of days present in U.S. during year before that.





# Closer Connection Exception to SPT

Allows alien who met SPT to be treated as NRA during the year in question, if he or she:

- Was present in U.S. < 183 days, and
- Had tax home in foreign country during entire year, and
- Had closer connection to that country than to U.S., and
- Had not taken steps toward, and did not have an application pending for, LPR status (green card), and
- Submitted Form 8840, *Closer Connection Exception Statement for Aliens*





# Dual-Status Alien

An individual who is an NRA and an RA in the same tax year.

- Usually occurs in the year an alien arrives or departs from the U.S.





# Who needs an ITIN?

Nonresidents and residents of the U.S. need an ITIN if they:

- do not qualify for an SSN, and
- have a U.S. tax filing or tax reporting requirement.





# ITIN - Examples

- Nonresident required to file a U.S. tax return
- Nonresident claiming a refund of tax under a U.S. tax treaty
- Dependent or spouse of a nonresident





# Nonresident Alien Filing Requirements

- Taxed on U.S. source investment income and income that is effectively connected to a U.S. trade or business under IRC § 871
- Files Form 1040NR





# U.S. Citizen or Resident Alien Filing Requirements

- Generally taxed on worldwide income at rates specified in IRC §1
- May be subject to employment taxes
- Files Form 1040





# Dual-Status Alien Filing Requirements

Return consisting of both Forms 1040 and 1040NR

- If RA on 12/31, and began year as NRA - files Form 1040 (“Dual Status Return”) with Form 1040NR (“Dual Status Statement”) attached.
- If NRA on 12/31, and began year as RA - files Form 1040NR (“Dual Status Return”) with Form 1040 (“Dual Status Statement”) attached.





# Resources

- <https://www.irs.gov/Individuals/International-Taxpayers>
- <https://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>
- <https://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-TIN>

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# Questions

