

SMITH CARMICHAEL ASSOCIÉS

How Can a U.S. Citizen File Jointly With a "Nonresident Alien" Spouse ?

Generally, a joint return cannot be filed if one spouse is a nonresident alien at any time during the tax year. However, if one spouse is a citizen or resident of the United States, both spouses may file an election to treat the nonresident alien spouse as if he or she were a resident of the United States for the entire tax year, thereby permitting them to file a joint return.

A married couple usually benefits from filing jointly because a joint return, as compared with two separate returns, evenly splits their income, thereby possibly reducing the highest marginal tax rate to which it is subject. If you and your spouse decide to make the election, you must attach a statement to your tax return, which you both sign. The election, once made, applies to all subsequent years until terminated by revocation, death, separation or divorce, or termination by the IRS for failure to keep adequate records. Once the election is terminated, it may not be made again by the couple.

If you make the election, you and your spouse will be subject to tax on your worldwide income, whereas nonresident aliens generally are subject to U.S. income taxation only if they have U.S. source income or income that is effectively connected with the conduct of a trade or business within the United States.

The decision to make the election, therefore, depends on the income each of you makes, and the sources from which it originates. Please call if we can be of assistance in helping you determine if this election would be right for your situation.

SMITH CARMICHAEL ASSOCIÉS