

Expatriation Statement (Form 8854)

1. Who Needs to File Form 8854

- **U.S. Citizen** who has relinquished U.S. citizenship.
- **Long-Term Resident** who has terminated U.S. residency:
 - Must have been a lawful permanent resident of the U.S. for at least 8 of the last 15 tax years.
 - *Note:* Visa holders, even those residing in the U.S. for more than 8 years, are not classified as "long-term residents" for expatriation purposes.

Counting the 8-Year Period:

- Years are counted based on the total years of lawful permanent residency, Not 365 days
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2. Exceptions to Filing Requirements

- **U.S. Citizen Exceptions:**
 1. Dual citizenship at birth, having resided in the U.S. for 10 years or fewer.
 2. Individuals under age 18½ who have been U.S. residents for 10 years or fewer.
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3. Determining the Expatriation Date

- **For U.S. Citizens:** The expatriation date is when the individual renounces citizenship before a U.S. diplomatic or consular officer. (Process involves filing Form DS-4079 and taking the expatriation oath.)
 - **For Long-Term Residents:** Expatriation occurs on the date Form I-407 is submitted to a U.S. consular or immigration officer and the physical green card is surrendered.
 - *Note:* Simply letting the green card expire does not constitute expatriation. The individual remains subject to U.S. tax obligations until Form I-407 is filed.
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4. U.S. Income Tax Return Requirements Upon Expatriation

- **U.S. Citizens:** File a Dual Status Return.
 - **Forms Required:** 1040 (Dual Status Statement) and 1040NR (Dual Status Return).
 - **Green Card Holders:** Typically file Form 1040 with “Final Tax Return” noted at the top.
 - May also need to file a Dual Status Return (1040NR) with Dual Status Statement (1040) if needed and conditions met.
 - **Visa Holders:** If they left the U.S. during the tax year, they would file a Dual Status Statement (1040) along with a Dual Status Return (1040NR).
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5. Covered Expatriate vs. Non-Covered Expatriate

An expatriate is classified as "Covered" if one or more of the following conditions apply:

1. Average annual net income tax liability exceeds \$201,000 for the five tax years preceding expatriation.
 2. Net worth is \$2 million or more on the expatriation date.
 - Consider gifting assets prior to the year of expatriation.
 3. Failure to certify compliance with all federal tax obligations for the five tax years prior to expatriation by filing Form 8854.
 - Non-compliance requires amending prior tax returns.
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6. Balance Sheet on Form 8854

- **FMV:** Good faith estimates of Fair Market Value (FMV) are accepted. Formal appraisals are not required.
 - **Basis:** The basis is the purchase price, adjusted by the foreign exchange rate on the purchase date.
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7. Tax Implications for Covered Expatriates

Covered expatriates are subject to tax on the net unrealized gain of their property, calculated as if the property were sold at FMV on the day before expatriation.

- The first \$866,000 gains are excluded from income.

Exceptions:

1. **Eligible Deferred Compensation:** Subject to 30% withholding upon distribution (e.g., 401(k) plans)
 2. **Ineligible Deferred Compensation:** Report based on present value.
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 3. **Specified Tax Deferred Accounts:** Treated as if a full distribution of the account was received (e.g., IRA).
 4. **Non-Grantor Trust Interests:** Subject to 30% withholding upon distribution.
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8. Filing Requirements

- Attach Form 8854 to your income tax return.
- Send a separate copy to:
 - **IRS:**
Internal Revenue Service
3651 S IH35 MS 4301AUSC
Austin, TX 78741

Penalty: Failure to file Form 8854 may result in a \$10,000 penalty.

9. Gifts After Expatriation

- **From Covered Expatriate to U.S. Person:** Subject to a 40% tax on gifts received by U.S. persons, under IRC §2801 (Recipient Inheritance Tax).
 - *Exceptions:* Unlimited marital deduction for gifts to U.S. spouse, and the annual gift exclusion of \$18,000.
- **From Non-Covered Expatriate to U.S. Person:** Nonresident gift tax rules apply, such as those for U.S. Situs property and the annual gift exclusion. Form 3520 may also be required.