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PRACTICE AREAS

BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries

Australia

Chile / Singapore E-1

E-1 Visas

E-2 Visas

PERM Labor Certification

HOSPITALS /HEALTHCARE

H-1C Visas

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FAMILY

Spouse / Fiancee Visas

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Within U.S.

Naturalization / Citizenship

AMNESTY

THURSDAY, JANUARY 21 2010

E-Newsletter

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Immigration and Income Taxes

Legal permanent residents (i.e. green card holders) and those who are considered alien residents under the US Tax Code are required to file and pay income taxes just like US citizens. Failure to do so can result in a loss of resident status. Nonresident aliens earning wages in the US also may be required to file and pay income taxes.

Resident Aliens

Resident status under the US Tax Code is not connected to visa status. For tax purposes, a resident is one who either holds a green card anytime during the tax year or who had sufficient physical presence in the US to qualify as an alien resident. Known as the substantial presence test, it requires a non-US citizen to be present in the US for 31 days during the current tax year and 183 days in total over the last three tax years. This three year period is calculated by taking a portion of the days spent in the US:

- For the current tax year, all of the days spent in the US are counted
- For the previous tax year, 1/3 of the days spent in the US are counted
- For the third tax year, 1/16 of the days spent in the US are counted

For example, if an individual spent 100 days in the US in 2007, 90 in 2006 and 90 in 2005, the calculation would be: 100 (all the days of 2007) + 30 (1/3 of the days of 2006) + 6 (1/16 of the days of 2005) = 136, which would not meet the 183 day requirement for the test. Anyone who does not qualify as a resident alien is considered a nonresident alien under the



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Tax Code.

Resident aliens are required to report all sources of income on their tax returns. This includes wages, tips, dividends, interest and rents, for example. Resident aliens also must report any income earned outside of the United States. They are subject to the same tax rates as American citizens and also may take advantage of the same deductions and credits.

Nonresident Aliens

Income earned by nonresident aliens is divided into two types: income that is effectively connected to a US trade or business and income that is not effectively connected to a US trade or business.

Effectively connected income is taxed at the same graduated rates as the income of US citizens and resident aliens. Income not effectively connected is taxed at a flat 30% rate, unless a lower rate was agreed upon by treaty. Income not effectively connected is not eligible for any deductions. This income is also known as Fixed, Determinable, Annual or Periodical (FDAP) income.

Nonresident alien students, teachers and trainees are considered to be part of a US trade or business and must file tax returns if they have qualifying income, which may include scholarship and fellowship grants and wages.

Nonresident aliens with qualifying income are required to file a tax return even if they have left the US. When nonresident aliens depart the country, they must file a Departing Alien Income Tax Return. However, this form does not replace a tax return, which still must be filed.

US tax laws regarding resident and nonresident aliens are complex. If you are unsure whether you need to file a US tax return, which income qualifies and how to compute your tax liability, contact an immigration attorney experienced in taxation matters. There can be severe penalties for failing to file income tax returns.



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Getting Ready To Apply for a Visa

To read and print out a copy of the checklist, please follow the link below.

[Getting Ready to Apply for a Visa](#)

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