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Taxation by VISA Type - Taxation of Nonimmigrants in TN Status



A TN worker is a professional worker admitted into the United States from Canada or Mexico under the provisions of the North American Free Trade Agreement (NAFTA) and described under section 214(e)(1) of the Immigration and Nationality Act (INA). A U.S. consular officer abroad would have issued a TN visa to such individual to allow him to enter the United States; however, Canadians may obtain a TN visa at the U.S./Canadian border with the proper documentation. The spouse or minor child of the TN nonimmigrant would be allowed to enter the United States in TD status.

Tax Residency

Aliens become residents of the United States for tax purposes by passing either (1) the Green Card test, or (2) the Substantial Presence Test. An alien who has been granted Lawful Permanent Resident status in the United States has passed the Green Card test. Aliens who are not Lawful Permanent Residents of the United States must count their days of presence in the United States according to a 3-year formula known as the Substantial Presence Test. Certain categories of nonimmigrants are exempt from counting days of presence for purposes of the Substantial Presence Test.

For an alien who is not an exempt individual as defined by IRC 7701(b)(5), or who is not in one of the other categories of aliens who are not allowed to count days of presence in the USA, the following rules of thumb are helpful when applying the Substantial Presence Test (SPT):

- (1) an alien who is present in the USA for at least 183 days during a single calendar year has passed the SPT for that calendar year and is a resident alien for that calendar year.
- (2) an alien who is present in the USA for at least 122 days every calendar year for 3 calendar years in a row, will pass the SPT in his third calendar year in the USA, and will become a resident alien during his third calendar year in the USA.
- (3) an alien who is present in the USA for less than 122 days during every calendar year will never pass the SPT, and thus, will never become a resident alien.

Nonimmigrants in TN status are not exempt from counting days of presence in the United States toward passing the Substantial Presence Test, and, therefore, must begin counting days of presence in the United States on the very first day of their arrival in the United States. Because TN nonimmigrants generally arrive in the United States with the intention of remaining in the United States for one year or more, their tax residency is usually determined under one of the following two scenarios:

- (1) If the TN nonimmigrant arrives in the United States on or before July 2nd of any calendar year, and remains in the United States through December 31st of the same year, he will pass the Substantial Presence Test in one year because he has accumulated 183 days of presence in the United States in one year. Under this scenario, his tax residency starting date will be the exact date he entered the United States. In other words, he is a tax resident of the United States upon the date of his arrival in the United States, and will usually remain a tax resident of the United States until his permanent departure from the United States.
- (2) If the TN nonimmigrant arrives in the United States after July 2nd of any calendar year, then it is impossible for him to pass the Substantial Presence Test in the year of his arrival in the United States because he has not accumulated 183 days of presence in the United States during the calendar year in which he arrived in the United States. Unless he leaves the United States for a substantial length of time, he will pass the Substantial Presence Test during his second calendar year in the USA. In this scenario, the TN nonimmigrant is a nonresident alien during his first calendar year in the United States, and a resident alien during his second and subsequent calendar years in the United States. His residency starting date is usually January 1st of his second calendar year in the United States, unless by chance he is absent from the United States on January 1st, in which case his residency starting date is the first day he is present in the United States during his second calendar year in the United States.

Withholding Taxes on TN Nonimmigrants

Federal Income Taxes on Wages

If the TN worker falls into scenario (1) above, and is a resident alien on his first day of arrival in the USA:

- Withhold U.S. federal income tax on his wages in the same manner as you would withhold on wages paid to a U.S. citizen in the same situation (i.e., with the same marital status and number of exemptions)
- The TN worker should file a Form W-4 with his employer just like a U.S. citizen would prepare it in the same situation

If the TN worker falls into scenario (2) above, and is a nonresident alien during his first calendar year in the USA, and is a resident alien for every calendar year thereafter:

- During his first calendar year in the USA, withhold on his wages following the special rules for withholding on wages paid to nonresident aliens found in Chapter 9 of IRS Publication 15 Circular E Employer's Tax Guide
- During his first calendar year in the USA, the TN worker should file a Form W-4 according to the special rules for withholding on wages paid to nonresident aliens found in Chapter 9 of IRS Publication 15
- During his second calendar year and every year thereafter in the USA withhold U.S. federal income tax on his wages in the same manner as you would on wages paid to a U.S. citizen in the same situation
- During his second calendar year and every year thereafter in the USA the TN worker should file a Form W-4 with his employer just like a U.S. citizen would prepare it in the same situation

Exception to the Above Rules:

- A TN worker who, under scenario (2) above, would normally be a nonresident alien during his first calendar year in the USA, can elect to use the First Year Choice (described in Chapter 1 of IRS Publication 519) to be treated as a resident alien by the last day of his first calendar year in the USA
- If the TN worker meets the following tests:
 - he elects to use the First Year Choice to be treated as a resident alien by the last day of his first calendar year in the USA, and
 - he is married on the last day of his first calendar year in the USA, and
 - he intends to file a joint U.S. federal income tax return with his spouse after year-end, as allowed by IRC 6013(g) or (h)

then he may elect to be treated as a resident alien for purposes of withholding U.S. federal income tax on his wages during his first calendar year in the USA

- A TN worker who meets the above tests, and who elects to be treated as a resident alien during his first calendar year in the USA, should file a Form W-4 with his employer just like a U.S. citizen would prepare it in the same situation
- The TN worker's Form W-4 should have the following annotation written across the top of Form W-4: "Employee elects to be treated as a resident alien under IRC 6013(g) or (h)".

Social Security and Medicare Taxes on Wages

General Rule: A TN worker who is paid wages in exchange for personal services he performs within the USA is liable for U.S. social security and medicare taxes on such wages, no matter whether he is a resident alien or nonresident alien.

Exceptions:

(1) If a TN worker meets the following conditions:

- He is a national of a country with which the USA has signed an International Social Security Agreement (also known as a Totalization Agreement), and
- He has signed an agreement with his country of nationality which requires that he pay social security tax on his U.S. wages to his country of nationality, and
- He has delivered to his U.S. employer a Certificate of Coverage issued either by his country of nationality or by the U.S. Social Security Administration which proves that under the appropriate Totalization Agreement the TN worker is exempt from U.S. social security and medicare taxes

then the TN worker will be exempt from U.S. social security and medicare taxes. Please refer to [Totalization Agreements](#).

(2) If the TN worker is engaged in a type of employment which under U.S. law is not subject to U.S. social security and medicare taxes, then his wages shall be exempt from such taxes. Please refer to IRS Publication 15 Circular E Employer's Tax Guide.

Federal Unemployment Tax

General Rule: The wages paid to a TN worker in exchange for personal services he performs within the USA are subject to U.S. federal unemployment tax (FUTA tax) on such wages, no matter whether he is a resident alien or nonresident alien. FUTA tax is paid by the employer, and is not withheld from the TN worker's wages.

Exception: If the TN worker is engaged in a type of employment which under U.S. law is not subject to U.S. FUTA tax, then his wages shall be exempt from such tax. Please refer to IRS Publication 15.

Reporting Wages Paid to a TN Worker

General Rule: Wages paid to a TN worker are reported on Forms 941 and W-2 in the usual manner.

Exception: Federal wages which are exempt from U.S. federal income tax under the provisions of an income tax treaty are reported on Forms 1042 and 1042-S.

State and Local wages are usually reported on Form W-2.

Withholding on Payments Not in the Nature of Wages

If the TN worker is still a nonresident alien:

- **General Rule:** Payments made to an TN worker which are not in the nature of wages, such as interest, dividends, rents, royalties, or non-employee compensation, etc. are subject to withholding of U.S. federal income tax at the rate of 30%.
- **Exception:** A lower rate of withholding under an income tax treaty may apply to a certain type of income paid to an TN worker.
- Such payments are reportable to the IRS on Forms 1042 and 1042-S.

If the TN worker is a resident alien:

- **General Rule:** Payments made to an TN worker which are not in the nature of wages, such as interest, dividends, rents, royalties, or non-employee compensation, etc. are not subject to withholding of U.S. federal income tax.
- **Exception:** Backup Withholding at the rate of 28% may apply to the payment(s) if the TN worker failed to report his U.S. Taxpayer Identification Number (TIN) to the payor of the income. A U.S. TIN is a U.S. Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN).
- Such payments are reportable to the IRS on Form 1099-MISC, and on Form 945 if Backup Withholding applies, if the total annual aggregate amount of non-wage payments made to the payee equals or exceeds \$600.

Income Tax Treaties

If, just prior to his visit to the USA, the TN worker was a resident of a country with which there is in force an income tax treaty between the United States and such country, then:

there may be a reduced rate of U.S. federal income tax on certain types of U.S. source income; with certain exceptions such as foreign teachers and researchers, under the "Saving Clause" of the treaty, the TN worker must usually still be a nonresident alien to qualify for the treaty exemption. under Article XV of the USA-Canada income tax treaty, a resident of Canada who does not earn in excess of \$10,000 in a calendar year for services performed in the United States shall not be liable for U.S. federal income tax on his wages; however, this provision applies only if the TN Alien is still a nonresident alien under U.S. law. for treaty exemptions involving personal service income, the TN worker would deliver a signed Form 8233 to the payor of the income in order to claim the lower treaty rate for withholding of U.S. federal income tax. for treaty exemptions involving types of income other than personal service income, the TN worker would deliver a Form W-8BEN to the payor of the income in order to claim the lower treaty rate for withholding of U.S. federal income tax. after year-end the treaty-exempt income is reported to the IRS on Forms 1042 and 1042-S by the payor of the income. For more information, please consult the following:

IRS Publication 515 Withholding of Tax on Nonresident Aliens and Foreign Entities

IRS Publication 901 U.S. Tax Treaties

[Tax Treaties](#)

[Foreign Students and Scholars](#)

U.S. Federal Income Tax Filing Requirements

If at year-end the TN worker is a nonresident alien:

- he should report only his U.S. source income on Form 1040NR or Form 1040NR-EZ.

there is no minimum amount of income which triggers a filing requirement for nonresident aliens. A nonresident alien who has any amount of gross income which is subject to U.S. taxation is required to report this income on Form 1040NR or Form 1040NR-EZ.

- Exceptions:
 - If a nonresident alien's only U.S. source income is wages, and the aggregate annual amount of such wages is less than the Personal Exemption Amount for the taxable year (see IRS Publication 501), then the nonresident alien is not required to file a Form 1040NR or Form 1040NR-EZ (Refer to Notice 2005-77).
 - If a nonresident alien's only U.S. source income is passive investment income normally reportable on page 4 of Form 1040NR, and the correct amount of U.S. federal income tax has already been withheld on such income by a withholding agent, then the nonresident alien is not required to file a Form 1040NR or Form 1040NR-EZ.
 - Interest income earned by a nonresident alien which is not effectively connected with a U.S. trade or business, and which is paid by the following payors is not subject to U.S. federal income tax and is not reportable on Form 1040NR or Form 1040NR-EZ:
 - Interest income paid by a U.S. bank
 - Interest income paid by a U.S. savings & loan association
 - Interest income paid by a U.S. credit union
 - Interest income paid by a U.S. insurance company Portfolio
 - Interest (See the discussion of Portfolio Interest in Publication 519 U.S. Tax Guide for Aliens)
- Unless one of the above exceptions applies, if a nonresident alien is claiming a tax treaty exemption on his U.S. source income, he is required to report both the income and the treaty exemption on Form 1040NR or Form 1040NR-EZ.

If at year-end the TN worker was a resident alien for the entire calendar year, or treated as a resident alien for the entire year:

- He should report his entire worldwide income on Form 1040 or Form 1040A or Form 1040EZ, whichever form is appropriate to his situation, in the same manner as if he were a U.S. citizen.
- He is not required to file one of the above forms unless his total aggregate gross income equals or exceeds the filing requirement amounts published annually in the Instructions for Form 1040.
- If he also paid a foreign income tax on his foreign income, then he may be eligible to take a Foreign Tax Credit on his U.S. federal individual income tax return (Refer to IRS Publication 514).
- He is required to report interest income from all sources unless the particular type of interest income is exempt under a provision of the Internal Revenue Code.
- With certain exceptions, the "Saving Clause" of most income tax treaties prevents a resident alien from claiming a tax treaty exemption or reduced tax rate on his U.S. source income. However, many income tax treaties allow foreign students/trainees and foreign teachers/researchers to claim treaty exemptions even though they have become resident aliens. Refer to [Claiming Tax Treaty Benefits](#)

If at year-end the TN worker was a resident alien, but he was a nonresident alien during an earlier part of the same year:

This usually occurs during the TN alien's very first year in the USA An alien who is both a resident alien and a nonresident alien during the same tax year is known as a Dual-Status Alien A Dual-Status alien should file a special income tax return as described in IRS Publication 519. If at year-end the Dual-Status Alien is a resident alien, and he is married (even to a nonresident alien spouse), then he may elect to file a joint Form 1040 or Form 1040A as if he and his spouse were resident aliens for the entire tax year. If a married Dual-Status Alien makes the election to file a joint return, he must report his entire worldwide income for the entire tax year on his income tax return. If he also paid a foreign income tax on his foreign income, then he may be eligible to take a Foreign Tax Credit on his U.S. federal individual income tax return (Refer to IRS Publication 514).

For more information refer to:

IRS Publication 519 U.S. Tax Guide for Aliens Taxation of Resident Aliens

[Taxation of Nonresident Aliens](#)

[Tax Withholding on Foreign Persons](#)

[Foreign Students and Scholars](#)

[Tax Treaties](#)

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You may view/download IRS Forms and Publications from:

[Forms and Publications.](#)

Revenue Procedure 2010-1 and its successor Revenue Procedures. However, Revenue

Procedure 2010-7 states that the IRS will not, in many cases, issue advance rulings concerning the interpretation of tax treaties. Taxpayers who disagree with the IRS interpretation of a tax treaty may file a claim with the U.S. Competent Authority according to the instructions set forth in Revenue Procedure 2006-54. The filers of Competent Authority claims involving Canada should also consult Revenue Procedure 98-21.

Page Last Reviewed or Updated: 14-Mar-2014

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