



Unintentional US Tax Residency: How Foreign Nationals Become US Taxpayers Without Realizing It

Many foreign nationals who spend time in the United States don't realize they may be subject to US income tax on their worldwide income. You don't need a green card or citizenship to become a US tax resident. Simply spending enough days in the country can trigger this status regardless of your immigration status, citizenship or otherwise.

The consequences can be significant. US tax residents must report and pay tax on income earned anywhere in the world, not just income from US sources. They also face complex international informational disclosure requirements and potential penalties for non-compliance. Penalties on international information forms can be \$10,000 per form.

This article explains how the IRS determines tax residency and what you can do if you inadvertently meet the criteria but maintain stronger ties to another country.

Three Paths to US Tax Residency

According to the IRS, you can be classified as a US resident for tax purposes in three ways:

US Citizenship: All US citizens are tax residents regardless of where they live. This status never changes unless you renounce citizenship through proper legal channels.

Green Card Holder: Anyone who holds lawful permanent resident status (a green card) is generally treated as a US tax resident. This status continues until the green card is legally revoked or a court determines it was abandoned. The simple act of not renewing is insufficient to abandon a green card.

Some green card holders can claim nonresident status under tax treaties between the US and their home countries. However, specific conditions must be met, and the process requires proper documentation.

Substantial Presence Test: This is where many foreign nationals become surprised. You can become a US tax resident based solely on the number of days you spend physically present in the country.

The Simple 183-Day Rule

The most straightforward path to tax residency is being physically present in the United States for 183 days or more during a single calendar year.

These don't need to be consecutive days. If you spend 183 or more days, basically six months, in the US during any calendar year, you meet this test and become a US tax resident for that year.

The only exceptions involve qualifying for the closer connection exception that will be covered later in this article or involve the use of specific tax treaties articles.

The Substantial Presence Test: The Hidden Trap

The substantial presence test is less obvious and catches many people unaware. This test looks at your physical presence over a three-year period, not just the current year.

You meet this test if you were physically present in the United States on 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 prior.

Here's what makes this complicated: days from different years count differently.



The formula:

- Count all days you were present in the current year at full value
- Count one-third of the days from the first preceding year
- Count one-sixth of the days from the second preceding year

If these calculations total 183 days or more, and you were present for at least 31 days in the current year, you meet the substantial presence test.

A Real Example

Let's say you spent 150 days in the United States in each of these years: 2023, 2024, and 2025.

Calculating for 2025:

- 2025: 150 days \times 1 = 150 days
- 2024: 150 days \times 1/3 = 50 days
- 2023: 150 days \times 1/6 = 25 days
- **Total: 225 days**

Since 225 exceeds 183, and you were present for more than 31 days in 2025, you meet the substantial presence test for 2025. You are considered a US tax resident.

The surprising part? You never spent more than five months in the US in any single year, yet you still became a tax resident.

What Counts as a Day of Presence?

You're considered present in the United States on any day you're physically in the country at any time during that day.

Even if you arrive at 11 PM and leave at 1 AM the next day, both days count.

Days That Don't Count

Certain days are excluded from the calculation. The following days don't count:

Regular commuters: Days you commute to work in the US from your residence in Canada or Mexico. This applies only if you regularly commute.

Transit days: Days you're in the US for less than 24 hours while traveling between two places outside the US. For example, airline layovers don't count when both your starting and ending points are outside the US.

Foreign vessel crew members: Days you are in the US as a crew member of a foreign ship or aircraft.

Medical condition: Days you can't leave the US because of a medical problem that developed while you were in the country.

Exempt individuals: Certain people with specific visa types don't count days toward the test for limited periods. This varies by the specific visa type. Generally, students, teachers, trainees, and certain foreign government employees may qualify as "exempt individuals" for specific time periods. Once your exempt period expires, all days in the US count toward the substantial presence test.

In the case of visa holders, in order to be eligible for exemption of days each year you must timely file a Form 8843 to exempt the days.



The Closer Connection Exception

Even if you meet the substantial presence test, you can still avoid US tax resident status by proving you have a closer connection to a foreign country. To qualify, you must meet all of these conditions:

Fewer than 183 days in the current year: You cannot have been present in the US for 183 days or more during the current calendar year.

Tax home in a foreign country: You must maintain a tax home in another country for the entire year. A tax home is generally your regular place of business or, if you don't have one, your regular place of residence. If you are considered "stateless" then you cannot use the closer connection exception as you are not closer connected to any other country.

Closer connection to that country: You must demonstrate that your connection to the foreign country is stronger than your connection to the US.

No green card application: You cannot have applied for or taken steps toward obtaining permanent resident status during the year.

The IRS evaluates many factors to determine whether you have a closer connection to a foreign country. None of these factors alone determines the outcome. The IRS looks at the totality of your circumstances.

Form 8840: The Critical Filing Requirement

To claim the closer connection exception, you must file Form 8840 (Closer Connection Exception Statement for Aliens). This form is specifically used to claim the closer connection to a foreign country(ies) exception to the substantial presence test.

Filing deadline: Form 8840 must be filed by the due date of your income tax return. For most foreign individuals, this means June 15 if you are not filing a US tax return, or by the tax return due date (April 15 or June 15, plus any extensions) if you are filing a return.

Where to file: If you're filing a US tax return (Form 1040-NR), attach Form 8840 to it. If you don't need to file a return, mail Form 8840 directly to the IRS Service Center specified in the form instructions.

Late filing consequences: If you don't file Form 8840 on time, you cannot claim the closer connection exception. The IRS may excuse late filing only if you can show by clear and convincing evidence that you took reasonable steps to learn about the filing requirement and made significant efforts to comply.

What Form 8840 Requires

The form asks detailed questions about your connections to foreign countries, including:

- Where your permanent home is located
- Where your family resides
- Location of your personal property
- Where you conduct business
- Your social and cultural affiliations
- Your driver's license country
- Your voter registration location
- Your bank account locations

You must also certify whether you filed tax returns in the foreign country and whether that country treated you as a resident for tax purposes.

Annual Calculations Are Required

Your residency status can change from year to year based on your travel patterns. You must calculate your substantial presence each year as outlined earlier.



Tax Implications of Residency Status

The difference between resident and nonresident status is substantial.

US tax residents:

- Must report worldwide income to the IRS
- File Form 1040 (US Individual Income Tax Return)
- May claim standard deduction
- Subject to tax on income from all sources globally
- Subject to International Informational disclosure forms, which are costly and complex to prepare

Nonresidents:

- Report only US-source income
- File Form 1040-NR (US Nonresident Alien Income Tax Return)
- Cannot claim standard deduction
- Generally subject to 30% withholding on certain US income types

For someone with significant foreign income or assets, becoming a US tax resident unexpectedly can result in large, unanticipated tax liability along with high costs for compliance.

Special Considerations for Property Owners

Many foreign nationals who own US real estate don't realize their visits to check on property, oversee rentals, or vacation in their US home count toward the substantial presence test.

If you own a Florida condo and visit it regularly, those days add up quickly. Four months per year for three consecutive years puts you at the threshold for tax residency.

When Tax Treaties Help

The United States has income tax treaties with many countries. These treaties often include "tie-breaker" rules that determine residency when someone qualifies as a resident in both countries.

If a treaty applies to your situation, you may be able to claim residence in your home country even if you meet the US substantial presence test.

Claiming treaty benefits requires filing Form 8833 (Treaty-Based Return Position Disclosure) with your tax return.

What to Do if You Discover You've Been a Tax Resident

If you realize you should have been filing as a US tax resident in prior years, address the situation promptly. You should consult with a qualified tax professional that routinely handles matters of this nature.

The IRS has procedures for taxpayers who discover past filing obligations. Acting voluntarily generally results in better outcomes than waiting for the IRS to discover the issue.

Practical Tips for Avoiding Unexpected Residency

Track your days carefully: Maintain a detailed log of every day you're present in the US. Include arrival and departure dates with supporting documentation like passport stamps and airline tickets.

Calculate annually: Run the substantial presence calculation each December to know your status for the coming year and plan accordingly.

Be strategic about travel: If you're approaching the threshold, consider limiting your US visits in the following year.



File Form 8840 proactively: If you meet the substantial presence test but maintain stronger ties to your home country, file Form 8840 every year without fail.

Understand visa status: Know whether your visa type makes you an exempt individual and how long that exemption lasts.

Keep documentation: Maintain evidence of your foreign ties (lease agreements, utility bills, bank statements) in case the IRS questions your closer connection claim.

Common Mistakes to Avoid

Assuming short visits don't matter: Any day you're in the US counts, even brief ones. Weekend trips add up.

Forgetting the three-year look back: Many people focus only on the current year and miss that prior years affect their status.

Neglecting Form 8840: Filing Form 8840 late can cost you the ability to claim the closer connection exception.

Relying on green card status alone: Even green card holders can sometimes claim treaty benefits, but this requires proper filing.

Mixing up physical presence with other tests: The substantial presence test is strictly about days in the US. Other factors matter only for the closer connection exception.

When to Seek Professional Help

International tax residency rules are complex. The stakes are high. Most foreign nationals who spend significant time in the US benefit from working with a tax professional experienced in this area of the US tax law.

A qualified advisor can:

- Calculate your substantial presence accurately
- Determine if you qualify for the closer connection exception
- Prepare Form 8840 properly
- Advise on tax treaty benefits
- Help with past compliance issues if needed
- Discuss how you can plan your visits to avoid unintended tax consequences

The cost of professional guidance is typically far less than the tax liability and penalties that can result from unexpected tax residency.

Key Takeaways

US tax residency can happen without you obtaining a green card or making any formal immigration status change. Simply spending time in the country can trigger worldwide income reporting obligations as a US tax resident.

The substantial presence test uses a three-year formula that gives different weight to days from different years. You can become a tax resident even without spending six months in the US during any single year.

The closer connection exception provides relief for those who maintain stronger ties to their home country, but it requires timely filing of Form 8840.

Track your US presence carefully. Calculate your status annually. If you meet the substantial presence test but have stronger connections abroad, file Form 8840 by the deadline.



Understanding these rules protects you from unexpected tax obligations and helps you plan your time in the United States strategically. Whether you're a snowbird, frequent business visitor, or property owner who visits regularly, knowing your tax residency status is essential for compliance and planning.

Numbers below are rounded for ease to remember and to provide a buffer of a couple days to be more conservative in the calculations.

120 days or less: If you don't want to file any tax forms in the United States related to your presence you should keep your number of days each year 120 (rounded down) or less (and have no reportable US income).

180 days or less: If you are a tax resident of another country and have a closer connection there you should plan not to exceed 180 (rounded down) days in any calendar year. If you are between 120 and 180 days each year you will generally meet the substantial presence test. You will need to file Form 8840 with the IRS to establish your closer connection, but you likely can avoid being a US tax resident as long as your fact pattern supports your position.

183 or more: If you have 183 or more days in a single calendar year you can no longer use Form 8840 to be treated as a nonresident for tax purposes. You must be from a country that has a tax treaty with the United States that contains an article allowing you to take a center of vital interests in that other country. While this may have you treated as a nonresident for income tax purposes, it would not relieve you of the need to file international information disclosure forms. It is beyond the scope of this article to cover this topic.

Author's Notes:

This article is not intended to be tax advice.

Each person's situation is unique. Small differences in a fact pattern can significantly change reporting requirements.

It is important to consult with tax professionals who regularly handle taxpayers with cross border issues or fact patterns that are more complex. The expertise of the professional is more important than where they are physically located. Professionals that have expertise in these matters can help ensure you understand your specific obligations and explore available options. Consulting with tax professionals who regularly handle international property transactions can help you maximize your profits and minimize your U.S. taxes and reduce risk.

I am happy to advise you on determining if you are in compliance, what options may exist if you are out of compliance, and next steps to take in order to be in compliance with US tax law.

About the author:

David A Cumberland, CPA CGMA has presented at the local, state, and national level. David has authored articles intended for both the taxpayer and the tax professional. He is vice chair of the FICPA International tax committee and founder of Cumberland CPA & Co. which serves clients worldwide. He has published in the FICPA's Florida CPA Today magazine and produces client-based tax articles in English and Spanish to educate both current and prospective clients and advisors to those clients. He primarily practices in the area of inbound international tax work covering both individual and business tax preparation and consulting. Fluent in Spanish, his emphasis is working with international clients or clients with international considerations. David brings unique value and perspective to advising clients as a CPA as he has more than two decades of operational management experience in business in addition to a technical tax background. Having retired as lead shareholder of the International Tax Department of one of the largest independent certified public accounting firms in Southwest Florida his focus now is on continuing to serve clients he is passionate about in a boutique setting.

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