



## Introduction to Residency Under U.S. Tax Law

The taxation of aliens by the United States is significantly affected by the residency status of such aliens.

Although the [immigration laws](#) of the United States refer to aliens as immigrants, nonimmigrants, and undocumented (illegal) aliens, the tax laws of the United States refer only to RESIDENT and NONRESIDENT ALIENS.

In general, the controlling principle is that resident aliens are taxed in the same manner as U.S. citizens on their worldwide income, and nonresident aliens are taxed according to special rules contained in certain parts of the Internal Revenue Code (hereinafter referred to as I.R.C. or the Code). A major distinguishing feature of this special tax regime concerns the source of income: a nonresident alien (with certain narrowly defined exceptions) is subject to federal income tax only on income which is derived from sources within the United States and/or income that is effectively connected with a U.S. trade or business.

The residency rules for tax purposes are found in I.R.C. § 7701(b). Although the tax residency rules are based on the immigration laws concerning immigrants and nonimmigrants, the rules define residency for tax purposes in a way that is very different from the immigration laws. If you are an alien (not a U.S. citizen), you are considered a nonresident alien, unless you meet one of two tests for the calendar year (January 1 – December 31).

1. You are admitted to the United States as, or change your status to, a Lawful Permanent Resident under the immigration laws (the [Green Card Test](#));
2. You pass the [Substantial Presence Test](#) (which is a numerical formula which measures days of presence in the United States);

In some cases aliens are allowed to make elections which override the Green Card Test and the Substantial Presence Test, as follows:

1. They make what is called the "First-Year Choice" (a numerical formula under which an alien may pass the Substantial Presence Test one year earlier than under the normal rules). Refer to the discussion of "First-Year Choice" in Chapter 1 of [Publication 519, U.S. Tax Guide for Aliens](#);
2. They elect with their resident alien or U.S. citizen spouse to be [treated as a resident](#);
3. They claim a [closer connection to a foreign country](#); or
4. They take advantage of the [effect of tax treaties](#) for the definition of tax residence.

Under these rules, even an undocumented (illegal) alien under the immigration laws who passes the Substantial Presence Test will be treated for tax purposes as a resident alien.

### References/Related Topics

- [Foreign Students and Scholars](#)
- [Determining Alien Status](#)
- [Taxation of Resident Aliens](#)
- [Taxation of Nonresident Aliens](#)

**Note:** This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the [Tax Code, Regulations, and Official Guidance](#) page. To access any Tax Court case opinions issued after September 24, 1995, visit the [Opinions Search](#) page of the United States Tax Court.

Page Last Reviewed or Updated: 19-Jan-2016