

# 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 1040EZ, 1040A or 1040. This is called "filing a tax return."

## Why Should I File a Tax Return?

- ✓ You might get a cash refund.
- ✓ For most immigration applications, you need to show that you filed tax returns. This includes Naturalization, Family Based Petitions, Work Authorization and Adjustment of Status.
- ✓ 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 refund and it is more than the tax you owe.

You may get a refund even if you are living and working in the U.S. illegally.

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

## How Do I Get Other Tax Benefits?

If you can get other tax benefits depends on your status. IRS rules about legal status are different than U.S. Citizenship and Immigration Services (USCIS) rules.

## 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.

### Resident Alien

You are a resident alien if you have a green card. **OR** if 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. **any time** during the year. Usually you are a resident alien if immigration (USCIS) has given 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**
- You lived in the U.S. for 183 days during a 3-year period. The 3-year period includes:
  - All the days you were here in the current year **AND**
  - 1/3 of the days you were here last year (year before the current year) **AND**
  - 1/6 of the days you were here year before last (the 2<sup>ND</sup> 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 don't have a green card. **OR** if you don't meet the rules for Substantial Presence in the U.S.

## What tax credits can I get?

**Resident aliens** may get:

- 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 (like the telephone tax credit), but special rules apply.

## 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.

### 2014 EITC Eligibility Rules



You may get an EITC of up to \$496 **IF**:

- You are at least age 25 and under age 65 **AND**
- There are no children in the home **AND**
- You earned less than \$14,590 (\$20,020 if filing a joint return) in 2014.

You may get an EITC of up to \$3,305 **IF**:

- You are raising 1 child, grandchild or eligible foster child in your home **AND**
- You earned less than \$38,511 (\$43,941 if filing jointly) in 2014.

You may get an EITC of up to \$5,460 **IF**:

- You are raising 2 children, grandchildren or eligible foster children in your home **AND**
- You earned less than \$43,756 (\$49,186 if filing a joint return) in 2014.

You may get an EITC of up to \$6,143 **IF**:

- You are raising 3 or more children, grandchildren or eligible foster children in your home **AND**
- You earned less than \$46,997 (\$52,427 if filing a joint return) in 2014.

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

For more information on the EITC, see The Tennessee Taxpayer Project's **Earned Income Tax Credit 2014** brochure.

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

To get the EITC, you, your spouse and qualifying children must have valid SSNs. It must be valid for employment. You **can't** claim the EITC using an ITIN. What if you get a valid SSN later? You can go back 3

years to claim the EITC. You have to change your tax return or file an original one.

**Example:** Selena got a valid SSN in 2014. She did not have a valid SSN in 2013 or 2012. Selena can file a 2014 tax return and claim the EITC. Selena can go back and file 2013 and 2012 original tax returns using her valid SSN. Or she can change her 2013 and 2012 tax returns to claim the EITC.

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

You don't need a SSN to file a tax return and get a income tax refund. Are you not eligible for a SSN? You can get an Individual Taxpayer Identification Number (ITIN). The IRS can give you an ITIN. You can put the ITIN on the tax return where it asks for a SSN.

**ITINs are for tax use only!** The ITIN does not change your immigration status. It does not change 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 with your:

- Passport **or**
- Foreign driver's license **or**
- Birth certificate



It must be the original. **OR** a copy certified by an IRS Authorized Acceptance Agency (AA) or Certifying Acceptance Agency (CAA). Attach it to the W-7 application. You can attach any picture ID issued by a government.

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

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

The IRS can't usually ask for the names of taxpayers using an ITIN.

**Warning!** Are you being deported? Or does immigration have proof you are a terrorist? Then Immigration can use the ITIN as proof of illegal status.

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

Yes, **IF at the end or 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

If all these are true for you, you can file a joint tax return. You can treat your nonresident alien spouse as a resident alien. You must:

- File a joint tax return and
- Attach a statement saying 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 communities, you can get **free** help from people trained by the IRS. Call **1-800-906-9887** 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.

## Tennessee Taxpayer Project

A Low Income Taxpayer Clinic  
A Project of the Legal Aid Society



Legal Aid Society  
of Middle Tennessee & the Cumberlandands

Working Together. Doing Justice. Restoring Hope.

**1-866-481-3669**

It's a free call.

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