

Introduction:

The part of the United States government that deals with taxes is called the Internal Revenue Service (IRS). You report your tax to the IRS along with an IRS form. Doing this is called “filing a tax return.” Are you or your spouse working and receiving a paycheck? Did your employer withhold income taxes from your paycheck? You may get a tax refund.

Why Should I File a Tax Return?

You might get a cash refund.

For most immigration applications, such as Naturalization, Family Based Petitions, Work Authorization and Adjustment of Status, you need to show that you filed tax returns.

For immigration matters, filing your income tax return is evidence of “good moral character” and “continuous presence.” You must prove both of these for most immigration benefits.

If you owe taxes, it is against the law to not 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 United States (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.



- 1 -

You may get a refund even if you do not have legal permission to live and work in the U.S.

You do not need a valid Social Security number (SSN) to get a refund or to file a tax return.



How Do I Get Other Tax Benefits?

Your eligibility for other tax benefits depends on your status. IRS rules about legal status are different from the rules used by the Bureau of Citizenship and Immigration Services (BCIS), former INS.



Under IRS rules, people who are not U.S. citizens are called aliens. There are two kinds of aliens - resident or nonresident aliens.

Resident aliens may get the earned income tax credit (EITC), child tax credit, child care credit, education credit, elderly credit, foreign tax credit and adoption credit.

Nonresident aliens may get a refund of their income taxes. Nonresident aliens may get some tax credits, but special rules apply.



Am I a Resident or Nonresident Alien?

RESIDENT ALIEN

You are a resident alien if you have a green card or you were in the U.S. for a certain period of time (substantial presence).

Green Card

- 2 -

You are a resident alien if you are a lawful *permanent* resident of the United States at *any time* during the year. You generally have this status if the BCIS has issued 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* 183 days during a three-year period. The three-year period includes all the days you were present in the current year, 1/3 of the days present in the year before the current year, and 1/6 of the days present in the second year before the current year. You meet this test if you lived in the U.S. 365 days or all of the current year.

NONRESIDENT ALIEN

You are a nonresident alien if you do not have a green card or you are not substantially present in the U.S.

Can I Get the Earned Income Tax Credit as a Resident Alien?

Under the Earned Income Tax Credit (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.

- 3 -

EITC Eligibility Rules

If you are at least 25 or under 65 without children in the home *and* you earned less than \$11,060 (\$12,060 if married) in 2002, you may get an EITC of up to \$376.

If you are raising one child, grandchild or eligible foster child in your home *and* you earned less than \$29,201 (\$30,201 if married) in 2002, you may get an EITC of up to \$2,506.

If you are raising two or more children, grandchildren or eligible foster children in your home *and* you earned less than \$33,178 (\$34,178 if married) in 2002, you may get an EITC of up to \$4,140.

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

For more information on the EITC, see IRS Publication 596 (596SP-Spanish).

Can I Get the Earned Income Tax Credit Without a Social Security Number?

To get the EITC, you, your spouse and qualifying children must have valid Social Security numbers (SSN). The SSN must be valid for employment. You cannot claim the EITC using an Individual Taxpayer Identification Number (ITIN).

If you later get a valid SSN, you can go back three years and amend or file an

- 4 -

original tax return to claim the EITC.

Example: Selena got a valid SSN in 2002. She did not have a valid SSN in 2001 or 2000. Selena can file a 2002 tax return and claim the EITC. Selena can go back and file a 2001 and 2000 original tax return or amend her 2001 and 2000 tax returns and claim the EITC with her valid SSN.

Do I Need a Social Security Number to File a Tax Return?

You do not need a SSN to file a tax return and get a refund of your income tax. You can get an Individual Taxpayer Identification Number (ITIN) if you are not eligible for a SSN. The IRS can give you an ITIN. You can put the ITIN where a SSN is required on your tax return.

ITINs are for tax use only! The ITIN does not affect your immigration status or 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 can file the W-7 with the local IRS walk-in office. You can also mail your W-7 application to:

Internal Revenue Service
ITIN Unit
Post Office Box 447
Bensalem, PA 19020



You must show a picture identification and proof of foreign status. You can

- 5 -

prove foreign status by attaching an original or certified copy of your passport, foreign driver's license or birth certificate to the W-7 application. You can show a picture identification by attaching any picture id

issued by a government. If you take the certified copies or original documents to the local IRS walk-in office, the original documents will be returned after a brief inspection. After you file your W-7, it takes about six to eight weeks to get your ITIN number.

Will Using an ITIN Get Me In Trouble With the BCIS, (former INS)?

The IRS cannot generally request the names of taxpayers using an ITIN. The BCIS can use the ITIN as proof of illegal status if there is an “ongoing investigation” of your immigration status or proof of terrorist activities.

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

If at the end of 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, you can file a joint tax return and treat your nonresident spouse as a resident alien.

- You must file a joint tax return.

- 6 -

- You must also attach a statement declaring that one 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 identification 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 1-800-829-1040 and ask for the location of a Volunteer Income Tax Assistance (VITA) or 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.



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05/03

- 7 -

Taxation of New U.S. Taxpayers



Tennessee Taxpayer Project

A Project of the Legal Aid Society of Middle Tennessee and the Cumberlandands

**Part of the Legal Aid Society's
"Make Work Pay" Campaign**

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1-866-481-3669