

## Frank Agostino, Esq.

- Frank Agostino is the president of Agostino & Associates, P.C., a law firm in Hackensack, New Jersey concentrating in civil and criminal tax controversies.
- Prior to entering private practice, Mr. Agostino was an attorney with the Internal Revenue Service's District Counsel in Springfield, Illinois and Newark, New Jersey. He also served as a Special Assistant United States Attorney, where he prosecuted primarily criminal tax cases.
- Mr. Agostino has taught tax controversy at the Stillman School of Business at Seton Hall and served as the co-director of the Rutgers Federal Tax Law Clinic.
- Mr. Agostino is a frequent speaker and author on tax controversy and litigation matters. He serves on the Advisory Board of the Journal of Tax Practice and Procedure. Mr. Agostino is actively involved with the American Bar Association and the New York County Lawyers' Association.
- Mr. Agostino is also the President of the Taxpayers Assistance Corp., which provides tax and legal advice to low-income taxpayers in the NY/NJ area.



## Christine Speidel, Esq.

- Christine Speidel is Assistant Professor and director of the Villanova Federal Tax Clinic. In the Clinic, she teaches students to practice law by representing members of Villanova's neighboring communities in federal tax disputes. Professor Speidel frequently speaks and writes on issues affecting low-income taxpayers. Her research interests lie in the intersection of poverty law with tax law and tax procedure. Professor Speidel is a contributor to the Procedurally Taxing blog and an editor of the practice manual *Effectively Representing Your Client Before the IRS*. Speidel is active in the American Bar Association Section of Taxation, where she is the Secretary and a past chair of the Pro Bono and Tax Clinics Committee.
- Prior to her appointment at Villanova, Professor Speidel practiced law at Vermont Legal Aid. She directed the Vermont Low-Income Taxpayer Clinic and was a staff attorney for Vermont Legal Aid's Office of the Health Care Advocate as well as the Poverty Law Project. She represented low-income individuals in tax, health care, domestic violence, and public benefits matters, and also advocated for systemic policy changes. For several years she was an instructor for the University of Vermont Extension Service's annual Tax School.



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## Wing Shan (Heidi) Lum

**Wing Shan (Heidi) Lum** is the Senior Manager with Asian Services in Action, Inc. (ASIA, Inc.). Her primary responsibilities include delivering welfare counselling, providing cultural education and advising on transition to retirement. She is fluent in Chinese and English. Most of the clients that she serves either immigrants or refugees. Heidi assists clients who have limited English proficiency with how to deal with retirement, how to adjust as a result of a major life event, providing and explaining public benefits, and coordinate outreach opportunities. The goal is to empower seniors and adults with disabilities to age successfully by providing resources and support that preserve their independence. Heidi has a Bachelor of Science degree in Business Administration with concentration in Risk Management and Insurance.



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## Brenda Stuart-Luke

- Internal Revenue Service Tax Specialist
- Brenda is an IRS veteran with 38 years of experience. During her tenure with the IRS she has worked in various Business Units such as, Human Resources, Criminal Investigation, Collection Enforcement, Taxpayer Assistance Manager, and New York Acting Area Manager for Stakeholder Liaison. Brenda currently works as Senior Stakeholder Liaison in the Small Business/Self Employed Business Operating Unit.
- As a Stakeholder Liaison she participates, coordinates and shares IRS key messages through outreach with Government Agencies, Trade and Industrial Organizations, Chambers of Commerce, Tax Professional organizations and other business organization. As a Stakeholder her role is to collaborate with tax professional organizations, small business groups and industry associations. Brenda is the New York Lead for the IRS Limited English program. Brenda has received several awards and recognition for her dedication and Community Service from Congressional Offices, Chambers of Commerce, Senators, Civic group, Community based organization, Multi-Lingual organizations and various Professional Woman organizations. Brenda is married with two children and 1 grandson. Brenda's is a people person, a mentor, and the President of an IRS Employee Organizations. She also enjoys meeting new people and learning about their culture and lifestyles.



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## Daniel N. Price, Esq.

Dan's legal practice focuses on complex federal tax and Title 31 matters. For over 19 years Dan served as an attorney for the Office of Chief Counsel of the Internal Revenue Service. Dan's prior government service included extensive work in the arena of international enforcement and included assisting the IRS in revising the Voluntary Disclosure Practice. Dan also worked with the Offshore Voluntary Disclosure Programs, the Streamlined Filing Compliance Procedures, foreign bank account reporting, Bank Secrecy Act investigations, various LB&I compliance campaigns, expatriation issues, and much more.



In early 2022, Dan and his wife moved from Texas to New York for one-year pro bono positions with a non-profit. Dan's year of pro bono service involves civil litigation defense as in-house-counsel. Dan also has a limited outside legal practice focusing on international compliance issues, voluntary disclosures, and other federal tax matters.

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## Byung Hyuk (Billy) Min, Esq.

- Byung Hyuk (Billy) Min is an attorney at Agostino & Associates, P.C.

Mr. Min obtained his J.D. in 2021, with a concentration in Tax Law and a certification in Corporate & Business Law, from Rutgers Law School - Newark. He was subsequently admitted to the New Jersey State Bar in 2021.

Mr. Min is also the recipient of the 2021 Charles Davenport Tax Prize for Best Grades and Highest Achievement in Tax.

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# Tax Compliance Issues for Refugees

## Basics of Filing Obligations and Compliance

June 15, 2022

Some slides adapted with permission from Eva Rosenberg [www.TaxMama.com](http://www.TaxMama.com)

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## Challenges

Tax law is exceedingly complex

VITA, AARP, and TCE programs cannot help refugees with their first U.S. tax return - first year returns are out of scope

Incompetent, ignorant and fraudulent tax preparers are prevalent

Inadequate outreach to refugees about their tax obligations; many misconceptions

Refugees may have various immigration law statuses and some need immigration assistance

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## Four Types of Afghan Refugees

SPECIAL IMMIGRANT VISA (SIV) HOLDERS

SPECIAL IMMIGRANT PAROLEES (SQ/SI)

REFUGEES

HUMANITARIAN PAROLEES

## Uniting for Ukraine

A pathway for Ukrainian citizens and their immediate family members to come to the United States and stay temporarily in a period of parole. Ukrainians approved via this process will be authorized to travel to the United States to be considered for parole, on a case-by-case basis, for a period of up to two years. Ukrainians will be eligible to apply for work authorization.

U.S. immigration law requires refugees to apply for lawful permanent resident (“LPR/Green Card”) status after they have been physically present in the U.S. for at least one year.

<https://www.uscis.gov/ukraine>

## Residency and Source

The taxation of income is based on the residence of the taxpayer, the source of the income, or a combination. These components are the bedrock of our income tax system.

**Residency** determines who is subject to taxation.

**Source** is where the income is generated. Foreign income has its source in another realm, technically called a foreign “State”. Sovereign States always have the right to tax their own income. Diplomacy and tax treaties govern States interactions with other States as to the treatment of taxes between States.

## Why Tax Residence Matters

In the U.S. taxation of Non-Residents is very different from that of U.S. persons (Citizens and Tax Residents)

U.S. citizens and tax residents are subject to tax on their worldwide income no matter the source

Non-residents are only taxed on U.S. source income.

WHY subject yourself to U.S. taxes?

Access to credits and the standard deduction that non-residents generally don't get

## So...

Your first order of business with a new refugee client is to determine their residency issues.

Make sure your client understands how the US tax system works!

In many countries in the world you are considered foolish if you pay the full tax. *Do you really always obey the speed limit.*

Clients need to know the import of accuracy in the US and that it can affect their immigration status down the road. *In the US you might occasionally speed but you would never drive while drunk.*

## U.S. Residency

Who is a U.S. Person? (Individual)

I.R.C.

7701(a)(30)

1. A U.S. Citizen

2. A U.S. Resident

1. Legal Permanent Resident (Green Card Test)

IRC § 7701(b)(1)

2. Substantial Presence Test

IRC §

7701(b)(3)

3. First Year Election

IRC §

7701(b)(4)

4. Spousal Election

IRC §

6013(g), (h)

## POLLING QUESTION 1

- US Taxation is based on...
- Residence
- Source of the Income
- Both or a Combination of Both

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## A Note on Terminology

**Resident Alien (RA):** a person who is a U.S. person but isn't a U.S. Citizen

**Non-Resident Alien (NRA):** a person who doesn't qualify as a U.S. person

**Dual Status Alien:** a person who is a non-resident alien for part of the year and a resident alien for part of the year

Occurs the first year a person enters the United States from another country

Occurs again when a person leaves the U.S.



CS There is no such thing as an illegal alien in the U.S. Tax Code

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## U.S. Tax Residency Start Dates

- Green card holder: First day of physical presence in the U.S. during the year you meet the green card test
- Substantial Presence Test: First day of physical presence in the U.S. during the year you pass the SPT
- First Year Election: First day of the successful “testing period” (often, first day of physical presence in the U.S. during the tax year of the election)
- Spousal elections: January 1 (residency is for the whole year)
- IRC §§ 7701(b)(2); 6013(g), (h)

## Substantial Presence Test

Applies to all aliens who

- Are in the United States,
- Are not permanent lawful residents, and
- Are not “Exempt Individuals”

Exempt individuals include

- Foreign government related persons with A or G visas
- Teachers or trainees with J or Q visas who comply with the requirements of the visa
- Students with F, J, M or Q visas who comply with the requirements of the visa
- Professional athletes

## Substantial Presence

Taxpayer is physically present in the United States

United States defined as 50 states, D.C. and U.S. territorial waters

**Not** U.S. possessions, territories or airspace

Substantial Presence defined

At least 31 days in the first tax year being filed, **and**

183 formula days looking at the tax year and the two years preceding the tax year.

Taxpayer may be exempt from the Substantial Presence Test by statute or because a closer connection is maintained to another country.

## Substantial Presence Test Formula

To meet this test, you must be physically present in the United States on at least:

31 days during the tax year, and

183 days during the 3-year period that includes the tax year and the 2 years immediately before that, counting:

All the days you were present in the tax year, and

1/3 of the days you were present in the first year before the tax year, and

1/6 of the days you were present in the second year before the tax year.

To meet the SPT in one year your client should have arrived by July 1.

## Counting the Days

In the Tax Year, **2021-**

Each day counts as one full day.

Must have at least 31 days in the tax year (2021).

**2020-** Each day counts as  $\frac{1}{3}$  of a day.

**2019-** Each day counts as  $\frac{1}{6}$  of a day.

Taxpayers with a 3-year formula count of 183 days are residents for the tax year, unless they can show a closer connection to another country or an exemption by treaty or statute.

## Tax Implications of Resident Status

Files Form 1040 & taxed on worldwide income

Filing status, dependents, deductions & credits follow same rules as U.S. citizens

May have Dual Status in the first year as a resident alien

<http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Resident-Aliens>

## First Year Choice

Available to people **who meet the SPT in the filing year (2022)**, but not the tax year (2021)

Election to be treated as a RA from date of arrival.

Allows client to go back the year prior to meeting the SPT and be treated as an RA from the first day of the first 31 days' presence as long as they were in the US 75% of the time of the rest of the year.

Can exclude up to 5 days.

Available for TP, SP, and dependents!

Each person must submit a separate statement.

IRC 7701(b)(4)

## First Year Choice (2)

Taxpayer, spouse, or dependent may choose to be treated as a U.S. resident from date of arrival (2021), if client

Was not a resident in in the year preceding the election (2020)

Was present in the U.S. 31 consecutive days in the tax year (2021)

Was present in the U.S. at least 75% of the days beginning with day one of the first 31-day period and ending 12/31/2021, and

Meets the 183-day SPT for the filing year (2022) before filing the election (filed with their return for the tax year, 2021)

## First Year Choice (3)

If the SPT is not met by the filing deadline, can request an extension, and file the dual status return with a first-year election after the test is met.

Example: SPT is not met by April 18, 2022, but it will be met by October 17, 2022.

The taxpayer may file an extension for TY 2021 and file their 2021 dual status return with a first-year election by October 17, 2022

Residency start date (for 2021) is the first day of the 31-day testing period. IRC § 7701(b)(4)(C)

<https://www.irs.gov/individuals/international-taxpayers/tax-residency-status-first-year-choice>

## NRA Spouse Elections: MFJ Only

Allows for treatment as an RA for the entire year of arrival.

6013(g) – NRA married to U.S. Citizen or RA

6013(h) – NRA at start of year and one spouse became RA by end of year

Spouses may jointly elect to be treated as U.S. resident taxpayers for the entire year.

Attach a statement to the return in election year

<http://www.irs.gov/Individuals/International-Taxpayers/Nonresident-Spouse-Treated-as-a-Resident>

## Elections can be stacked! Example:

Family arrives Nov 1, 2022 (61 days' presence in 2022).

On June 13, 2023, they will meet the SPT.

Since SPT will be met after April 15, you would put the 2022 return on extension.

Then you can do a First Year Choice to have all the family treated as RA from the Nov 1 date (each person signs a separate statement).

Then the TP and Spouse could choose a 6013(h) election and be treated as RA all year.

## More on Elections

Pub 519, <https://www.irs.gov/forms-pubs/about-publication-519> is an excellent place to find examples of qualifying statements.

IRS internal training slides are a great resource:

First year election –

[https://www.irs.gov/pub/int\\_practice\\_units/JTO9431\\_02\\_11.PDF](https://www.irs.gov/pub/int_practice_units/JTO9431_02_11.PDF)

6013(h) [https://www.irs.gov/pub/int\\_practice\\_units/JTO9431\\_02\\_10.PDF](https://www.irs.gov/pub/int_practice_units/JTO9431_02_10.PDF)

6013(g) [https://www.irs.gov/pub/int\\_practice\\_units/JTO9431\\_02\\_09.PDF](https://www.irs.gov/pub/int_practice_units/JTO9431_02_09.PDF)

Elections can become complex! Not only do you have to consider the risk/ benefit sceneries, you will have to explain all this to your client as they are the only ones who can make the choice.

Remember to not let the tax tail wag the dog!

## Foreign Pensions

A foreign pension or annuity distribution is a payment from a pension plan or retirement annuity received from a source outside the United States.

Just as with domestic pensions or annuities, the taxable amount generally is the Gross Distribution minus the Cost (investment in the contract). Income received from foreign pensions or annuities may be fully or partly taxable, even if you do not receive a Form 1099 or other similar document reporting the amount of the income.

## The Foreign Tax Credit

## IRC 901-909

The FTC was developed by Congress as the principal method to avoid double taxation.

The FTC is an election - when you elect to use the credit, you give up the right to deduct foreign income taxes.

The FTC is figured on Form 1116

<https://www.irs.gov/pub/irs-pdf/f1116.pdf>

Publication 514, Foreign Tax Credit for Individuals

<https://www.irs.gov/forms-pubs/about-publication-514>

## The FTC - How it Works

You can credit only the amount of foreign tax that would have been due in U.S. income tax if the income had been earned in the U.S.

This is called the limitation. For example, income tax in Portugal can reach 48%. If the tax on the same income in the U.S. is 22%, you forfeit the difference although the excess unused credit may be carried **back one year** or **forward 10 years**.

Note: Foreign income is added into the total taxable income mix not just added to the top to be taxed at the highest rate. Thus it is spread out over the income brackets. Some is proportionally spread out at 10%, 12%, 22% etc.

## The 1116 – IT IS Complex!

The Form is designed to:

- Arrive at the all-important ratio expressed of foreign income to all income.
- Allocate the income to a specific “basket”.
- Adjust the foreign income and tax for deductions and exclusions.

What is “basket”? The IRS wants to know the nature of your foreign income for foreign tax credit purposes. To that end they created categories, commonly called “baskets”. The rules connected with baskets go on for pages. For the test you should be familiar with the three most commonly used...



## FTC “Baskets”

Income from work goes in the "general limitation" basket.

Interest, dividends, pensions, rents, royalties, annuities, and net gain from the sale of non-income-producing investment property or property that generates passive income go to the “passive” basket.

“Income resourced by treaty” basket for income that treats US income as foreign source. Happens when clients live overseas and the country has right to tax its residents.

**A separate 1116 MUST be made for each basket.**

Income is further separated by each country where it was earned.

## Non-Resident Aliens (NRA)

Generally, people who live outside the United States and are not citizens of the U.S.

People with a short-term presence, legal or otherwise, in the U.S.

People who are temporarily present in the United States, but are “exempt individuals” and thus retain NRA status even if they spent a substantial amount of time here.

Teachers, trainees, students, etc.

## Tax Implications of Nonresident Status

Files Form 1040NR & taxed only on U.S. source income

### Deductions

- Does not get the standard deduction
- Itemized deductions limited to those related to U.S. income
  - State & Local income taxes
  - Charitable contributions to U.S. non-profit organizations
  - Casualty & theft losses
  - Miscellaneous itemized deductions
  - Ordinary and necessary expenses related to a trade or business

Filing Status generally limited to Single or MFS

## Taxation of Non-Residents: The Good

- Not subject to worldwide taxation. Only U.S. source income.
- Same tax rates as U.S. Citizens on Income Effectively Connected with a U.S. Trade or business.
- Some types of income are not subject to tax
  - certain (horse and dog) gambling winnings, personal bank interest, some dividend income, under \$3,000 of work for a foreigner for less than 90 days.
- Bottom line: most refugees will have no U.S. income tax obligation for the days before they become a U.S. resident
  - But you must ask

## Source Rules

IRS Pub. 519

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income:	
Personal services	Where services performed
Sale of inventory—purchased	Where sold
Sale of inventory—produced	Where produced
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties:	
Natural resources	Location of property
Patents, copyrights, etc.	Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but see <i>Personal Property</i> , later, for exceptions)
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.
*Exceptions include: Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared. Special rules apply for dividend equivalent payments.	

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## Taxation of Non-Residents: The Bad

The Bad:

- Must itemize and cannot use the standard deduction. Lone treaty exception for students/business apprentices of India.
- Generally can't claim dependents. Exception for U.S. Nationals, residents of Canada, Mexico, South Korea, and students/ business apprentices of India.

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## Taxation of Non-Residents: The Ugly

The Ugly:

- May be subject to high mandatory backup withholding.
- 30% tax rate on U.S. income not effectively connected with a U.S. Trade or business.
- Can only use Single or MFS tax tables.
- US companies are subject to filing specific reporting forms. They have to know who their partners are!

## POLLING QUESTION 2

- Who is a US Person?
- Citizen
- US Resident
- Both of the above

## Form 1040NR

1040NR looks very similar to the (former) 1040.

- Report income, subtract basically the same adjustments, subtract itemized deductions, compute tax, claim credits and withholding
- Attach Schedule OI: days in U.S., tax treaty claims

Itemized deductions for 1040-NR

- Same as the 1040 with the limitation that deductions are properly allocated and apportioned to Effectively Connected Income. (ECI)
- Exceptions to ECI limitation for charitable giving and casualty losses (but remember nonbusiness is limited to federally declared disasters)

## Form 1042-S

1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

<https://www.irs.gov/forms-pubs/about-form-1042-s>

Common for reporting FDAP income (Fixed, Determinable, Annual, Periodical). Taxable scholarships, royalties, pensions, rents, compensation such as commissions, interest. (Not sale of property.)

Think of it as similar to a 1099.

## Dual Status Aliens

An individual who is a non-resident alien for part of the tax year and a resident alien for part of the year

Occurs the first year a taxpayer enters the United States from a foreign country

Occurs again when a taxpayer leaves the U.S.

Unless a spousal election is made, refugees will likely have dual status for their year of arrival.

## Dual Status Alien: Arrival Year

Files Form 1040 and reports worldwide income for part of year taxpayer was a resident alien

Write "Dual-Status Return" across the top of Form 1040

Attaches statement declaring U.S. source income received as a nonresident alien.

Unsigned Form 1040NR should be used as the statement if there is U.S. Source income to report. Write "Dual-Status Statement" across the top.

No standard deduction

<https://www.irs.gov/individuals/international-taxpayers/taxation-of-dual-status-aliens>

## Dual Status Tax Filing Example

Alice arrived in the U.S. on March 1, 2021 and has been here ever since.  
Alice passed the SPT in 2021, so her RA start date is 3/1/21.

Alice files Form 1040 reporting her worldwide income and claiming dependents, adjustments, and credits for March through December, 2021.

She writes “Dual-Status Return” across the top of Form 1040.

Alice attaches a Form 1040NR to her Form 1040 as her dual status statement, reporting no U.S. source income from Jan-Feb 2021.

She writes “Dual-Status Statement” across the top of Form 1040NR.

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The 2021 return must be mailed to the IRS; it cannot be e-filed.

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## POLLING QUESTION 3

- Can an undocumented worker be a US resident?
  
- Yes
  
- No

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# Navigating Cultural Barriers with Refugees

Wing (Heidi) Lum  
Senior Manager, Sustainability Services Department  
**Asian Services In Action, Inc.**



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## Challenges for Refugee Communities

- ❖ Post Traumatic Stress Disorder
  - Coming from war-torn or conflict area
  - Personal experience with violence: rape, murder, torture
- ❖ Illiteracy/Language
  - Some are illiterate in their own languages
  - Adults and older persons find new language acquisition difficult
- ❖ Cultural Barriers/Life Skills
  - Come from a variety of circumstances and backgrounds
  - Difficult to integrate when previous life experiences are so different
  - Role reversal between children/parents

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## Challenges for Refugee Communities (continued)

### ❖ Depression

- Not able to communicate well with Americans
- Stressors associated with finding living-wage jobs to support their families
- Isolation, especially for older adults
- Counseling professionals with limited cultural competency

### ❖ Substance Abuse/Alcoholism

- Drinking alcohol is acceptable in many communities
- Some substances considered illegal in the U.S. are used for medicinal purposes

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## Build relationships with people from different cultures

- Establish friendships with people from other cultures
- Read about other people's cultures and histories
- Listen to other people's stories
- Be aware of differences in communication styles and values--don't base on stereotypes
- It's OK to make mistakes
- Ask people questions about their cultures, customs, and views

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## Key Communication Skills with Persons with Limited-English Proficiency

- Listen carefully
- Make your statements as specific as possible
- Let the person see your lips as you speak
- Don't rush – be patient
- Use simple sentence structure
- Use body language to illustrate
- Use the vocabulary that the client has used
- Emphasize key words
- Make sure the client understands by having them restate what you said

## Manage the Dynamics

- Recruit staff from the communities
- Provide diversity training for existing staff
- Use simple words in conversation
- Provide strong support
- Clear, straightforward and simple operating procedures
- Direct communication--e.g., face to face or phone instead of e-mail
- Ask about staff development needs
- Include cultural competency in job description

## POLLING QUESTION 4

- Can the US tax non-residents?
  
- YES/NO

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Communications & Liaison
<b>STAKEHOLDER LIAISON</b>

## **Advocating for Immigrant Taxpayers**

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## **The Goals**

- **What is an ITIN?**
- **How does it differ from a Social Security Number?**
- **What does the IRS issue to refugees?**
- **What tax benefits can you get with an ITIN?**
- **What tax benefits can't you get with an ITIN?**

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## **Residency**

- **U.S. immigration law refers to those not holding U.S. citizenship (aliens) as immigrants, nonimmigrants, and undocumented aliens**
- **U.S. tax law has only two categories for aliens**
  - **Resident alien**
  - **Nonresident alien**

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STAKEHOLDER LIAISON**

**ITIN Overview**

**What is an ITIN?**

- **Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by the Internal Revenue Service to those not eligible for Social Security Numbers (SSNs) and have a filing or reporting requirement.**
- **ITINs are not intended for use outside of the federal tax system.**

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**ITIN Overview – cont'd**

**What is an ITIN?**

- **Helps individuals comply with the U.S. tax laws and provides a means to efficiently process and account for tax returns and payments.**
- **Issued regardless of immigration status.**

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## **The difference between the SSN and the ITIN**

- **IRC § 6109 and Treas. Reg. 301-6109-1 require taxpayer identification numbers on returns, documents, and statements**
- **ITINs must be used by anyone who is not eligible for a Social Security Number, but has a tax filing requirement**
- **Dependents and spouses need ITINs to be claimed on a return**
- **An ITIN does not authorize a person to work and should not be used on Form W-2**

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## **Refugees**

- **Refugees are individual who come to the US through the US Refugee Admissions Program, a government program which provides reception and placement assistance through resettlement agencies.**
- **Refugees are eligible for US citizenship and receive Social Security numbers as part of this resettlement process. Refugees are taxed as US citizens.**

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## Wage Withholding for U.S. Citizens and Resident Aliens

- **Employees with an SSN – file W-4 with employer to calculate withholding**
- **Independent contractors – no withholding requirement, estimated tax payments may be required**
- **Employees who do not provide a correct taxpayer identification number (ITIN or SSN) to employer may be subject to 24% back-up withholding rate**

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## Benefits for U.S. Taxation of Resident Alien versus Nonresident Alien

U.S. Tax Treatment	U.S. Citizens & Resident Aliens	Nonresident Aliens
Standard deduction	Yes	No
Itemized deductions	Yes	Only for expenses related to Effectively Connected Income (ECI)
Earned Income Tax Credit	Yes*	No
American Opportunity Tax Credit	Yes*	No
Child Tax Credit & Additional Child Tax Credit	Yes*	Yes*
Other Dependent Credit	Yes*	Yes*

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## **Advocating for Immigrant Taxpayers**

- **Challenges facing immigrants, guest workers and refugees**
  - **Complex and frequently changing tax law**
  - **May be distrustful of government**
  - **Language barriers**
  - **Unique cultural norms**

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## **Taxpayer Advocate Service (TAS)**

- **Helps taxpayers resolve problems with the IRS**
  - **Contact TAS at (877) 777-4778**
- or
- **Find your local TAS office on our website:**
    - **[www.TaxpayerAdvocate.irs.gov](http://www.TaxpayerAdvocate.irs.gov)**

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## Resources

- **IRS.gov**
- **Publication 519, US Tax Guide for Aliens**
- **Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number**
- **Taxpayer Bill of Rights Crosswalk:**
  - **<https://taxpayeradvocate.irs.gov/about-tas/taxpayer-rights>**

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## POLLING QUESTION 5

**ITINs allow residents to work in the US**

**YES/NO?**

# FBAR and IIR Penalties

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## Disclaimer

These slides are shorthand aids to an oral presentation. Neither these slides nor the oral presentation constitute legal or tax advice.

The information covered concerning FBARs and international information returns is high-level and in no way comprehensive. This presentation is intended for issue-spotting by a return preparer/advisor, and not instruction on how to prepare the various forms discussed in this presentation.

## Overview of International Reporting

- Reporting to FinCEN – Title 31 (Money and Finance)
- Reporting to IRS – Title 26 (Internal Revenue Code)

## Reporting to FinCEN- FBAR History

- FBAR first required 1970 as part of the Bank Secrecy Act (BSA)
- BSA was intended to assist investigators in tracing funds from illegal sources as they moved through the financial system
- Congress refined and modified the reporting requirements under the BSA, and expanded the reporting requirements after September 11, 2001

## History of FBAR (Cont'd)

- Basic reporting required under the BSA:
  - **Reports filed by persons on their own activities (FinCEN Form 114, formerly Form TD F 90-22.1)**
  - Reports filed by financial and non-financial businesses on their customers (for example, Currency Transaction Reports)
  - Registrations for money service businesses (for example, check cashing businesses)
  - Reports by the Secretary of the Treasury to Congress regarding FBAR compliance efforts

## History of FBAR (Cont'd)

- The general authority for the Secretary of the Treasury to require U.S. persons to keep records and file reports of their transactions with foreign financial agencies is Title 31, §5314.
- The specific filing requirement for the FBAR is contained in the regulations for the Bank Secrecy Act, Treasury Regulations 31 CFR 1010.350 (formerly 31 CFR 103.24)

## History of FBAR (Cont'd)

- In 2003 the Financial Crimes Enforcement Network (FinCEN) delegated to the IRS FBAR enforcement authority
  - IRS may investigate possible FBAR violations
  - IRS may assess civil FBAR penalties
  - IRS may issue administrative rulings on FBARs
- 31 CFR 1010.810(g) (delegation from FinCEN to IRS)

## Who is required to file an FBAR?

A U.S. person that has a financial interest in, or signature or other authority over, foreign financial accounts, the aggregate value of which exceeded \$10,000 at any time during the calendar year.

Key elements:

- U.S. Person
- Financial interest
- Signature or other authority
- Foreign financial account
- Aggregate balance

## FBAR- U.S. Person

- U.S. person
  - A U.S. Citizen
  - A Legal Permanent Resident (Green Card holder)
  - A Resident by Substantial Presence Test (SPT)
  - U.S. organized entities (corporations, partnerships, LLCs, etc.)
  - U.S. Trusts & Estates
- There are differences between U.S. Person for Title 26 and FBAR purposes

## FBAR – Financial Interest

- Owner of record or holder of legal title
- Owner of record or holder of legal title is an agent, nominee, attorney, or a person acting in some other capacity on behalf of the United States person
- Corporation, partnership, other entity holds the account, and U.S. person owns more than 50% of the corporation, partnership, or other entity
- Grantor trust holds the account and U.S. person has ownership interest in the trust for tax purposes
- A trust in which the U.S. person has a greater than 50 percent present beneficial interest in the assets or income of the trust for the calendar year

## FBAR – Financial Interest (Cont'd)

- Financial interest
  - If husband and wife own an entity equally that holds foreign bank account, best to report as IRS will generally take position that it is reportable
  - Anti-Avoidance rule- A U.S. Person that causes an entity to be created for the purpose of evading the definition of financial interest has a financial interest in any account for which the entity is the owner of record or holder of legal title – 1010.350(e)(3)

## FBAR- Signature or Other Authority

- Broad concept
- Authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the bank or other financial institution that maintains the financial account
  - Reporting exception (*not likely to encounter for refugees*) - for Officers or employees of certain entities subject to federal regulation and certain publicly-traded entities who have no financial interest in the foreign account

## FBAR – Foreign Financial Account

- Foreign means outside of the U.S., as defined in Title 31, regulation section 1010.100(hhh):
  - the States of the United States
  - the District of Columbia
  - the Indian lands
  - the territories and insular possessions of the United States
  - Foreign refers to the geographic location of the financial account
- Financial account: generally broad definition which includes
  - securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution
  - Cash value insurance
  - Mutual funds
  - And more

## FBAR – Aggregate Balance

- An FBAR is required if the aggregate value of all foreign accounts exceeds \$10,000
- To determine the maximum account value
  1. Determine the maximum value of each account for the calendar year using the currency of the account
  2. For each account not denominated in U.S. dollars, convert the maximum value of that account into U.S. dollars



## FBAR – Aggregate Balance Example

- A U.S. Person maintained three foreign bank accounts in calendar year 2021:
  - Pounds Sterling, maximum value of \$3,000
  - Euros, maximum value of \$4,000
  - Japanese Yen, maximum value \$4,000
- The aggregate value of these accounts is \$11,000 for calendar year 2021.
- All three accounts must be reported on an FBAR

## FBAR – Joint Filing

- The spouse of an individual who files an FBAR is not required to file a separate FBAR if all of the following are true:
  1. All foreign financial accounts of the non-filing spouse are jointly owned with the filing spouse
  2. The filing spouse reports the joint accounts on a timely-filed FBAR
  3. Both spouses sign the FBAR
- If all three conditions are not met, then spouses must file separate FBARs

## FBAR – Deadline and Filing

- Deadline
  - Annually due on April 15
  - Automatic extension to October 15
  - The FBAR filing deadline follows the Federal income tax due date guidance. When the Federal income tax due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.
- FBARs must be e-filed through FinCEN's BSA E-Filing System

## FBAR - Recordkeeping

- Account records must be maintained for 5 years from April 15 of the filing year
  - Example: 2021 FBAR is due 4/18/2022. Retain records 5 years from filing date to 4/18/2027
  - See FBAR Line by line instructions for details on required records
- Records access and retention will be an issue for refugees
  - Document lack of records and reason for lack of records at time of preparing FBAR

## FBAR Penalties

- Willful
  - Classic definition: Voluntary, intentional violation of a known legal duty
  - Caselaw has lowered the threshold to:
    - Reckless
    - Willfully blind
- Non-willful
  - Includes all levels of intent less than willful
    - Gross negligence
    - Negligence
    - Unintentional

## Willful FBAR Penalties

- IRS continues to aggressively pursue willful FBAR penalties
  - IRM 4.26.16.5.5
  - Default is the greater of \$100,000 (inflation adjusted for 2022 to \$144,886 per 31 CFR sec. 1010.821) or 50% of the account at the time of the violation date
- The 50% penalty is based upon the balance of the account on June 30 of the following year
- There is no reasonable cause exception for willful penalties

## Non-Willful FBAR Penalties

- Non-willful penalties
  - \$10,000 (inflation adjusted for 2022 to \$14,489 per 31 CFR sec. 1010.821) per violation
  - IRS position is that violations are counted per account
  - Example: U.S. person has signature authority over 22 foreign bank accounts with an aggregate balance in excess of \$10,000
    - IRS may assess  $\$10,000 \times 22 = \$318,758$  per reporting year

## FBAR Statute of Limitation

- 6 year statute of limitation for assessing FBAR penalties - 31 U.S.C. § 5321(b)(1)
- IRS may ask for “resurrection” of statute of limitation after it has lapsed
- Government has 2 years to bring a collection suit in federal court after assessment

## FBAR Resources

- IRS.gov guidance =
  - <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar>
  - IRS Publication 5569 (rev. 3-2022)
- FinCEN guidance-
  - <https://www.fincen.gov/index.php/report-foreign-bank-and-financial-accounts>
  - The FBAR Line Item Instructions booklet (“BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114)”) is a helpful resource

## POLLING QUESTION 6

Is an FBAR required if the interest income is less than 10K?

YES/NO

## Income Tax (Title 26) International Reporting

- The Internal Revenue Code mandates a complex set of international reporting requirements.
- The discussion that follows highlights the most common international information returns.
- Penalties for late, incomplete, or unfiled international information returns may be substantial or even crushing to the average taxpayer.

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## Some Common International Information Returns (IIRs)

Code Section	Form	IRS.gov resource
6038	Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations	<a href="https://www.irs.gov/forms-pubs/about-form-5471">https://www.irs.gov/forms-pubs/about-form-5471</a>
6038, 6038B	Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)	<a href="https://www.irs.gov/forms-pubs/about-form-8858">https://www.irs.gov/forms-pubs/about-form-8858</a>
6038A	Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business	<a href="https://www.irs.gov/forms-pubs/about-form-5472">https://www.irs.gov/forms-pubs/about-form-5472</a>
6038D	Form 8938, Statement of Specified Foreign Financial Assets	<a href="https://www.irs.gov/forms-pubs/about-form-8938">https://www.irs.gov/forms-pubs/about-form-8938</a>

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## Some Common International Information Returns (Cont'd)

Code Section	Form	IRS.gov resource
6039F	Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts	<a href="https://www.irs.gov/businesses/gifts-from-foreign-person">https://www.irs.gov/businesses/gifts-from-foreign-person</a>
6048(b)	Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner	<a href="https://www.irs.gov/forms-pubs/about-form-3520-a">https://www.irs.gov/forms-pubs/about-form-3520-a</a>
6677(a)	Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts	<a href="https://www.irs.gov/forms-pubs/about-form-3520">https://www.irs.gov/forms-pubs/about-form-3520</a>
6677(b)	Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts	<a href="https://www.irs.gov/forms-pubs/about-form-3520">https://www.irs.gov/forms-pubs/about-form-3520</a>

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## Statute of Limitation – Why filing information returns is so critical

- Open SoL under I.R.C. § 6501(c)(8)(A) - In the case of any information which is required to be reported to the Secretary pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is **3 years after the date on which the Secretary is furnished the information** required to be reported under such section.
- Six year SoL under I.R.C. § 6501(e)(1)(A)(ii) - \$5,000 unreported income from foreign financial asset

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## Key International Information Returns for Refugees

- Form 5471 - foreign corporations
- Forms 3520 and 3520-A - reporting relating to foreign trusts
- Form 3520 - reporting of foreign gifts/inheritances
- Form 8621 – passive foreign investment corporation (PFIC)
- Form 8858 - reporting foreign disregarded entities
- Form 8938 - foreign financial assets

## Form 8938

- Specified individuals and certain entities must report interests in specified foreign financial assets
- What are specified foreign financial assets?
  - Deposit accounts, foreign brokerage accounts, directly held foreign stock, foreign partnership interests, foreign mutual funds, foreign life insurance with cash value, foreign trust distributions, foreign hedge funds...
- Who must file?
  - “Specified persons” with “specified foreign financial assets”
  - “Specified persons” includes defined individuals and entities



## Form 8938 (Cont'd)

- Filing thresholds for individuals
  - Living in U.S. (unmarried) – assets greater than \$50,000 at year-end or \$75,000 at any point during the year
  - Living in U.S. (married) - assets greater than \$100,000 at year-end or \$150,000 at any point during the year
  - Living outside of the U.S. (unmarried) - assets greater than \$200,000 at year-end or \$300,000 at any point during the year
  - Living outside of the U.S. (married) - assets greater than \$400,000 at year-end or \$600,000 at any point during the year

## Form 8938 (Cont'd)

- When & how to file?
  - Attach to timely filed return of the U.S. person owner
- Penalties (I.R.C. § 6038D)
  - Initial penalty: \$10,000
  - Continuation penalties: up to additional \$50,000 per year

## Comparison of FBAR to Form 8938

- Some reporting on FBAR is duplicated on Form 8938
- IRS provides a useful chart comparing FBAR with Form 8938 reporting
  - Who must file, differences in treating U.S territories, reporting thresholds, when a person has a reportable interest, where to file, penalties, ...
  - Types of assets and whether reportable
- See "Comparison of Form 8938 and FBAR Requirements"  
<https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements>

## Form 5471

- Who must file? Certain U.S. Persons who are officers, directors, or shareholders
  - Officer director, 10%-shareholder by vote or value, control person in a CFC for at least 30 days; acquisition of shares and after the acquisition owns more than 10%. Numerous exceptions.
  - Various reporting categories
- When and where to file?
  - Attach to timely filed return of the U.S. person shareholder
- Penalties (I.R.C. §§ 6038(b); 6038B(c))
  - Initial penalty: \$10,000 per CFC
  - Continuation penalties: up to additional \$50,000 per CFC per year

## Form 3520

- Grantors or beneficiaries with reportable transactions with foreign trusts or estates
  - Many reportable transactions including formation of foreign trust, transfer of property to foreign trust, receipt of distributions by U.S. beneficiary, loans to a foreign trust.
  - Gifts or bequests from foreign person or estate greater than \$100,000.
- When and where to file?
  - Due with tax return for the U.S. grantor or beneficiary (separately filed – Ogden, UT)
- Penalties (I.R.C. §§ 6039F, 6677)
  - Foreign trust transactions: 35% of the gross value of the transfer to/distribution from a foreign trust
  - Foreign Gifts and Inheritances: 5% per month of foreign gift/inheritance, up to 25%

## Form 3520-A

- A foreign trust with a U.S. owner
  - Basic info about trust, trust income statement, trust balance sheet, distributions to beneficiaries, and more
- When and where to file?
  - Due March 15 if filed by trustee. Due with return of US owner if the US owner files substitute Form 3520-A
- Penalties (I.R.C. § 6677)
  - Greater of \$10,000 or 5% of the gross value of the trust
  - \$10,000 per month continuation penalty

## Form 8621

- Passive Foreign Investment Corporation (PFIC) – special tests by income and assets
  - Required under I.R.C. sec. 1298(f)
  - Gains and losses in PFICs generally recognized each year
  - Very complex accounting for PFICs
- Issue spotting for refugees- foreign mutual funds are classified as PFICs

## Form 8621 (Cont'd)

- Who must file?
  - U.S. persons who are direct or indirect shareholders in a PFIC
- When and where to file?
  - Attach to shareholder's tax return by due date (with extension)
- Penalties
  - No separate penalties for Form 8621
  - PFIC disclosure may be required on Form 8938

## Form 8858

- U.S. persons who own a foreign disregarded entity
  - A foreign DRE is an entity that is not created or organized in the U.S. and is disregarded as an entity separate from its owner for U.S. tax purposes.
  - Required reporting of entity, owners, income statement, balance sheet, and more
- When to file?
  - Attach to timely filed return of the U.S. person shareholder
- Penalties (I.R.C. § 6038(b))
  - Initial penalty: \$10,000 per foreign DRE
  - Continuation penalties: up to additional \$50,000 per DRE per year

## Reporting Strategies for Refugees

- Provide as much information as possible on the information return and add addendum/explanation statement concerning estimates and reasons for any missing information
- Document in workpapers what was available, what wasn't available, and why items were not available.
  - Memories fade. Be complete and get the story down in writing.
- If selected for exam argue substantial compliance
  - See IRS Practice Unit "The Meaning of "Substantially Complete" with Reference to Int'l Information Return Penalties" available on IRS.gov

## Penalties for Timely Info Returns

- Challenge penalties
- Provide narrative with supporting documents showing filing dates
- Create and keep a paper trail

## Penalties for Late Info Returns

- If taxpayer has facts to support reasonable cause, prepare and attach reasonable cause statement
- Submit, resubmit, appeal, resubmit...
- Possibly file a Form 843, Claim for Refund and Request for Abatement, if reasonable cause request falls into the IRS backlog abyss
- Before the Independent Office of Appeals, settlement discretion for certain issues relating to international penalties are taken away from individual Appeals Officers
  - Obstacles relating to review and concurrence
- Prepare clients for IRS process and timeline

## Strategies for Late or Incomplete FBARs

- If the following conditions are met:
  - Tax returns filed and all tax reported,
  - Missing or incomplete FBAR,
  - Not under civil examination or criminal investigation, and
  - Not contacted by the IRS about the delinquent FBARs
- Then, use the delinquent FBAR submission procedures  
<https://www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures>

## Systemic Penalty Assessments

- Forms 5471/5472 for corporate and partnership filers
- All Forms 3520 and Forms 3520-A filed with Ogden
  - Systemic = campus operations while processing
  - Manual = revenue agents from audits

## Systemic Penalties- Forms 3520/3520-A

- Beginning January 2018, the IRS began assessing penalties on all late filed Forms 3520 and 3520A
- Large number of cases timely filed and incorrectly penalized as late
- AICPA and other groups have expressed much valid concern about systemic penalty assessments

## Compliance Options for Taxpayers with International Information Return Issues

1. Voluntary Disclosure Practice – for taxpayers with criminal exposure
2. Filing Amended/Delinquent Returns (a.k.a. “quiet disclosure”)
3. Prospective compliance (a.k.a. “silent disclosure”)
4. Streamlined Filing Compliance Procedures
  - Streamlined Foreign Offshore
  - Streamlined Domestic Offshore



## Confirm written supervisory approval of penalties

I.R.C. § 6751(b) states: "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the **immediate supervisor** of the individual making such determination or such higher level official as the Secretary may designate."

## Collection Issues – Int'l Penalties

- Ask for a "collection stay" if client is waiting on reasonable cause determination
  - Collection stays are often temporary
  - Requires time and multiple requests to renew collection stay
  - Prepare clients for possibility of IRS applying refunds to penalty balance
- Collection Due Process hearing
  - Provide reasonable cause statement that was submitted and timeline of submissions
  - Ponder asking Collection to contact Appeals International for technical assistance in considering underlying penalties
- FOIA and then Form 656-L Doubt as to Liability

# POLLING QUESTION 7

Penalties apply to the failure to file IIRs even if no tax due.

YES/NO

## Afghan Refugees and the Tax Credits Available to Them<sup>ss</sup> (Taxable Year 2021)

Some slides adapted from the Rutgers Law – LITC

Byung Hyuk (Billy) Min, Esq.

## 2021 Economic Impact Payment (2021 EIP)



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## What is the 2021 EIP?

- ▶ The 2021 Economic Impact Payment, a/k/a 2021 stimulus check a/k/a third round stimulus payments, was passed in the American Rescue Plan Act of 2021 ("ARPA"). The ARPA built on the 2020 CARES Act to help American citizens, nationals, and residents during the COVID-19 pandemic by distributing \$1,400 per eligible individual and \$1,400 per qualifying dependent.
- ▶ Codified in I.R.C. § 6428B.



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Who is eligible?

## Eligibility Criteria

- ▶ Eligible Individual - I.R.C. § 6428B(c)  
Any individual other than -  
(1) any nonresident alien individual;  
(2) any individual who is a dependent of another taxpayer or for a taxable year beginning in the calendar year in which the individual's taxable year begins; and  
(3) an estate or trust.
- ▶ Limitation Based On Adjusted Gross Income - I.R.C. § 6428B(d)  
AGI BELOW: \$150,000 Married Filing Jointly;  
\$112,500 Head of Household; \$75,000 Single
- ▶ Valid Identification Number - I.R.C. § 6428B(e)(2)  
SSN issued to an individual by the SSA, on or before the due date

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Does this include Afghan Refugees?

YES, if a first-year election (I.R.C. § 7701(b)(4)) is made

When?

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## POLLING QUESTION 8

- ▶ ITIN HOLDERS ARE ELIGIBLE FOR THE EIP
- ▶ YES/NO

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## Child Tax Credit(CTC)



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## What is the Child Tax Credit?

- ▶ The Child Tax Credit (CTC) is a tax benefit granted to qualified taxpayers for each qualifying dependent child
- ▶ For 2021 The American Rescue Plan increased the maximum annual credit to \$3,000 per each qualifying child under age 18 or \$3,600 for qualified children younger than 6
- ▶ The Child Tax Credit decreases taxpayers' tax liability on a dollar-for-dollar basis and is fully refundable for 2021



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## Are you a Qualified Taxpayer?

The Child Tax Credit (CTC) is for:

- Individuals who claim a child as a dependent so long as the child is a qualified child
  - Only one taxpayer can claim the Child Tax Credit, even if the qualifying child divides time between more than one household during the tax year
- For the 2021 tax year, you can take full advantage of the expanded credit if your modified adjusted gross income is:
  - Under \$75,000 for single filers
  - Under \$112,500 for heads of household
  - Under \$150,000 for those married filing jointly
- If you are above these thresholds there is a credit phaseout generally of \$50 for each \$1,000 (or fraction thereof) of modified adjusted gross income above a MAGI threshold

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## Qualifying Child

- ▶ A qualifying child is the taxpayer's:
  - ▶ Son
  - ▶ Daughter
  - ▶ Stepchild
  - ▶ Eligible foster child
    - ▶ Foster children younger than 19 who lived with you for more than half of the year
  - ▶ Brother or Sister
  - ▶ Stepbrother or Stepsister
  - ▶ Half-brother or half - sister
  - ▶ Legally adopted child or
  - ▶ A descendant of any of the above (e.g. grandchild, niece etc.)

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## Qualifying Child

- ▶ A child qualifies a taxpayer to claim the CTC if the child meets the following conditions:
  - ▶ The child was a US Citizen, US National, or Resident Alien at the end of 2021
  - ▶ The child is under 18 at the end of 2021
  - ▶ The child did not provide over half of their own support
  - ▶ The child lived with the taxpayer for more than half of the 2021
  - ▶ The child is claimed as a dependent on taxpayer's return
  - ▶ The child does not file a joint return for the year (or files it only to claim a refund of withheld income tax or estimated tax paid)



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## Are Afghan Refugees Eligible?

▶ Sort of...

▶ (1) Special Rules for 2021

▶ In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

▶ (1) Refundable credit

▶ If the taxpayer (in the case of a joint return, either spouse) has a principal place of abode in the United States (determined as provided in section 32) for more than one-half of the taxable year

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## Earned Income Tax Credit

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## What is the Earned Income Tax Credit?

- ▶ The Earned Income Tax Credit (EITC) helps low-to-moderate income workers and families get a tax break.
- ▶ If a taxpayer qualifies, they can use the credit to reduce how much tax they owe or increase their refund amount.
- ▶ This tax credit has greatly reduced poverty for working families.

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## Basic Qualifications to Claim EITC

Taxpayer must have worked and earned income under \$57,414

Taxpayer's investment income must be below \$10,000 in 2021

Taxpayer must have a valid social security number by the due date of their 2021 return (including extensions)

Taxpayer must have a principal place of abode in the U.S. for more than one-half of 2021

Taxpayer can't file Form 2555, *Relating to Foreign Earned Income*

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## If Taxpayer does not have a qualifying child

- ▶ Taxpayer must only be at least 19 years old, for Tax Year 2021.
- ▶ Taxpayer can't be the dependent of another person
- ▶ Taxpayer can't be the qualifying child of another person
- ▶ Taxpayer must have lived in the United States for more than half of the year

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## Qualifying Child Requirements

- a. A child who bears a relationship to the taxpayer
  - i. Relationship: child, stepchild, foster child, sibling, stepsibling, or a descendant (grandchild, niece/nephew)
- b. A child with the same principal place as the taxpayer for more than one-half of such taxable year
- c. A child who meets the age requirement
  - i. Under 19 at the end of the taxable year (Under 24 if a student)
  - ii. Permanently and totally disabled at any time regardless of age
- d. A child who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and
- e. A child who has not filed a joint return (besides for a claim of refund)

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## And Afghan Refugees?

- ▶ Unlikely. Because of the “principal place of abode” requirement, most Afghan Refugees won't be eligible. However, some will be able to make a 6013 (g), (h) election.
- ▶ Only certain married individuals who are eligible to make the first-year election and/or file a joint return under election I.R.C. §§ 6013(g), (h) will be eligible for the 2021 EITC.

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## POLLING QUESTION 9

- ▶ ITIN HOLDERS ARE ELIGIBLE FOR THE EITC
- ▶ YES/NO

## Conclusion

- ▶ 2021 EIP (2021 RRC) - YES
- ▶ 2021 CTC - NO
- ▶ BUT...
- ▶ 2018-2025 CTC - YES
- ▶ EITC - UNLIKELY, BUT POSSIBLE

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## QUESTIONS?

Susan E. Morgenstern  
Acting Supervisory Attorney Advisor  
Taxpayer Advocate Service

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## Low Income Taxpayer Clinic Mission

Low Income Taxpayer Clinics (LITC) ensure the fairness and integrity of the tax system for taxpayers who are low-income or speak English as a second language (ESL) by:

- Providing ***pro bono* representation** on their behalf in tax disputes with the IRS;
- **Educating** them about their rights and responsibilities as taxpayers; and
- Identifying and **advocating** for issues that impact low-income taxpayers.

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## Volunteers and LITCs

LITCs utilize volunteers to help expand the reach of their program.

Attorneys, CPAs and Enrolled Agents may provide:

- Representation in a controversy before the IRS
- Assist with tax preparation where necessary to resolve a controversy
- Act as a mentor or resource for students in accounting or clinical law programs or to a new practitioner
- Author or provide substantive continuing legal education to practitioners through the clinic
- Volunteer to teach communities about their taxpayer rights and responsibilities through sponsored events.

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## Representation

LITCs represent taxpayers in disputes with:

- The Internal Revenue Service (IRS) including audits, appeals, collections, and Tax Court and other US Federal Courts
- State and local tax issues that are related to the federal tax issue.
- Applicants not accepted for representation may be provided legal advice about their situation.

In general, clinics do not prepare tax returns unless the return is needed to resolve the dispute. A late tax return can be considered a controversy therefore LITCs may assist non-filers to bring them into compliance.

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