

Foreign National Tax Frequently Asked Questions (FAQs)

What is the difference between a resident alien and a nonresident alien for tax purposes?

The Internal Revenue Service (IRS) classifies all foreign nationals as either resident aliens or nonresident aliens. Resident aliens are, for the most part, taxed in the same manner as U.S. citizens. The Internal Revenue Code (IRC), however, imposes an entirely different tax system on nonresident aliens. There are many differences between the two tax regimes, but perhaps the most significant is that resident aliens, like U.S. citizens, are taxed on their worldwide income, while nonresident aliens are taxed only on their U.S. source income. In addition, different income tax withholding and reporting requirements are imposed on payments made to nonresident aliens.

There are two tests that the IRS uses to classify a foreign national as either a resident alien or nonresident alien generally. If either test is met, the person is a resident alien.

Under the green card test, the foreign national is classified as a resident alien on the date that the person is officially granted green card status. Resident alien status remains in effect until such time as the green card is rescinded or abandoned.

The substantial presence test measures the extent of the foreign national's physical presences in the U.S. to determine whether the person has been present in the U.S. for a sufficient amount of time to be classified as a resident alien. The substantial presence test (which is used only for tax purposes, not for immigration classification purpose) is met if the foreign national is physically present in the U.S. for a total of at least 183 days, taking in to account all days of physical presence in the current year and in the two immediately preceding years. In addition, the person must be physically present for at least 31 days during the calendar year being tested. In making the 183-day calculation, the individual must count:

- The total number of days of physical presence in the U.S. during the current year.
- 1/3 of the number of days of physical presence in the U.S. the year before the current calendar year.
- 1/6 of the number of days of physical presence in the U.S. two years before the current calendar year.

This test is performed and audited in section B, "Determination of Residency Status" on the statement of citizenship and Federal Tax Status. The IRS requires that this test be performed each calendar year in order that an individual's federal tax status can be adjusted to either a nonresident alien or to a resident alien.

Who is an "exempt individual" for tax purposes?

The term "exempt individual" does not refer to exemption from U.S. income tax; rather, it describes certain foreign national students, teachers, researchers, or trainees who are exempt from having to count days of physical presence in the U.S. toward the substantial presence test. The result of being an exempt individual is that the period of time that the person is classified as a nonresident alien is extended. In order to qualify as an exempt individual, the person must be temporarily present in the U.S. and be in substantial compliance with the conditions of his or her visa. In addition, the individual must fit one of the following profiles.

- Present in the U.S. as a teacher/researcher/trainee or postdoctoral fellow on a J or Q visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt

individual for any part of two or more of the previous six calendar years. In making the two of six year determination; the person must take into account any part of the year in which he or she was (1) a teacher, trainee, or postdoctoral fellow under a J-1 or Q-1 visa, and (2) a student under an F-1, J-1, M-1, or Q-1 visa.

- Present in the U.S. as a student on a F-1, J-1, M-1, or Q-1 visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt individual for any part of five calendar years throughout the person's lifetime. In making the five-year determination, the person must take in to account any part of a calendar year that he or she was previously present in the U.S. as a (1) a student under an F-1, J-1, M-1, or Q-1 visa, and (2) a teacher, researcher, trainee, postdoctoral fellow under a J-1 or visa.

What is FICA?

The Federal Insurance Contributions Act (FICA) provides a system of Social Security and Medicare benefits financed through taxes on employers and employees. FICA taxes and benefits consist of two parts: Social Security benefits include old-age, survivors, and disability insurance (OASDI) while Medicare provides hospital insurance benefits for the elderly and younger people with disabilities.

Am I exempt from FICA withholding?

A non resident alien employee is exempt from FICA if he or she is:

- Present in the U.S under an F-1, J-1, or Q-1 visa, and
- Performing services in accordance with the primary purpose of the visa's insurance (i.e., the primary holder of the visa, the "1" visa holder)

In connection with the nonresident alien FICA tax exemption, please note that:

- Alien employees who hold F-1, J-1, or Q-1 visas, but are considered resident aliens for Federal tax purposes, are not eligible for the nonresident alien FICA exception.
- The spouse/department of the primary visa holder (e.g., F-2, M-2, or Q-2 visa holders) is not eligible for the nonresident alien FICA tax exemption.

Why do I need a Social Security Number or an ITIN?

A resident or nonresident alien employee by LANL must obtain a Social Security Number (SSN). The SSN is required on individual tax returns filed with the tax authorities by the employee and are also required to claim tax treaty benefits. Any individual not eligible to obtain a SSN, but requiring a tax identification number (e.g., a spouse or dependent of any alien employee), may obtain an Individual Taxpayer Identification Number (ITIN). LANL is no longer an Acceptance Agent, and cannot assist in the process of obtaining ITIN numbers.

How may I obtain more information about my Federal and State tax status?

For more information on your Federal tax status, contact the IRS on the web at www.irs.gov or by calling (800) 829-1040. For more information on your State tax status, contact the New Mexico Taxation & Revenue Department on the web at www.tax.state.nm.us or by calling (505) 827-0700.