

H1, L1 Visa Holder Special Tax Situation and Deductions

Last month we discussed tax programs suitable for different tax situations. Among the different tax situations we covered, H1, L1 visa holder tax situation stands out as a special tax situation. Several H1, L1 tax payers have reached out with questions around the uniqueness of the H1, L1 visa holder tax situation. With the technology spending tightening and IT consultant billing rates getting crushed, every dollar saved in taxes seems like gold!

Does H1, L1 Tax Situation require Special Treatment?

Can H1, L1 visa worker tax situation be treated like ordinary Tax Payers filing 1040 Tax Return or does it require any special treatment? Most of the popular tax software and tax consultants may treat H1, L1 tax returns no different than ordinary US citizen Tax Returns. However, IRS regulation allows for special treatment in case of temporary workers in the US. There are specific guidelines in the IRS code to determine the tax status as well as calculate deductions based on special conditions due to temporary work status. Since H1, L1 tax payers account for less than 1% of all Tax Payers, most popular tax software and tax consultants may not pay specific attention to the regulations that govern US temporary worker taxes. Perhaps it is not cost effective for the big tax software companies to invest in programming code that covers H1, L1 special tax situation.

Often H1, L1 tax payers are surprised when they find out the benefits offered in the tax code, especially during the initial year of their assignments in the US. Unfortunately, most of them miss out on these benefits without the help of a qualified tax professional that focuses on H1, L1 related tax issues.

H1, L1 Visa Workers may be considered US Resident for Tax Purposes

Most H1, L1 consultants may be waiting for years for their US resident card (Green Card), but IRS may already consider them as US Resident for tax purposes. The first tax distinction IRS makes is between a Non Resident Alien and a Resident Alien from a tax code perspective.

IRS has specific guidelines to determine Resident Status for tax purposes through the 'Substantial Presence Test'. Once it is established that you are a US Resident (for tax purposes only, your immigration status may still be H1, L1 or other temporary work visa), you are subject to US taxes on your global income, including income in your home country. Incomes from different sources such as passive investment income as opposed to active income through a job are also treated differently. For more detailed information on how to determine your tax status, visit online http://www.h1bvisataxes.com.

Top Tax Deductions for H1, L1 Consultants

Once the tax resident status is determined, H1 L1 consultants may be eligible for certain itemized tax deductions in addition to all of the tax deductions that US citizens are normally eligible. Here are the top itemized deductions that can be used in case of temporary US workers. A word of caution, itemized deductions may not always be suitable. You must review your overall tax situation before deciding on itemized deductions.

Home Office Deduction for IT Consultants

Home Office Deduction was considered a red flag by many CPAs, inviting IRS Audit for many years. But that may no longer be the case, with more and more businesses and individuals taking advantage of working from home and maintaining a healthy work-life balance. IRS is well aware of the rising trend in working from home office. As long as you use the 'Home Office' as IRS defines it. This one deduction alone can save you several hundred dollars in Federal and State taxes.

If you are working in a city away from your company's principal office (base office) and for the convenience of your employer, use your home or apartment to work on client projects, meet with clients on a regular basis and have part of your home or apartment exclusively for use as an office, you may be able to deduct part of your rent or mortgage under the business use of your home deduction. If you rent part of your home or apartment to your employer, or if your employer reimburses part of the rent and other expenses to you, your deduction will be limited.

Once you have determined that you qualify for the home office deduction, you may be able to add several other direct and indirect expenses such as repairs, utilities, phone, internet etc. However deductions may be only partial based on percentage of your home used for business.

H1, L1 Dependent Tax Deductions, ITIN

Once your tax residency has been established, H1, L1 workers may be able to take full deductions for their spouses and dependent family members. In case dependents do not qualify for a social security number, they may be eligible to get an ITIN (Individual Taxpayer Identification Number). ITIN Application is a paper process along with the tax return. Unfortunately you may not be able to e-file your taxes in many states in the first year that you apply for ITIN.

Business Travel Expense Deductions

Business travel expenses, or away from home expense deductions can be taken for non-reimbursed meals, lodging and travel if you have a regular job somewhere else, and are on a temporary assignment for work or training. Sec. 162(a) of the IRS Code limits the period to less than one year. So for example if your employer posts you in a different city on a temporary project for 8 months, you may qualify to take all of your meals, lodging and travel expenses as deduction. If your employer reimburses you any of the expenses, your deduction may be limited.

IRS is pretty aggressive about this deduction. In the past some large IT outsourcing companies may have taken advantage of this provision in the IRS code. Make sure you consult with your tax accountant and evaluate the overall audit risk of your tax return.

Immigration and Taxes Matters Together

Many H1, L1 workers may be in the immigration process for their Green Card and eventually their Citizenship. During approval for the Green Card as well as Citizenship, having your tax status clear with the IRS is critical. Pending tax audits, penalties or tax dues, may negatively impact your immigration case as well as your potential to sponsor others. Having a good immigration lawyer and a reliable tax accountant may provide some peace of mind as you go through the immigration and tax matters together.

Another emerging risk that IRS and tax community is observing is the trend in getting taxes filed by preparers outside the country. Many small and large sized tax service companies have outsourced tax preparation with tax preparers outside the US filing taxes on behalf of their clients. In most cases, all is well until an IRS audit gets triggered. You will definitely need someone that is authorized to represent you in front of the IRS and based in the US. Putting at risk your entire immigration process to save a few dollars in tax preparation fees may not be a wise decision in the long term.

Keep in mind this column and the articles published here are only meant to provide you with high level information about taxes and in no way should you consider this as tax advice. Hopefully I have got you started thinking about saving more of your hard earned money, paying less to the IRS and at the same time reduce your immigration risks as you brave through the economic head winds in a recession. Consult your Tax Advisor regarding your individual tax situation and your immigration attorney for any immigration related situation.

This Article provides only an overview to the complex Tax Laws. It is not exhaustive nor a substitute for Independent Tax Advice provided by a Tax Accountant or a Tax Attorney familiar with your case.



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