

**To File a Form 1040, you must be either:**

- A U.S. citizen
- A lawful permanent resident (green card holder)
- A resident alien who meets the substantial presence test

Those who file Form 1040 are taxed on their worldwide income.

Time to talk about resident aliens and nonresident aliens because it is crucial to evaluating whether we can help the taxpayer with their ITIN.

Generally speaking, to file a regular 1040 in the US the **primary taxpayer** must be either a US citizen, a lawful permanent resident, or a resident alien who meets the substantial presence test. Basically, you have to be present in the US a minimum number of days in order to file a 1040 as a resident alien.

If you do not meet the SPT, you are considered a nonresident alien and cannot file a Form 1040.

We'll come back to the substantial presence test in a minute.

### To File a 1040NR means:

- You are not a U.S. citizen
- You are not a green card holder
- You did not meet the substantial presence test for that tax year OR you are present in the US on a type of visa that exempts you from the substantial presence test
- Those who file Form 1040NR are ONLY taxed on their U.S. source income.
- **We do not prepare these returns in the regular tax program.**

PROSPER TAX HELP 

To file a 1040NR for nonresident aliens, the **primary taxpayer** is not a US citizen, not a green card holder, and didn't pass the substantial presence test OR is exempt from it.

More on this next. We'll talk a little later about who is exempt from the substantial presence test.

### Quiz Question

Leonardo is a 57-year-old green card holder from Mexico. He lives and works in the US much of the year but spends some months each year at his home in Mexico. **Does he file a Form 1040 or Form 1040NR?**

To know which form Leonardo files, ask yourself: Is he a US citizen, green card holder, or does he meet the substantial presence test?

## Answer

Leonardo is a green card holder. He files a Form 1040.

To know which form Leonardo files, ask yourself: Is he a US citizen, green card holder, or does he meet the substantial presence test? Since Leonardo is a green card holder, you stop there. He files a Form 1040 and reports all worldwide income on his tax return.

## Substantial Presence Test

You are considered a U.S. resident for tax purposes if physically present in U.S. for at least:

- 31 days during the tax year AND
- 183 days during 3-year period of the tax year and 2 years immediately before the tax year, counting:
  - All days present in 2019
  - 1/3 of days present in 2018
  - 1/6 of days present in 2017

PROSPER TAX HELP

To refresh, we only do the substantial presence test for the primary taxpayer if she is not a US citizen and not a green card holder.

The **primary taxpayer** must have been here at least a month in 2019 and also at least 6 months in the most recent 3 years, counting all days in 2019, 1/3 of days in 2018, and 1/6 of days in 2017.

So basically, if someone arrived in the US in 2019 but was present for more than 6 months, that person should meet the substantial presence test. That's at least 31 days in 2019 and also at least 183 days counting all days in 2019.

It gets more complicated if the taxpayer came and left in the last several years. In that case, you'd need to do more math. Let me assure you that we don't often have to do the substantial presence test.

To summarize, if a taxpayer meets the substantial presence test, typically she is a resident alien. If she is a resident alien, she files a Form 1040.

## Quiz Question

Rosalía arrived in the U.S. with her two children on July 3, 2019 and has not left the country since then.

- **Did she pass the substantial presence test?**
- **Is she a resident alien or nonresident alien?**
- **Does she file a Form 1040 or Form 1040NR?**
- **Can we prepare the return?**

## Answer

Rosalía arrived July 3, 2019.

July 3, 2019 – Dec 31, 2019 = 181 days

- **Did she pass the substantial presence test?** No.
- **Is she a resident or nonresident alien?** Nonresident.
- **Does she file a Form 1040 or Form 1040NR?** 1040NR.
- **Can we prepare the return?** No.

PROSPER TAX HELP

### Answer:

Rosalía did not meet the SPT. (She was present 31 days in 2019 but then only 181 days in 2019 toward the requirement minimum of 183.)

Since she is not a US citizen, not a green card holder, and didn't meet the SPT, she is a nonresident alien.

She files a Form 1040NR for tax year 2019.

We cannot prepare the return in the regular tax program. (Stay tuned to learn more about who we can refer to.)

So if someone has been here well over 6 months in 2019, they've met the SPT. But if they were present somewhere close to 6 months, you may need to count the days to know for sure.

**Note: the 1040 vs. 1040NR test is something that can change from year to year.** Take Rosalía: in 2019 she has to file a 1040NR. But if she continues to live in the US in all of 2020, she's now a resident alien and files a 1040. People's situation and status can change across years.

### Caution: F, J, M, and Q visas

- Some teachers and students are present in the U.S. on F, J, M, or Q visas
- Taxpayers on these visa types are “exempt” from the substantial presence test for a certain number of years
- This means they are considered nonresident aliens for those years and file a 1040NR
- After a certain number of years, they begin counting days for SPT and can be considered resident aliens & file Form 1040

PROSPER TAX HELP

We have a screening tool called the “1040 vs. 1040NR Screening Tool” available on CTC Resources to help you navigate this situation.

We sometimes get foreign students or teachers that want to do their taxes with us. We have to be extra careful because many of these taxpayers need to file a 1040NR, which we cannot prepare in the regular tax centers.

Basically, taxpayers present on these visas are exempt from counting days present in the US for purposes of the substantial presence test. This means they don’t meet the substantial presence test and must file a 1040NR. In filing a 1040NR, they are only taxed on their US source income.

If they stay here a number of years (more than 2 years for some categories of visas or more than 5 years for other categories), they start counting their days toward the SPT and, if they meet the test, are considered resident aliens for that year and file a Form 1040. We can prepare this return. Refer to “1040 vs. 1040NR Screening Tool” on CTC Resources for more information on these situations.



## Caution: Form 1042-S

Form **1042-S** Foreign Person's U.S. Source Income Subject to Withholding **2019** OMB No. 1545-0096  
 Department of the Treasury Internal Revenue Service **Copy A** for Internal Revenue Service  
 \* Go to [www.irs.gov/Form1042-S](http://www.irs.gov/Form1042-S) for instructions and the latest information.

1 Income 2 Gross income code 3 Chapter indicator. Enter "3" or "4" 4a Exemption code 4b Tax rate 5a Exemption code 5b Tax rate 6 Withholding allowance 6a Net income 7a Federal tax withheld 7b Check if federal tax withheld was not deposited with the IRS because secure procedures were applied (see instructions) 7c Check if withholding occurred in subsequent year with respect to a partnership interest 8 Tax withheld by other agents 9 Overwithheld tax need to request pursuant to adjustment procedures (see instructions) 10 Total withholding credit (combine boxes 7a, 8, and 9) 11 Tax paid by withholding agent (amounts not withheld) (see instructions) 12a Withholding agent's EIN 12b Ch. 3 status code 12c Ch. 4 status code 13a Recipient's U.S. TIN, if any 13b Recipient's EIN 13c Recipient's foreign tax identification number, if any 13d Recipient's account number 13e Recipient's date of birth (YYYYMMDD) 14a Primary Withholding Agent's name (if applicable) 14b Primary Withholding Agent's EIN 14c Check if pro-rata basis reporting 15a Intermediary or flow-through entity's EIN, if any 15b Ch. 3 status code 15c Ch. 4 status code 15d Intermediary or flow-through entity's name 15e Intermediary or flow-through entity's TIN

This form is most often presented to a taxpayer who files a 1040NR as a nonresident alien. Basically, the US has tax treaties with different countries, and this form reflects the tax treaty benefits available to the taxpayer based on their country's agreement with the US.


A Form 1042-S *could* be given to a taxpayer who needs to file a 1040, but most often it will be presented to us by a foreign teacher or student who needs to file a 1040NR. So if the taxpayer pulls out a Form 1042-S at intake, we know it is very likely they need to file a 1040NR and that we cannot prepare their return in the regular tax program. (Note: even if the taxpayer will file a 1040, if a 1042-S is presented you must refer the return via the Foreign Student and Scholar 1040NR Referral Form.)


For tax season 2020: we now are preparing 1040NRs on a limited basis through our new Foreign Student and Scholars Program, which has a referral process similar to that of Special Tax Services. This is to ensure that someone with the right expertise prepares the return. We created a 1040NR Screening Tool (available on CTC Resources) to help us determine when we can refer the taxpayer internally or whether the return is out of scope for VITA and needs to be referred to a paid preparer.

*Everything You Need to Know About ITINs*

## When do we have this conversation?

Keep an inventory:	Y / N
Are you present in the U.S. on an F, J, M or Q visa?	Y / N
Did you arrive to the United States in 2019?	Y / N

 If you answered "YES" to any of the questions above, please return to the front desk for assistance!

PROSPER TAX HELP 

We don't go about asking every single taxpayer if he is a citizen or green card holder. We only ask in a couple situations.

We've added two questions to the coversheet that will be on each clipboard at the site (on top of the intake paperwork and given to each taxpayer to review). These are to catch people here on a F, J, M, or Q visa and those who arrived to the US in 2019.

If a taxpayer answers yes to either question, use the 1040 vs. 1040NR Screening Tool to help determine if we can prepare the return.

When in doubt, get a second opinion from a VLT or the tax staff!

## 1040NR Resources

- Tax staff can refer via Foreign Student and Scholar (1040NR) Referral Form
  - A tax center volunteer with expertise in these returns will contact the client within 1 week.
- Otherwise, refer to paid preparer.

PROSPER TAX HELP

For tax season 2020, we are able to prepare many of the 1040NRs via a referral form process just like with Special Tax Services. The return is only in scope for VITA under certain cases, so follow the 1040NR Screening Tool to know if it should be referred internally or to a paid preparer.

We unfortunately still don't have great outside resources for when a taxpayer needs to file a Form 1040NR.

Also, as a side note, the rules for filing status and claiming dependents are totally different on Form 1040NR. So we should not provide any advice to taxpayers who need to file a 1040NR about ITINs or any other aspect of the return.