

Jan 4, 2025

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### **Re: TaxAct Product Issues Affecting Dual-Status Taxpayers**

I wish to inform TaxAct of serious issues producing incorrect calculations and understatements of tax liability for users who are “dual-status taxpayers”, i.e. persons who have changed residency status during the year. These issues are observed on returns for the 2024 tax year.

TaxAct advertises support for dual-status returns (Fig. 1). On that support page, it instructs the user to prepare two returns, a Form 1040 for the resident period, and a Form 1040-NR for the nonresident period. Then, it directs the user to an interview page for dual-status taxpayers. There are two versions of this page, which are both defective, as described in detail in

- Appendix 1. Deficiency of TaxAct’s “Dual-Status Taxpayer – Form 1040NR” Interview
- Appendix 2. Deficiency of TaxAct’s “Dual-Status Taxpayer – Form 1040” Interview

To protect TaxAct users, I encourage the following remedies:

- *Short-term remedy.* TaxAct should **disable** access to the Dual-Status Taxpayer interview pages which are linked from Federal ► Miscellaneous Topics, and revise the “Dual-Status Taxpayer” support page to state that dual-status returns are not currently supported.
- *Long-term remedy.* TaxAct’s development team should reimplement dual-status functionality in a way that correctly aggregates **resident-period income** and **nonresident-period effectively connected income**, as described in Appendix 1 and the citations supplied in Fig. 4 and Fig. 5.

Thank you for your attention to the matter.

## Dual-Status Taxpayer

Per IRS [Publication 519](#) U.S. Tax Guide for Aliens, page 33:

### Forms To File

The U.S. income tax return you must file as a dual-status alien depends on whether you are a resident alien or a nonresident alien at the end of the tax year.

**Resident at end of year.** You must file Form 1040 or 1040-SR if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a statement to your return to show the income for the part of the year you are a nonresident. You can use Form 1040-NR as the statement, but be sure to mark "Dual-Status Statement" across the top.

**Nonresident at end of year.** You must file Form 1040-NR if you are a dual-status taxpayer who gives up residence in the United States during the year and who is not a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a statement to your return to show the income for the part of the year you are a resident. You can use Form 1040 or 1040-SR as the statement, but be sure to mark "Dual-Status Statement" across the top.

TaxAct® supports the creation of dual-status returns. To accommodate for this situation, taxpayers need to prepare multiple returns in TaxAct. An example of how taxpayers would file a dual-status return is as follows:

**TaxAct Return #1** - Prepare the return for the first part of the year. If you were a nonresident alien at the beginning of the year, prepare [Form 1040-NR U.S. Nonresident Alien Income Tax Return](#). If you were a resident alien at the beginning of the year, prepare [Form 1040 U.S. Individual Income Tax Return](#). Only include income for the part of the year you had this status. [This federal return is used as the dual-status statement.](#)

**TaxAct Return #2** - Prepare the return for the end of the year. If you were a nonresident alien on the last day of the year, prepare Form 1040-NR. If you were a resident alien on the last day of the calendar year, prepare Form 1040. Only include income for the part of the year you had this status. [This federal return is used as the dual-status return.](#)

To indicate you were a dual-status taxpayer, and enter the necessary information from your statement:

1. From within your TaxAct return ([Online](#) or Desktop), click **Federal**. On smaller devices, click in the upper left-hand corner, then click **Federal**.
2. Click the **Miscellaneous Topics** dropdown, then click **Dual-Status Taxpayer**.
3. Continue with the interview process to enter your information.

For more information regarding the different rules for your period of residence and period of nonresidence, please see IRS Publication 519.

In this situation, as the IRS does not currently support attaching the required statement to an electronically filed return, you would need to print both returns and paper file. Below are the steps to print each return. When following these steps for "Return #1" described previously, you would just print the return, however when following them for "Return #2," you would print the return and follow the instructions as to where to file both the dual-status return and the dual-status statement.

If you need help mailing your return, go to our [How to Mail a Paper Return \(Paper File\) FAQ](#).

*Note that any link in the information above is updated each year automatically and will take you to the most recent version of the webpage or document at the time it is accessed.*

Fig. 1. TaxAct's support page, available at <https://www.taxact.com/support/22211/2024/dual-status-taxpayer> (accessed Jan 4, 2025).

## Appendix 1. Deficiency of TaxAct’s “Dual-Status Taxpayer – Form 1040NR” Interview

A departing alien (nonresident at the end of the year) prepares a Form 1040-NR return with a Form 1040 supporting statement. TaxAct’s dual-status instructions (Fig. 1) will direct the user to the screen “Dual-Status Taxpayer - Form 1040NR” (Fig. 2, following page).

Here the user enters “Amount of tax calculated on Form 1040, line 16”. TaxAct then computes the following sum for Form 1040-NR line 16:

$$\begin{array}{r} \text{tax on resident-period income (Form 1040 line 16)} \\ + \text{tax on nonresident-period effectively connected}^1 \text{ income} \\ = \text{combined tax??} \end{array}$$

But this is the wrong calculation to perform. According to the IRS’s Form 1040-NR instructions (Fig. 4) and Treasury Regulations § 1.871-13(a)(1) (Fig. 5), the incomes must be combined first:

$$\begin{array}{r} \text{resident-period taxable income (Form 1040 line 15)} \\ + \text{nonresident-period effectively connected income} \\ = \text{combined taxable income (Form 1040-NR line 15)} \end{array}$$

Then the tax due on Form 1040-NR line 16 must be computed on the combined taxable income. This will tend to be a larger amount than TaxAct’s incorrect calculation, due to the progressivity of the tax brackets.

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<sup>1</sup> A nonresident alien is subject to US tax on two types of income. Income “effectively connected with the conduct of a trade or business within the United States” is taxed at progressive rates, using the same brackets that apply to US residents. IRC § 871(b). This income is reported on the first page of Form 1040-NR (lines 1-15). Meanwhile, US-source income that is *not* effectively connected with a US trade or business is taxed at a flat rate of 30%, or a lower rate under the terms of a tax treaty. IRC § 871(a). This income is reported on Form 1040-NR Schedule NEC.

Income may be deemed to be effectively connected in a variety of ways. For example, employee wages for services performed in the US are effectively connected, subject to limited exceptions. IRC § 864(b). Furthermore, deferred compensation arrangements, such as employee stock option or restricted stock unit (RSU) plans, often result in a departing alien recognizing US-connected income after they have left the country. The incidence of nonresident-period effectively connected income is not limited to business owners.

## Dual-Status Taxpayer - Form 1040NR



If you are a dual-status taxpayer that changed residency status during the year, check the box below and enter the information from your Form 1040. ⓘ

Dual-Status Taxpayer

Amount of tax calculated on Form 1040, line 16

\$ 1,000

Amount of tax not effectively connected to the U.S. while a resident

\$

Tax withholding not already included on return from Form 1040, line 25d

\$

Net investment income tax from Form 8960, line 17 completed while a resident

\$

Continue

Fig. 2. TaxAct's "Dual-Status Taxpayer – Form 1040NR" Interview

## Appendix 2. Deficiency of TaxAct’s “Dual-Status Taxpayer – Form 1040” Interview

A US-inbound alien (resident at the end of the year) prepares a Form 1040 return with a Form 1040-NR supporting statement. TaxAct’s dual-status instructions (Fig. 1) will direct the user to the screen “Dual-Status Taxpayer – Form 1040” (Fig. 3).

**Dual-Status Taxpayer - Form 1040**

If you are a dual-status taxpayer that changed residency status during the year, check the box below and enter the information from your Form 1040-NR. ⓘ

Dual-Status Taxpayer

Amount of tax not effectively connected to the U.S. while a nonresident

\$

Tax withholding not already included on return from Form 1040-NR, line 25a-g

\$

Tax paid with Form 1040-C

\$

< Back Continue

Fig. 3. TaxAct’s “Dual-Status Taxpayer – Form 1040” Interview

This page contains three fields relating to the 1040-NR supporting statement. However, it fails to ask the user for a critical input, namely the *income effectively connected with US trade or business* during the nonresident period.<sup>2</sup>

This income would appear on lines 1-15 of the Form 1040-NR supporting statement, but TaxAct simply ignores it when calculating the tax due on Form 1040, line 16. A return prepared in this manner will understate the user’s tax liability.

<sup>2</sup> For a description of effectively connected income, see Appendix 1, footnote 1.

## How To Figure Tax for a Dual-Status Year

When you figure your U.S. tax for a dual-status year, you're subject to different rules for the part of the year you were a resident and the part of the year you were a nonresident.

All income for the period of residence and all income that is effectively connected with a trade or business in the United States for the period of nonresidence, after allowable deductions, is combined and taxed at the same rates that apply to U.S. citizens and residents. For the period of residence, allowable deductions include all deductions on Schedule A (Form 1040), including medical expenses, real property taxes, and certain interest.

**Note.** Schedule A (Form 1040) isn't the same as Schedule A (Form 1040-NR).

*Fig. 4. IRS Form 1040-NR instructions, p. 13, available at <https://www.irs.gov/pub/irs-pdf/i1040nr.pdf> (accessed Jan 4, 2025).*

**§ 1.871-13 Taxation of individuals for taxable year of change of U.S. citizenship or residence.**

**(a) In general.**

- (1)** An individual who is a citizen or resident of the United States at the beginning of the taxable year but a nonresident alien at the end of the taxable year, or a nonresident alien at the beginning of the taxable year but a citizen or resident of the United States at the end of the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time during which he is a citizen or resident of the United States and the other consisting of the time during which he is not a citizen or resident of the United States. Thus, for example, the income tax liability of an alien individual under chapter 1 of the Code for the taxable year in which he changes his residence will be computed under two different sets of rules, one relating to resident aliens for the period of residence and the other relating to nonresident aliens for the period of nonresidence. However, in determining the taxable income for such year which is subject to the graduated rate of tax imposed by section 1 or 1201 of the Code, all income for the period of U.S. citizenship or residence must be aggregated with the income for the period of nonresidence which is effectively connected for such year with the conduct of a trade or business in the United States. This section does not apply to alien individuals treated as residents for the entire taxable year under section 6013 (g) or (h). These individuals are taxed under the rules in § 1.1-1(b).

*Fig. 5. Treasury Regulations § 1.871-13(a)(1). Available from [www.ecfr.gov](http://www.ecfr.gov).*