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Are you a U.S. person living in Canada?

Your U.S. status defines your tax obligations and filing requirements under the U.S. tax system

The United States (U.S.) has many tax regimes, including the U.S. income tax system and the U.S. transfer tax system. The transfer tax system consists of U.S. gift, estate and generation-skipping transfer tax.

The U.S. is one of the few countries in the world that levies tax on your worldwide income or worldwide estate based upon citizenship and residency status. The term “U.S. person” embodies both of these concepts. The determination of your U.S. status is further complicated by the fact that the two tax systems define a U.S. person differently.

An individual who’s considered to be a U.S. person for U.S. income tax purposes or U.S. transfer tax purposes, regardless of where they’re living, has filing requirements under U.S. tax law. With that in mind, it’s particularly relevant to determine your U.S. status, irrespective of the fact that you’re living in Canada (and possibly also a citizen of Canada) and meeting your Canadian income tax filing requirements.

This article provides some general information to consider in determining your status as a U.S. person for U.S. income tax and transfer tax purposes only.

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Are you a U.S. person?

A U.S. person for U.S. income tax purposes is either a U.S. citizen or a U.S. resident alien (resident alien is the concept of residency from a U.S. income tax perspective).

A U.S. person for U.S. transfer tax purposes is either a U.S. citizen or a U.S. domiciliary (domicile is the concept of residency from a U.S. transfer tax perspective). If you became a U.S. citizen only because of your connection with a U.S. possession (e.g. Puerto Rico or Guam), but you don't live in the U.S., you're considered a non-resident and not a citizen of the U.S. for U.S. transfer tax purposes.

Are you a U.S. citizen?

1. Where were you born?

If you were born in the U.S., or in certain other territories of the U.S. and subject to the jurisdiction of the U.S., you're a U.S. citizen by birth.

A child of certain diplomats born in the U.S. wouldn't be a U.S. citizen by birth because they're not subject to the jurisdiction of the U.S.

2. If you were born outside of the U.S., do you have a U.S. citizen parent?

If you were born outside of the U.S. to a U.S. citizen parent or parents (including an adoptive parent), the law in effect at the time of your birth determines whether you're a U.S. citizen at birth. The other considerations for determining whether you're a U.S. citizen at birth include whether both or only one of your parents were U.S. citizens, whether your parents were married when you were born and the duration of your U.S. citizen parent's presence in the U.S. before your birth. Generally, at least one of your parents must have been a U.S. citizen when you were born and must have resided or been physically present in the U.S. for certain durations prior to your birth. For example, if you were born on or after November 14, 1986, and only one of your parents is a U.S. citizen, the U.S. citizen parent must have been physically present in the U.S. for at least 5 years prior to your birth (2 of those 5 years must be after their 14th birthday). If at the time of your birth, your parents were married to each other and were both U.S. citizens, provided at least one of them had resided at some time in the U.S. before you were born, you too are a U.S. citizen.

3. Did you become a U.S. citizen by naturalization?

If you chose to become a U.S. citizen through naturalization, but you no longer live in the U.S., you remain a U.S. citizen unless you've taken the necessary actions to renounce your U.S. citizenship.

The green card test applies to individuals who are lawful permanent residents of the U.S. If you've been given the privilege of residing permanently in the U.S. as an immigrant, according to U.S. immigration law, you'd likely have been issued a "green card" (officially known as the alien registration card).

Are you a U.S. resident alien?

You're considered a U.S. resident alien for U.S. income tax purposes if you're not a U.S. citizen and you meet either the "green card test" or the "substantial presence test." The substantial presence test is a test based upon the number of days you're physically present in the U.S. over a 3-year period that includes the current calendar year and the 2 immediately preceding calendar years, based upon a prescribed formula. This test is explained more fully in the article on determining U.S. residency for Canadians travelling to the U.S.

The green card test applies to individuals who are lawful permanent residents of the U.S. If you've been given the privilege of residing permanently in the U.S. as an immigrant, according to U.S. immigration law, you'd likely have been issued a "green card" (officially known as the alien registration card). A green card is renewable every 10 years; however, even if not renewed and provided your residency status hasn't been taken away by a U.S. government action or abandoned by you through a formal administrative or judicial process and officially confirmed, you'll continue to be a green card holder and considered a U.S. resident alien for U.S. income tax purposes.

Under the Canada-U.S. income tax treaty (Treaty), a U.S. resident alien who qualifies may elect not to be a U.S. resident alien for U.S. income tax purposes. To qualify, the U.S. resident alien must have closer ties to Canada based on the residency tie-breaker rules in the Treaty.

Are you a U.S. domiciliary?

You're considered a U.S. domiciliary for U.S. transfer tax purposes if you're not a U.S. citizen but it's your intention that the U.S. is your permanent home, indefinitely, and to where you intend to return whenever absent. Initially, to establish domicile you must be physically present in the U.S. with that intention. However, once established, U.S. domicile continues until a domicile is established in another country. Therefore, it's possible for you to be considered a U.S. domiciliary even if you're not currently residing in the U.S.

The determination of U.S. domicile can be complex. For example, having U.S. resident alien status for income tax purposes, including holding a U.S. green card isn't in and of itself definitive of having U.S. domicile. Although, a green card does show an intent to reside permanently in the U.S., you may not be considered domiciled in the U.S., if the facts demonstrate a foreign domicile. Through case law, several factors have been identified and are considered in determining U.S. domicile. The Internal Revenue Service will review the facts and circumstances in each case to determine your status.

For a better understanding of your obligations under the U.S. transfer tax system, please refer to the article on U.S. gift, estate and generation-skipping transfer tax. If you're uncertain of your status, you should seek advice from a qualified cross-border tax advisor and/or a qualified U.S. immigration lawyer.

This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.



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