



Nonresident Spouse Treated as a Resident

Election to File Joint Return

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other is a nonresident alien, you can choose to treat the nonresident as a U.S. resident. This includes situations in which one of you is a nonresident alien at the beginning of the tax year, but a resident alien at the end of the year, and the other is a nonresident alien at the end of the year.

If you make this choice, the following rules apply:

- You and your spouse are treated, for federal income tax purposes, as residents for all tax years that the choice is in effect. You and your spouse are treated as residents for your entire tax year for the purpose of your federal individual income tax return, and for the purpose of withholding federal income tax from your wages. However, you may still be treated as a nonresident alien for the purpose of withholding Social Security and Medicare tax. Refer to [Aliens Employed in the U.S. – Social Security Taxes](#)
- You must file a joint income tax return for the year you make the choice (but you and your spouse can file joint or separate returns in later years), and
- Each spouse must report his or her entire worldwide income on the joint income tax return.
- Generally, neither you nor your spouse can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect. However, the exception to the saving clause of a particular tax treaty might allow a resident alien to claim a tax treaty benefit on certain specified income.

Example:

Pat Smith has been a U.S. citizen for many years. She is married to Norman, a nonresident alien. Pat and Norman make the choice to treat Norman as a resident alien by attaching a statement to their joint return. Pat and Norman must report their worldwide income for the year they make the choice and for all later years unless, the choice is ended or suspended. Although Pat and Norman must file a joint return for the year they make the choice, as long as one spouse is a U.S. citizen or resident, they can file either joint or separate returns for later years.

CAUTION! If you file a joint return under this provision, the special instructions and restrictions for dual-status taxpayers do not apply to you.

How to Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following information:

1. A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for the entire tax year
2. The name, address, and identification number of each spouse. (If one spouse died, include the name and address of the person making the choice for the deceased spouse.)

Amended Return

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on [Form 1040X, Amended U.S. Individual Income Tax Return](#) within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

Suspending the Choice

The choice to be treated as a resident alien does not apply to any later tax year if neither of you is a US citizen or resident alien at any time during the later tax year.

Example:

Dick Brown was a resident alien on December 31, 2015, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed a joint 2015 income tax return. On January 10, 2016, Dick became a nonresident alien. Judy had remained a nonresident alien. Since neither Dick nor Judy is a resident alien at any time during 2016, their choice to treat Judy as a resident alien is suspended for that year. For 2016, both are treated as nonresident aliens. If Dick becomes a resident alien again in 2017, their choice to treat Judy as a resident alien is no longer suspended. Since Dick is a resident alien, they can again choose to treat Judy as a resident alien and file a joint 2017 income tax return.

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained above) or ended in one of the ways shown below. If the choice is ended for any of the reasons listed below, neither spouse can make a choice in any later tax year.

- Revocation by either spouse
- Death of either spouse
- Legal Separation
- Inadequate records

For a more detailed explanation of these items, refer to the section titled Ending the Choice in Chapter 1 of [Publication 519, U.S. Tax Guide for Aliens](#).

Note: If you do not choose to treat your nonresident spouse as a U.S. resident, you may be able to use head of household filing status. To use this status, you must pay more than half the cost of maintaining a household for certain dependents or relatives other than your nonresident alien spouse. For more information, refer to [Head of Household](#) and [Publication 501, Exemptions, Standard Deduction, and Filing Information](#).

Special Situations

If you are a nonresident alien from American Samoa or Puerto Rico, you may be treated as a resident alien.

If you are a nonresident alien in the United States and a bona fide resident of American Samoa or Puerto Rico during the entire tax year, you are taxed, with certain exceptions, according to the rules for resident aliens of the United States. For more information, see chapter 5 of [Publication 519, U.S. Tax Guide for Aliens](#).

If you are a nonresident alien from American Samoa or Puerto Rico who does not qualify as a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you are taxed as a nonresident alien.

Resident aliens who formerly were bona fide residents of American Samoa or Puerto Rico are taxed according to the rules for resident aliens.

Social Security Number

If your spouse is a nonresident alien and you file a joint or separate return, your spouse must have either a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). To get an SSN for your spouse, apply at a social security office or U.S. consulate. You must complete Form SS-5. You must also provide original or certified copies of documents to verify your spouse's age, identity, and citizenship. If your spouse is not eligible to get an SSN, he or she can file Form W-7 with the IRS to apply for an ITIN. Refer to [Taxpayer Identification Numbers \(TIN\)](#) for more information.

References/Related Topics

- [Taxation of Dual-Status 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: 31-Jan-2017