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**North Carolina Low-Income Taxpayer  
Clinic**

Tax Topics for Immigrants

*This presentation is for informational purposes only. It is not meant to provide  
legal or tax advice specific to the facts of your situation.*

The North Carolina Low-Income Taxpayer Clinic (Tax Clinic) provides low-income North Carolina taxpayers with free\* representation in federal and state tax controversies and educates individuals about their rights and responsibilities as U.S. taxpayers. Our attorneys are dedicated to helping taxpayers understand and manage their tax issues, regardless of language barriers. The Tax Clinic is part of Charlotte Center for Legal Advocacy, a non-profit law firm located in Charlotte, NC dedicated to pursuing justice for those in need.

### **Cases We Work**

Collection issues, including Offers-in-Compromise, installment agreements and Currently-Not-Collectible status  
Examination, including audit reconsideration  
Earned Income Tax Credit  
Innocent and injured spouse claims  
Appeals  
Liens  
Levies  
Tax Court litigation  
Identity theft  
Cancellation of debt  
Employment classification

# Agenda

- Introduction
  - Residency vs. Non-residency
  - ITINs vs. Social Security numbers
  - Which tax return should be filed?
- Qualifying for credits and benefits
    - Child Tax Credit
    - Earned Income Credit



# Residency vs. Non-residency

# Residency

- U.S. immigration law refers to those not holding U.S. citizenship (aliens) as immigrants, nonimmigrants, and undocumented aliens.
- U.S. tax law has only two categories for aliens.
  - Resident alien
  - Nonresident alien

# Residency and Source

The taxation of income is based on the residence of the taxpayer, the source of the income, or a combination. These components are the bedrock of our income tax system.

- Residency determines who is subject to taxation.
- Source is where the income is generated. Foreign income has its source in another realm, technically called a foreign “State”. Sovereign States always have the right to tax their own income. Diplomacy and tax treaties govern States interactions with other States as to the treatment of taxes between States.

# Why Tax Residence Matters

- In the U.S., taxation of Non-Residents is very different from that of U.S. persons (Citizens and Tax Residents).
- U.S. citizens and tax residents are subject to tax on their worldwide income no matter the source.
- Non-residents are only taxed on U.S. source income.
- Why subject yourself to U.S. taxes? Access to credits and the standard deduction that non-residents generally don't get.

# A Note on Terminology

- Resident Alien (RA): a person who is a U.S. resident but isn't a U.S. Citizen.
- Non-Resident Alien (NRA): a person who doesn't qualify as a U.S. resident or U.S. citizen.
- There is no such thing as an illegal alien in the U.S. Tax Code.



# Who is considered a RA?

- Green Card Test: Lawful permanent resident, likely has a SSN, and must report “worldwide” income.
- Substantial Presence Test: Based on a formula of days and years a person is physically in the US, and likely has or needs an ITIN.

# Substantial Presence Test

Applies to all aliens who

- Are in the United States,
- Are not permanent lawful residents, and
- Are not “Exempt Individuals”.

Exempt individuals include

- Foreign government related persons with A or G visas.
- Teachers or trainees with J or Q visas.
- F, J, M or Q student visa holders.
- Professional athletes.

# Substantial Presence

Taxpayer is physically present in the United States

- United States defined as 50 states, D.C. and U.S. territorial waters.
- **Not** U.S. possessions, territories or airspace.

Substantial Presence

- At least 31 days in the first tax year being filed, **and**
- 183 formula days looking at the tax year and the two years preceding the tax year.

Taxpayer may be exempt from the Substantial Presence Test by statute or because a closer connection is maintained to another country.

# Counting the Days

- In the Tax Year,
  - Each day counts as one full day and must have at least 31 days in the tax year.
  - Prior Year - Each day counts as  $\frac{1}{3}$  of a day.
  - 2 Years Prior - Each day counts as  $\frac{1}{6}$  of a day.
- Taxpayers with a 3-year formula count of 183 days are residents for the tax year, unless they can show a closer connection to another country or an exemption by treaty or statute.

### Resident or Nonresident Alien Decision Chart

Determine residency status for federal income tax purposes.

Step	Probe	Action
<b>1</b>	Were you a lawful permanent resident of the United States (had a "green card") at any time during the current tax year?	<b>YES</b> – RESIDENT Alien for U.S. tax purposes <sup>1, 2, 7</sup> <b>NO</b> – Go to Step 2
<b>2</b>	Were you physically present in the United States on at least 31 days during the current tax year? <sup>3</sup>	<b>YES</b> – Go to Step 3 <b>NO</b> – NONRESIDENT Alien for U.S. tax purposes <sup>5, 6, 8</sup>
<b>3</b>	Were you physically present in the United States on at least 183 days during the 3-year period consisting of the current tax year and the preceding 2 years, <ul style="list-style-type: none"> <li>• counting all days of presence in the current tax year,</li> <li>• 1/3 of the days of presence in the first preceding year, and</li> <li>• 1/6 of the days of presence in the second preceding year?<sup>3</sup></li> </ul>	<b>YES</b> – Go to Step 4 <b>NO</b> – NONRESIDENT Alien for U.S. tax purposes <sup>4, 5, 6, 8</sup>
<b>4</b>	Were you physically present in the United States on at least 183 days during the current tax year? <sup>3</sup>	<b>YES</b> – RESIDENT Alien for U.S. tax purposes <sup>1, 2, 7</sup> <b>NO</b> – Go to Step 5
<b>5</b>	Can you show that for the current tax year you have a tax home in a foreign country and have a closer connection to that country than to the United States? *(Out of Scope, Form 8840, Closer Connection Exception Statement for Aliens required)	<b>YES</b> – NONRESIDENT Alien for U.S. tax purposes <sup>5, 6, 8</sup> <b>NO</b> – RESIDENT Alien for U.S. tax purposes <sup>1, 2, 7</sup>

# Special Rules

- First Year Rule
- NRA Spouse Election
- Dual Status Aliens
  - These issues are beyond the scope of this presentation.

# Unique Situations: Nonresident Spouse

- A person is considered married no matter where in the world they were married. It does not matter if one spouse is living in another country.
- A U.S. citizen or resident alien who is married to a nonresident alien spouse who does not meet either the green card or the SPT generally has three filing status options:
  - The taxpayer may choose to file as Married Filing Separately.
  - The couple may choose to file as Married Filing Jointly.
  - The taxpayer may qualify for Head of Household under the regular rules for a married person who is “considered unmarried” even while living with the nonresident alien spouse.

# Unique Situations: Nonresident Spouse

- Married Filing Separately: The NRA spouse, if required to file a return, would file Form 1040 NR.
- Joint return: A married couple may elect to treat a NRA spouse as a RA for tax purposes and file a joint return. If taxpayers make this choice, both spouses are treated for income tax purposes as residents for the entire tax year. Neither spouse can claim under any tax treaty not to be a U.S. resident. Both spouses are taxed on worldwide income. If the NRA spouse agrees to file a joint return, worldwide income of both spouses must be reported. To make this election, taxpayers must provide a signed declaration to attach to their joint return, as detailed in IRS Publication 519.



# Unique Situations: Nonresident Spouse

- When can a citizen or RA, who lives with a NRA alien spouse, file as Head of Household? There is an exception that allows U.S. citizens and RAs who have a NRA spouse to file as Head of Household. The following requirements must be met:
  - The taxpayer is a U.S. citizen, or RA for the entire year.
  - The NRA spouse chooses not to file a joint return.
  - The taxpayer meets the other requirements for this filing status.
  - The spouse is not a qualifying person for head of household purposes. The taxpayer must have a qualifying person to be eligible for this filing status.

# Tax Implications of Resident Status

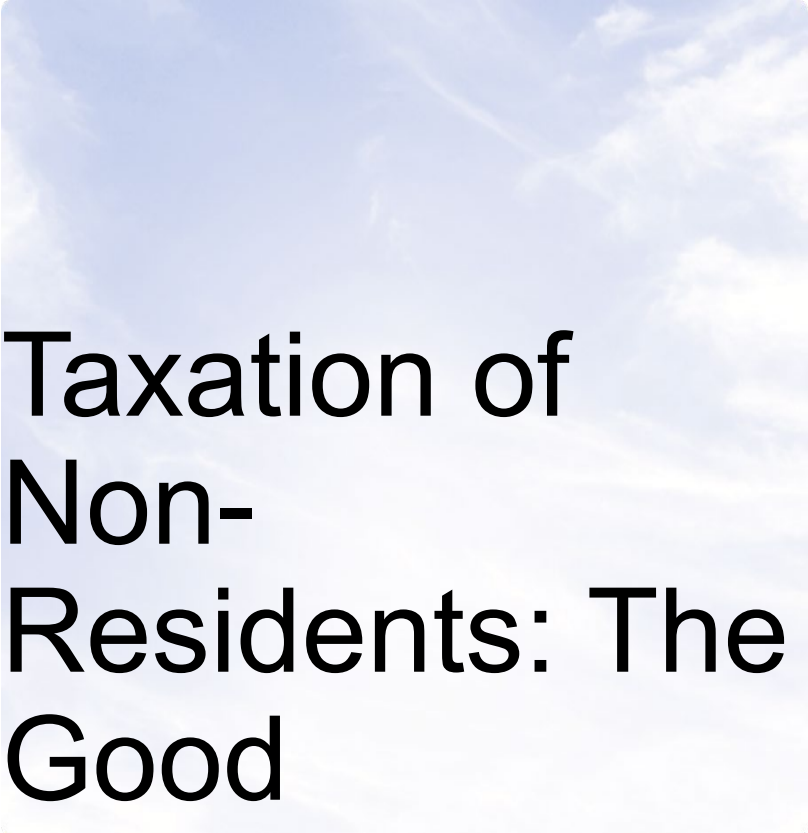
- Files Form 1040 & taxed on worldwide income.
- Filing status, dependents, deductions & credits follow same rules as U.S. citizens.
- May have Dual Status in the first year as a resident alien.
- <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Resident-Aliens>

# Tax Implications of Nonresident Status

- NRA files Form 1040NR & taxed only on U.S. source income
  - Does not get the standard deduction.
  - Itemized deductions limited to those related to U.S. income, state & local income taxes, charitable contributions to U.S. non-profit organizations, casualty & theft losses, miscellaneous itemized deductions, and ordinary and necessary expenses related to a trade or business.
  - Filing Status generally limited to Single or MFS.

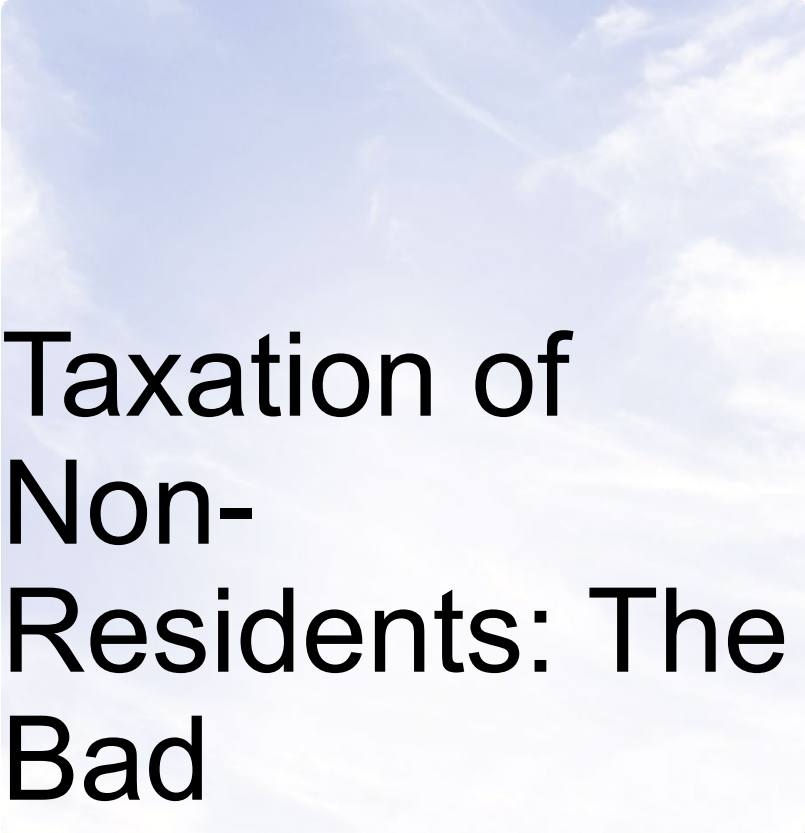
# Form 1040NR

- 1040NR looks very similar to the (former) 1040.
- NRAs report income, subtract basically the same adjustments, subtract itemized deductions, compute tax, claim credits and withholding.
- Attach [Schedule OI](#): days in U.S., tax treaty claims.
- Itemized deductions for 1040-NR are the same as the 1040 with the limitation that deductions are properly allocated and apportioned to Effectively Connected Income (ECI).
- Exceptions to ECI limitation for charitable giving and casualty losses (but remember nonbusiness is limited to federally declared disasters).



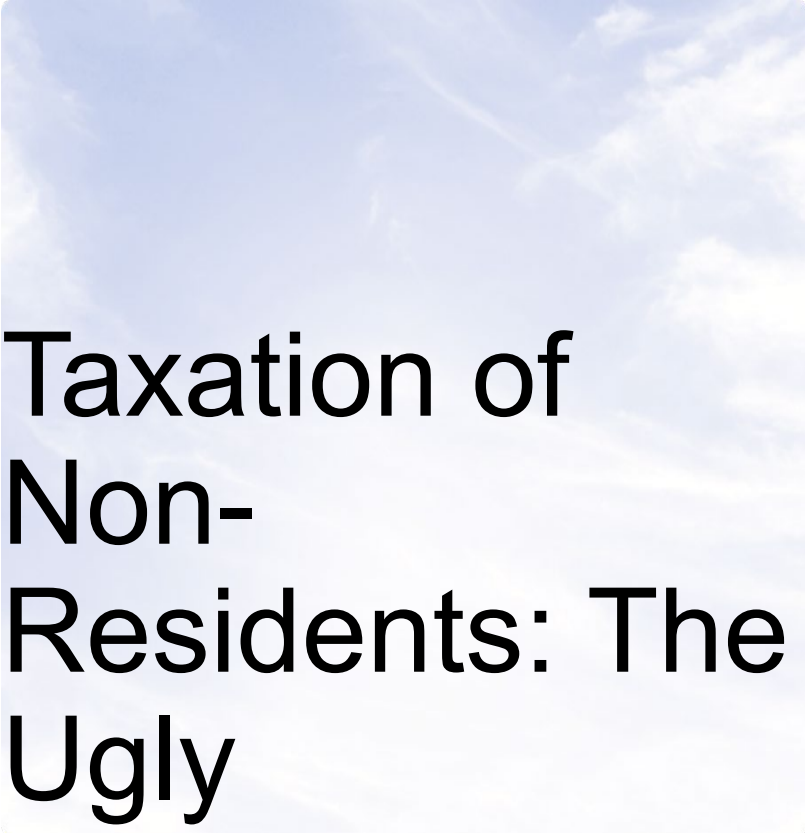
# Taxation of Non- Residents: The Good

- The Good:
- Not subject to worldwide taxation. Only U.S. source income.
- Same tax rates as U.S. Citizens on Income Effectively Connected with a U.S. Trade or business.
- Some types of income are not subject to tax
  - certain (horse and dog) gambling winnings, personal bank interest, some dividend income, under \$3,000 of work for a foreigner for less than 90 days.
- Bottom line: most immigrants will have no U.S. income tax obligation for the days before they become a U.S. resident.



# Taxation of Non- Residents: The Bad

- The Bad:
- Must itemize and cannot use the standard deduction. Lone treaty exception for students/business apprentices of India.
- Generally, can't claim dependents. Exception for U.S. Nationals, residents of Canada, Mexico, South Korea, and students/business apprentices of India.



# Taxation of Non- Residents: The Ugly

- The Ugly:
- May be subject to high mandatory backup withholding.
- 30% tax rate on U.S. income not effectively connected with a U.S. Trade or business.
- Can only use Single or MFS tax tables.



# ITINs vs. SSNs





# ITIN Overview

- What is an ITIN?
- Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by the Internal Revenue Service to those not eligible for Social Security Numbers (SSNs) and have a filing or reporting requirement.
- ITINs are not intended for use outside of the federal tax system.

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# ITIN

## Overview

### (cont.)

- Helps individuals comply with the U.S. tax laws and provides a means to efficiently process and account for tax returns and payments.
- Issued regardless of immigration status.
- The ITIN is not an immigration-enforcement tool. The application process is designed to facilitate tax payment, and the fact that the IRS does not generally share applicants' private information with immigration enforcement agencies is key to tax compliance.

# The difference between the SSN and the ITIN

- Taxpayer identification numbers are required on returns, documents, and statements.

ITINs must be used by anyone who is not eligible for a Social Security Number but has a tax filing requirement.

Dependents and spouses need ITINs to be claimed on a return.

An ITIN does not authorize a person to work and should not be used on Form W-2.

# Child Tax Credit(CTC)



# What is the Child Tax Credit?

- The Child Tax Credit (CTC) is a tax benefit to help families who are raising children. The child must be your dependent and under the age of 17 at the end of year. You must also meet other eligibility rules discussed below.
- The CTC is a nonrefundable tax credit, which means that it will reduce your tax owed by the corresponding credit amount but will not result in a refund. If you get less than the full amount of the nonrefundable CTC, you may be entitled to the refundable Additional Child Tax Credit (ACTC). As a refundable credit, the ACTC may result in a refund even if no tax is owed.
- If you don't qualify for the CTC or ACTC, you may qualify for the Credit for Other Dependents (ODC) which is a nonrefundable credit [A discussion of the ODC is outside the scope of this presentation.].

# Are you a Qualified Taxpayer?

- The Child Tax Credit (CTC) is for:
  - Individuals who claim a child as a dependent so long as the child is a **qualified child**.
    - Only one taxpayer can claim the Child Tax Credit, even if the qualifying child divides time between more than one household during the tax year.
  - For the 2024 tax year, you can take full advantage of the expanded credit if your modified adjusted gross income is:
    - Under \$200,000 for single filers and under \$400,000 for joint filers.
- You and your spouse, if filing jointly, must have a social security number (SSN) or individual taxpayer identification number (ITIN) issued on or before the due date of your return (including extensions).
- NOTE: If you apply for an ITIN on or before the due date of your return (including extensions) and the IRS issues you an ITIN as a result of the application, the IRS will consider your ITIN as issued on or before the due date of your return.

# Qualifying Child

- A qualifying child is the taxpayers:
  - Son
  - Daughter
  - Stepchild
  - Eligible foster child
    - Foster children younger than 19 who lived with you for more than half of the year
  - Brother or Sister
  - Stepbrother or Stepsister
  - Half-brother or half - sister
  - Legally adopted child or
  - A descendant of any of the above (e.g. grandchild, niece etc.)


# Qualifying Child (cont.)

- A child qualifies a taxpayer to claim the CTC if the child meets the following conditions:
  - Be under age 17 at the end of the year
  - Provide no more than half of their own financial support during the year
  - Have lived with you for more than half the year
  - Be properly claimed as your dependent on your tax return
  - Not file a joint return with their spouse for the tax year or file it only to claim a refund of withheld income tax or estimated tax paid
  - Have been a U.S. citizen, U.S. national or U.S. resident alien



# Earned Income Tax Credit





# What is the Earned Income Tax Credit?

- The Earned Income Tax Credit (EITC) helps low-to-moderate income workers and families get a tax break.
- If a taxpayer qualifies, they can use the credit to reduce how much tax they owe or increase their refund amount.
- This tax credit has greatly reduced poverty for working families.

# Basic Qualifications to Claim EITC

- Have worked and earned income under \$63,398

- Have investment income below \$11,000 in the tax year 2024

- Have a valid Social Security number by the due date of your 2024 return (including extensions)

- Be a U.S. citizen or a resident alien all year

- Not file Form 2555, Foreign Earned Income

- Meet certain rules if you are separated from your spouse and not filing a joint tax return

# Rules for Married Couples

In 2024, to meet EITC eligibility requirements, you can use one of the following statuses: Married Filing Jointly, Head of Household, Qualifying Surviving Spouse, Single or Married Filing Separate.

You can claim the EIC if you are married, not filing a joint return, had a qualifying child who lived with you for more than half of 2024, and either of the following apply:

- You lived apart from your spouse for the last 6 months of 2024 or
- You are legally separated according to your state law under a written separation agreement or decree of separate maintenance, and you didn't live in the same household as your spouse at the end of 2024.



# Qualifying Child Requirements



- A child who bears a relationship to the taxpayer
  - Relationship: child, stepchild, foster child, sibling, stepsibling, or a descendant (grandchild, niece/nephew).
- A child with the same principal place as the taxpayer for more than one-half of such taxable year.
- A child who meets the age requirement
  - Under 19 at the end of the taxable year (Under 24 if a student) or
  - Permanently and totally disabled at any time regardless of age.
- A child who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and
- A child who has not filed a joint return (besides for a claim of refund).



# EITC and ITINs



- You are not eligible for the Earned Income Credit if you (or your spouse if filing a joint return) have an individual taxpayer identification number (ITIN), instead of a valid social security number. A child with an ITIN or ATIN (Adoption Taxpayer Identification Number) is not a qualifying child for Earned Income Credit. The child must have a valid social security number.

# EITC Without a Qualifying Child

- You **are** eligible to claim the EITC without a qualifying child if you meet **all** the following rules. You (and your spouse if you file a joint tax return) must:
- Meet the [EITC basic qualifying rules](#)
- Have your main home in the United States for more than half the tax year
  - The United States includes the 50 states, the District of Columbia and U.S. military bases. It does not include U.S. possessions such as Guam, the Virgin Islands or Puerto Rico
- Not be claimed as a qualifying child on anyone else's tax return
- Be at least age 25 but under age 65 (at least one spouse must meet the age rule)