

Let's Talk Taxes

{ US Tax compliance planning and strategies

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Am I a US Taxpayer?

Non Resident Alien vs. Resident Alien?

Resident Alien – must meet one of the two tests, otherwise considered nonresident alien:

1. Green Card Test or
2. Substantial Presence Test

Green Card Test

- a. Lawful permanent resident of the United States any time during the tax year.
- b. Issued an alien registration card, aka “Green Card”
- c. Will be considered resident unless status taken away – “abandonment of resident status”
- d. US Immigration law – a lawful permanent resident who is required to file must file or may lose permanent resident status.

Substantial Presence Test

Must be physically present in the U.S. on at least:

1. 31 Days during the current year, and
2. 183 days during the 3 year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - $\frac{1}{3}$ of the days you were present in the first year before the current year, and
 - $\frac{1}{6}$ of the days you were present in the second year before the current year.

Example:

Jackie Chan loves to watch American Football. Jackie is a fan of the San Francisco 49ers.



In order to watch his beloved 49er's play in person, Jackie spends approximately 3 months each year in the United States. From October to December, Jackie travels around the United States following the team.

Is Jackie a US Taxpayer under the Substantial Presence Test?

- 2014 90 Days = 90
- 2013 90 Days = $1/3 * 90 = 30$
- 2012 90 Days = $1/6 * 90 = 15$

$$=90+30+15 = 135 \text{ days}$$

Jackie does not meet the Substantial Presence Test

Substantial Presence Test Cont.

Exceptions to the Rule:

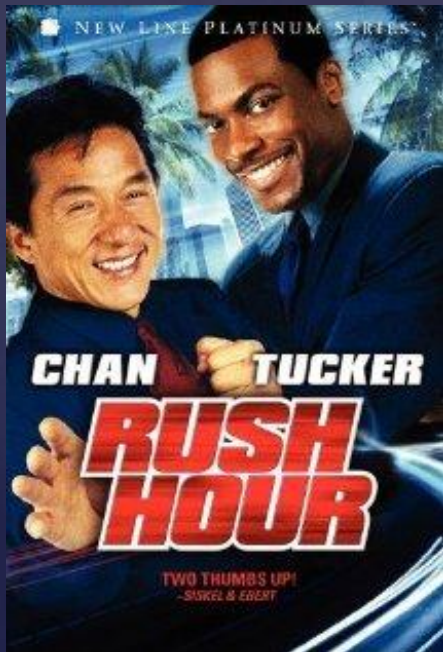
1. Transit days do not count. E.g. Layover in the United States
2. Medical Treatment Exception
3. Puerto Rico and Northern Mariana Islands (US Territories)
4. Special Circumstances
 1. Student Visa
 2. Teaching Visa
 3. Professional Athlete
 4. Performer

For discussion purposes lets assume Jackie is a Resident Alien

What tax does Jackie owe?

- Taxed on all US Source income
- Taxed on income received from all sources during period of Residency

Jackie receives royalty income each month for DVD sales related to his role in the Rush Hour movies.



- Rush Hour was filmed in the US by a US movie Studio
- As such Jackie must pay tax on this income regardless of timing

Jackie also receives Rental income from a French Chateau

Does Jackie pay tax on this rental Income?

Yes...

Between the months of October and December when Jackie is considered to be a Resident Alien, Jackie will need to pay tax on the received during these months.

Nonresident Alien

Taxed on U.S. Source income only, at flat 30% (or lower treaty) rate

Examples

1. Interest Income from U.S. Bank
2. Dividends from U.S. corporations
3. Guarantee of Indebtedness- Loans
4. Personal Services
5. Pensions
6. Gains on Real Property
7. Social Security benefits – 85% of income received subject to 30% flat tax

International Reporting Requirements

FATCA

FBAR

5471

3520

IRS 1040

Designee	Designee's name ▶	Phone no. ▶	Personal identification number (PIN) ▶	<input type="text"/>
Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
Joint return? See instructions. Keep a copy for your records.	Your signature	Date	Your occupation	Daytime phone number
	Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.) <input type="text"/>
Paid	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if PTIN

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Schedule B 1040

On that form.

Note. If line 6 is over \$1,500, you must complete Part III.

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

		Yes	No
Part III Foreign Accounts and Trusts (See instructions on back.)	7a At any time during 2013, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), formerly TD F 90-22.1, to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements	<input type="checkbox"/>	<input type="checkbox"/>
	b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶ _____	<input type="checkbox"/>	<input type="checkbox"/>
	8 During 2013, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions on back	<input type="checkbox"/>	<input type="checkbox"/>

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 17146N **Schedule B (Form 1040A or 1040) 2013**

At any time during 2013, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country?

FinCen 114 FBAR

Report of Foreign Bank and Financial Accounts

Home Filer Information Financial Account Owned Separately/Jointly No Financial Interest Account Information Consolidated Report Signature Information

 **Report of Foreign Bank and Financial Accounts** Version Number: 1.0
FinCEN Form 114 OMB No. 1506-0009 Effective October 1, 2013

The FBAR must be received by the Department of Treasury on or before June 30th of the year immediately following the calendar year being reported. The June 30th filing date may not be extended.

IMPORTANT : After you have completed this FBAR, you must **Sign the Form** and **Save** in order to activate the **Ready to File** button, which will direct you to a page where you can attach and submit your report. Click **Validate** to identify missing or incorrectly formatted data at any time during preparation of this report. Click **Print** to print a copy of this report for record keeping purposes.

Filing name (e.g. SMITH FBAR 2013)

If this report is being filed late, select the reason for filing late

FinCen 114 cont

- Listing all Foreign bank accounts if the cumulative value is over \$10,000.00 USD
- Financial Institution Name
- Account Number
- Address of banking institution
- Type of interest in the bank account. Financial vs. Non-Financial.
- Must report all accounts even if just Signature Authority.

5471

Who must file?

U.S. citizens and U.S. residents who are **officers, directors, or shareholders** with more than 10% ownership in certain foreign corporations

What is filed?

Reporting of income, assets and liabilities of the foreign corporation.

3520

What is it?

The Reporting of Gifts and distributions from Foreign trusts.

U.S. Resident taxpayers that receive in excess of \$100,000.00 USD in gifts
Or distributions in each calendar year.

Penalties for Non-Filing

FBAR

50% of the highest account balance **annually**

5471

\$10,000 USD - \$50,000 USD per missed filing annually

3520

35% of the cumulative unreported amount.

.... And the Possibility of Criminal penalties as well

FATCA

Foreign Account Tax Compliance Act

- Became law in March 2010
- Designed to force US persons around the world to report Foreign Financial Accounts
- Foreign Financial Institutions, such as banks will be required to work with the IRS to identify their U.S. Person account holders.
 - Foreign banks that fail to comply face stiff penalties including the seizure of U.S. assets
 - As a result many foreign financial institutions would rather report all suspected U.S. persons rather than risk fines.

Relief options?

Offshore Voluntary Disclosure Program (OVDP)

Streamlined Disclosure Program (Streamlined)

OVDP

- File back tax returns dating back 7 years to recognize any unreported income.
- File back FBAR's for the past 7 years
- File back 5471's for the past 7 years
- File back 3520's for the past 7 years

Penalty: 50% of the highest account balance for the highest year.

Benefit: You avoid criminal penalties.

Streamlined Disclosure 2014

Two versions:

Streamlined Domestic Offshore Disclosure

- U.S. Taxpayers residing within the United States and Territories

Streamlined Foreign Offshore Disclosure

- U.S. Taxpayers residing overseas.
- 183 day rule
- Does not have a permanent U.S. abode

Streamlined Domestic

1. File past 3 years tax returns to recognize any income omitted.
 1. Interest or dividend income
 2. Overseas Rental income
2. File 6 years back FBAR for missing accounts
3. File all missing 5471's and 3520s
4. Sign statement under penalty of perjury that non-compliance was a result of **non-willful conduct**.
 - Non Willful Conduct?
 - Varies and each case is different but....
 - IRS examples include...
 - Negligence
 - Mistake of the Law
 - Reliance on a professional

Penalty?

5% of the highest cumulative year end balance
for all accounts

Streamlined Foreign

1. File past 3 years tax returns to recognize any income omitted.
 1. Interest or dividend income
 2. Overseas Rental income
2. File 6 years back FBAR for missing accounts
3. File all missing 5471's and 3520s
4. Sign statement under penalty of perjury that non-compliance was a result of **non-willful conduct**.
 - Non Willful Conduct?
 - Varies and each case is different but....
 - IRS examples include...
 - Negligence
 - Mistake of the Law
 - Reliance on a professional

Penalty?

Nothing