

Filing Form 1040NR: Taxpayer Elections, Income and Deduction Computation, and Spouse/Dependent Treatment

WEDNESDAY, JANUARY 22, 2014, 1:00-2:50pm Eastern

IMPORTANT INFORMATION

This program is approved for 2 CPE credit hours. To earn credit you must:

- **Participate in the program on your own computer connection and phone line (no sharing)** - if you need to register additional people, please call customer service at 1-800-926-7926 x10 (or 404-881-1141 x10). Strafford accepts American Express, Visa, MasterCard, Discover.
- **Respond to verification codes presented throughout the seminar.** If you have not printed out the “Official Record of Attendance”, please print it now. (see “Handouts” tab in “Conference Materials” box on left-hand side of your computer screen). To earn Continuing Education credits, you must write down the verification codes in the corresponding spaces found on the Official Record of Attendance form.
- Complete and submit the “Official Record of Attendance for Continuing Education Credits,” which is available on the program page along with the presentation materials. Instructions on how to return it are included on the form.
- To earn full credit, you must remain on the line for the entire program.

WHOM TO CONTACT

For Additional Registrations:

-Call Strafford Customer Service 1-800-926-7926 x10 (or 404-881-1141 x10)

For Assistance During the Program:

- On the web, use the chat box at the bottom left of the screen
- On the phone, press *0 (“star” zero)

If you get disconnected during the program, you can simply call or log in using your original instructions and PIN.

Tips for Optimal Quality

Sound Quality

Call in on the telephone by dialing

1-866-873-1442 and enter your PIN when prompted, and view the presentation slides online.

If you have any difficulties during the call, press *0 for assistance. You may also **send us a chat** or e-mail sound@straffordpub.com so we can address the problem.

Viewing Quality

To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.

Program Materials

If you have not printed or downloaded the conference materials for this program, please complete the following steps:

- Click on the ^ sign next to “Conference Materials” in the middle of the left-hand column on your screen.
- Click on the tab labeled “Handouts” that appears, and there you will see a PDF of the slides and the Official Record of Attendance for today's program.
- Double-click on the PDF and a separate page will open.
- Print the slides by clicking on the printer icon.

Filing Form 1040NR: Taxpayer Elections, Income and Deduction Computation, and Spouse/Dependent Treatment

Jan. 22, 2014

Marc J. Gedeon, Gedeon Law & CPA
marc@gedeonlawcpa.com

Gary W. Carter, GW Carter Ltd, CPAs
gwc@gwcartercpa.com

Today's Program

Guidance on U.S. Taxes For Non-Residents

[Marc J. Gedeon]

Slide 7 - Slide 30

Form 1040NR Compliance Issues and Examples

[Gary W. Carter]

Slide 31 - Slide 66

Notice

ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY THE SPEAKERS' FIRMS TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.

You (and your employees, representatives, or agents) may disclose to any and all persons, without limitation, the tax treatment or tax structure, or both, of any transaction described in the associated materials we provide to you, including, but not limited to, any tax opinions, memoranda, or other tax analyses contained in those materials.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Marc J. Gedeon, Gedeon Law & CPA

GUIDANCE ON U.S. TAXES FOR NON-RESIDENTS

Form 1040NR

Guidance on US Taxes for Non-Residents



Marc J. Gedeon

Attorney & Certified Public Accountant

marc@gedeonlawcpa.com or (424) 254 - 9529

What We Will Cover



- ◆ US Tax Residency – Why it Matters
- ◆ When to File 1040NR
- ◆ Dual Status Returns/Statements
- ◆ Claiming Spouses & Dependents
- ◆ Applying For ITIN
- ◆ Form 1040NR Due Dates & Extensions

Who We Are



- ◆ Gedeon Law & CPA is a boutique cross border tax firm based in Los Angeles
- ◆ We provide tax services for Canadians who live, work or invest in the US

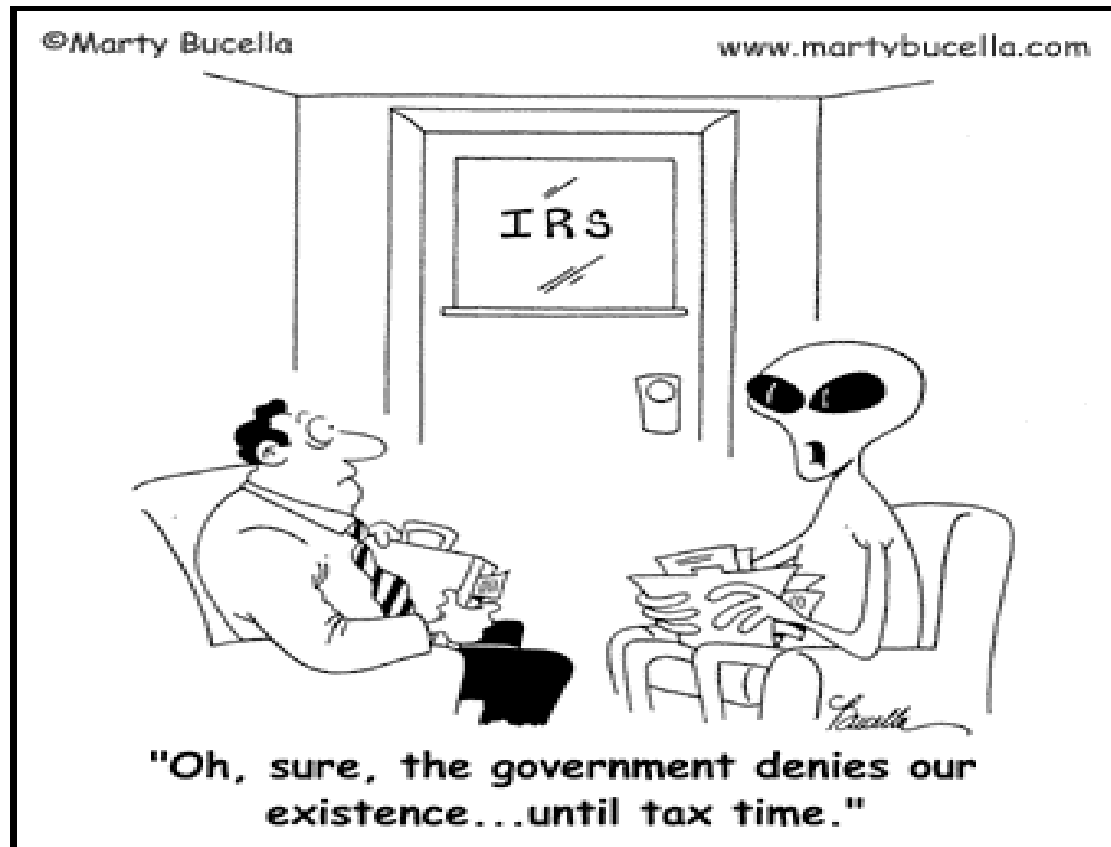
US Tax Residency

Why does it matter?



- ◆ **IMPORTANT:** Tax resident is **NOT** the same as resident for immigration purposes
- ◆ US Citizen and US Resident Alien taxed on **WORLDWIDE** income
- ◆ Non-residents Alien taxed on **US SOURCE** income
 - Not US sourced income:
 - Bank interest income not reported on 1040NR
 - Capital gains if < 183 days present in US (excluding capital gain distributions from mutual funds, investments in REITS, real estate and certain other types of non-stock assets)

Tax Humour



What Type of Alien Am I?

Alien: is not a US Citizen by birth or naturalization

RESIDENT ALIEN: Have green card or meet Substantial Presence Test(SPT)

NON-RESIDENT ALIEN: Not a US Citizen or Resident Alien(not have a green card or not meet SPT)

Substantial Presence Test

Must be physically present in the US (states not territories) for:

- ◆ > 30 Days in current tax year AND
- ◆ > 182 Days in most recent 3-year period:
 - ALL days in current tax year PLUS
 - 1/3 of days in previous year PLUS
 - 1/6 of days in year prior to previous year

SPT Example

Taxpayer was physically present in the US for 120 days in each year 2013, 2012 and 2011...

- ◆ 120 days in 2013 plus
- ◆ 40 days in 2012 (1/3 of 120) plus
- ◆ 20 days in 2011 (1/6 of 120)

Total = 180 days

Not meet SPT

What Days Are Not Counted

If taxpayer.....

- ◆ Cross Border Commuter – regularly commutes to work in the US from a residence in Canada or Mexico.
- ◆ In US for < 24 hours due to international transit
- ◆ Is a crew member of a foreign vessel
- ◆ Unable to leave due to medical condition
- ◆ Is an “exempt individual”

Exempt Individuals

Foreign Government Employees on A-2 visa

Form 8843 Exempt Individuals:

- ◆ Teachers on J or Q visas unless > 2 years
- ◆ Students on F, J, M or Q visas unless > 5 years
- ◆ Professional athletes competing for charity

Exceptions to SPT

Form 8840 – Closer Connection Exemption

- ◆ >182 days under SPT but < 183 days in current year

Form 8833 – Treaty Disclosure

- ◆ Dual Resident under a treaty, then use tax treaty to break residency tie.
- ◆ Check box: The taxpayer is a dual-resident taxpayer and is disclosing a treaty-based return position as required by Regulations section 301.7701(b)-7

Dual Status Aliens

Taxpayer is a resident for part of the year and a non resident for the other part

Occurs when Taxpayer...

- ◆ Enters US and passes SPT in year of arrival(must enter before July 1) or
- ◆ Leaves US after passing SPT in year of departure

Practical Tip: File 1040 as Dual Status Return and file 1040NR as Dual Status Statement or vice versa

Slide Intentionally Left Blank

Residency Start Date

- ◆ **Green Card Only:** first day alien is physically present with a valid greencard.
- ◆ **SPT Only:** first day which the individual is physically present
- ◆ **Both:** earlier of the two

- ◆ **De Minimis Presence:** allows an individual to be present in the United States for short periods of up to 10 days in total (for example, for business or house-hunting trips) without starting his or her U.S. residency for tax purposes.

Dual Status Elections

Dual Status Alien can't...

- ◆ Use Head of Household
- ◆ File joint return
- ◆ Claim standard deduction

Dual Status Elections

a) First Year Election

a) Full Year Residency 6013(h) Election

First Year Election

- ◆ When Applies: become dual status alien for a calendar year in which don't meet either green card or SPT tests.
- ◆ Who qualifies:
 - Was not a resident alien during the preceding year(2013);
 - Meets the requirements of SPT in the following calendar year(2014);
 - Is present in the United States for at least 31 consecutive days during the election year;
 - Is present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (December 31) for a number of days equal to or exceeding 75 percent of the number of days in such period.
 - may treat up to five days of absence from the United States as days of presence.
- ◆ Residency is going to start on the first day which the individual can satisfy both the 31-day and the 75-percent tests
- ◆ **Practice Tip:** Put 2014 return on extension then file the 2013 return with the election after 7/1

Full Year Election

- ◆ Only for married couples. If single at end of year, cant make this election.
- ◆ Can piggy back this election to the first year election to file a joint return

If you are a dual-status alien, you can choose to be treated as a U.S. Resident for the entire year if all of the following apply:

- *You were a nonresident alien at the beginning of the year.*
- *You are a resident alien or U.S. Citizen at the end of the year.*
- *You are married to a U.S. Citizen or resident alien at the end of the year.*
- *Your spouse joins you in making the choice.*

This includes situations where both spouses were nonresident aliens at the beginning of the tax year and both spouses are resident aliens at the end of the tax year.

1040NR Filing Status

- ◆ S, MFS or QW
- ◆ **Exception:** Married NRA can file S if
 - (1) resident of Canada, Mexico, South Korea AND
 - (2) has not lived with spouse for last six months of year
- ◆ Cannot file HOH

Claiming Spouse & Dependents

General Rule: can claim only itemized deductions and one personal exemption

Exceptions:

- ◆ Indian student: eligible for Standard Deduction and Personal Exemption
- ◆ Spousal Exemptions available for Married individuals from Canada, Mexico, Japan, South Korea or India(only if a student)
- ◆ Dependent Exemptions: available only for individuals from Canada, Mexico, Japan, South Korea can claim children who live with them as dependents.
 - But individuals from Canada and Mexico can also claim children who don't live with them as dependents.

Examples

- ◆ Ex. 1: NRA from Russia lives in US with wife(no income) & 2 kids.
 - 1 PE
- ◆ Ex. 2: NRA student from India lives in US with wife(no income) & 2 kids.
 - 2 PE since special exemption for Indian students
- ◆ Ex. 3: NRA from Canada lives in US with wife(no income) & 2 kids.
 - 4 PE since special exemption for Canadians

Applying For ITIN

Who needs an ITIN?

- NRA
- Spouse
- Dependents

How to Obtain ITIN?

- File W-7
- For tax processing only
- Not eligible for social security benefits

1040NR Due Dates & Extension

- ◆ April 15th
- ◆ One Extension to October 15th - Form 4868
- ◆ **Exception:** NRA without wage income can delay filing until June 15 and also claim an extension to December 15

Slide Intentionally Left Blank

Gary W. Carter, GW Carter Ltd.

FORM 1040NR COMPLIANCE ISSUES AND EXAMPLES

FORM 1040NR

Issues & Examples

Topics

- Overview of Form 1040NR
- More on “Exempt Individuals” for the SPT
- Statutory Income Exclusions
- Introduction to Treaty Exclusions
- Residency & Treaty Examples
- Social Security
- Research Resources for Foreign National Taxation

OVERVIEW OF FORM 1040NR

Pages 1 through 5

The Form Page 1-1

Form 1040NR Department of the Treasury Internal Revenue Service	U.S. Nonresident Alien Income Tax Return For the year January 1-December 31, 2013, or other tax year beginning _____, 2013, and ending _____	OMB No. 1545-0074 <div style="border: 1px solid black; padding: 5px; font-size: 24pt; font-weight: bold; text-align: center;">2013</div>																										
Please print or type	Your first name and initial Darius	Last name Howard	Identifying number (see instr.) APPLIED FOR																									
	Present home address (number, street, and apt. no., or rural route). If you have a P.O. box, see instructions.		Check if: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Estate or Trust																									
	City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).																											
	Foreign country name	Foreign province/state/country	Foreign postal code																									
Filing Status Check only one box.	<table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none;"> 1 <input type="checkbox"/> Single resident of Canada or Mexico or single U.S. national 2 <input type="checkbox"/> Other single nonresident alien 3 <input type="checkbox"/> Married resident of Canada or Mexico or married U.S. national </td> <td style="width:50%; border: none;"> 4 <input type="checkbox"/> Married resident of South Korea 5 <input checked="" type="checkbox"/> Other married nonresident alien 6 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instr.) </td> </tr> </table> If you checked box 3 or 4 above, enter the information below.			1 <input type="checkbox"/> Single resident of Canada or Mexico or single U.S. national 2 <input type="checkbox"/> Other single nonresident alien 3 <input type="checkbox"/> Married resident of Canada or Mexico or married U.S. national	4 <input type="checkbox"/> Married resident of South Korea 5 <input checked="" type="checkbox"/> Other married nonresident alien 6 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instr.)																							
1 <input type="checkbox"/> Single resident of Canada or Mexico or single U.S. national 2 <input type="checkbox"/> Other single nonresident alien 3 <input type="checkbox"/> Married resident of Canada or Mexico or married U.S. national	4 <input type="checkbox"/> Married resident of South Korea 5 <input checked="" type="checkbox"/> Other married nonresident alien 6 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instr.)																											
	(i) Spouse's first name and initial	(ii) Spouse's last name	(iii) Spouse's identifying number																									
Exemptions If more than four dependents, see instr.	7a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 7a b <input type="checkbox"/> Spouse. Check box 7b only if you checked box 3 or 4 above and your spouse did not have any U.S. gross income		Boxes checked on 7a and 7b 1 No. of children on 7c who: • lived with you _____ • did not live with you due to divorce or separation (see instructions) _____ Dependents on 7c not entered above _____ Add numbers on lines above 1																									
	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;">(1) First name</th> <th style="width:30%;">Last name</th> <th style="width:15%;">(2) Dependent's identifying number</th> <th style="width:15%;">(3) Dependent's relationship to you</th> <th style="width:10%;">(4) If qualifying child for child tax credit (see instr.)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	(1) First name	Last name	(2) Dependent's identifying number	(3) Dependent's relationship to you	(4) If qualifying child for child tax credit (see instr.)																						
(1) First name	Last name	(2) Dependent's identifying number	(3) Dependent's relationship to you	(4) If qualifying child for child tax credit (see instr.)																								
	d Total number of exemptions claimed		1																									

The Form Page 1-2

Income Effectively Connected With U.S. Trade/Business	8	Wages, salaries, tips, etc. Attach Form(s) W-2	8	
	9a	Taxable interest	9a	
	b	Tax-exempt interest. Do not include on line 9a	9b	
	10a	Ordinary dividends	10a	
	b	Qualified dividends (see instructions)	10b	
	11	Taxable refunds, credits, or offsets of state and local income taxes	11	
	12	Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement (see instructions)	12	
	13	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	13	
	14	Capital gain or (loss). Attach Schedule D (Form 1040) if required. If not required, check here <input type="checkbox"/>	14	
	15	Other gains or (losses). Attach Form 4797	15	
	16a	IRA distributions	16a	
			16b	Taxable amount
	17a	Pensions and annuities	17a	
			17b	Taxable amount
	18	Rental real estate, royalties, partnerships, trusts, etc. Attach Schedule E (Form 1040)	18	
	19	Farm income or (loss). Attach Schedule F (Form 1040)	19	
	20	Unemployment compensation	20	
	21	Other income. List type and amount (see instr.)	21	
	22	Total income exempt by a treaty from page 5, Schedule OI, Item L(1)(e)	22	
	23	Combine the amounts in the far right column for lines 8 through 21. This is your total effectively connected income	23	
	Adjusted Gross Income	24	Educator expenses (see instructions)	24
25		Health savings account deduction. Attach Form 8889	25	
26		Moving expenses. Attach Form 3903	26	
27		Deductible part of self-employment tax. Attach Schedule SE (Form 1040)	27	
28		Self-employed SEP, SIMPLE, and qualified plans	28	
29		Self-employed health insurance deduction (see instructions)	29	
30		Penalty on early withdrawal of savings	30	
31		Scholarship and fellowship grants excluded	31	
32		IRA deduction (see instructions)	32	
33		Student loan interest deduction (see instructions)	33	
34		Domestic production activities deduction. Attach Form 8903	34	
35	Add lines 24 through 34	35		
36	Subtract line 35 from line 23. This is your adjusted gross income	36		

The Form Page 2-1

Form 1040NR (2013)

Darius Howard

Applied For

Page **2**

Tax and Credits	37	Amount from line 36 (adjusted gross income)	37	
	38	Itemized deductions from page 3, Schedule A, line 15	38	
	39	Subtract line 38 from line 37	39	0.
	40	Exemptions (see instructions)	40	3,900.
	41	Taxable income. Subtract line 40 from line 39. If line 40 is more than line 39, enter -0-	41	0.
	42	Tax. Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	42	
	43	Alternative minimum tax (see instructions). Attach Form 6251	43	
	44	Add lines 42 and 43	44	
	45	Foreign tax credit. Attach Form 1116 if required	45	
	46	Credit for child and dependent care expenses. Attach Form 2441	46	
	47	Retirement savings contributions credit. Attach Form 8880	47	
	48	Child tax credit. Attach Schedule 8812, if required	48	
	49	Residential energy credits. Attach Form 5695	49	
	50	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	50	
51	Add lines 45 through 50. These are your total credits	51		
52	Subtract line 51 from line 44. If line 51 is more than line 44, enter -0-	52	0.	
Other Taxes	53	Tax on income not effectively connected with a U.S. trade or business from page 4, Schedule NEC, line 15	53	
	54	Self-employment tax. Attach Schedule SE (Form 1040)	54	
	55	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	55	
	56	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	56	
	57	Transportation tax (see instructions)	57	
	58a	Household employment taxes from Schedule H (Form 1040)	58a	
		b First-time homebuyer credit repayment. Attach Form 5405 if required	58b	
	59	Taxes from: a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Instructions; enter code(s)	59	
	60	Add lines 52 through 59. This is your total tax	60	

The Form Page 2-2

Payments	61 Federal income tax withheld from:		
	a Form(s) W-2 and 1099	61a	
	b Form(s) 8805	61b	
	c Form(s) 8288-A	61c	
	d Form(s) 1042-S	61d	
	62 2013 estimated tax payments and amount applied from 2012 return	62	
	63 Additional child tax credit. Attach Schedule 8812	63	
	64 Amount paid with request for extension to file (see instructions)	64	
	65 Excess social security and tier 1 RRTA tax withheld	65	
	66 Credit for federal tax paid on fuels. Attach Form 4136	66	
67 Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> Res. c <input type="checkbox"/> 8885 d <input type="checkbox"/>	67		
68 Credit for amount paid with Form 1040-C	68		
69 Add lines 61a through 68. These are your total payments	69		
Refund <small>Direct deposit? See instructions.</small>	70 If line 69 is more than line 60, subtract line 60 from line 69. This is the amount you overpaid	70	0.
	71a Amount of line 70 you want refunded to you . If Form 8888 is attached, check here <input type="checkbox"/>	71a	
	b Routing number <input type="text"/> c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
	d Account number <input type="text"/>		
e If you want your refund check mailed to an address outside the United States not shown on page 1, enter it here.			
72 Amount of line 70 you want applied to your 2014 estimated tax	72	0.	
Amount You Owe	73 Amount you owe. Subtract line 69 from line 60. For details on how to pay, see instructions	73	0.
	74 Estimated tax penalty (see instructions)	74	
Third Party Designee	Do you want to allow another person to discuss this return with the IRS (see instructions)? <input checked="" type="checkbox"/> Yes . Complete below. <input type="checkbox"/> No		
	Designee's name ▶ Gary W. Carter	Phone no. ▶ 952-224-2888	Personal identification number (PIN) ▶ 55435
Sign Here <small>Keep a copy of this return for your records.</small>	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. Your signature ▶	Date	Your occupation in the United States ▶ Entrepreneur
			If the IRS sent you an identity Protection PIN, enter it here (see inst.) <input type="text"/>

The Form Page 3-1

Form 1040NR (2013)

Darius Howard

Applied For

Page **3**

Schedule A - Itemized Deductions (see instructions)

07

Taxes You Paid					
1	State and local income taxes			1	
Gifts to U.S. Charities					
Caution: <i>If you made a gift and received a benefit in return, see instructions.</i>					
2	Gifts by cash or check. If you made any gift of \$250 or more, see instructions	2			
3	Other than by cash or check. If you made any gift of \$250 or more, see instructions. You must attach Form 8283 if the amount of your deduction is over \$500	3			
4	Carryover from prior year	4			
5	Add lines 2 through 4			5	
Casualty and Theft Losses					
6	Casualty or theft loss(es). Attach Form 4684. See instructions			6	

The Form Page 3-2

Job Expenses and Certain Miscellaneous Deductions	7	Unreimbursed employee expenses - job travel, union dues, job education, etc. You must attach Form 2106 or Form 2106-EZ if required. See instr. ▶ _____	7	
	8	Tax preparation fees	8	
	9	Other expenses. See instructions for expenses to deduct here. List type and amount ▶ _____ _____ _____	9	
	10	Add lines 7 through 9	10	
	11	Enter the amount from Form 1040NR, line 37 11		
	12	Multiply line 11 by 2% (.02)	12	
	13	Subtract line 12 from line 10. If line 12 is more than line 10, enter -0-		13
Other Miscellaneous Deductions	14	Other - see instructions for expenses to deduct here. List type and amount ▶ _____ _____ _____ _____ _____		14
	15	Is Form 1040NR, line 37, over the amount shown below for the filing status box you check on page 1 of Form 1040NR: <ul style="list-style-type: none"> ● \$300,000 if you checked box 6, ● \$250,000 if you checked box 1 or 2, or ● \$150,000 if you checked box 3, 4, or 5? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 1 through 14. Also enter this amount on Form 1040NR, line 38. <input type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter here and on Form 1040NR, line 38.		15

Form **1040NR** (2013)

The Form Page 4-1

Form 1040NR (2013)

Darius Howard

Applied For

Page **4**

Schedule NEC - Tax on Income Not Effectively Connected With a U.S. Trade or Business (see instructions)

Nature of income		Enter amount of income under the appropriate rate of tax (see instructions)				
		(a) 10%	(b) 15%	(c) 30%	(d) Other (specify)	
					%	%
1	Dividends paid by:					
a	U.S. corporations	1a				
b	Foreign corporations	1b				
2	Interest:					
a	Mortgage	2a				
b	Paid by foreign corporations	2b				
c	Other	2c				
3	Industrial royalties (patents, trademarks, etc.)	3				
4	Motion picture or T.V. copyright royalties	4				
5	Other royalties (copyrights, recording, publishing, etc.)	5				
6	Real property income and natural resources royalties	6				
7	Pensions and annuities	7				
8	Social security benefits	8				
9	Capital gain from line 18 below	9				
10	Gambling - Residents of Canada only. Enter net income in column (c). If zero or less, enter -0- .					
a	Winnings					
b	Losses	10c				
11	Gambling winnings - Residents of countries other than Canada. Note. Losses not allowed	11				
12	Other (specify) ▶					
13	Add lines 1a through 12 in columns (a) through (d)	13				
14	Multiply line 13 by rate of tax at top of each column	14				
15	Tax on income not effectively connected with a U.S. trade or business. Add columns (a) through (d) of line 14. Enter the total here and on Form 1040NR, line 53					15

The Form Page 4-2

Capital Gains and Losses From Sales or Exchanges of Property								
<p>Enter only the capital gains and losses from property sales or exchanges that are from sources within the United States and not effectively connected with a U.S. business. Do not include a gain or loss on disposing of a U.S. real property interest; report these gains and losses on Schedule D (Form 1040).</p> <p>Report property sales or exchanges that are effectively connected with a U.S. business on Schedule D (Form 1040), Form 4797, or both.</p>	16 (a) Kind of property and description (if necessary, attach statement of descriptive details not shown below)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)	
	17 Add columns (f) and (g) of line 16					17 ()		
	18 Capital gain. Combine columns (f) and (g) of line 17. Enter the net gain here and on line 9 above (if a loss, enter -0-)						▶ 18	

Form 1040NR (2013)

The Form Page 5-1

Schedule OI - Other Information (see instructions)

Answer all questions

A Of what country or countries were you a citizen or national during the tax year? _____

B In what country did you claim residence for tax purposes during the tax year? _____

C Have you ever applied to be a green card holder (lawful permanent resident) of the United States? Yes No

D Were you ever:

1. A U.S. citizen? Yes No

2. A green card holder (lawful permanent resident) of the United States? Yes No

If you answer "Yes" to (1) or (2), see Pub. 519, chapter 4, for expatriation rules that apply to you.

E If you had a visa on the last day of the tax year, enter your visa type. If you did not have a visa, enter your U.S. immigration status on the last day of the tax year. _____

F Have you ever changed your visa type (nonimmigrant status) or U.S. immigration status? Yes No
If you answered "Yes," indicate the date and nature of the change. ► _____

G List all dates you entered and left the United States during 2013 (see instructions).

Note. If you are a resident of Canada or Mexico AND commute to work in the United States at frequent intervals, check the box for **Canada** or **Mexico** and skip to item H Canada Mexico

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy

The Form Page 5-2

H Give number of days (including vacation, nonworkdays, and partial days) you were present in the United States during:
 2011 _____, 2012 _____, and 2013 _____.

I Did you file a U.S. income tax return for any prior year? Yes No
 If "Yes," give the latest year and form number you filed. ▶ _____

J Are you filing a return for a trust? Yes No
 If "Yes," did the trust have a U.S. or foreign owner under the grantor trust rules, make a distribution or loan to a U.S. person, or receive a contribution from a U.S. person? Yes No

K Did you receive total compensation of \$250,000 or more during the tax year? Yes No
 If "Yes," did you use an alternative method to determine the source of this compensation? Yes No

L Income Exempt from Tax - If you are claiming exemption from income tax under a U.S. income tax treaty with a foreign country, complete (1) and (2) below. See Pub. 901 for more information on tax treaties.

1. Enter the name of the country, the applicable tax treaty article, the number of months in prior years you claimed the treaty benefit, and the amount of exempt income in the columns below. Attach Form 8833 if required (see instructions).

(a) Country	(b) Tax treaty article	(c) Number of months claimed in prior tax years	(d) Amount of exempt income in current tax year

(e) Total. Enter this amount on Form 1040NR, line 22. Do not enter it on line 8 or line 12 _____

2. Were you subject to tax in a foreign country on any of the income shown in 1(d) above? Yes No

Slide Intentionally Left Blank

EXEMPT INDIVIDUALS

Aliens Who Are Exempt From the Substantial Presence Test (Not from tax!)

Exemption Tests Under IRC Sec. 7701(b)(5)

- Teachers and Trainees
 - J-1 and Q-1 visa holders (non-students) and family members (J-2 and Q-2)
 - Not exempt if exempt as teacher, trainee or student for any part of 2 of the previous 6 calendar yrs.
 - If foreign employer pays all compensation for all years present, exemption lasts up to 4 calendar yrs.
- Students
 - F-1, J-1, M-1 & Q-1 students
 - Not exempt if exempt as a student, teacher or trainee for any part of 5 earlier calendar years
 - No recurring exemption – once in a lifetime 5 year limit
 - Can be exempt longer than 5 calendar years if intent is established not to reside permanently in the US
 - F-2, J-2, M-2 and Q-2 family members fall under same rules as primary visa holder
- Before and after period of exemption the individual is subject to the SPT

Exemption Tests Under IRC Sec. 7701(b)(5)

- Foreign Government-Related Individuals
 - A and G visa holders who are employees of a foreign government or int'l organization
 - Includes family members with dependent visas
 - This exemption does not expire
- Professional Athletes
 - Temporarily in the U.S. to compete in a charitable sports event
 - See Pub. 519, p. 7
- Exempt individuals must attach Form 8843 to their non-resident return

Form 8843 Page 1-1

Form **8843**

Statement for Exempt Individuals and Individuals With a Medical Condition

OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service

For use by alien individuals only.
▶ Information about Form 8843 and its instructions is at www.irs.gov/form8843.
For the year January 1-December 31, 2013, or other tax year

2013

Attachment
Sequence No. **102**

beginning _____, 2013, and ending _____, 20_____

Your first name and initial
Darius Howard

Last name

Your U.S. taxpayer identification number, if any
Applied For

**Fill in your
addresses only if
you are filing this
form by itself and
not with your tax
return**

Address in country of residence

Address in the United States

Part I General Information

- 1a** Type of U.S. visa (for example, F, J, M, Q, etc.) and date you entered the United States ▶ H-1,
- b** Current nonimmigrant status and date of change ▶ _____
- 2** Of what country were you a citizen during the tax year? _____
- 3a** What country issued you a passport? _____
- b** Enter your passport number ▶ _____
- 4a** Enter the actual number of days you were present in the United States during:
2013 _____ 2012 _____ 2011 _____
- b** Enter the number of days in 2013 you claim you can exclude for purposes of the substantial presence test ▶ _____

Form 8843 Page 1-2

Part II Teachers and Trainees

- 5** For teachers, enter the name, address, and telephone number of the academic institution where you taught in 2013 ► _____

- 6** For trainees, enter the name, address, and telephone number of the director of the academic or other specialized program you participated in during 2013 ► _____

- 7** Enter the type of U.S. visa (J or Q) you held during: ► 2007 _____ 2008 _____ 2009 _____
2010 _____ 2011 _____ 2012 _____. If the type of visa you held during any of these years changed, attach a statement showing the new visa type and the date it was acquired.
- 8** Were you present in the United States as a teacher, trainee, or student for any part of 2 of the 6 prior calendar years (2007 through 2012)? Yes No
- If you checked the "Yes" box on line 8, you cannot exclude days of presence as a teacher or trainee unless you meet the *Exception* explained in the instructions.

Part III Students

- 9** Enter the name, address, and telephone number of the academic institution you attended during 2013 ► _____

- 10** Enter the name, address, and telephone number of the director of the academic or other specialized program you participated in during 2013 ► _____

- 11** Enter the type of U.S. visa (F, J, M, or Q) you held during: ► 2007 _____ 2008 _____ 2009 _____
2010 _____ 2011 _____ 2012 _____. If the type of visa you held during any of these years changed, attach a statement showing the new visa type and the date it was acquired.
- 12** Were you present in the United States as a teacher, trainee, or student for any part of more than 5 calendar years? Yes No
- If you checked the "Yes" box on line 12, you must provide sufficient facts on an attached statement to establish that you do not intend to reside permanently in the United States.
- 13** During 2013, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to change your status to that of a lawful permanent resident of the United States? Yes No
- 14** If you checked the "Yes" box on line 13, explain ► _____

STATUTORY INCOME EXCLUSIONS

Earned Income of Non-Resident Aliens Deemed Foreign Source by Statute

IRC Sec. 861(a)(3), 872(b)(3), 893

- IRC Sec. 861(a)(3) – Compensation Deemed Not U.S. Source
 - For Services by NRA individual temporarily in U.S. for 90 days or less
 - Compensation does not exceed \$3,000
 - Compensation is wage or contract income under a contract with:
 - NRA or NR company not engaged in business in U.S., or
 - U.S. employer if services are for an office maintained in a foreign country or possession
- IRC Sec. 872(b)(3) – Compensation Paid by Foreign Employer for Trainees
 - Paid to NRA individual in F, J, or Q status for length of visit (while NRA)
 - Foreign employer is NRA individual or foreign company, or U.S. individual or company with foreign office
- IRC Sec. 893 – Employees of Foreign Governments & Int’l Organizations
 - See Pub. 519, Chapter 10.
 - Can also apply to resident aliens and U.S. citizens

INTRODUCTION TO TREATY EXEMPTIONS

Available to Non-Resident Aliens on the Non-Resident Return

Available to Resident Aliens on Form 1040

Tax Treaty Provisions in General

- Treaties override U.S. tax law to exempt income or impose lower rates (on NECI) for residents of foreign countries
- Treaties generally do not reduce U.S. taxes of U.S. citizens or residents under the treaty's "saving clause"
 - Limited exceptions to saving clause benefit U.S. residents
- Treaties are generally reciprocal, allowing same benefits to U.S. residents against foreign country tax
- Pub. 901 provides summaries of provisions
 - Table 1 (page 35): rates on NECI (investments)
 - Table 2 (page 41): exemptions for ECI
- More details are provided for each country
 - Beginning on page 15 for teachers & researchers
 - Beginning on page 19 for students

Income Exclusions in Pub. 901, Table 2

- See IRS Pub. 901, page 41
- Independent personal services = self-employment income
- Dependent personal services = wages
- Compensation during training = wages
- Scholarship income cannot represent payment for services
- Exemptions are generally shown on taxpayer's Form 1042-S
- Not included in total compensation
- Some states do not honor federal treaty exemptions
 - 1) Alabama, 2) Arkansas, 3) California, 4) Connecticut, 5) Hawaii, 6) Kansas, 7) Kentucky, 8) ,Maryland 9) Mississippi, 10) Montana, 11) New Jersey, 12) North Dakota, and 13) Pennsylvania

IRS Pub. 901, Table 2

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose ²² (3)				
Ukraine	15	Scholarship or fellowship grant ⁴¹	5 years ³¹	Any U.S. or foreign resident ⁵	No limit	20
	16	Independent personal services ^{3,7}	No limit	Any contractor	No limit	14
	17	Dependent personal services ^{3,17}	183 days	Any foreign resident	No limit	15
	19	Studying and training: Remittances or allowances ⁴	5 years ³¹	Any foreign resident	No limit	20
United Kingdom	16	Independent personal services ⁵³	7
	17	Dependent personal services ^{12,17}	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	\$20,000 p.a. ²⁵	16
	18	Teaching or research ⁴	2 years	Any U.S. educational institution	No limit	20A
	19	Studying and training: Remittances or allowances ¹¹	1 year ⁴⁵	Any foreign resident	No limit	20
Venezuela	15	Scholarship or fellowship grants ⁴	5 years ¹⁰	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,12}	No limit	Any contractor	No limit	14
	17	Dependent personal services ^{12,17}	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	\$6,000 p.a. ³⁰	18
	18	Teaching ⁴	2 years ⁴⁰	Any U.S. or foreign resident	No limit	21(3)
	19	Studying and training: ⁴ Remittances or allowances	5 years ¹⁰	Any foreign resident	No limit	21(1)
		Compensation during training	12 mos.	Venezuelan resident	\$8,000	21(2)
		5 years ¹⁰	Other foreign or U.S. resident	\$5,000 p.a.	21(1)
		Compensation while gaining experience	12 mos.	Venezuelan resident ²	\$8,000	21(2)

Slide Intentionally Left Blank

RESIDENCY & TREATY EXAMPLES

Applications of the Substantial Presence Test

Exempt Individual Rules

Treaty Exemptions

Examples

- Doris was born in the United States and is a U.S. citizen but has lived in Sweden for her entire life and is also a Swedish citizen. She makes \$200,000 per year from her job in Sweden and has no US source income. Is she required to file a resident US tax return and report her Swedish income?
 - Answer: Yes
- Terrance is an H1-b visa holder who was present in the U.S. for 80 days during 2013, 360 days during 2012, and 240 days during 2011. Is he a resident or nonresident of the U.S. for tax purposes during 2013?
 - Answer: He passed the SPT (days deemed present = $240 [80 + 360/3 + 240/6]$), but if he had a closer connection to his home country, he could be deemed a nonresident.
- What If Terrance arrived as an F-1 visa holder in 2011, changed to H1b on June 1, 2012, and was in the US 120 days after that in 2012. Did he pass the SPT in 2013?
 - Answer: No (days deemed present = $120[80 + 120/3]$)

Examples

- Sam, an F-1 (student) visa-holder arrived in the U.S. on December 30, 2008, and has not left.
 - Was he a resident or nonresident in 2012?
 - Nonresident
 - Was he a resident or nonresident in 2013?
 - Resident
- Sam's wife came with him on an F-2 visa. She is not a student. Is she a resident or non-resident in 2012?
 - Answer: Nonresident (her residency status follows Sam's)
- Assume the same facts as above, but Sam was also in the U.S. as an F-1 high school exchange student in 2004. In what year would Sam become a tax resident?
 - Answer: 2012

Examples

- Joan, in the U.S. on an F-1 (student) visa, is married to Bob who received a green card in 2013. If they elect to file a joint return, is Joan a resident, nonresident, or dual status alien?
 - Answer: Both spouses are deemed to be residents for the entire year and must report worldwide income for the entire year.
- Rose is a teacher from Venezuela who entered the U.S. as a J-1 visa holder on June 1, 2011, and has remained in the U.S. through the end of 2013. Can Rose claim the treaty exemption under Art. 21(3) of the US/Venezuela tax treaty in 2013?
 - Answer: Yes. Although Rose is a resident in 2013 under the substantial presence test, the treaty with Venezuela has an exception to the saving clause for this article, allowing Rose to claim the treaty exemption on her resident return. Rose should complete and attach Form 8833 for this, show the exemption as a reduction of income on line 21 of Form 1040, and paper file with the Austin Service Center.

Examples

- Reggie is a teacher from the UK who entered the U.S. as a J-1 visa holder on June 1, 2011, and has remained in the U.S. through the end of 2013. Can Reggie claim the treaty exemption under Art. 20A of the US/UK tax treaty in 2013?
 - Answer: Not only can Reggie not claim the exemption in 2013, but there is a retroactive revocation in Art. 20A if the taxpayer stays in the U.S. longer than 2 years. That means if Reggie claimed the exemption in 2011 or 2012, tax is now owed on the exempted income, and amended returns should be filed.

SOCIAL SECURITY WITHHOLDING

Social Security Exemptions

IRC Sec. 3121(b)(19) Exemption

- Nonresident aliens holding F, J, M & Q visas are exempt from social security & Medicare tax
 - Exemption applies only to -1 visa holders
 - Family members on -2 visas are not exempt
- Tax is sometimes withheld by mistake
 - Refund must first be requested from employer
 - Form 843 & Form 8316 are filed to claim refund if employer refuses
 - See Pub. 519, page 42 for refund procedures
- Resident F, J, M & Q visa holders and all other nonresidents are subject to Social Security & Medicare tax.
- Non-resident aliens are statutorily exempt from Self-Employment tax, unless they are subject to the tax through a totalization agreement with their home country. IRC Sec. 1402(b). See Pub. 519 for the list of treaty countries.

RESEARCH RESOURCES ON FOREIGN NATIONAL TAXATION

Web Sites and IRS Publications

Non-Resident Alien Tax Resources

- IRS Publications
 - [IRS Publication 519](#) : US Tax Guide for Aliens
 - [IRS Publication 901](#): U.S. Tax Treaties
- Additional Treaty Resource Links
 - [US Income Tax Treaties A to Z](http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z) (<http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>)
 - [US Treasury Resource Center](http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx) (<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx>)
 - [Social Security Agreements](http://www.socialsecurity.gov/international) (www.socialsecurity.gov/international)
- Form1040NR.com Resources
 - [Interactive Residency Status Questionnaire](http://www.form1040nr.com/Residentstatus.php) (<http://www.form1040nr.com/Residentstatus.php>)
 - [Tax Guide for Foreign Nationals](http://www.form1040nr.com/foreignnationaltaxguide.php) (<http://www.form1040nr.com/foreignnationaltaxguide.php>)