Introduction

Who Should Read This Guide

This guide is intended for volunteer tax preparers who have certified at the Basic level or above and who wish to prepare tax returns for clients -- primarily resident aliens who have not filed a tax return -- who want ITINs for themselves, their spouses, or their dependents.

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Abbreviations used
   CAA - Certifying Acceptance Agent
   CTC - Community Tax Centers
   HOH - Head of Household
   ITIN - Individual Taxpayer Identification Number
   MFJ - Married Filing Joint
   MFS - Married Filing Separate
   SSN - Social Security Number

Additional resources
   Community Tax Center’s Volunteer Resources
   IRS Form W-7: Application for IRS Taxpayer Identification Number
   IRS Form 2555-EZ, Foreign Earned Income Exclusion
   IRS Foreign Employer Compensation record (TaxWise form FEC)
   IRS Publication 17: Your Federal Income Tax
   IRS Publication 501: Exemptions, Standard Deduction, and Filing Information
   IRS Publication 519: U.S. Tax Guide for Aliens
   IRS Publication 915: Understanding Your IRS Individual Taxpayer Identification Number (ITIN)
   IRS Publication 1915(SP): Entendiendo su número de Identificación Personal Del Contribuyente del IRS
Background Information:
What is an ITIN?

From IRS Publication 1915: Understanding Your IRS Individual Taxpayer Identification Number:

An ITIN is a tax processing number, issued by the Internal Revenue Service, for certain resident and nonresident aliens, their spouses, and their dependents. It is a nine-digit number beginning with the number “9”, has a range of numbers from “70” to “99” for the fourth and fifth digits and is formatted like a SSN (i.e. 9XX-7X-XXXX). The ITIN is only available to individuals who are required to have a taxpayer identification number for tax purposes but who do not have, and are not eligible to obtain a SSN from the Social Security Administration (SSA). Individuals who have a valid filing requirement or are filing a tax return to claim a refund of over-withheld tax are eligible to receive an ITIN. Generally a U.S. federal income tax return must accompany the ITIN application.

ITINs are issued regardless of immigration status, because both resident and nonresident aliens may have United States tax return filing and payment responsibilities.

An ITIN:
• Does not authorize work in the U.S. or provide eligibility for Social Security benefits or the Earned Income Tax Credit.
• Is not valid for identification outside of the tax system.
• Does not establish immigration status.

When did IRS start issuing ITINs and why?
In 1996, the U.S. Department of the Treasury issued regulations that introduced the ITIN and required foreign persons to use an ITIN as their unique identification number on federal tax returns. The regulations were intended to address the concern by the IRS and the U.S. Department of the Treasury that, without a unique number, taxpayers could not be identified effectively, and tax returns could not be processed efficiently.

Are ITINs valid for identification?
ITINs are not valid for identification outside of the tax system and should not be offered as identification for non-tax purposes. Since ITINs are strictly for tax processing, the IRS does not apply the same standards as agencies that provide genuine identity certification. ITIN applicants are not required to apply in person.

Preparing Tax Returns for ITIN Applicants

The general procedure at CTC sites is as follows:

1. Intake
2. Prepare Form 1040 in TaxWise
3. Prepare Form(s) W-7 in TaxWise
4. Enter client diary notes in TaxWise
5. Quality review of entire return
6. Print all forms and revise by hand
7. Advise client regarding signature and supporting document requirements
8. Direct client to CTC Certifying Acceptance Agent or IRS Office

Tax Return Step One: Intake

CTC Client Liaisons will identify incoming clients who require ITINs. There is a check box on the brown processing envelope labelled "ITIN Applicant." The Liaison will check this box if anyone in the household is applying for an ITIN. For primary taxpayer and spouse, leave the SSN fields blank. For all applicant dependents, use 999-99-9999.

Practice tip: This dependent “dummy number” will print on the client’s final paper copies of the tax return. You must white out or scratch through the printed numbers as part of final processing.
All tax filings for ITIN applicants must be paper returns. This is because every ITIN application will be presented in person to an IRS acceptance agent. Never attempt to e-file a tax return that includes an ITIN application.

**Tax Return Step Three:**
**Prepare Form(s) W-7**

In order to request an ITIN from the IRS the client will submit a Form W-7 along with the completed tax return. A separate W-7 must be prepared for any person whose name appears on the client’s 1040 and who lacks an SSN or a previously assigned ITIN. The W-7 is available in TaxWise by using the Form menu. See Appendix A: Form W-7 Instructions for details on completing this form.

**Tax Return Step Four:**
**Client Diary Notes**

Tax filings for ITIN applicants will often require a greater level of tax preparer analysis than filings for clients with SSNs. Be sure to note in the TaxWise taxpayer diary any decisions you and the client make regarding the filing and any information you considered when making those decisions. Clients seeking ITINs may wish later to amend the tax return you’ve prepared once the client obtains an SSN. Help future CTC preparers by typing -- and saving -- extensive notes in the taxpayer diary.

**Tax Return Step Five:**
**Quality Review**

W-7s for ITIN applicants, like all tax forms for any client, should be examined as part of CTC’s standard quality review procedure.

**Tax Return Step Six:**
**Print Forms and Revise by Hand**

After quality review is complete, you will print out all tax forms including the W-7s. Print two copies in English for the client, and also offer to print the forms in Spanish if appropriate. If the client wants ITIN notices from the IRS in Spanish, they may submit the Spanish W-7 (SP). The dependent dummy numbers you enter in TaxWise will appear in the dependent section of the printed forms. Use white-out or scratch through completely these dummy numbers on all copies. Otherwise, someone may later mistake these numbers for IRS-issued ITINs. Note that the W-7 forms may also require handwritten additions in ink, as explained in Appendix A: Form W-7 Instructions. Emphasize that the client should keep one copy of all tax documents including W-7s among his or her other important records.

**Tax Return Step Seven:**
**Signatures and Supporting Documents**

Every ITIN applicant age 18 or older must sign his or her own W-7, unless they provide a Form 2848 Power of Attorney. This means that if an applicant lives outside the U.S., the W-7 must be mailed to him or her for signing and then returned to the primary taxpayer for submission with that client’s tax return. Because the signing date on the W-7 must be within five days of submitting the W-7 to the IRS, it is recommended that persons living outside the U.S. do not date their signature.

If the ITIN applicant is under the age of 18 and a student, their parent or guardian may sign the W-7. The parent or guardian is to sign their own name (not the applicant’s name) and print their own name below their signature. They also check the box indicating whether they are the applicant’s parent or guardian.

If a guardian signs the W-7, an original or notarized copy of the court guardianship document must be attached. If signing with a Power of Attorney, Form 2848 Power of Attorney and Declaration of
Representative must be attached; this form is complex and requires careful completion. Again, if the W-7 must be sent out of the country for signing, advise against dating the signature.

**What you must submit to the IRS**

ITIN applicants must submit to the IRS at least four documents:

- A completed 1040 for the relevant tax year
- A completed Form W-7 for each person on the tax return who does not have an SSN or an ITIN
- An original or certified copy of an official document establishing the applicant's personal identity
- An original or certified copy of an official document establishing the applicant's foreign status

See Appendix B: Supporting Documents for a list of documents suitable for establishing identity and foreign status. Note that an applicant may use a passport to fulfill both requirements. If a passport is not provided, then a separate document is required for personal identity and for foreign status. One of these two documents must contain a photograph for adults and, if applicable, both documents must be current, i.e., they cannot be expired. (Obviously, a birth certificate does not expire, but many identifying documents do have expiration dates.) If the ITIN applicant is a minor dependent, then the set of supporting documents must be either, a) a passport, or b) a birth certificate plus a second document for identity or foreign status, such as school or medical records.

**Tax Return Step Eight:**

Certifying Acceptance Agent

Once a client has gathered the required supporting documents and obtained the necessary signatures, the client has three options for delivering the completed 1040 and W7(s) to the ITIN Unit for final processing:

- U.S. Mail to the ITIN Unit
- Personal delivery to the IRS Office
- Community Tax Centers Certifying Acceptance Agents *(preferred option)*

To submit, the client may mail the signed tax return(s) and the required supporting documents to:

**Internal Revenue Service**

**ITIN Operation**

**P.O. Box 149342**

**Austin, TX 78714-9342**

Processing takes 6-8 weeks, after which an ITIN letter will be mailed to the address shown on the client's tax return. Do not mail a tax return which includes a W-7 to any other IRS address besides the ITIN Operation center in Austin.

**Personal delivery to the IRS Office**

The client may choose to deliver documents personally to the IRS Office at 825 East Rundberg Lane, near I-35. Clients are seen only on an appointment basis; they may call 844-545-5640 to schedule an appointment. At this Taxpayer Assistance Center a trained IRS employee will mail the client’s original supporting documents and signed 1040 and W-7s to the ITIN Unit. Once the ITINs are assigned, the ITIN letters and original identification documents will be mailed to the client, and the tax return will be forwarded for processing. There is often a significant waiting line at this location, so suggest instead that clients use the third option, a CTC Certifying Acceptance Agent.

**CTC's Certifying Acceptance Agents (CAA) service**

From IRS Publication 1915:

**What are Acceptance Agents?**

Certifying Acceptance Agents (CAAs) are individuals or entities who... are also authorized to verify the applicant’s claim of “identity” and “foreign status” through a review of appropriate documentation, as well as verifying the authenticity, accuracy and completeness of the supporting documentation. They will submit your Form W-7, attached Federal income tax return, and any supplemental documentation to the IRS on your behalf.

Ask your site manager for details on CTC CAA locations and hours throughout tax filing season. In order to facilitate the expected volume of certifying
requests, please be sure that the client’s 1040 and W-7 are prepared completely and accurately. Clients should arrive at the designated CTC location with original supporting W-7 documents and with all relevant tax documents signed by any person who is required to sign and who cannot appear in person before the CAA.

**Filing Status for ITIN Applicants**

From IRS Publication 1915:

Any individual who is not eligible to obtain a SSN but who must furnish a taxpayer identification number to the IRS must apply for an ITIN on Form W-7. Applicants must have a valid filing requirement and file an original valid U.S. Federal income tax return with their ITIN applications.

To determine if a client has a valid filing requirement see IRS Publication 4012, page A-1, Chart A - For Most People Who Must File.

*Chart A* requires that you first identify the client’s filing status. Regretfully, the procedure for determining the filing status of an ITIN applicant can be significantly more complex than that for a U.S. citizen. Generally this entails four steps:

1. **Determine residency status of ITIN applicant**
2. **Determine residency status of ITIN applicant’s spouse**
3. **Identify qualifying dependents**
4. **Select applicant’s filing status**

**Filing Status Step 1:**

Determine residency status of applicant

You must first determine if the ITIN applicant is a nonresident or resident alien for the tax year. Use the decision tree from IRS Publication 4012, page L-1. Residency status is often determined using the substantial presence test:

**Substantial Presence Test**

You must be physically present in the United States on at least:

1. 31 days during 2015, **and**
2. 183 days during the 3-year period that includes 2015, 2014, and 2013, counting:
   a. All the days you were present in 2015, **and**
   b. 1/3 of the days you were present in 2014, **and**
   c. 1/6 of the days you were present in 2013.

A client who arrives in the U.S. before July 1, 2015, and who does not leave the U.S. at any time after arrival will automatically meet the substantial presence test and will be considered a resident alien.

| Do not prepare a tax return for a nonresident alien. Such taxpayers must file a Form 1040-NR, which is beyond the scope of the CTC program. Nonresident aliens who are affiliated with the University of Texas may be referred to the UT International Office: 2400 Nueces Street, 512-471-2477, http://world.utexas.edu/isss/tax |

**Filing Status Step 2:**

Determine residency status of applicant’s spouse

Ask the client if he or she was legally married on December 31, 2015. If the answer is “yes”, then also determine the citizenship and residency status of the client’s spouse using the decision tree noted above.

**Filing Status Step 3:**

Identify qualifying dependents

The rules for claiming a dependent by a resident alien are the same as those for U.S. citizens. Use the charts and interview tips in IRS Publication 4012, tab C.

**Note:** An ITIN applicant will **never** be eligible for EIC. Thus it is irrelevant whether an ITIN applicant’s potential dependent is a qualifying child for purposes of EIC.

**Note:** Remember that for purposes of Child Tax Credit, the qualifying child must be a U.S. citizen or resident. Use the same residency test as outlined above. If the ITIN applicant’s biological
child is not a U.S. citizen or a resident alien, then the applicant will not be eligible for the Child Tax Credit. However, be sure to check if the child meets the test to be a qualifying relative, so that the applicant will gain the benefit of the child's dependency exemption.

**Filing Status Step 4: Select applicant’s filing status**

The basic document in determining filing status is the decision tree found in *IRS Publication 4012*, page B-1. However for resident aliens there are some variations to these general rules as shown in the following chart.

This chart is not intended to address every possible filing situation (for example, it does not cover issues of widow/widower and custodial parents in divorced couples). Rather its purpose is to help you be aware of special circumstances which may apply for CTC clients. Always consult *IRS Publication 4012* or other definitive source materials.

### Filing Status Scenarios for Resident Aliens

<table>
<thead>
<tr>
<th>Taxpayer Residency</th>
<th>Marital Status</th>
<th>Spouse Residency</th>
<th>Is taxpayer claiming dependents?</th>
<th>Possible Filing Status</th>
<th>Notes</th>
<th>ITINs required for:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident alien</td>
<td>Single</td>
<td>NA</td>
<td>No</td>
<td>Single</td>
<td>No other filing status allowed</td>
<td>Taxpayer</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Single</td>
<td>NA</td>
<td>Yes, and dependent is nonresident alien not living with taxpayer and not taxpayer's parent</td>
<td>Single with dependent</td>
<td>See <em>IRS Publication 4012</em>, p. C-5 in order to claim dependent as qualifying relative</td>
<td>Taxpayer, dependents</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Single</td>
<td>NA</td>
<td>Yes, dependent lives with taxpayer or is taxpayer's parent</td>
<td>HOH</td>
<td>See <em>IRS Publication 4012</em>, p. B-1 to confirm dependent is a qualifying person for HOH</td>
<td>Taxpayer, dependents</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Married, live together or apart</td>
<td>Resident alien or U.S. citizen</td>
<td>Yes or No</td>
<td>MFJ</td>
<td>Taxpayer and spouse may elect to file MFS</td>
<td>Taxpayer, spouse (if alien), dependents</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Married, live apart</td>
<td>Resident alien or U.S. citizen</td>
<td>Yes, dependent lives with taxpayer or is taxpayer's parent</td>
<td>HOH</td>
<td>See <em>IRS Publication 4012</em>, p. B-1 to confirm dependent is a qualifying person for HOH</td>
<td>Taxpayer, dependents</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Married, live together or apart</td>
<td>Nonresident alien</td>
<td>Yes or No</td>
<td>MFJ</td>
<td>See Appendix C Written declaration plus Forms FEC &amp; 2555 EZ required. Taxpayer and spouse may elect to file MFS</td>
<td>Taxpayer, spouse, dependents</td>
</tr>
<tr>
<td>Resident alien</td>
<td>Married, live together or apart</td>
<td>Nonresident alien</td>
<td>Yes, dependent lives with taxpayer or is taxpayer's parent</td>
<td>HOH</td>
<td>See Appendix D May be able to claim spouse's personal exemption</td>
<td>Taxpayer, spouse (optional), dependents</td>
</tr>
</tbody>
</table>
When should a client not request an ITIN?

Do not risk incurring a failure-to-file penalty by missing the April 15th deadline due to delays in securing signatures and supporting documents for W-7s of nonresident aliens. Instead encourage the client to choose MFS or to leave off nonresident alien dependents who may be legitimately claimed. If the client does choose this method, go ahead and prepare any W-7s required by the client’s spouse or dependents. The client may file the simplified 1040 with only his/her own signed W-7. Later the client’s family can finalize the additional W-7s as best suits their schedule, before or after April 15. Once the client obtains these signed W-7s and the required identifying documents, we can then prepare an amended return during CTC’s year round tax assistance service. The client then will submit the completed W-7s along with the amended return and appropriately claim all eligible tax benefits.

What happens after the IRS assigns an ITIN?

**IRS Sends ITIN Letter**
The IRS will insert the assigned ITINs on the tax return and forward it for processing. The IRS will also send the client a letter on light green paper which contains the ITIN. Each ITIN applicant will receive such a letter, mailed to the address of the primary taxpayer noted on the tax return. Clients are urged to safeguard these letters, just as you would a social security card. ID theft is rampant, and a lot of damage may result from loss of an ITIN.

**Payment of tax liability**
Providing the IRS with a personal check which does not show an SSN or ITIN on the face of that check is highly discouraged. The IRS will cash the check but will not know to which tax account it is to be applied. It is deposited into the general revenue account unless and until someone is able to prove ownership of the payment. But an ITIN applicant won’t have a valid ITIN until his or her 1040 and W-7 have been processed by the IRS. There are two options available:

1) Wait to pay until the ITIN letter is received, even though it is likely the client will then also owe a hefty late-payment penalty plus interest; or

2) Mail a check or money order noting all of the following information:
   - Complete name
   - Complete U.S. address
   - The handwritten words: “Form 1040, Tax Year 2014, ITIN Applied For.”

   It is essential that the client keep a copy of the check or money order once it is all filled out, as this will be her proof of payment.

What if the client doesn’t get their ITIN letter or has questions?

There is an ITIN Taxpayer Hotline which clients may use. It is **1-800-908-9982**.
A User’s Guide to ITIN Applications in 8 Easy Steps

What follows is a suggested method of preparing tax returns for ITIN applicants which incorporates the various issues addressed in this Guide:

1) **Start as Single:** Regardless of the client’s true marital and tax filing status, first enter the client info into the TaxWise Main Info Screen as if the client were a single taxpayer. Do not enter the spouse’s name. Do not even consider dependents.

2) **Do the W-7 First:** Immediately after completing the TaxWise Main Info Screen, add a W-7 form for the client and enter all required information. W-7 question 6d requires determining the client’s entry date into the U.S. Answering this question will clarify issues of U.S. residency for the substantial presence test. There’s no sense in completing an entire tax return only to later learn that the client is in fact a nonresident alien.

3) **Enter Income:** Enter all U.S.-source income for the client. Determine client AGI.

4) **Tax Analysis:** Examine the origins of the client’s contingent tax liability.

   - Self-employment tax from Schedule C income can be lowered only through a complete and accurate accounting of business expenses or by considering the possibility of a misclassified employee.

   - In contrast, federal income tax can be lowered by appropriate use of filing status, personal/dependent exemptions, and those credits available to nonresident aliens (i.e. child tax credit, dependent care credit, elderly and disabled credit -- but not EIC).

5) **Get Married:** If the client is legally married, then that client is precluded by tax law from filing as Single; filing status must be MFS, MFJ, or HOH. At this point also determine residency of spouse, income sources of spouse, and client preference for obtaining an ITIN for that spouse. Review the options outlined in the above filing status chart. Note that if the client is married, then filing “MFS, no dependents” completely fulfills all tax law requirements regardless of the actual family living arrangement. Providing additional family information on the 1040 is optional, and for some clients may result in no tax benefit.

6) **Have Kids:** Next, add dependents, starting with the youngest child living with the client in the U.S. The living arrangements of different types of families will determine availability of HOH filing status for the client as well as the number of ITINs required. At this point you may wish to print out single copies of a pro forma 1040 so that you can visually compare different options available to the client. Mark such print-outs with a large “X” so that they are not mistakenly filed as legitimate tax returns.

7) **Diary Notes:** Once you and the client have made a determination as to the preferred filing status and number of dependents, note the rationale for this decision in the Taxpayer Diary. You may also wish to print the Taxpayer Diary so that the client may show the physical copy to a future tax preparer (or a future immigration attorney assisting that client).

8) **More W-7s.** Create additional W-7s only for those people who actually need them and for whom the client can gather the required documents and signatures in time to meet the April 15 filing deadline. When all required W-7s are complete, request a quality review of the entire return. Then print and assemble the return. Advise the client regarding CTC CAA options and the procedure for making payments to the U.S. Treasury.
Appendix A: Form W-7

Instructions

Step 1: Fill out the W-7

Add the W-7 form using the TaxWise Form menu. Indicate on the W-7 if the application is for the taxpayer, the spouse, or a dependent. Also indicate the reason the client is filing the W-7. All CTC clients must choose reason code C, D, or E:

**Reason C:** U.S. resident alien, based on days present in the United States, filing a U.S. tax return.

**Reason D:** Dependent of a U.S. citizen/resident alien. This is an individual who can be claimed as a dependent on a U.S. tax return and is not eligible to obtain an SSN. Dependent must live in U.S., Mexico, or Canada.

**Reason E:** Spouse of a U.S. citizen/resident alien. This category includes a nonresident alien spouse who is not filing a tax return and who is not eligible to obtain an SSN. Spouse must elect to file a U.S. tax return jointly with a citizen or resident alien [See Appendix C].

**Line 1a:** What name does the client wish to use for all tax filings, the current year included? For persons of Latin American origin see IRS Publication 4012 page C-17, Determining Last Name of Taxpayer.

**Line 1b:** Name as it appears on client's birth certificate if different from name on line 1a.

**Line 2:** TaxWise populates the same U.S. mailing address which appears on the tax return. This is also the address to which the IRS will mail the client's ITIN letter(s), so even if the ITIN applicant is a nonresident alien, use the U.S. address of the primary taxpayer.

**Line 3:** If the applicant lives in U.S., enter country of last foreign residence. If applicant lives outside of U.S., then supply a foreign address or at least enter foreign country of residence.

**Line 4, 5:** Enter date of birth, country of birth, and gender. Do not skip this step: lack of birth information will cause the IRS to reject the W-7.

**Line 6a:** Enter the client’s country of citizenship

**Line 6b:** Type “NA”

**Line 6c:** Enter visa information if known

**Line 6d:** Type in the date for “entry date in the US” or at least the client's best estimation of this date. Leave all other 6d fields blank.

**Line 6e:** “Have you previously received a U.S. temporary taxpayer identification number (TIN) or employer identification number (EIN)?” The client's answer should be “no.”

**Line 6f and Line 6g:** Type “NA”

Step 2: Print the W-7

The W-7s will print as part of the client’s complete tax filing. Print two copies in English, one for the client to submit to the IRS, one to keep. Remember that TaxWise has the option to print completed tax forms in Spanish. You may wish to offer such forms to the client as a courtesy in addition to providing English language copies for the IRS.

Step 3: Handwritten additions

At the top of the W-7 handwrite the words “Please correspond in Spanish” if appropriate. Make sure any dependent dummy numbers are whited out or scratched through on all copies of the return.

Step 4: Signature

Generally the ITIN applicant must personally sign the W-7. But if the applicant is under 18 years of age, a parent may sign for him or her. Print the parent’s name in the space provided and check the appropriate box that indicates his or her relationship to the applicant. Note that an applicant’s signature may only be valid for five days, so advise the client not to sign until the final W-7 is presented to the CAA or the IRS. Signatures of nonresident aliens should not be dated.
### ITIN Applicants:

ITIN applicants must submit to the IRS at least four documents:

- A completed Form W-7 for each person on the tax return who does not have an SSN or an ITIN
- A completed 1040 for the relevant tax year
- An original or certified copy of an official document establishing the applicant’s foreign status
- An original or certified copy of an official document establishing the applicant’s personal identity

### Supports Documents

<table>
<thead>
<tr>
<th>Document</th>
<th>Required</th>
<th>Acceptable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed 1040</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Completed Form W-7</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Certified copy of an official document establishing personal identity</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Certified copy of an official document establishing foreign status</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Passport/Foreign Identification Card</td>
<td>✔️</td>
<td></td>
</tr>
</tbody>
</table>

From IRS Publication 1915: Understanding Your IRS Individual Taxpayer Identification Number

Appendix B: Supporting Documents
Appendix C: Declaration of Residency for Married Filing Joint (MFJ)

This appendix addresses the situation where there exists a legal marriage between a resident alien and a nonresident alien and the couple wishes to file a joint return. Commonly this will be the case when a resident alien client is filing a tax return at a CTC site and his or her spouse remains living in the client's country of origin. From IRS Publication 519, U.S. Tax Guide for Aliens:

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other spouse is a nonresident alien, you can choose to treat the nonresident spouse as a U.S. resident... If you make this choice, you and your spouse are treated for income tax purposes as residents for your entire tax year. Neither you nor your spouse can claim under any tax treaty not to be a U.S. resident. You are both taxed on worldwide income. 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.

Note that if the client does not make this election, then the spouse remains a nonresident alien and as such may not file jointly on a Form 1040. The client must select some filing status other than Married Filing Joint. IRS Publication 519:

Making the choice. You should attach a statement signed by both spouses to your joint return for the year of the choice. The statement must contain the following information: A declaration that you both qualify to make the choice and that you choose to be treated as U.S. residents for the entire tax year, [and] the name, address, and taxpayer identification number (SSN or ITIN) of each spouse...

The following page is a sample statement which you may photocopy for resident alien clients who wish to file jointly with nonresident alien spouses. This document should be completed by hand, signed by both spouses, and submitted to the IRS or the CTC CAA along with the signed W-7s and the 1040, also signed by both spouses. The declaration form does not need to notarized or certified. A Spanish translation of the statement also follows. Please emphasize to Spanish speaking clients that they should sign the English version of the document. The Spanish text is only for reference.

As noted above, the jointly filing client and spouse “are both taxed on worldwide income.” U.S.-source income of the resident alien spouse is reported through the standard 1040 tax preparation procedures. Foreign-source income of the nonresident alien spouse requires a two step process:

1. Report foreign source income: Form FEC

From line 7 on the 1040, link to a new TaxWise form FEC (Foreign Employer Compensation Record). Completion of form is self-explanatory. Override any required fields which cannot be answered by the taxpayer.

2. Exclude foreign source income: Form 2555-EZ

Some taxpayers are allowed to exclude foreign earned wages up to $100,800 in 2015, an amount which obviously exceeds earnings of all CTC clients. From the bottom portion of line 21 on the 1040, link to IRS Form 2555-EZ (two pages):
DECLARATION OF RESIDENCY

I declare that on December 31, 2015, I, ____________________________________________ ,
Name of nonresident spouse

was a nonresident alien as defined by U. S. Code Title 26, Subtitle F, Chapter 79, § 7701(b)(1)(B).

I further declare that on December 31, 2015, I was married to ______________________________________ ,
Name of resident spouse

a United States resident as identified below. It is my intention to be treated as a United States resident for

the entire tax year 2015 for the purposes of filing a joint tax return with my spouse.

__________________________________________________________
Signature of nonresident

c____________________
Date

__________________________________________________________
Signature of resident

c____________________
Date

__________________________________________________________
Name of nonresident

__________________________________________________________
Name of resident

[] ITIN applied for

Tax ID number of nonresident

[] ITIN applied for

Tax ID number of resident

Foreign address of nonresident:

__________________________________________________________

U. S. address of resident:

__________________________________________________________

__________________________________________________________

__________________________________________________________
DECLARACIÓN DE RESEDENCIA EXTRANJERA

Declaro que a 31 de diciembre de 2015, yo, __________________________________________ 
Nombre del esposo/a no residente

era un extranjero no residente según lo definido la ley del EEUU.

Declaro más que a 31 de diciembre de 2015, me casaron a __________________________________ , 
Nombre del esposo/a residente del EEUU

un residente de Estados Unidos identificado abajo. Es mi intención ser tratado como extranjero residente de Estados Unidos para todo el año 2015 para hacer una declaración de impuestos conjunto.

Do not file with IRS

Firma del extranjero no residente Firma del extranjero residente

_______________________________ _________________________________
Fecha Fecha

_______________________________ _________________________________
Nombre del extranjero no residente Nombre del extranjero residente

_______________________________ 
ITIN solicitada ITIN solicitada

_______________________________ 
Número de identificación del impuesto del extranjero no residente Número de identificación del impuesto del extranjero residente

Dirección del extranjero no residente: Dirección del extranjero residente:

_______________________________ 
_______________________________ 
_______________________________ 
_______________________________ 

ITIN solicitada
Appendix D: Spouse's Personal Exemption for HOH, MFS

This appendix addresses the situation where there exists a legal marriage between a resident alien and a nonresident alien and the couple does not wish to file MFJ. In some instances the client may be able to claim the $4,000 personal exemption usually attributed to the client's spouse. Note that this spousal personal exemption is available for a nonresident alien spouse of any nationality, unlike the dependent exemption which is limited to residents of the United States, Canada or Mexico.

Head of Household (HOH)

First, determine if the client qualifies for Head of Household filing status using the same rules applicable to U.S. citizens. See IRS Publication 4012, p. B-1. The qualifying person -- particularly a nonresident alien parent -- does not necessarily have to live with the taxpayer within the United States, as long as all other requirements are met. See IRS Publication 4012, p. B-3, footnote 6.

Ordinarily if a married taxpayer did not live apart from his or her spouse during the last six months of the year, that taxpayer is prevented from filing HOH. However there is an exception for cohabitating alien. From IRS Publication 519, U.S. Tax Guide for Aliens:

Head of household. You can qualify as head of household if you are unmarried or considered unmarried on the last day of the year and you pay more than half the cost of keeping up a home for you and a qualifying person. You must be a resident alien for the entire tax year. You are considered unmarried for this purpose if your spouse was a nonresident alien at any time during the year.

As with U.S. citizens, married resident aliens filing HOH do not report the income of their spouse. The taxpayer filing HOH would automatically receive a $9,250 standard deduction, a personal exemption, and most likely at least one dependent exemption for the HOH qualifying person(s).

Additionally, the resident alien filing HOH may in some circumstances be eligible to claim the spouse's $4,000 personal exemption. From IRS Publication 501: Exemptions, Standard Deduction, and Filing Information:

Head of household. If you qualify for head of household filing status because you are considered unmarried, you can claim an exemption for your spouse...

But in order to claim this exemption, the taxpayer's spouse must meet three conditions:

- The spouse had no gross income, and
- Is not filing a return, and
- Was not the dependent of another taxpayer.

Generally nonresident aliens are only subject to U.S. income tax on income derived from U.S. sources (e.g. working for a U.S. company). In most cases, the nonresident alien spouses of CTC clients would not have earned income, so the spouse would meet the gross income test as well as the filing and dependency tests listed above.

If your client and spouse meet these conditions, click the box in the Exemptions section of the TaxWise Main Info screen:

The spouse will require an ITIN, and you may need to prepare a W-7 in order to obtain one if an ITIN has not been previously assigned.

Scenario: Your client is a resident alien who fully supports her U.S.-born child who lived with her in the U.S. all year. In 2014, the client married a nonresident alien who now lives with her in the U.S. and who does not have U.S. income of his own. The couple does not wish to file MFJ. Client's best filing status is HOH, and she may claim two personal exemptions and one dependent exemption. ITINs required for client and spouse.
Married Filing Separately (MFS)

Clients who are married to nonresident aliens and who do not qualify for HOH status may choose to file MFS. Again, in some circumstances such a client may be eligible to claim the spouse's personal exemption. From IRS Publication 501: Exemptions, Standard Deduction, and Filing Information:

If you file a separate return, you can claim the exemption for your spouse only if your spouse had no gross income, is not filing a return, and was not the dependent of another taxpayer. This is true even if the other taxpayer does not actually claim your spouse as a dependent. **This is also true if your spouse is a nonresident alien.**

If you believe your client could benefit from claiming such an exemption, consult your site manager or an appropriately experienced fellow volunteer.

**Practice tip:** This strategy of filing MFS + claiming spouse’s exemption may be the best filing method for resident alien clients in the *second* year in which they declare taxes.

In the initial filing year, the resident alien taxpayer would request ITINs for self and the nonresident alien spouse. The couple would file MFJ and the nonresident alien spouse would sign the 1040, the W7, and the MFJ residency declaration.

In the following year, the resident alien client could file MFS. The client could claim the nonresident spouse’s personal exemption, provide the spouse’s newly assigned ITIN -- and avoid the requirement of securing the spouse’s signature on the current year return. If the client's AGI is low enough there may be no loss of tax benefits, and the client could receive his or her refund much quicker.

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*Feedback welcome!*

*Questions about CTC ITIN policy should be directed to your site manager or to CTC’s CAA: Linda.Paulson@foundcom.org.*