

Tax Credits for Aliens – Who is Eligible?

To claim a tax credit, the Non-Resident Alien must have **effectively connected income** (Form 1040NR, lines 8 – 23). The credits do not offset “Other Taxes” from lines 52-57, which include income that is not effectively connected with a U.S. trade or business.

These credits are non-refundable.

The following credits may be claimed on Form 1040NR –

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Other credits are **only** available to Non-Resident Aliens if they choose to file a joint return with their spouse that is a U.S. citizen or resident. These credits are:

Education Credits – If the taxpayer, spouse or dependents had qualifying tuition and related expenses. See Publication 970, Tax Benefits for Higher Education, for more information.

Earned Income Tax Credit – a refundable credit for low income working people, especially families with children. Both spouses and any qualifying children must have a Social Security Number that allows them to work in the United States. See Publication 596, Earned Income Tax Credit, for more details.

Credit for the Elderly and Disabled – If the taxpayer or spouse was over age 65 at the end of the tax year, or under age 65 but received taxable disability. An income limitation applies. See Publication 524, Credit for the Elderly and Disabled for more details

Form 1040NR Credits -- Quick Reference

Credit	Income Requirements for Non-Resident Aliens	Country of Residence	Filing Status	Other Requirements that may Eliminate Non-Resident Aliens
Foreign Tax Credit	Effectively Connected Foreign Source Income	Any	Any	None
Child and Dependent Care Credit	Effectively Connected Income	Canada, Mexico, Japan, South Korea, Students and Apprentices from India	Single or Qualifying Widow(er)	Taxpayer must maintain a home w/dependent Japan, S Korea, Indian dependents must be child
Retirement Savings Contribution Credit (Saver's Credit)	Effectively Connected Income	Any	Any	Must be working and saving for retirement in the U.S. May not be a full-time student
Child Tax Credit and Additional Child Tax Credit	Effectively Connected Income	Canada, Mexico, Japan, South Korea, Students and Apprentices from India	Any	Child must be U.S. resident
Adoption Credit	Effectively Connected Income	Any	Single or Qualifying Widow(er)	None

Married Non-Resident Aliens will be able to claim the Child and Dependent Care Credit or the Adoption Credit only if they choose to file a joint return with a U.S. citizen or resident. A married person filing a separate return may not claim these credits. **However, residents of Canada, Mexico, Japan or South Korea who meet the tests for “Married Persons Living Apart” may be able to use the Single filing status.**

Foreign Tax Credit (line 43)

The Foreign Tax Credit is the amount of the taxpayer's total eligible foreign taxes, or the amount of tax on Line 40, whichever is **smaller**.

A Non-Resident Alien may qualify for the Foreign Tax Credit if the income being taxed is from **foreign sources** that is **effectively connected with a trade or business in the U.S.** and will be included on their Form 1040NR. As non-resident aliens are not taxed on foreign income that is not effectively connected, foreign taxes paid on that income is not eligible for the credit.

To claim the Foreign Tax Credit on Form 1040NR, all the following conditions must be met:

- 1) Taxes are income, war profits and excess profits taxes paid to the government or a political subdivision (i.e., a city, state or province) of a foreign country or U.S. possession
- 2) Taxes must be paid on **foreign source income** that is **effectively connected with a trade or business in the U.S.**
- 3) The foreign government is recognized by the U.S. and not designated by the Secretary of State as supporting terrorism.
- 4) The taxes must be legally owed to the foreign government, and not eligible for refund or returned as a subsidy, and
- 5) If the foreign tax was paid on a dividend from shares of stock, the taxpayer must have held that stock for at least 16 days.

If Form 1116 is required, refer the taxpayer to a professional preparer.

Form 1116 is **not** required if all of the following are met:

- All income being taxed is interest or dividends
- All taxes are reported on a qualified payee statement, such as Form 1099-INT, Form 1099-DIV, or Schedule K-1
- Taxpayer's total creditable foreign taxes are not more than \$300 (\$600 for Married Filing Joint), and
- Taxpayer is not carrying over any excess foreign taxes

For more information on the Foreign Tax Credit, see Publication 514, Foreign Tax Credit for Individuals.

Credit for Child and Dependent Care Expenses (line 44)

The credit is a percentage of the amount paid to care for a qualifying person while the taxpayer worked or looked for work.

Very few Non-Resident Aliens qualify are eligible for this credit. To be eligible, **all** the following conditions must be met:

- The Non-Resident Alien can claim an exemptions for the qualifying person
- Filing status is Single or Qualifying Widow(er)
- The Non-Resident Alien has effectively connected income.
- The taxpayer kept up a home where he or she lived with the qualifying person.

Non-Resident Aliens that may be able to claim exemptions for dependents:

- **Residents of Canada or Mexico** -- if the qualifying person meets the age, relationship, joint return, residency and support tests for dependents.
- **Residents of Japan or South Korea** – qualifying person must be a child that meets the age, relationship, joint return and support tests AND lived with the taxpayer in the U.S. at some time during the tax year AND the taxpayer had effectively connected income from a U.S. source. **Students and apprentices from India** – qualifying person must be a child that was **not** admitted to the U.S. on F-2, J-2 or M-2 visas AND meets the age, relationship, joint return and support tests.

NOTE: *As long as the taxpayer was the custodial parent, a child can still be a qualifying person for this credit, even if the child's exemption is being claimed by the other parent under the special rules for divorced and separated parents.*

Married Non-Resident Aliens will be able to claim the credit only if they choose to file a joint return with a U.S. Citizen or resident. A married person filing a separate return may not claim the credit. However, residents of Canada, Mexico, Japan or South Korea who meet the tests for “Married Persons Living Apart” may be able to use the Single filing status.

Disabled Spouse – Only a married Non-Resident Alien choosing to file a joint return with a U.S. Citizen or resident would only be able to claim the credit based on expenses for a disabled spouse. Form 1040NR does not allow for a joint return, and a married person filing a separate return cannot claim the credit. As the taxpayer must keep up a home where they lived with the qualifying person, the exceptions for “Married Persons Living Apart” would not apply.

There are other requirements for the Child and Dependent Care Credit. For information on qualifying expenses, provider reporting requirements and more, see Publication 503, Child and Dependent Care Expenses.

Retirement Savings Contribution Credit (Line 45)

The Retirement Savings Contribution Credit (also referred to as the Saver's Credit) allows a credit based on a percentage of the taxpayers contributions to an IRA Individual Retirement Arrangement (IRA) or other qualified retirement plan defined under U.S. code. The percentage allowed as a credit depends on the taxpayers Adjusted Gross Income.

Non-Resident Aliens may qualify for this credit if they are working and saving for retirement in the U.S. However, full-time students are not eligible, so many of your VITA clients may not qualify for the credit.

In order to claim the Saver's Credit on Form 1040NR, the Non-Resident Alien must meet **all** the following conditions:

- Contributed to an IRA or qualified retirement plan
- **Must have effectively connected income**
- **Not a full-time student**
- At least 18 years of age
- Not able to be claimed as a dependent on another person's tax return
- Adjusted Gross Income must not be over \$50,000 for Married Filing Joint
\$37,500 for Head of Household
\$25,000 for Single or Separate

Note: *Credit will be reduced if TP received an IRA/retirement distribution IN THE 2 PRIOR TAX YEARS THRU APRIL 15 OF THE FOLLOWING YEAR (except rollovers or withdrawals of excess contributions).*

For more information on the Saver's Credit, see Form 8880, Credit for Qualified Retirement Savings Contributions.

Child Tax Credit (Line 46)

The Child Tax Credit is a non-refundable credit for people who have a qualifying child. Certain lower-income taxpayers may also qualify for the Additional Child Tax Credit, which is calculated on Form 8812.

To claim the Child Tax Credit on a Form 1040NR, the taxpayer must be able to claim the child as a dependent **and** the child must also be a U.S. citizen or resident. In addition, the Non-Resident Alien must have effectively connected income.

A qualifying child for the Child Tax Credit must be:

- Under age 17
- The taxpayer's child, adopted child, stepchild, grandchild, or eligible foster child
- **Claimed as a dependent** on the Form 1040NR
 - **Canadian and Mexican** residents can claim children or grandchildren as dependents, as long as the children meet the age, relationship, joint return, residency and support tests for dependents
 - **Japanese and South Korean** residents can claim children (but not grandchildren) as dependents if they meet the age, relationship, joint return and support tests AND lived with the taxpayer in the U.S. at some time during the tax year AND the taxpayer had effectively connected income from a U.S. source.
 - **Students and business apprentices from India** can claim children (but not grandchildren) as dependents if they were **not** admitted to the U.S. on F-2, J-2 or M-2 visas AND meet the age, relationship, joint return and support tests.
- **A U.S. citizen or resident**

For example, a Non-Resident Alien from Japan has a 1 year-old child born in the U.S. and therefore a U.S. citizen. If the taxpayer meets all the tests that allow him to claim the child as a dependent, AND the child lived with him in the U.S. AND the taxpayer had effectively connected U.S. source income, then the Non-Resident Alien can claim the child as a dependent, and claim the Child Tax Credit on his Form 1040NR.

For more information on the Child Tax Credit and Additional Child Tax Credit, see Publication 972, Child Tax Credit.

Adoption Credit (Line 47)

The Adoption Credit is a credit for people who adopt a child. The rules governing when the credit may be taken and the limits for the credit depend on whether the child is a U.S. citizen or a foreign child, and whether the child has special needs.

Non-Resident Aliens filing Form 1040NR may be able to claim the Adoption credit if they have qualifying adoption expenses. However, they must:

- Report effectively connected income AND
- Use Single or Qualifying Widow(er) filing status.

Married Non-Resident Aliens will be able to claim the credit only if they choose to file a joint return with a U.S. citizen or resident. A married person filing a separate return may not claim the credit. However, residents of Canada, Mexico, Japan or South Korea who meet the tests for “Married Persons Living Apart” may be able to use the Single filing status.

For information on qualifying expenses, income limitations and when to take the credit, see Publication 968, Tax Benefits for Adoption.

Mortgage Interest Credit (Form 8396) – If a Non-Resident Alien was issued a Mortgage Credit Certificate for his main home, use Form 8396 to calculate the credit and show it on line 48. The taxpayer must have effectively connected income. The credit is not affected by filing status or exemptions.

District of Columbia First-Time Homebuyer Credit (Form 8859) – If a Non-Resident Alien purchased a home in the District of Columbia and has modified Adjusted Gross Income less than \$90,000, they may qualify for the credit. The taxpayer must have effectively connected income. See the instructions for Form 8859 for more information.

The following credits may be claimed by Non-Resident Aliens on Form 1040NR, but are outside the scope of the VITA program. Taxpayers that may qualify for these credits should be referred to a professional preparer:

Credit for Prior Year Minimum Tax (Form 8801)

Qualified Electric Vehicle Credit (Form 8834)

General Business Credit (Form 3800)

Empowerment Zone Employment Credit (Form 8844)

Nonconventional Source Fuel Credit