



Policy & Preparation: Taxpayers with Nonresident Alien Spouses

- A **nonresident alien** is a person who is not a U.S. citizen and who does not pass the IRS “green card” or substantial presence test. A nonresident alien usually cannot file **Form 1040**, but instead files **Form 1040-NR** to report only U.S. income.

See [Alien Residency - Green Card Test](#) for more information.

- A **resident alien** is a person who is not a U.S. citizen but does meet the IRS “green card” or substantial presence test. A resident alien files **Form 1040** to report worldwide income.

If two taxpayers are married and one spouse is a U.S. citizen or resident alien and the other spouse is a nonresident alien at the end of the tax year, the Tax Help Program can assist them. The taxpayers have two (2) choices to file a tax return.

OPTION 1: The nonresident alien spouse is treated as a resident alien for tax purposes and the taxpayers file as Married Filing Jointly (MFJ).

If the taxpayers elect to treat the nonresident alien spouse as a resident alien:

- Both spouses will need to be present in person (unless the spouse who is present has a signed [Spousal Consent](#) form) in order to have the tax return prepared.
- Both spouses must complete and sign the [Declaration of Residency](#) form (if one spouse is deceased, include the name and address of the person making the choice for the deceased spouse);

Note: Once made, the declaration applies to all later tax years until it is properly terminated. See [Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad](#) for further information.

- The return filing status will be Married Filing Jointly (MFJ);
- If the nonresident alien spouse does not have a SSN, they will be an ITIN applicant on the tax return (and we use 000-00-0001 as their TIN, which generates Form W-7);
- Both spouses must report their combined worldwide income and deduct combined allowable worldwide expenses;
- Both spouses must sign the return (unless the resident spouse has a signed Power of



Attorney); and

- The return will be **Paper**.

Instruct the taxpayers to:

1. Complete and sign the Declaration of Residency.*
2. Sign the tax return. Remember: Both spouses must sign the return (unless the resident spouse has a signed Power of Attorney)
3. Mail the entire packet to the IRS **OR** if the nonresident alien spouse is an ITIN applicant, refer the taxpayers for an ITIN appointment and instruct the taxpayers not to mail the tax return.

*Submitted only for the first year that the declaration is used.

OPTION 2: The nonresident alien spouse is omitted from the tax return and the resident alien/U.S. citizen spouse files as Married Filing Separately (MFS) or Head of Household (HOH).

If the nonresident alien spouse does not elect to be treated as a resident alien for tax purposes, the tax return will be prepared under one of two circumstances:

1. **Married Filing Separately (MFS)**
 - a. In place of the SSN/ITIN of the nonresident alien spouse (if they do not have one), **NRA** (ie, Non-Resident Alien) will be listed; and
 - b. The return type is set to **Paper** and must be signed and mailed to the IRS.

OR

2. **Head of Household (HOH)**
 - a. The taxpayer **MUST HAVE** a qualifying person (who is not the nonresident spouse) and meets the other eligibility tests; and
 - b. The return type set is to **E-File** if the return meets other criteria to be electronically filed.

For more information, refer to [Filing Status Options for Married Taxpayers](#) and [Preparing MFS Returns in TaxSlayer](#) on CTC Resources.