



Determining Tax Residency Status

Overview of Tax Residency Status

In legal terms, non-citizens of the U.S. are called “aliens.” There are three types of aliens for tax purposes: (1) non-resident; (2) dual-status; and (3) resident. These categories are for tax purposes only and are not related to your immigration status. You may be in F-1 or J-1 non-immigrant status and considered a resident for tax purposes.

If you are not a U.S. citizen, you are considered a 'non-resident for tax purposes' **unless** you meet the criteria for **one** of the following tests:

1: The “Green Card” Test

You are a 'resident for tax purposes' if you were a legal permanent resident of the United States any time during the past calendar year.

2: The Substantial Presence Test

You will be considered a 'resident for tax purposes' if you meet the Substantial Presence Test for the calendar year. You meet this test if you were physically present in the United States for 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 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
- If total equals 183 days or more = Resident for Tax
If total equals 182 days or less = Nonresident for Tax
- For more information about counting days of presence in the US, see page 2 of this document or page 3 of form 8843.

Example (Source: University of Washington)

Example: An individual is present in the U.S. for 84 days in 2014, 168 days in 2013 and 261 days in 2012, then the test would show residency, with 183.5 days of presence.

SUBSTANTIAL PRESENCE TEST CALCULATION			
	Year	Number of Days in US	Calculation
Current Year	2014	84	84 X 1 = 84 days
1 st Preceding Year	2013	168	168 X 1/3 = 56 days
2 nd Preceding Year	2012	261	261 X 1/6 = 43.5 days
			Total = 183.5 days
Residency Determination = Resident Alien for Tax Purposes			

Note: In this example, the person was a resident during 2013 because $168 + (261 * 1/3) = 255$ days and during 2012 because 261 days > 183 days.



EXCEPTIONS to the Substantial Presence Test (Exempt Individuals):

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 categories below.

- 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 requirements of the visa.
- 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.
 - **Typically, F or J students** receive **5** "exempt"*** years. Not exempt from tax, but of counting physical days of presence in the U.S. towards Substantial Presence Test. If you have been in the U.S. for fewer than 5 calendar years** (including any previous F-1/F-2/J-1/J-2 statuses at any point), then you may be considered a 'Non Resident for Tax Purposes.'
 - **J Non-Students** (including Non-Degree Visiting Students) receive **2**"exempt"*** years (of the past 6 years).
- A [professional athlete](#) temporarily in the U.S. to compete in a charitable sports event.

For purposes of both the two and five year exempt individual limitation rules, the IRS uses a calendar year (January 1 through December 31), not 12 consecutive months. If the individual is present in the U.S. as an exempt individual for any part of a calendar year, it is counted as a full year.

If 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, 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.

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 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.

Sources IRS: <https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>
The University of Chicago: <https://internationalaffairs.uchicago.edu/page/determine-residency-tax-purposes#determine>



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 are unable to 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](#).

Sources:

IRS <https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>