

RENOUNCING U.S. CITIZENSHIP

1040Abroad

Your trusted U.S. Expat Tax Services

ABOUT US



Just like you, I know what it's like to be an American citizen living and/or working abroad. The difference is that I studied the American tax system exhaustively after my corporate finance career, so I had an insider's advantage when it came to staying tax compliant on my travels!

I grew up in France, studied and worked in America, then I moved to Canada and I still travel to new countries as often as I can. At one point in my life the French government saw me as French, the American government saw me as American, and the Canadian government saw me as a Canadian resident.

I never thought I would be so popular with that many governments at once!

I've been a tourist, a foreign resident, an immigrant, and a citizen, and now I'm an expatriate living and working abroad...which has given me a **unique and in-depth insight into the many regulations it all entails**, none more so than filing taxes.

And that's what compelled me to write a book on the topic. The book got snapped up by so many desperate American expats struggling to understand tax compliance that it became an Amazon best-seller.

I set up 1040 Abroad **to cut through the scare-tactics, and provide a straightforward speedy service to help Americans abroad file their taxes** with accuracy and ease, catering to your unique situation. To date we've helped more than 1,000 people do exactly this.

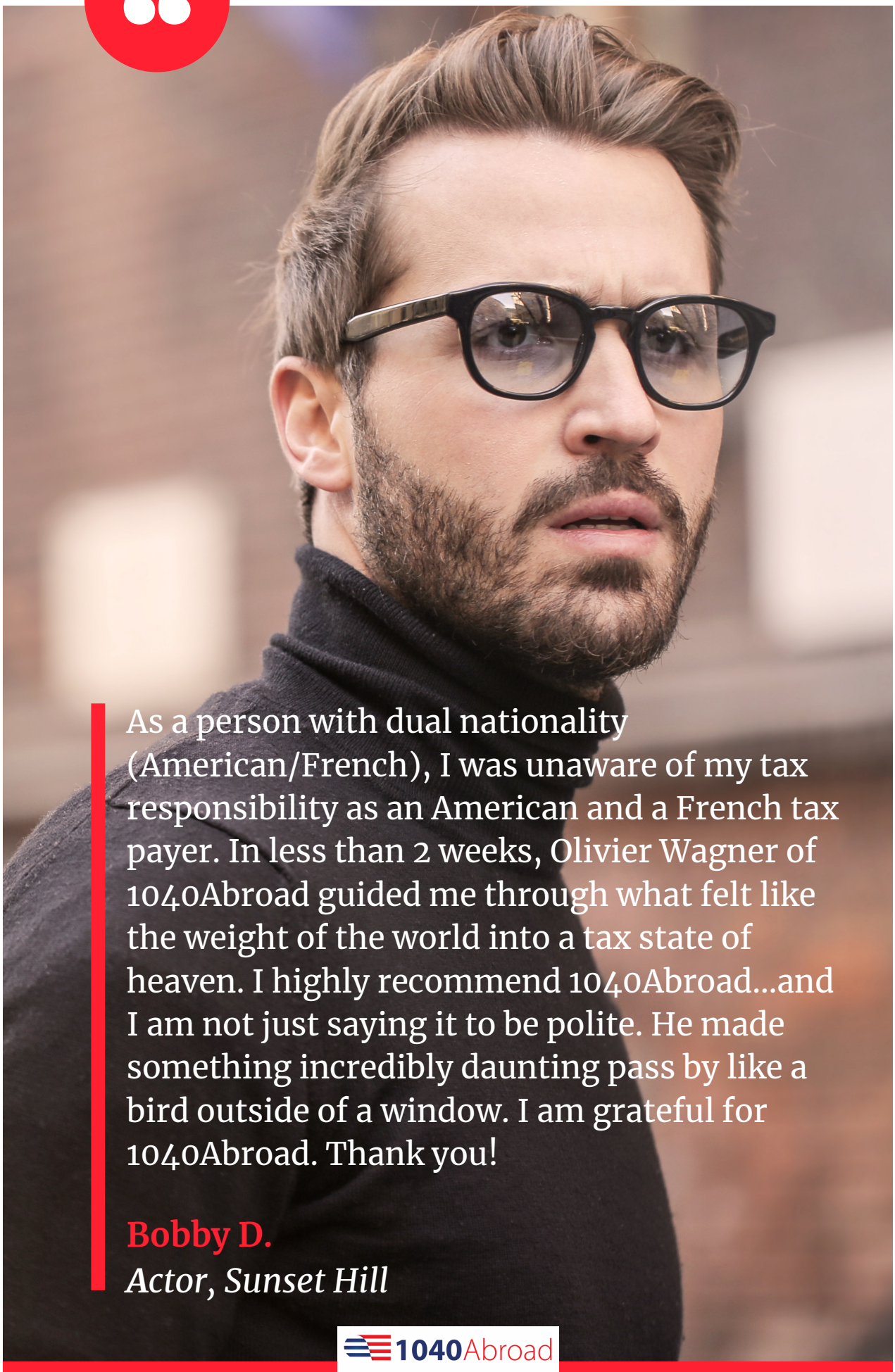
My mission is to help fellow expatriates like you to live a more successful life abroad, without ever having to risk your freedom, career, or finances by staying 100% tax compliant as you go.

Here's to YOUR stress-free freedom!
Olivier Wagner, Founder and CEO of 1040 Abroad

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WHAT OUR CLIENTS SAY ABOUT US



As a person with dual nationality (American/French), I was unaware of my tax responsibility as an American and a French tax payer. In less than 2 weeks, Olivier Wagner of 1040Abroad guided me through what felt like the weight of the world into a tax state of heaven. I highly recommend 1040Abroad...and I am not just saying it to be polite. He made something incredibly daunting pass by like a bird outside of a window. I am grateful for 1040Abroad. Thank you!

Bobby D.
Actor, Sunset Hill

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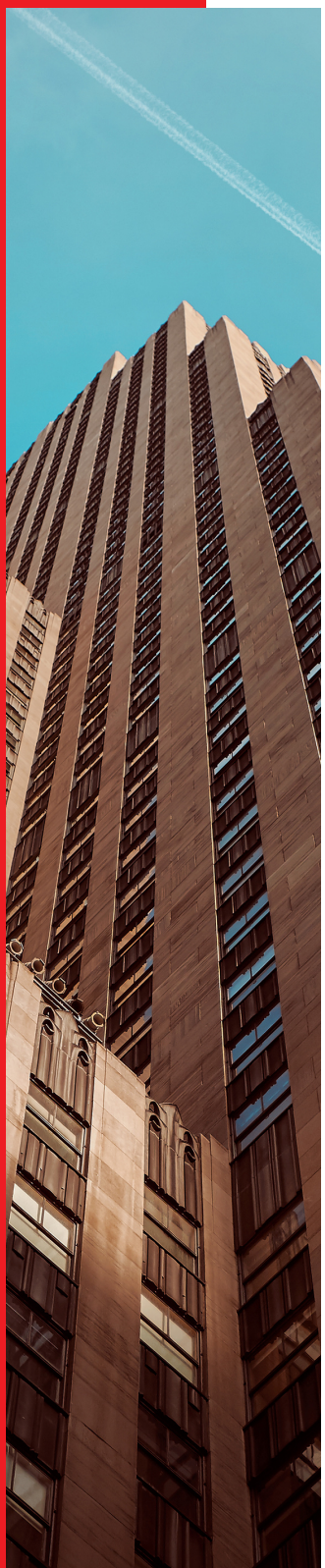
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THE MAIN POINTS YOU NEED TO REMEMBER

- Wait time to get an appointment at the consulate can be more than 6 months, especially since the Covid-19 related office closure.
- Our cost is $700 (dual status + Form 8854) as well as the $2,350 for the US government.
- Pay attention to section 2 to understand covered expatriate status and the consequences.
- Reed amendment only applies if you state that you are renouncing to avoid paying US tax and only a dozen people have been banned US entry in a decade on that ground.

01

RELINQUISHMENT VS RENOUNCIATION

Relinquished - these are people who perform an "expatriating act" with the intention of relinquishing U.S. citizenship. Common expatriating acts include acquiring another country's citizenship, being a state worker for another country and joining the army of another country. They are listed in Section 349 of the INA.

The downside of applying for a relinquishment is that the approval rate is lower since you need to evidence your intent and the fact that you stopped behaving like a U.S. citizen after the expatriating act.

The upside is that your Certificate of Loss of Nationality would be backdated to the date of the expatriating act, and you would no longer be a U.S. citizen as of the date of that expatriating act, and US laws passed after that date would not apply to you.

Renunciation (which itself is technically an expatriating act) is more straight forward and for an adult the approval rate is close to 100%.In the case of a renunciation, your Certificate of Loss of Nationality would be dated as of the date of the appointment at the U.S. consulate.

The fee to both get a relinquishment recognized by the U.S. consulate (and have a Certificate of Loss of Nationality issued) and the fee to perform a renunciation are the same $2,350.



01



No formal notification needs to take place for the U.S. citizenship to be lost!

(for immigration purposes)

That is not true, however, for tax purposes. If the expatriating act occurred after 2004, people will continue to be taxed as a U.S. citizen until they notify the Department of State and then file form 8854 with the IRS.

Practically speaking, this notification takes the form of going to a U.S. consulate, convincing them that the expatriating act occurred and then applying for a Certificate of Loss of Nationality.

The fee to renounce U.S. citizenship is $2,350.

01 The fee to renounce U.S. citizenship is $2,350. Section 349 of the INA (8 U.S.C. 1481), as amended, states that U.S. nationals are subject to loss of nationality if they perform certain specified acts voluntarily and with the intention of relinquishing U.S. nationality.

Briefly stated, these acts include:

1. Obtaining naturalization in a foreign state upon one's own application after the age of 18 (Sec. 349 (a) (1) INA).

2. Taking an oath, affirmation or other formal declaration of allegiance to a foreign state or its political subdivisions after the age of 18 (Sec. 349 (a) (2) INA).

3. Entering or serving in the armed forces of a foreign state engaged in hostilities against the United States, or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state (Sec. 349 (a) (3) INA).

4. Accepting employment with a foreign government after the age of 18 if (a) one has the nationality of that foreign state or (b) an oath or declaration of allegiance is required to accept the position (Sec. 349 (a) (4) INA).

5. Formally renouncing U.S. nationality before a U.S. diplomatic or consular officer outside the United States (sec. 349 (a) (5) INA).

6. Renouncing U.S. nationality , officially, within the United States (The Department of Homeland Security is responsible for implementing this section of the law) (Sec. 349 (a) (6) INA).

7. A conviction for an act of treason against the Government of the United States or for attempting to force to overthrow the Government of the United States (Sec. 349 (a) (7) INA).

01 RENUNCIATION FEE IS $2,350!

This procedure takes place when a U.S. citizen makes an appointment at a U.S. consulate and applies for a Certificate of Loss of Nationality.

Unlike the relinquishment, the loss of citizenship occurs there and then when the U.S. citizen tells the consulate employee, “I’m out of here.” In addition, the U.S. citizen doesn’t need to convince the consulate officer that an expatriating act has occurred, as the expatriating act occurs during the appointment at the consulate.

As for a relinquishment, one would need to file Form 8854 in order to no longer be a U.S. taxpayer. The relinquishment allows you to stop being a U.S. citizen at an earlier date.

This could be advantageous in a few scenarios:

- If the expatriating act occurred before 2004, then no further action is needed for tax purposes.
- If the taxpayer has children born after the expatriating act and wants to keep the children out of the U.S. tax system. If the parent was not a U.S. citizen.

Either way, you will want to document your separation with the United States with a Certificate of Loss of Nationality, file form 8854, and certify that you were tax compliant for the prior five years and want a “clean break”.

02 WHO IS COVERED AND UNCOVERED EXPATRIATE?

You are considered a covered expatriate and have to pay the related Exit Tax if you meet any of the following criteria:

- You have too many assets: a net worth of $2 million or more
- You have too much income: an average net U.S. income tax liability of greater than $162,000 for the five-year period prior to expatriation
- You fail to certify that you have complied with all of the U.S. federal tax obligations for the preceding five years

Herewith, all property is subject to gift tax and all property where you hold a use right is included for purposes of the net worth test.

There are two exceptions to these rules:

- People born with dual citizenship are still resident and subject to tax in their country of second residence and citizenship and that they have been a US resident for not more than 10 tax years during the 15-tax-year period ending with the tax year during which the expatriation date occurs (residency determined under the substantial presence test).
- Those who relinquish before the age of 18 years and six months and haven't lived in the U.S. for at least 10 years. Under both of these, the taxpayer still needs to have 5 years of tax compliance, but the other tests (notably the $2 million asset test) no longer apply to them.





02

You are not a covered expatriate if both of the following conditions are true:

- Your relinquishment of U.S. citizenship occurred before the age of 18.5
- You have been resident of the U.S. for not more than 10 taxable years before the date of relinquishment
- You have 5 years of tax compliance

The Exit Tax that you, as a covered expatriate, would have to pay is calculated as if you have sold all of your assets at Fair Market Value on the day prior to your relinquishment, and the associated capital gains are subject to this tax. The Internal Revenue Code provides that the first $699,000 of this capital gain will not be taxed. The tax payment is due within 90 days after giving up your U.S. citizenship. Expatriation is considered to be effective for tax purposes, even if you fail to file the Expatriation Information Statement (form 8854). The exceptions from the main rule are certain deferred compensation items, specified tax deferred accounts, and non-grantor trusts.

To relinquish the U.S. Citizenship or Residence you will need to do the following:

1. Get a second citizenship in another country.
2. Leave the U.S.3. Appear before the U.S. Consul in that country.
4. File Form 8854, the Expatriation Information Statement.
5. Pay the due Exit Tax.

As a covered expatriate, you will be able to visit and even stay for a certain time in the United States; the mere fact of being an expatriate does not make you a U.S. tax resident. You can still become taxable in the U.S. under the normal U.S. tax rules if you continue to have U.S.-sourced income.



03 What do I need to know about my final tax return?

You will have to file your final tax return and attach Form 8854. Your final return will cover both periods when you were a resident and the period during which you were a non-resident.

If your renunciation date is any day other than December 31st, you'll be filing Form 1040 and 1040NR (if applicable) for your final return: IRS Form 8854, the Expatriation Information Statement, is the Exit Tax form and it's filed along with your final return. It's not especially difficult, but you will want to make sure you do it right.



03

FORM 8854

Form 8854 is targeted at “covered expatriates.

Covered expatriates are those who meet the following criteria:

- Have too many assets: a net worth of $2 million or more
- Have too much income: an average net U.S. income tax liability of greater than $162,000 for the five-year period prior to expatriation
- Have failed to certify that he/she has complied with all U.S. federal tax obligations for the preceding five years.

You write “Dual Status Return” at the top of Form 1040NR and “Dual Status Statement” at the top of Form 1040, which you then attach to Form 1040NR.

The first one covers the period when you were a non-resident and only applies to U.S. sourced income, which might be zero. Form 1040 covers the period when you were a U.S. citizen and reports all worldwide income.

You need to file all of the appropriate schedules and forms, including Form 8854.

04 WHAT IS EXIT TAX AND HOW CAN I FILE IT?

Exit Tax is the IRS' last chance to tax you before you give up your U.S. citizenship or long-term residency. So it is similar to an estate tax on the gain in your assets, even though you are not really selling anything. It's calculated as if you have sold all your assets on the day before you expatriated and had to report a capital gain. Currently, the rate on net capital gains can reach a maximum of 23.8%, including the net investment income tax.

3 factors for Exit Tax that will make you a "Covered Expatriate":

1. If the aggregate net value of your worldwide assets is over $2 million. If you are married, then each spouse's net worth is calculated separately. If one of the spouses owns most of the assets and becomes a covered expatriate, then a couple can gift their assets to each other and lower their net worth below $2 million. If the spouse who receives the gifts is a U.S. citizen, then these gifts may escape the gift tax. For 2018, there is an annual exclusion of $152,000 for gifts to non-citizen spouses. There are a few other conditions to consider and you may want to consult professional advice from an expat tax company for your own sake.

2. If your average net annual income tax liability was over $162,000. This means that if you are married and filing taxes jointly, you must use your net tax liability on your joint returns, even if only one of you is expatriating. You may need to file separately for several years before you expatriate to lower your average tax liability on your join returns.

3. If you have failed to certify five years of U.S. tax compliance. Luckily, you can amend your previous tax returns and file Form 8854 last of all to expatriate, after you've signed the amended tax forms.

If any of these factors apply to you, then be ready to calculate your Exit Tax. If you are a covered expatriate, the first $699,000 of capital gains is not taxed. There are some negative consequences of being a covered expatriate. For example, if you have friends or family in the U.S., they would need to pay a tax on your gifts to them. Even if your Exit Tax may be slight, or you do not owe any (for example, because of the $699,000 gain exclusion), avoid being a covered expatriate if you can.

Make it your goal to achieve a final, clean break from the U.S. tax system.

05 WILL RENOUNCING MY U.S. CITIZENSHIP AUTOMATICALLY CANCEL MY TAX OBLIGATIONS?

Renouncing your U.S. citizenship will not automatically cancel your tax obligations. Prior obligations remain, so you would only be a non-resident on an ongoing basis. You must notify the IRS of the change in your status by filing Form 8854 and then filing a copy with the Department of Treasury as well. You will be treated as a U.S. citizen for tax purposes until you file this form. The same rules apply to green card holders. You must file the form as soon as possible after you renounce your citizenship.

U.S. citizens and green card holders are obligated to report their worldwide income, even if they live outside the U.S. The act of expatriation does not terminate your obligation to file a U.S. tax return and report all your worldwide income.

You need to be tax compliant for the past five years and file form 8854. Failure to do so means you will be considered as a covered expatriated (subject to an “Exit Tax”, which is a tax on the deemed disposition of all assets, tax on gifts to U.S. persons and others) and it could lead to an audit.

Form 8854 asks for general information regarding your new country of tax residence, date of expatriation, your U.S. tax liability in the last five years and your net worth on the date of your expatriation. It is used to acknowledge the change of your tax status and determine your status of expatriate or covered expatriate.





05

A COVERED EXPATRIATE IS SUBJECT TO AN "EXIT TAX"

A TAX ON THE DEEMED DISPOSITION OF ALL ASSETS



Exit Tax is calculated, based on your net worth, as if you had sold all your assets on the day of expatriation, and is subject to capital gains tax rates. There are three triggers that would make you a "covered expatriate", and thus subject to Exit Tax.

These are:

- Your average annual net income tax liability for the past five years, preceding the renunciation is more than $162,000
- Your net worth is $2 million or more on the date of your expatriation
- You failed to certify that you have complied with all of your federal tax obligations for the past five years preceding the expatriation

Being a "covered expatriate" has many negative consequences and so you should avoid being one if you can. The goal of many expatriates is to have a final, clean break from the U.S. tax system.

If you want to give up your U.S. citizenship, don't hesitate to contact us for a consultation or to help with your final tax returns and sort out your U.S. taxes. It is a decision that should not be taken lightly as there are many consequences of expatriation. We work with a Toronto based lawyer John Richardson and help with even most complicated situations.

0 6

I WANT TO RENOUNCE MY U.S. CITIZENSHIP. HOW DO I START THE PROCESS?

Renouncing your U.S. citizenship is a serious, life-affecting step to take. Therefore, you need to look at all the pros and cons that you will have afterwards before considering to take this decision.



06



In order to renounce your U.S. citizenship, it is extremely recommended to have a second passport (citizenship of another country). You will be required to bring this with you to the renunciation appointment. The State Department will deny anyone the right to renounce their U.S. citizenship if they do not have a second passport. You will need to prepare a few forms and fill out form DS-4079 before your appointment, which is a questionnaire for determining the possible loss of U.S. citizenship.

According to the law, if you want to renounce your citizenship, you will need to do it in person by visiting a U.S. embassy or consulate abroad.You need to seek a professional expat lawyer's help to start the process and book your appointment.

TO RENOUNCE YOU WILL NEED TO BRING THE FOLLOWING DOCUMENTS:



- Evidence of U.S. citizenship (such as your most recent U.S. passport or U.S. birth certificate, if you are not in possession of a U.S. passport
- U.S. Consular Report of Birth Abroad, if applicable
- Bio-pages of all current foreign passports
- Certificates of Naturalization for any country, including the United States, if applicable
- Certificates of Citizenship for any country, including the United States, if applicable
- Evidence of any name changes, if applicable (for example, your marriage or divorce certificates, court orders or deed polls)
- Completed form DS-4079
- Completed Loss of Citizenship Questionnaire
- Completed Informal Loss of Citizenship Acknowledgement, which must be signed/dated and sent as a scanned document.

06

RENOUNCING U.S. CITIZENSHIP DOESN'T FREE YOU FROM U.S. TAX OBLIGATIONS!

Even after the renunciation, the IRS could still audit and assess taxes and penalties on your tax obligations that took place prior to renunciation. There is an Exit Tax imposed on people who meet any of the following criteria:

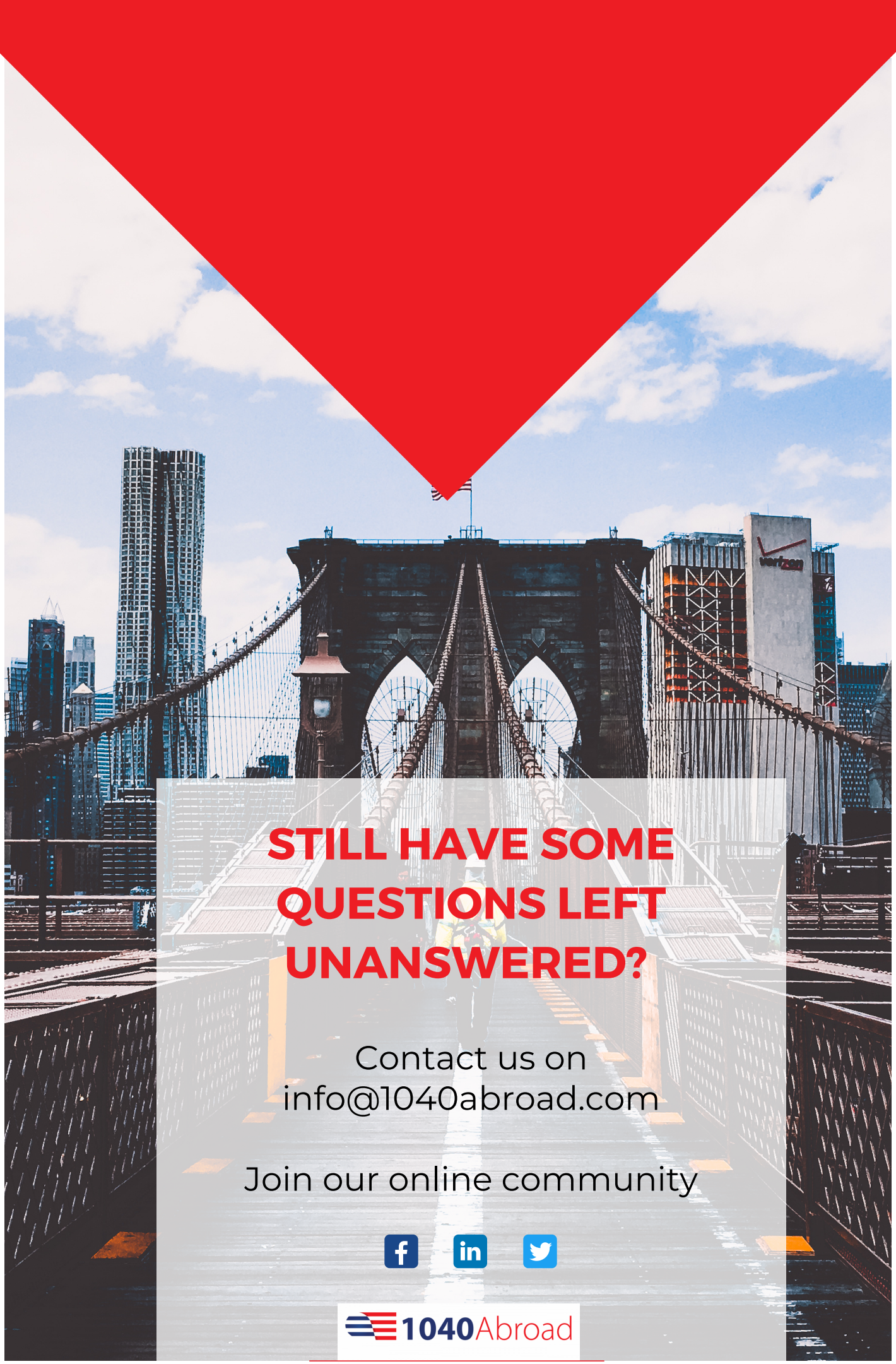
- If your average net annual income tax liability is over $162,000
- If the aggregate net value of your worldwide assets is over $2 million
- If you failed to certify five years of U.S. tax compliance.

What does it mean?

If the Exit Tax applies to you, then you will be treated as if you have sold all of your assets on the day before you renounce your citizenship and will be taxed on your capital gains. It also impacts on the gifts that you present later to U.S. persons, as they will need to pay a tax on them.

It's extremely important to fully catch up with all your taxes before you renounce your citizenship and you may want to use the Streamlined Filing Compliance Procedures. This allows you to become tax compliant and avoid penalties for not filing your taxes earlier. You will need to file your tax returns for the previous five years. Your last final tax return will be filed for the year of the renunciation and it is called a "dual return". We strongly recommend that you, and all of our clients, carefully think about deciding to renounce your U.S. citizenship. At 1040 Abroad, we will help to guide you through the process of renunciation and let you leave the U.S. tax system with a clean break.





STILL HAVE SOME QUESTIONS LEFT UNANSWERED?

Contact us on
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