**26 CFR § 301.7701(b)-1 Resident alien.**

**(a)*Scope.*** [Section 301.7701(b)-1(b)](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-1_b) provides rules for determining whether an alien individual is a [lawful permanent resident](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=33515141b7efad4195cc0cd49cb0e91a&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of the United States. [Section 301.7701(b)-1(c)](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-1_c) provides rules for determining if an alien individual satisfies the substantial presence test.[Section 301.7701(b)-2](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-2) provides rules for determining when an alien individual will be considered to maintain a [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) home in a foreign country and to have a closer connection to that foreign country. [Section 301.7701(b)-3](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-3) provides rules for determining if an individual is an exempt individual because of his or her status as a foreign government-related individual, teacher, trainee, student, or professional athlete. [Section 301.7701(b)-3](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-3) also provides rules for determining whether an individual may exclude days of presence in the United[States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) because the individual was unable to leave the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) because of a medical condition. [Section 301.7701(b)-4](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-4) provides rules for determining an individual's residency starting and termination dates. [Section 301.7701(b)-5](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-5) provides rules for applying section 877 to a nonresident alien individual. [Section 301.7701(b)-6](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-6) provides rules for determining the [taxable year](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=dd37c48ddaba183135105d17eb1f5a13&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of an alien. [Section 301.7701(b)-7](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-7)provides rules for determining the effect of these regulations on rules in [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) conventions to which the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) is a party. [Section 301.7701(b)-8](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-8) provides procedural rules for establishing that an individual is a nonresident alien. [Section 301.7701(b)-9](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-9) provides the[effective dates](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b998ada40f3a4e87d307e9793bb47ea8&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of section 7701(b) and the regulations under that section. Unless the context indicates otherwise, the regulations under[§§ 301.7701(b)-1](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-1) through 301.7701(b)-9 apply for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of determining whether a United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) citizen is also a resident of the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1). (This determination may be relevant, for [example](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d5445d557f1503834f315a4ff883e611&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1), to the application of section 861(a)(1) which treats income from[interest](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1d08c190a01308a970560f75b9fdfe38&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1)-bearing obligations of residents as income from sources within the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1).) The regulations do not apply and [§§ 1.871-2](https://www.law.cornell.edu/cfr/text/26/1.871-2)and 1.871-5 of this chapter continue to apply for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of the bona fide residence test of section 911. See [§ 1.911-2(c](https://www.law.cornell.edu/cfr/text/26/1.911-2#c)) of this chapter. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of determining whether an individual is a resident of the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=7&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) for estate and gift [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) purposes, see [§ 20.0-1(b)(1) and (2)](https://www.law.cornell.edu/cfr/text/26/20.0-1#b_1) and [§ 25.2501-1(b](https://www.law.cornell.edu/cfr/text/26/25.2501-1#b)) of this chapter, respectively.

**(b)*Lawful permanent resident*** -

**(1)*Green card test.*** An alien is a resident alien with respect to a calendar year if the individual is a [lawful permanent resident](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=33515141b7efad4195cc0cd49cb0e91a&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) at any time during the calendar year. A [lawful permanent resident](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=33515141b7efad4195cc0cd49cb0e91a&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) is an individual who has been lawfully granted the privilege of residing permanently in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=8&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) as an immigrant in accordance with the immigration laws. Resident status is deemed to continue unless it is rescinded or administratively or judicially determined to have been abandoned.

**(2)*Rescission of resident status.*** Resident status is considered to be rescinded if a final administrative or judicial order of exclusion or deportation is issued regarding the alien individual. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of this paragraph, the term “final judicial order” means an order that is no longer subject to appeal to a higher court of competent jurisdiction.

**(3)*Administrative or judicial determination of abandonment of resident status.*** An administrative or judicial determination of abandonment of resident status may be initiated by the alien individual, the Immigration and Naturalization Service (INS), or a consular officer. If the alien initiates this determination, resident status is considered to be abandoned when the individual's application for abandonment (INS Form I-407) or a letter stating the alien's intent to abandon his or her resident status, with the Alien Registration Receipt Card (INS Form I-151 or Form I-551) enclosed, is filed with the INS or a consular officer. If INS replaces any of the form numbers referred to in this paragraph or [§ 301.7701(b)-2(f)](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-2_f), refer to the comparable INS replacement form number. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of this paragraph, an alien individual shall be considered to have filed a letter stating the intent to abandon resident status with the INS or a consular office if such letter is sent by certified mail, return receipt [requested](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=764bb439b85bddc2446be8e845e21b80&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) (or a foreign country's equivalent thereof). A copy of the letter, along with proof that the letter was mailed and received, should be retained by the alien individual. If the INS or a consular officer initiates this determination, resident status will be considered to be abandoned upon the [issuance](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f4c3ea5e4e9ed15d4fbb2f355c522a4c&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of a final administrative order of abandonment. If an individual is granted an appeal to a federal court of competent jurisdiction, a final judicial order is required.

**(c)*Substantial presence test*** -

**(1)*In general.*** An alien individual is a resident alien if the individual meets the substantial presence test. An individual satisfies this test if he or she has been present in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=9&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) on at least 183 days during a three year period that includes the current year. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of this test, each day of presence in the current year is counted as a full day. Each day of presence in the first preceding year is counted as one-third of a day and each day of presence in the second preceding year is counted as one-sixth of a day. For[purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=7&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of this paragraph, any fractional days [resulting](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=fe21e6e57c3298b181fb228ee53cccfd&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) from the above calculations will not be rounded to the nearest whole number. (See [§ 301.7701(b)-9(b)(2)](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-9_b_2) for [transitional rules](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23622418577300f98cdfd8e43cb1f345&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) for calendar years 1985 and 1986.)

**(2)*Determination of presence*** -

**(i)*Physical presence.*** For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=8&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of the substantial presence test, an individual shall be treated as present in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=10&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1" \o "States)on any day that he or she is physically present in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=11&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) at any time during the day. (But see [§ 301.7701(b)-3](https://www.law.cornell.edu/cfr/text/26/301.7701#b_-3) relating to days of presence that may be excluded.)

**(ii)*United States.*** For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=9&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of section 7701(b) and the regulations thereunder, the term *United States* when used in a geographical sense includes the [states](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=12&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) and the District of Columbia. It also includes the territorial waters of the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=13&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=14&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) and over which the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=15&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. It does not include the possessions and territories of the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=16&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) or the air space over the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=17&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1).

**(3)*Current year.*** The term *current year* means any calendar year for which an alien individual is determining his or her resident status.

**(4)*Thirty-one day minimum.*** If an individual is not physically present for more than 30 days during the current year, the substantial presence test will not be applied for that year even if the three-year total is 183 or more days. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=10&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of the substantial presence test, it is irrelevant that an individual was not present for more than 30 days in the first or second year preceding the current year.

**(d)*Application of section 7701(b) to the possessions and territories*** -

**(1)*Application to aliens for purposes of mirror systems.*** Section 7701(b) provides the basis for determining whether an alien individual is a resident of a United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=18&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) possession or territory that administers income [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) laws that are identical (except for the substitution of the name of the possession or territory for the term “United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=19&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1)” where appropriate) to those in force in the United[States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=20&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1), for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=11&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) of applying such laws with respect to income [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) liability incurred to such possession or territory.

**(2)*Non-application for bona fide resident determination.*** Section 7701(b) does not provide the basis for determining whether an individual (including an alien individual) is a bona fide resident of a United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=21&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1) possession or territory for Federal income [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:301.7701(b)-1" \o "tax)purposes. For the applicable rules for making this determination, see section 937(a) and [§ 1.937-](https://www.law.cornell.edu/cfr/text/26/1.937-)1 of this chapter.

**(e)*Examples.*** This section may be illustrated by the following examples:

**Example 1.**

B, an alien individual, is present in the United States for 122 days in the current year. He was present in the United States for 122 days in the first preceding calendar year and for 122 days in the second preceding calendar year. In determining his status for the current year, B counts all 122 days in the United States in the current year plus 1/3 of the 122 days in the United States in the first preceding calendar year (40 2/3 days) and 1/6 of the 122 days in the United States during the second preceding calendar year (20 1/3 days). The total of 122 40 2/3 20 1/3 equals 183 days. B meets the substantial presence test and is a resident alien for the current year.

**Example 2.**

C, an alien individual, is present in the United States for 25 days during the current year. She was present in the United States for 365 days during the first preceding year and 365 days during the second preceding year. The substantial presence test does not apply because C is present in the United States for fewer than 31 days during the current year.

**Example 3.**

D, an alien individual, is present in the United States for 170 days during the current year. He was present in the United States for 30 days during the first preceding year and 30 days during the second preceding year. In determining his status for the current year, D counts all 170 days in the United States in the current year plus 1/3 of the 30 days in the United States in the first preceding calendar year (10 days) and 1/6 of the 30 days in the United States during the second preceding calendar year (5 days). The total of 170 10 5 equals 185 days. D meets the substantial presence test and is a resident alien for the current year notwithstanding the fact that he was present in the United States for fewer than 31 days in each of the two preceding years.

[T.D. 8411, [57 FR 15242](https://www.law.cornell.edu/rio/citation/57_FR_15242), Apr. 27, 1992; [57 FR 28612](https://www.law.cornell.edu/rio/citation/57_FR_28612), June 26, 1992; [57 FR 37190](https://www.law.cornell.edu/rio/citation/57_FR_37190), Aug. 18, 1992, as amended by T.D. 9194, [70 FR 18947](https://www.law.cornell.edu/rio/citation/70_FR_18947), Apr. 11, 2005; T.D. 9391, [73 FR 19377](https://www.law.cornell.edu/rio/citation/73_FR_19377), Apr. 9, 2008]