

Foreign Student Taxes

Michael Bootsma
mbootsma@iastate.edu

1

Materials

- Publication 519
 - <http://www.irs.gov/pub/irs-pdf/p519.pdf>
- 1040NR Instructions
 - <http://www.irs.gov/pub/irs-pdf/1040nr.pdf>
- IRS Link and Learn Module
 - http://apps.irs.gov/app/vita/foreign_student.jsp?level=
- Publication 4011
 - <http://www.irs.gov/pub/irs-pdf/p4011.pdf>
- Publication 901 Income Tax Treaties
 - <http://www.irs.gov/pub/irs-pdf/p901.pdf>

2

Residency Status

- Nonresident status
 - File for 1040NR
 - File form 8843
- Resident status
 - Form 1040 (same form as US citizens)
 - True for green card holder, permanent resident and US nationals as well

3

Am I a Resident?

- This question is for tax purposes only.
- Must meet substantial presence test to be a resident.
 - Students are generally not residents for first five years in the US.
 - Post docs are generally not residents for the first two years present in the US.
 - Present any day of the year = present for the whole year. Even if I came on 12/31? Yes!!!!

4

Substantial Presence Test

- You will be considered a United States resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States (U.S.) on at least:

5

Substantial Presence Test

- 31 days during the current year, and
- 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.

6

Example

- You were physically present in the U.S. on 120 days in each of the years 2022, 2021, and 2020. To determine if you meet the substantial presence test for 2022, count the full 120 days of presence in 2022, 40 days in 2021 (1/3 of 120), and 20 days in 2020 (1/6 of 120). Since the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 2022.

7

Residency Status

- Non-student / non-scholar alien taxpayers follow a complex Substantial Presence Test (SPT) to determine status
- Students (F, J, M, or Q visa) and scholars (J visa) are **exempt** from the SPT
- Their spouses and children are also exempt
- A nonresident alien who is married to a resident alien or U.S. citizen is considered a resident for tax purposes

8

Student and Scholar Residency

- Students**
 - Considered non-residents for first 5 calendar years (or any part thereof)
 - Status changes to resident in sixth year
- Scholars**
 - Start as non-residents
 - Become residents if present in the U.S. for any part of 2 of the preceding 6 calendar years

9

Student and Scholar Residency

- If ever in doubt, use the Pub 4011 flowchart!

The flowchart is titled "Are you an exempt individual?—Decision Tree". It provides a step-by-step process to determine if an individual is exempt from the Substantial Presence Test (SPT). The process starts by identifying the individual as either a Student (F, J, M, or Q Visa) or a Teacher or Trainee (J Visa). For students, it asks if they are a full-time student and if they are in substantial compliance with their visa. For teachers or trainees, it asks if they are a student and if they are in substantial compliance with their visa. Both paths lead to a question about the number of days spent in the U.S. in the current year and the two preceding years. If the total days exceed 180, the individual is not exempt. If not, they are exempt.

10

Scholar Example

- Maria is a visiting scholar from Argentina
- She arrived in the U.S. December 27, 2021
- She first had earned income in the US in 2022
- What is Maria's status for the 2022 tax year?

11

Scholar Example

- Maria is a visiting scholar from Argentina
- She arrived in the U.S. December 27, 2019
- She first had earned income in the US in 2020
- What is Maria's status for the 2022 tax year?

12

Student Example

- Jon is a PHD student. He arrived October 21, 2017.
- 2017
- 2018
- 2019
- 2020
- 2021
- 2022?

13

Who must file a return (non-resident aliens)?

- Persons who have income (even if all or part is exempt)
- "Income" includes
 - Wage income
 - Scholarship income exempt under a tax treaty
 - Any other taxable income (except for income from an interest-bearing account)
- All non-resident aliens claiming an exemption from the SPT must file Form 8843, even if they do not file a tax return

14

1040 NR vs. 1040 NR-EZ

- 1040 NR-EZ has gone away
- If you are a non resident you must use 1040 NR

15

Form 8843

- Who must file:
 - Non residents &
 - Anyone claiming exemption from US income tax even if no income
 - Includes dependent children (unless child is born in the United States)
 - No SS or ITIN needed
 - Attach to return
 - If no return later due date (June 15)

16

Resident Alien Returns

- Taxpayers without exempt income
 - File online, just like U.S. citizen
 - Form 1040
- Taxpayers with exempt income
 - Prepare return using form 1040 and file paper return
 - Complete Form 8833 Treaty-Based Return Position Disclosure (see template on Blackboard)

17

Filing Status

- Nonresident aliens must file either as single or married filing separately
- Exceptions:
 - Nonresident alien whose spouse is a resident alien or U.S. citizen is treated as a resident alien and may file a joint return
- Note special boxes on 1040NR for married citizens of Mexico, Canada, and Korea
 - They are allowed to claim an exemption for their spouse

18

Filing Status—Married Individuals

- Non-resident alien taxpayers are considered married, even if they live apart from their spouse
- Exceptions: residents of Mexico, Canada, and South Korea who
 - File separately and live apart from their spouse for the last 6 months of the year
 - Have their home as the main home of a dependent child

19

Source of Income

Types and Sources of Income	
Income type:	Source is determined by:
Dividends	Where payer is incorporated
Interest	Payer's place of residence
Pension payments attributable to: • Contributions (employer or employee, pretax) • Earnings of domestic (U.S.) trusts	Where the services were performed
Rents	Where property is located
Royalties from natural resources	Where property is located
Royalties from patents, copyrights, etc.	Where property is used
Salaries, wages, and other compensation for personal services	Where services are performed
Sale of inventory that was purchased	Where the inventory is sold (where title passes)
Sale of personal property (except inventory)	Tax home of seller
Sale of real property	Where the property is located
Scholarships and fellowships	Residence of grantor

20

Effectively Connected Income

- Most common types
 - Wages
 - **Taxable refunds of state taxes**
 - Taxable scholarships
 - Self-employment income
- Interest on bank accounts **not** taxed for non-resident alien students and scholars

21

Tax-Exempt Income

- Certain types of foreign student / scholar income are exempted by tax treaties
- Timing of income exemptions not same as that for nonresident / resident status
- Commonly exempt
 - Scholarships (Code 15)
 - Teaching (Code 18)
 - Student wages (Code 19)
- Earnings from off-campus work usually not exempt, except:
 - Canadian citizens (all wages up to \$10,000)
 - Wages for **required** internships (**certain countries only**)
- References:
 - Publication 4011
 - Publication 901 (U.S. tax treaties)
 - Form 1040-NR instructions

22

Tax-Exempt Income

- Taxpayer **should** file a Form 8233 (exemption from withholding) when they start working at Iowa State
- If they do
 - **Exempt** income will appear on Form 1042-S
 - **Non**-exempt income will appear on W-2 (or other appropriate form)
- If Form 8233 is not filed
 - All income will be reported on W-2 (or other appropriate form)
 - You will have to figure out what is exempt and not exempt
- Exempt income is listed on return (1040NR-EZ line 6; 1040NR line 22), but not included in "effectively connected income"

23

"Not Effectively Connected" Income

- Investment income other than interest is taxed
- Special tax rates for dividends ("not effectively connected" income)
- Other not effectively connected income
 - Gambling winnings
- All not effectively connected income is reported on 1040 NR schedule NEC (page 4)

24

Deductions

- For AGI = student loan interest
- Standard deduction not allowed for nonresident alien taxpayers
 - Exception: India
- Nonresident aliens may deduct the following:
 - State and local taxes
 - Charitable contributions
 - Casualty or theft loss (subject to usual limitations)
 - Job expenses (subject to 2% AGI limitation)
 - Educational costs (**job-related only!!!--rare**)
- Must use Form 1040 NR if deducting items other than state and local taxes

25

Credits

- Nonresident aliens
 - Child tax credit and child care credit rarely seen
 - Generally require the qualifying child to be a dependent
 - Other credits on Form 1040 NR usually don't apply to students and scholars
- Resident aliens
 - Entitled to same credits as any U.S. resident taxpayer
 - Check eligibility for child and earned income credit carefully

26

Social Security / Medicare Tax

- Non-resident aliens
 - Student / scholar income not subject to social security tax
 - Not a problem if employer processes correctly
 - If social security withheld in error, must file Form 843 (available from IRS website)
 - Family members of students / scholars in U.S. on F-2, J-2, or M-2 visas are **not** exempt from Social Security tax
- Resident aliens
 - May be responsible for social security, even on exempt income

27

State Taxes

- May have to file if taxpayer has non-exempt income
- Iowa tax forms same as for U.S. citizens, regardless of immigration status
- Iowa bases taxes on Federal AGI (recognizes tax treaties)

28

Income

- Most nonresidents will have a
 - W-2 statement
 - 1042-S showing exempt income
- Some may have a 1042-S showing non exempt income
- Form 1099G from the state of Iowa

29

Affordable Care Act

- Foreign nationals who live in the United States for a short enough period of time that they do not become resident aliens for federal income tax purposes are exempt from the individual shared responsibility payment even though they may have to file a U.S. income tax return. The IRS has more information available on [when a foreign national becomes a resident alien](#) for federal income tax purposes. Individuals who are exempt under this rule include:
 - Nonresident aliens;
 - Those unlawfully present
 - Dual-status aliens in their first year of U.S. residency;
 - Nonresident aliens or dual-status aliens who elect to file a joint return with a U.S. spouse;
 - Individuals who file a Form 1040NR or Form 1040NR-EZ (including a dual-status tax return for their last year of U.S. residency); and
 - Individuals who are claimed as a personal exemption on a Form 1040NR or Form 1040NR-EZ.

30

Where can I file?

- Nonresidents can use
 - Glacier (Deb Vance ISSO)
 - <https://www.issso.iastate.edu/>
 - Sprintax (product of Turbo Tax)
 - <https://www.sprintax.com/>
 - TaxAct.com
 - <https://www.taxact.com/support/22172/2016/form-1040nr-and-form-1040nr-ez-in-taxact>

31

VITA

- Meet Monday nights and Wednesday nights
- About 30 student volunteers
- Prepare approximately 150 tax returns each year
- <https://www.business.iastate.edu/vita/>
 - Appointments open up four weeks in advance. For example, if you want a Monday appointment, try booking it at 12am on the Monday four weeks in advance

32

Where to Send Form 1040NR

- If you are not enclosing a payment:
 - Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301-0215
U.S.A.
- If you are enclosing a payment:
 - Internal Revenue Service
P.O. Box 1303
Charlotte, N.C. 28201-1303
U.S.A.

33

ITIN

- Good idea for family members if you will eventually become a resident
 - An ITIN is: A tax processing number issued by the IRS for certain resident and non-resident aliens (including spouses and dependents) who are not eligible for SSNs.
 - A nine-digit number in the same format as the SSN (9XX-XX-XXXX), begins with a "9".
 - ITINs that haven't been included on a U.S. federal tax return at least once in the last three consecutive tax years will expire.

34

How to Get an ITIN

- **How to Apply for an ITIN**
 - Each person who requires an ITIN must file a separate Form W-7/W-7(SP) and provide supporting identification documentation.
 - Form W-7/W-7(SP) must be completed and attached to a U.S. federal income tax return. The applicant's name must be listed on the Form W-7/W-7(SP) as it appears on the tax return.

35

Two Ways To Receive an ITIN

- First way: in person at IRS Taxpayer Assistance Center (TAC). Service at TACs is by appointment only. Appointments can be scheduled by calling 1-844-545-5640. For list of locations and services provided, click <http://www.irs.gov/uac/Contact-Your-Local-IRS-Office-1> or search for "Local IRS office" at www.irs.gov.
 - Des Moines has had office in the past

36

Second Way

- By Mail:

Internal Revenue Service
ITIN Operation
P.O. Box 149342
Austin, TX 78714-9342