



## ARE YOU A U.S. INCOME TAX RESIDENT AND DON'T KNOW IT?



**By:**

**Renea M. Glendinning, CPA  
(Shareholder)**

**Kerkering, Barberio & Co.  
Certified Public Accountants  
1990 Main Street, Suite 801  
Sarasota, FL 34236  
and  
6320 Venture Drive, Suite 203  
Lakewood Ranch, FL 34202**

**Phone:**

**(941) 365-4617**

**Email:**

**[rglending@kbgrp.com](mailto:rglending@kbgrp.com)**

**[www.kbgrp.com](http://www.kbgrp.com)**

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**About the Author:**

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

You can be taxed for U.S. income tax purposes either as a resident or as a nonresident. Residents are required to report their worldwide income to the U.S. taxing authorities. Nonresidents are required to report only income arising from U.S. sources.

There are several ways you can be treated as a resident for U.S. income tax purposes. U.S. citizens are always U.S. income tax residents, regardless of where they live. Under most circumstances, an individual who obtains a green card, which allows the holder to reside permanently in the U.S., will be taxed as a resident. Nonresident status could possibly be obtained by a green card holder under an income tax treaty, but very specific conditions must be met in order for an income tax treaty provision to apply.

Even if you are not a U.S. citizen, nor do you possess a U.S. visa, you could be determined to be an income tax resident in the U.S. merely by the number of days in which you are physically present in the U.S. during the current calendar year or a combination of days in the three most current calendar years.

U.S. tax law states that if you are physically present in the U.S. for 183 days or more in a calendar year, you are treated as a U.S. income tax resident. Like the green card holder, the only exception to income tax residency status would be the potential availability of an income tax treaty provision.

A tax law that is not as commonly known in determining U.S. income tax status is the substantial presence test. This test states that you are considered a U.S. income tax resident if you have substantial presence in the U.S. You meet this test if you were physically present in the U.S. for at least a) 31 days during the current year and b) 183 days during the current year and the two immediately preceding years, counting all the days in the current year, one-third of the days in the first preceding year and one-sixth of the days in the second preceding year.

To illustrate, assume you are physically present in the U.S. for 150 days for each of the calendar years 2010, 2009 and 2008. The number of days of presence under the formula is 225, calculated as follows:

<u>YEAR</u>	<u># OF DAYS</u>	<u>WEIGHT</u>	<u>WEIGHTED # OF DAYS</u>
2010	150	1	150
2009	150	1/3	50
2008	150	1/6	25
TOTAL WEIGHTED # OF DAYS			<u><u>225</u></u>

You are treated as being present in the U.S. on any day that you are physically present in the country at any time during the day. However, for purposes of the substantial presence test, you do not count the days you regularly commuted to work in the U.S. from a residence in Canada or Mexico or the days you were in the U.S. for less than 24 hours when traveling between two places outside the U.S.

Even though you otherwise meet the substantial presence test using the formula referenced above, you will not be treated as a U.S. income tax resident in the current year if a) you were present in the U.S. for fewer than 183 days during the current year, b) you establish that during the current year you had a tax home in a foreign country, and c) you establish that during the current year you had a closer connection to the foreign country in which you had a tax home than to the U.S.

In order to have a closer connection to a foreign country than to the U.S., you must establish that you have maintained more significant contacts with the foreign country than with the U.S.

If you meet the substantial presence test, you must file Form 8840, Closer Connection Statement. The answers to the questions on the Form 8840 will help establish the country to which you have a closer connection. The form must be filed with the IRS no later than June 15 of the following year. If you are required to file a Form 1040NR, US Nonresident Income Tax Return, to report income from U.S. activities, the Form 8840 must be filed with the tax return by the due date of the tax return.

The calculations must be made each year to determine if the Form 8840 is required to be filed, as the number of days spent in the U.S. may vary significantly from year to year.

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I would be happy to assist you with any of your questions. Please call 941-365-4617 or email me at [rglending@kbggrp.com](mailto:rglending@kbggrp.com).