



# Nonresident Spouse Treated as a Resident



If, at the end of your tax year, you are a U.S. citizen or a resident alien (even if you were NOT for the whole year) and married to a nonresident alien, you can choose to treat your nonresident spouse as a U.S. resident for U.S. Federal Individual Income Tax purposes.

## If you make the choice for your nonresident spouse to be treated as U.S. resident in a particular tax year:

You and your spouse are treated as residents for that entire tax year for the purpose of your federal individual income tax return, and for the purpose of withholding U.S. federal income tax from your wages. However, you may still be treated as a nonresident alien for other U.S. withholding taxes such as (1) Chapter 3 withholding or (2) Social Security and Medicare tax withholding. Refer to Aliens Employed in the U.S. – Social Security Taxes.

You must file a joint income tax return for the year you make the choice (but you and your spouse can file joint or separate returns in later years).

For the year to make the choice, you and your spouse are both taxed on worldwide income.

Generally, neither you nor your spouse can claim tax treaty benefits as a resident of your foreign spouse's country for the tax year for which the choice is in effect. However, there may be exceptions on certain tax treaties that allow a resident alien to claim a tax treaty benefit on certain specified income.

**CAUTION!** If you file a joint return under this provision, the special instructions and restrictions for dual-status taxpayers do not apply to you.

## How to Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following information:

A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for the entire tax year

The name, address, and identification number of each spouse. (If one spouse died, include the name and address of the person making the choice for the deceased spouse.)

## Amended Return

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040X, Amended U.S. Individual Income Tax Return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

The choice to be treated as a resident alien does not apply to any tax year if neither spouse is a U.S. citizen or resident alien at any time during the tax year.

## References/Related Topics

U.S. Citizens and Resident Aliens Abroad - Nonresident Alien Spouse

Taxation of Dual-Status Aliens

**Note:** This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the Tax Code, Regulations, and Official Guidance page. To access any Tax Court case opinions issued after September 24, 1995, visit the Opinions Search page of the United States Tax Court.