

Payments to Individuals: Taxpayer Classification for Reporting Payees to the IRS

A. General

1. The department head or employing official shall determine the taxpayer's classification prior to any performance of work or service.
2. Each Area Business Office shall provide guidance and assistance in the classification of taxpayers in its respective area.
3. Resident alien and nonresident alien taxpayer classifications are set out in detail in IRS Publication 515. See below for details.
4. The Office of the Treasurer, Purchasing Division, Accounts Payable Department and Payroll Department shall perform the final audit and review of all classifications before approval for payment.

B. Taxpayer Classifications for Reporting Payees to the IRS

1. US Citizen– taxpayers who were born in the United States or have received citizenship status through naturalization. See Section E-7-5 of the Business Procedures Manual for payment procedures.
2. Resident Alien and Nonresident Alien Classification Tests
 - a. Green Card Test: A Resident Alien is an individual who has entered the United States as a lawful, permanent resident for the purpose of working. This person will be in possession of a “Green Card” (INS form I-551 Alien Registration Card). Note that the Green Card is good for ten years and does not have to be green in color to be valid. Each department should keep a copy of the Green Card for its records. Nonresident Aliens will *not* have a Green Card.
 - b. Substantial Presence Test: Two tests must be applied to the number of days a non-U.S. citizen is in the United States, the 31 Days Test and the 183 Days Test. See Section 2.c.1 below for classifications based on the results of the calculations. Examples of situations that may be encountered in classifying resident or nonresident aliens are given in Section 2.d. Questions may be directed to the Accounts Payable Department.
 1. 31 Day Test: Ask the taxpayer how many days he/she will be in the United States during the current calendar year.

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2. 183 Days Test

Calculations are as follows: (Exceptions are listed in #3)

Current year calendar days expected to be in U.S. x 1 = _____ days

First preceding calendar year days in U.S. x 1/3 = _____ days

Second preceding calendar year days in U.S. x 1/6 = _____ days

Add subtotals of first three lines to find:

Total days in U.S. = _____ days

3. Exempt Individuals. Do not count days for which the NRA is an exempt individual. The term “exempt individual” does not refer to someone exempt from U.S. tax, but to anyone in the following categories:

- a) Students on F, J, M, or Q Visas should wait 5 years before counting the 183 days.
- b) Teachers, trainees, or researchers on J or Q Visas should wait 2 years before counting the 183 days.
- c) Any aliens who have taken steps to claim a Closer Connection Exception with the Internal Revenue Service will be classified as nonresident aliens. Attach a copy of the written permission from the District Director of the IRS to the DAV.
- d) An individual temporarily present in the United States as a foreign government –related individual.
- e) A professional athlete temporarily in the United States to compete in a charitable sports event.

c. Classifications – See the appropriate section of the Business Procedures Manual listed below for payment procedures:

1. Resident Aliens – Section E-7-6

- a) The individual possesses a Green Card OR
- b) The individual will be present in the United States for 31 days or more in the current calendar year AND will be present for a total of 183 days or more as calculated above in the Substantial Presence Test.

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- 2. Nonresident Aliens – Section E-7-7
 - a) The individual does not possess a Green Card AND
 - b) The individual will be in the United States for less than 31 days in the current year OR less than the 183 days as calculated above in the Substantial Presence Test.

d. Examples of resident alien/nonresident alien classifications

- 1. A department wishes to pay an individual from South Africa for consulting work on a research project. The taxpayer will be in the United States for a total of 45 days to complete this consultation, but no days in the prior two years. The individual does not have a Green Card. The calculations are as follows:

Present year days in the U.S.	45	x 1	=	45
1 st Preceding year days in the U.S.	0	x 1/3	=	0
2 nd Preceding year days in the U.S.	0	x 1/6	=	0

Total days in U.S.				45

This taxpayer is a nonresident alien because he/she has been in the United States for less than 183 days as calculated in the Substantial Presence Test. Although the individual has been in the U.S. for more than 31 days in the present year, the test stipulates that a nonresident alien has been in the U.S. for less than 31 days in the current calendar year OR less than 183 days for the past three years.

- 2. A researcher from Oxford University in England has agreed to come to the University of Kentucky to work on a research project. This researcher has been in and out of the United States for the last three years on a J Visa in an effort to complete this project: Year 1 = 300 days, Year 2 = 330 days, Year 3 (Current year) = 30 days. The calculations are as follows:

Do not include Year 1 or Year 2 in your calculations. This falls under the teacher/researcher exception to the Substantial Presence Test.

Present year days in the U.S.	30	x 1	=	30
1 st Preceding year days in the U.S.	0	x 1/3	=	0
2 nd Preceding year days in the U.S.	0	x 1/6	=	0

Total days in U.S.				30

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This taxpayer is a nonresident alien because he/she has been in the U.S. for less than 31 days in the current year OR less than 183 days in the past three years.

3. Consider the same circumstances found in Example 2 except the individual is an independent contractor rather than a foreign researcher and the total number of days spent in the U.S. during the current year is 31 days. The calculations are as follows:

Present year days in the U.S.	31	x 1	=	31
1 st Preceding year days in the U.S.	330	x 1/3	=	110
2 nd Preceding year days in the U.S.	300	x 1/6	=	50

Total days in U.S.				191

This taxpayer is a resident alien because the individual will be present in the U.S. for 31 days in the current calendar year AND will be present for a total of 183 days or more in the past three years.

Note: If the independent contractor had been in the U.S. for only 30 days in the current year, he/she would be a nonresident alien because both the 31 day test and the 183 day test must be met before the individual can be classified as a resident alien. Nonresident aliens must pass only one test.

4. An individual is eligible to work in the United States as an independent contractor. The Immigration and Naturalization Service has issued a Green Card (INS form I-551) to this taxpayer. However, the individual will only perform this service in the U.S. for a total of 10 days in the current year and no days in the prior two years.

This taxpayer is a resident alien because he/she has a legal right to work in the United States as indicated by the issuance of the Green Card. In the case of Green Card holders, the number of days the individual actually performs the service in the U.S. is irrelevant.