

Substantial Presence Test Examples

Counting Days

The person must be physically present in the U.S. on at least:

- 31 days during the current year, **and**
- 183 days during the three year period that includes the current year and the two preceding calendar years, counting:
 - All of the days the person was present in the current year, **and**
 - 1/3 of the days the person was present in the first preceding year, **and**
 - 1/6 of the days the person was present in the second preceding year

Example: An individual is present in the U.S. for 84 days in 2014, 168 days in 2013 and 261 days in 2012, then the test would show residency, with 183.5 days of presence.

SUBSTANTIAL PRESENCE TEST CALCULATION			
	Year	Number of Days in US	Calculation
Current Year	2014	84	$84 \times 1 = 84$ days
1 st Preceding Year	2013	168	$168 \times 1/3 = 56$ days
2 nd Preceding Year	2012	261	$261 \times 1/6 = 43.5$ days
			Total = 183.5 days
Residency Determination = Resident Alien for Tax Purposes			

Note: In this example, the person was a resident during 2013 because $168 + (261 * 1/3) = 255$ days and during 2012 because 261 days > 183 days.



Substantial Presence Test Examples

Days Not Counted

- J-1 non-student visa holder (professor, researcher, etc.), who is substantially complying with the requirements of the visa, does not count days present in the first **two calendar years**
- F-1 or J-1 student visa holder, who substantially complies with the requirements of the visa, does not include days present in the first **five calendar years**

Note: The counting rules are based on **calendar** years, not twelve-month periods.

Example 1: A J-1, non-student, foreign visitor enters the U.S. on December 15, 2012. So, 2012 is the “first calendar year”, even though the foreigner was only present for 16 days during 2012. 2013 is the “second calendar year”. This individual would begin counting days present in the U.S. on 1/1/2014 and would become a resident on July 2, 2014. The full 183 days in the current calendar year are required for residency because there are no countable days in the prior two years.

Example 2: When an individual is exempt from counting days in a year, those days are never used for future SPT periods. An F-1 or J-1 student can be exempt from counting days only once, but the five year period can be split between visits. J-1 non-students can use their two exempt years repeatedly, being allowed two years in every seven. A J-1 researcher, who first came to the U.S. in 2005 and 2006, was exempt both years, returned as a J-1 teacher in August 2011, and had to count days under the SPT to determine residency and pay FICA taxes in 2011, because he had two exempt years within the prior six. However, in 2012, he is again exempt from counting days (and FICA), because he has only one exempt year in the previous six. In 2013, he would also be exempt, and if he left in 2013 he would be a nonresident for all three years (August – Dec 2011 does not equal 183 days).

SUBSTANTIAL PRESENCE TEST CALCULATION				
J-1 Non-student with Repeat Visits				
US Entry Date	Year	Number of Days in US	Calculation	Residency Determination
9/1/2005	2005	Exempt from Counting Days	0	Nonresident Alien
	2006	Exempt from Counting Days	0	Nonresident Alien
	2007	Not in US	N/A	N/A
	2008	Not in US	N/A	N/A
	2009	Not in US	N/A	N/A
	2010	Not in US	N/A	N/A
9/1/2011	2011	122 days	122 X 1 = 122 days	Nonresident Alien
	2012	Exempt from Counting Days	0	Nonresident Alien
	2013	Exempt from Counting Days	0	Nonresident Alien

