

# Taxation of New U.S. Taxpayers



The part of the U.S. government that deals with taxes is called the Internal Revenue Service (IRS). You report your tax to the IRS with an IRS form. This is called "filing a tax return."

## Why Should I File a Tax Return?

- You might get a cash refund.
- For most immigration applications, such as Naturalization, Family Based Petitions, Work Authorization and Adjustment of Status, you need to show that you filed tax returns.
- Filing your income tax return is evidence of "good moral character" and "continuous presence." You must prove both of these for some immigration benefits.
- If you owe taxes, it is against the law **not** to file an income tax return.

## Who Can Get a Tax Refund?

You can apply for a tax refund if you are living and working in the U.S. You will be eligible for a tax refund if the income tax withheld by your employer is more than the tax you owe or you qualify for a refundable tax credit.



You may get a refund even if you do not have legal permission to live and work in the U.S.

You do not need a valid Social Security number (SSN) to get a refund or to file a tax return. You will need an Individual Taxpayer Identification Number (ITIN) if you don't have a SSN.

## How Do I Get Other Tax Benefits?

Your eligibility for other tax benefits depends on your status. IRS rules about legal status are different from the rules used by U.S. Citizenship and Immigration Services (USCIS).



## What Is My Status?

Under IRS rules, people who are not U.S. citizens are called aliens. There are two kinds of aliens - resident or nonresident aliens.

Resident aliens may get the Earned Income Tax Credit, Child Tax Credit, Child Care Credit, Education Credit, Elderly Credit, Foreign Tax Credit, Adoption Credit and other credits.

Nonresident aliens may get a refund of their income taxes. Nonresident aliens may get some tax credits (such as the telephone tax credit), but special rules apply.

## Am I a Resident or Nonresident Alien?

### Resident Alien

You are a resident alien if you have a green card or you were in the U.S. for a certain period of time (substantial presence).



### Green Card

You are a resident alien if you are a **lawful permanent** resident of the U.S. at any time during the year. You generally have this status if immigration (USCIS) has issued you a "green card."

### Substantial Presence

You are a resident alien if you have lived in the U.S. for 31 days during the current year and 183 days during a 3-year period. The 3-year period includes all the days you were present in the current year, 1/3 of the days present in the year before the current year, and 1/6 of the days present in the 2nd year before the current year. **You meet this test if you lived in the U.S. 184 or more days in the current year.**

### Nonresident Alien

You are a nonresident alien if you do not have a green card or you are not substantially present in the U.S.

## Can I Get the Earned Income Tax Credit (EITC) as a Resident Alien?

Under the EITC program, the IRS pays money to some single workers and families who earn low wages.

A resident alien who is not a U.S. citizen may get the EITC.

### 2010 EITC Eligibility Rules

If you are at least 25 and under 65 without children in the home and you earned less than \$13,460 (\$18,410 if married) in 2010, you may get an EITC of up to \$457.



If you are raising 1 child, grandchild or eligible foster child in your home and you earned less than \$35,535 (\$45,683 if married) in 2010, you may get an EITC of up to \$3,050.

If you are raising 2 or more children, grandchildren or eligible foster children in your home **AND** you earned less than \$40,363 (\$50,305 if married) in 2010, you may get an EITC of up to \$5,036. You may get more if you have 3 children.

You must have earned income (wages or self-employment) to qualify for the EITC.

For more information on the EITC, see **IRS Publication 596** (596SP - Spanish).

### Can I Get the EITC Without a SSN?

To get the EITC, you, your spouse and qualifying children must have valid SSN. It must be valid for employment. You cannot claim the EITC using an ITIN.

If you later get a valid SSN, you can go back 3 years and amend or file an original tax return to claim the EITC.

**Example:** Selena got a valid SSN in 2010. She did not have a valid SSN in 2009 or 2008. Selena can file a 2010 tax return and claim the EITC. Selena can go back and file 2009 and 2008 original tax returns. **OR** change her 2009 and 2008 tax returns and claim the EITC with her valid SSN.

## Do I Need a SSN to File a Tax Return?

You do not need a SSN to file a tax return and get an income tax refund. You can get an Individual Taxpayer Identification Number (ITIN) if you are not eligible for a SSN. The IRS can give you an ITIN. You can put the ITIN where a SSN is required on your tax return.

ITINs are for tax use only! The ITIN does not affect your immigration status or your right to be legally employed in the U.S. To apply for an ITIN, file form W-7 - **Application for IRS Individual Taxpayer Identification Number**. You must mail your W-7 application and tax return to:

**Internal Revenue Service  
ITIN Operation  
P.O. Box 149342  
Austin, TX 78714-9342**



You must show a picture ID and proof of foreign status. You can prove foreign status by attaching an original or certified copy of your passport, foreign driver's license or birth certificate to the W-7 application. You can show a picture ID by attaching any picture ID issued by a government.

After you file your W-7 and tax return, it takes about 4 to 6 weeks to get your ITIN. Please see our brochure titled Individual Taxpayer Identification Numbers for rules on getting an ITIN.

### Will Using an ITIN Get Me In Trouble With USCIS (Immigration)?

The IRS cannot usually request the names of taxpayers using an ITIN. Immigration can use the ITIN as proof of illegal status if you are in deportation proceedings or if immigration has proof of terrorist activities.

### Can I File a Joint Tax Return With My Nonresident Spouse?



If at the end of the tax year you are married and you are a U.S. citizen, legal resident or resident alien and your spouse is a nonresident alien, you can file a joint tax return and treat your nonresident alien spouse as a resident alien.

- You must file a joint tax return.
- You must also attach a statement declaring that 1 spouse was a U.S. citizen or resident alien and the other spouse was a nonresident alien.

The statement must include the name, address, and ID number of each spouse.

### Where Can I Get Help With My Tax Return?

In most places, you can get free help from people trained by the IRS. Call **1-800-829-1040** and ask for the location of a Volunteer Income Tax Assistance (VITA). Or call **1-888-227-7669** for the Tax Counseling for the Elderly (TCE) site near you.



**NOTE:** This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation on a tax matter or if you have questions.

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