

EZ Guide 1040NR? or 1040?

Substantial Presence in U.S. requires¹ a Form 1040. The substantial presence test (SPT) is met when someone has 183 days of countable **presence** in the U.S., full or partial days, over up to three years, including arrival and departure days. ¹Possible 'student exception.'

If 31 day minimum in the U.S. in the tax year is met, count all tax year days **present**, plus
 1/3 of days **present** in the U.S. in the immediate first prior tax year, plus
 1/6 of days **present** in the U.S. in the second prior tax year. Add all fractions to the total.

Count Days?	A1, A2 Embassy	1040NR only, as 'taxpayer' <i>(If married to U.S. citizen or resident, taxpayer may file on 1040 as "electing spouse". IRC 6013(g). See later)</i>
N E V E R	G1, G2, G3, G4 International Organization Primary visa holder is the sponsoring organization employee Secondary is spouse, unmarried child	Never present in U.S. Never count days (eXempt) ² Primaries don't report embassy or international organization wages (Rare A2 PRI exception) Secondaries report U.S. wages -They pay FICA (social security, Medicare taxes) All report U.S. rental, investment, business income Filing status generally Other Single or Other Married (MFS) Must itemize deductions. No standard deduction. ² May not claim credits requiring taxable earned income (child care)

Count Days?	F1, F2 Student, Trainee, OPT OPT = optional practical training OPT ends one year after visa	On first arrival in the U.S., they are eXempt from counting days towards substantial presence. File 1040NR until eXempt period is over and presence reaches 183 days.
D E L A Y	J1, J2 Researcher, Student, Teacher, Trainee M Vocational or other non-academic student Q Cultural Exchange Visitor Generally short-term visitor	<ul style="list-style-type: none"> - see Look back Period on 'Counting Days' page for length of eXempt period - see Substantial Presence above and on 'Counting Days' page for day-counting instructions <p>While eXempt from counting days, they must file Form 8843, whether or not they file a tax return.</p> <p>They may file a dual-status return (1040/1040NR) the year they change from 1040NR filers to 1040 filers.</p> <p>They may file a dual-status return, Form 8840 (Closer Connection), or a residency end date statement, for the final year, to shield non-U.S. income after departure.</p>

Count Days?	A3*, B, E, G5*, H, I, K, L, N, NAFTA, NATO, O, P, R, S, SK, T, TN/TD, U, V, TPS I-94 VWP *Household staff of A1,2,G1,2,3,4	Begin counting days present as soon as arrive in U.S. If first-year days present are less than 183, they file 1040NR If first-year days present are 183 or more, they might: <ul style="list-style-type: none"> - File 1040 for full year, - File dual-status (1040NR and 1040) and start/ end date statement to shield non-U.S. income in non-resident period.
Y E S		

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