



Electronic Tool-Kit for Non-Resident Alien VITA Sites



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Section 1

Tax Credits for Aliens

Who is Eligible?

To claim a tax credit, the nonresident Alien must have **effectively connected income**. The credits do not offset “Other Taxes”. The information in this document contains information about Tax Credits for Aliens as follows:

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Other credits are available to Non-Resident Aliens only if they choose to file a joint return with their spouse that is a U.S. citizen or resident. The most common credits are:

1. **Education Credits** — If the taxpayer, spouse or dependents had qualifying tuition and related expenses they may be eligible for a non-refundable education credit. See [Publication 970](#), Tax Benefits for Education, for more information.
2. **Earned Income Tax Credit** — Low income working people, especially families with children, may be eligible for the Earned Income Tax Credit. **Both spouses and any qualifying children must have a Social Security Number that allows them to work in the United States.** See [Publication 596](#), Earned Income Credit, for more details or log onto www.irs.gov/eitc.

Form 1040NR Credits — Quick Reference

Credit	Income Requirements for Non-Resident Aliens	Country of Residence	Filing Status	Other Requirements that may Eliminate Non-Resident Aliens
Foreign Tax Credit	Effectively Connected Foreign Source Income	Any	Any	None
Child and Dependent Care Credit	Effectively Connected Income	Canada, Mexico, South Korea, Students and Apprentices from India	Single or Qualifying Widow(er)	Taxpayer must maintain a home w/dependent
				South Korea, Indian dependents must be child
Retirement Savings Contribution Credit (Saver's Credit)	Effectively Connected Income	Any	Any	Must be working and saving for retirement in the U.S.
				May not be a full-time student
Child Tax Credit and Additional Child Tax Credit	Effectively Connected Income	Canada, Mexico, South Korea, Students and Apprentices from India	Any	Child must be U.S. resident
Adoption Credit	Effectively Connected Income	Any	Single or Qualifying Widow(er)	None

Married Non-Resident Aliens will be able to claim the Child and Dependent Care Credit or the Adoption Credit only if they choose to file a joint return with a U.S. citizen or resident. A married person filing a separate return may not claim these credits. **However, residents of Canada, Mexico or South Korea who meet the tests for “Married Persons Living Apart” may be able to use the Single filing status.**

Foreign Tax Credit

A nonresident Alien may qualify for the Foreign Tax Credit if the income being taxed is from **foreign sources** that is **effectively connected with a trade or business in the U.S.** and will be included on their Form 1040NR. As non-resident aliens are not taxed on foreign income that is not effectively connected, foreign taxes paid on that income is not eligible for the credit.

To claim the Foreign Tax Credit on Form 1040NR, **all** the following conditions must be met:

- 1) Taxes are income, war profits and excess profits taxes paid to the government or a political subdivision (i.e., a city, state or province) of a foreign country or U.S. possession
- 2) Taxes must be paid on **foreign source income** that is **effectively connected with a trade or business in the U.S.**
- 3) The foreign government is recognized by the U.S. and not designated by the Secretary of State as supporting terrorism.
- 4) The taxes must be legally owed to the foreign government, and not eligible for refund or returned as a subsidy, and
- 5) If the foreign tax was paid on a dividend from shares of stock, the taxpayer must have held that stock for at least 16 days.

If Form 1116 is required, refer the taxpayer to a paid preparer. Form 1116 is **not** required if all of the following are met:

- All income being taxed is interest or dividends
- All taxes are reported on a qualified payee statement, such as Form 1099-INT, Form 1099-DIV, or Schedule K-1
- Taxpayer's total creditable foreign taxes are not more than \$300 (\$600 for Married Filing Joint), and
- Taxpayer is not carrying over any excess foreign taxes

For more information on the Foreign Tax Credit, see [Publication 514](#), Foreign Tax Credit for Individuals.

Credit for Child and Dependent Care Expenses

The credit is a percentage of the amount paid to care for a qualifying person while the taxpayer worked or looked for work.

Nonresident aliens are generally, not eligible for this credit. To be eligible, **all** the following conditions must be met:

- The nonresident alien can claim an exemption for the qualifying person
- Filing status is Single or Qualifying Widow(er)
- The nonresident alien has effectively connected income.
- The taxpayer kept up a home where he/she lived with the qualifying person.

Married nonresident aliens will be able to claim the credit only if they choose to file a joint return with a U.S. Citizen or resident. A married person filing a separate return may not claim the credit. However, residents of Canada, Mexico or South Korea who meet the tests for “Married Persons Living Apart” may be able to use the single filing status.

Disabled Spouse – Only a married nonresident alien choosing to file a joint return with a U.S. Citizen or resident would only be able to claim the credit based on expenses for a disabled spouse. Form 1040NR does not allow for a joint return, and a married person filing a separate return cannot claim the credit. As the taxpayer must keep up a home where they lived with the qualifying person, the exceptions for “Married Persons Living Apart” would not apply.

For additional requirements for the Child and Dependent Care Credit including qualifying expenses, see [Publication 503, Child & Dependent Care Expenses](#).

Retirement Savings Contribution Credit

The Retirement Savings Contribution Credit (also referred to as the Saver's Credit) allows a credit based on a percentage of the taxpayers contributions to an IRA Individual Retirement Arrangement (IRA) or other qualified retirement plan defined under U.S. code. The percentage allowed as a credit depends on the taxpayer's Adjusted Gross Income.

Nonresident aliens may qualify for this credit if they are working and saving for retirement in the U.S. However, full-time students are not eligible, so many of your VITA clients may not qualify for the credit.

In order to claim the Saver's Credit on Form 1040NR, the nonresident alien must meet **all** the following conditions:

- Contributed to an IRA or qualified retirement plan
- **Must have effectively connected income**
- **Not a full-time student**
- At least 18 years of age
- Not able to be claimed as a dependent on another person's tax return
- Adjusted Gross Income must not be over the threshold amount

For more information on the Saver's Credit, see [Form 8880](#), Credit for Qualified Retirement Savings Contributions.

Child Tax Credit

The Child Tax Credit is a nonrefundable credit for people who have a qualifying child. Certain lower-income taxpayers may also qualify for the Additional Child Tax Credit, which is calculated on Form 8812.

To claim the Child Tax Credit on a Form 1040NR, the child must be a U.S. citizen or resident. In addition, the nonresident alien must have effectively connected income.

A qualifying child for the Child Tax Credit must be:

- Under age 17
- The taxpayer's child, adopted child, stepchild, grandchild, or eligible foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (i.e. grandchild).
- A U.S. citizen or resident

For example, a nonresident alien from Korea has a 1 year-old child born in the U.S. and therefore a U.S. citizen. If the taxpayer meets all the tests AND the child lived with him in the U.S. AND the taxpayer had effectively connected U.S. source income, then the nonresident alien can claim the child as a dependent, and claim the Child Tax Credit on his Form 1040NR.

For more information on the Child Tax Credit and Additional Child Tax Credit, see [Publication 972](#), Child Tax Credit.

Adoption Credit

The Adoption Credit is a credit for people who adopt a child. The rules governing when the credit may be taken and the limits for the credit depend on whether the child is a U.S. citizen or a foreign child, and whether the child has special needs.

Nonresident aliens filing Form 1040NR may be able to claim the Adoption credit if they have qualifying adoption expenses. However, they must:

- Report effectively connected income AND
- Use Single or Qualifying Widow(er) filing status.

Married nonresident aliens will be able to claim the credit only if they choose to file a joint return with a U.S. citizen or resident. A married person filing a separate return may not claim the credit.

For information on qualifying expenses, income limitations and when to take the credit, see [Publication 968](#), Tax Benefits for Adoption.

Mortgage Interest Credit (Form 8396) – If a nonresident alien was issued a Mortgage Credit Certificate for his main home, use [Form 8396](#) to calculate the credit and show it on line 49. The taxpayer must have effectively connected income. The credit is not affected by filing status or exemptions.

The **following credits may be claimed by nonresident aliens** on Form 1040NR, **but are outside the scope of this program.** Taxpayers that may qualify for these credits should be referred to a paid preparer:

- Credit for Prior Year Minimum Tax ([Form 8801](#))
- Qualified Electric Vehicle Credit ([Form 8834](#))
- General Business Credit ([Form 3800](#))
- Empowerment Zone Employment Credit ([Form 8844](#))

Section 2

Frequently Asked Questions

International Tax Law (11/2006)

Frequently Asked Questions

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Basic Rules of U.S. Taxation

What determines the U.S. taxation of income?

The general rule of income taxation is that income is taxable where the activity or transaction occurs. All compensation for services performed in the U.S. is subject to U.S. taxes unless an exception applies. For additional information see Publication 17, *Your Federal Income Tax* and Publication 519, *U.S. Tax Guide for Aliens*.

How do I calculate the taxes on my U.S. income?

The services you perform in the U.S. will be taxed based on your residency status for federal income tax purposes. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

How do I determine my residency status?

Your residency status for federal income tax purposes will depend on your immigration status. In general, a nonimmigrant is considered a resident alien for federal tax purposes if he or she is present in the U.S. for 183 days or more, unless an exception applies. Most students and scholars will meet one of the exceptions for at least part of their stay. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Since I already had taxes withheld from my pay, do I need to file a tax return?

Yes. The U.S. tax system is considered a “pay as you go” plan. Therefore, taxes are withheld from your pay as you earn it (based on withholding documents you give to your employer). You file a federal income tax return after the end of the calendar year to reconcile your withholdings with your actual tax liability. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Canadian Questions

I am a Canadian citizen living and working in the U.S. for a U.S. employer on a visa. Do I need to file both a U.S. tax return and a Canadian tax return?

You must comply with both U.S. and Canadian filing requirements. In the United States, you generally are required to file a return if you have income from the performance of personal services within the United States. However, under certain circumstances, that income may be exempt from payment of U.S. tax pursuant to the U.S.-Canada income tax treaty. You need to determine what type of visa you have, and how that impacts your residency status in the United States. If, based on the tax code and your visa status you are treated as a U.S. resident, then your entitlement to treaty benefits will be impacted. For additional information, see Publication 519, *U.S. Tax Guide for Aliens* and Publication 597, *Information on the United States-Canada Income Tax Treaty*.

I am a Canadian citizen who worked in the U.S. for 4 months. Do I have to file a U.S. income tax return as well as my income tax return in Canada?

In the United States, you generally are required to file a return if you have income from the performance of personal services within the US. The type of return to file would depend upon whether you are a resident of the U.S. for purposes of U.S. tax law. There are several tests to determine residency, including the substantial presence test, which is based on how many days you are present in the U.S. over a period of three years. For additional information, see Publication 519, *U.S. Tax Guide for Aliens* and Publication 597, *Information on the United States-Canada Income Tax Treaty*.

I am a U.S. citizen. If I move to Canada to live and work there as a Canadian permanent resident, do I pay both U.S. and Canadian Taxes?

United States citizens living abroad are required to file annual U.S. income tax returns and report their worldwide income if they meet the minimum income filing requirements for their filing status and age. You must contact the Canadian Government to determine whether you must file a Canadian tax return and pay Canadian taxes. For the United States income tax return, you will have several options available to you regarding claiming a foreign tax credit or excluding some or all of your foreign earned income. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

Capital Gain Income Nonresident Aliens

Are international students required to pay income tax on their U.S. capital gains?

Nonresident alien students and scholars, and alien employees of foreign governments and international organizations who, at the time of their arrival in the United States, intend to reside in the United States for longer than one year, are subject to the 30% taxation on their U.S. source capital gains during any tax year, if during such tax year (usually calendar year), they are present in the United States for 183 days or more, unless a tax treaty provides for a lesser rate of taxation. This assumes that such capital gains are not effectively connected with the conduct of a United States trade or business. These capital gains would be reported on Page 4 (not Page 1) of Form 1040NR, and would not be reported on a Schedule D, because they are being taxed at a flat rate of 30%, under I.R.C. §871(a), or at a reduced flat rate under a tax treaty. For additional information, go to www.irs.gov.

I am a nonresident alien and invested money in U. S. stock market through a U.S. brokerage company. Are the dividends and the capital gains taxable? If yes, how are they taxed?

Generally, capital gains received by a nonresident alien not present in the United States for 183 days or more are not taxable in the United States. Certain gains, however, are subject to the 30% withholding rate or if applicable, a reduced tax treaty rate. Dividends are withheld upon at the 30% or lower tax treaty rate. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Form 6166, Certification for Reduced Tax Rates in Tax Treaty Countries

Who needs a Form 6166?

As proof of residency in the United States and of entitlement to the benefits of the tax treaty, U.S. treaty partner countries require a U.S. Government certification that you are a U.S. citizen or resident of the United States for purposes of taxation. Most treaty partner countries will accept this certification in the form of a computer-generated certification letter from the Internal Revenue Service. This letter is also known as Form 6166.

How do I request this certification?

Beginning July 5, 2004, you must file a Form 8802, *Application for United States Residency Certification*, to request U.S. residency certification. A user fee will be charged to process all [Forms 8802](#) received with a postmark date on or after November 1, 2006. A single user fee of \$35 per Form 8802 submitted will cover a request for up to 20 original Forms 6166 issued under a single taxpayer identification number (TIN).

Where do I file my request?

You should mail your application, including full payment of the user fee, at least 45 days before the date you need Form 6166. You will be contacted within 30 days if there will be a delay in processing your application. Call 215-516-2000 (not a toll free number) and select the U. S. residency option if you have questions regarding your application. Send Form 8802, all required attachments, and payment of the user fee by mail to:

Internal Revenue Service
P.O. Box 42530
Philadelphia, PA 19101-2530

Or, by private delivery service to:

Citibank
Attn: IRS Lockbox Operations
1617 Brett Road
New Castle, DE 19720-2425

Where can I get more information about the certification?

Publication 686, *Certification for Reduced Tax Rates in Tax Treaty Countries* is obsolete. For more information, see Form 8802 instructions. You can download a copy of the instructions at www.irs.gov.

Currency Issues

How much money can a nonresident alien bring in to the U.S.?

There is no limit on the total amount of monetary instruments which may be brought into or taken out of the United States, nor is it illegal to do so. However, if the person transports more than \$10,000 in monetary instruments on any occasion into or out of the United States, FinCEN Form 105 (formerly Customs Form 4790, *Report of International Transportation of Currency or Monetary Instruments with U.S. Customs*) must be filed with U.S. Customs. For additional information, go to www.irs.gov.

What is a “monetary instrument”?

Monetary instruments include U.S. or foreign coin in current circulation, currency, travelers' checks (in any form), money orders, and negotiable instruments or investment securities in bearer form.

How does the foreign currency exchange rate work?

Foreign currency needs to be translated into U.S. dollars to determine the amount of income (such as income from the sale of goods or services, dividends or interest) to report on a taxpayer's U.S. return and to determine gain or loss when foreign currency is disposed of. The proper translation rate depends on the item of income. You can generally get the exchange rates from banks and U.S. Embassies. Other possible sources of exchange rate would be publications, such as the Wall Street Journal. If there is more than one exchange rate, use the one that most properly reflects your income. For additional information, go to www.irs.gov.

Determination of Residency Status for Federal Income Tax Purposes

Why is my residency status for federal income tax purposes important?

Since resident and nonresident aliens are taxed differently, it is important for you to determine your status. You are considered a nonresident alien for any period that you are neither a United States citizen nor a United States resident alien.

How do I know if I am considered a resident alien for federal income tax purposes?

You are considered a resident alien if you met one of two tests for the calendar year. The first test is the “green card test.” If at any time during the calendar year you were a lawful permanent resident of the United States according to the immigration laws, and this status has not been rescinded or administratively or judicially determined to have been abandoned, you are considered to have met the green card test.

The second test is the “substantial presence test.” To meet this test, you must have been physically present in the United States on at least 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. To satisfy the 183 days requirement, count all of the days you were present in the current year, and one-third of the days you were present in the first year before the current year, and one-sixth of the days you were present in the second year before the current year. Do not count any day you were present in the United States as an “exempt individual” or commute from Canada or Mexico to work in the United States on more than 75% of the workdays during your working period. An exempt individual may be anyone in the following categories:

A foreign government-related individual,

A teacher or trainee with a J or Q visa who substantially complies with the requirements of the visa,

A student with an F, J, M, or Q visa who substantially complies with the requirements of the visa; or

A professional athlete temporarily present to compete in a charitable sports event.

For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I am a foreign national and came to this country on June 30th of last year. I have a H-1 visa. What is my tax status regarding residency nonresident alien, or resident alien?

You were a dual status alien last year. As an H-1 visa holder in the U.S. for 183 days or more, you likely became a resident, for tax purposes, as of June 30th. For the part of the year you are a resident alien, you are taxed on income from all sources. For the part of the year that you are not a resident alien, you are not taxed on income from sources outside the United States, unless the income is effectively connected with a trade or business in the United States. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I have an H-1 visa and my husband has an F-1 visa. We both lived in the United States all last year and had income. What kind of form should we file? Do we file our taxes separately or jointly?

You will have met the substantial presence test and will be taxed as a resident alien for last year, while your husband is likely to be a nonresident alien. You may file a joint tax return if your husband makes the choice to be treated as a resident for the entire year. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I was an international student (F-1 visa) until October 1, and then my visa status was changed to H-1. Should I file my income tax return as a dual status or nonresident alien?

Assuming you were not in the U.S. on your F-1 student visa for over 5 years, you may file as a nonresident for the entire year or, if you qualify under the first year choice, you may file as a dual status alien. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Last year I changed my immigration status from an F-1 student to an H-1 worker. Does my status change how I file my tax return or what forms I use?

It depends on whether or not you qualify as a resident alien. As a foreign national temporarily in the U.S. and now under an H-1 visa, you must file Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. You must also file Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition* if you do not meet the substantial presence test. In order to file a Form 1040, Individual Tax Return, you must meet the substantial presence test. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I entered the U.S. in August and I have a J-2 visa with an Employment Authorization (work permit). Can I be considered as a U.S. resident for tax purposes under the substantial presence test?

You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. As an exempt individual, a J-2 visa holder will not initially meet this test. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

If someone in F or J immigration status was previously an F or J visa holder under a different stay, perhaps 10 years ago, do they need to include the previous stay in calculating the 2 or 5 year limit for exemption from the physical presence test?

Teachers and trainees (and their dependents) will not be exempt from counting their days of presence if he/she was exempt as a teacher, trainee or student for any part of 2 of the preceding 6 years. Publication 519, *U.S. Tax Guide for Aliens*. The student five-tax-year limit includes any time spent in exempt individual status after January 1, 1985. Therefore, any time in the U.S. in F, J, M, or Q immigration status (including dependents) may effect the calculation of the five-year period. For additional information, See Publication 519, *U.S. Tax Guide for Aliens*.

Are all J-1s subject to the 6 year look-back 2 year physical presence rule?

Only J non-students are subject to this rule. J students and their dependents follow the same five-year rule as F students and their dependents. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Is there a look-back rule for the 5 year rule for F-1s?

The rule for F and J students is a five-year lifetime limit, so one must look back to January 1, 1985 to see if there have been any years as an exempt individual to determine current year substantial presence test results. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Sometimes it would be better for a student to be considered a resident alien for tax purposes. Can they choose to be treated this way if it benefits them?

Nonresident aliens who are married to US citizens or residents can elect to file a joint return and be treated as a resident alien. Students and trainees from Barbados, Hungary and Jamaica, regardless of marital status may elect to be treated as a resident alien. All other nonresident students and scholars must follow the prescribed rules for counting or exempting their days of presence. For additional information, See Publication 519, *U.S. Tax Guide for Aliens*.

Deductions

Nonresident Aliens

Can nonresident aliens claim the standard deduction?

Nonresident aliens **cannot** claim the standard deduction. However, a special rule applies to **students** and **business apprentices** who are eligible for the U.S.-**India** treaty benefits. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Does a nonresident alien get a deduction for state or local income taxes?

Yes, the nonresident can take a deduction for state and local income taxes that have been withheld by the payer. The deduction can be taken on Form 1040NR, *U.S. Nonresident Alien Income Tax Return* or Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents*. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

What charitable contributions can the nonresident alien include on the tax return?

Charitable contributions or gifts to qualified organizations can be deducted on Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, subject to certain limitations. Qualified organizations include organizations that are religious, charitable, educational, scientific, or literary in nature, or that work to prevent cruelty to children or animals. Contributions made directly to a foreign organization are not deductible. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Can a nonresident alien deduct a loss from a theft of property?

Casualty and theft losses are deductible on Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. Several limitations apply. For additional information, see Publication 519, *U.S. Tax Guide for Aliens* and Form 4684, *Casualties and Thefts*.

What job expenses can a nonresident alien deduct?

Expenses such as allowable unreimbursed travel expenses and other expenses such as union dues and safety equipment are deductible on Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. Several limitations apply. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Can students and scholars deduct costs associated with their jobs? What costs can be included and where would they be deducted?

The nonresident can deduct job expenses, such as allowable unreimbursed travel expenses. Generally, the allowable deductions must be related to effectively connected income. Job expenses are a miscellaneous itemized deduction and they are subject to a 2% of Adjusted Gross Income (AGI) limit. Publication 519, *U.S. Tax Guide for Aliens*.

Educational Expenses

Nonresident Aliens

Can nonresident aliens claim a credit for tuition paid to go to school?

If you are a nonresident alien for any part of the year, you generally cannot claim the education credits. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse, you may be eligible for the Hope or Lifetime Learning Credit. For additional information, see Publication 970, *Tax Benefits for Education* and Publication 519, *U.S. Tax Guide for Aliens*.

Can a nonresident alien take a deduction for student loan interest?

If you paid interest on a student loan, you may be able to deduct the interest if you meet all of the following requirements:

- 1) Your filing status is any filing status except married filing separately
- 2) Your income is less than \$ 70,000
- 3) No one else claims you as a dependent
- 4) The loan was taken out to pay tuition and other qualified expenses
- 5) The educational expenses were paid or incurred within a reasonable period of time before or after the loan was taken out
- 6) The person for whom the expenses were paid was an eligible student

For additional information, see Publication 970, *Tax Benefits for Education* and Publication 519, *U.S. Tax Guide for Aliens*.

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition

What happens if the student doesn't file the form 8843?

If Form 8843 is not filed, the alien can't exclude their days of presence from the SPT. This could mean that they will be viewed as a resident alien for tax purposes. They would have to report all of their world-wide income on the U.S. tax return and they may not be able to claim their treaty benefits.

I'm a first-year F-1 student and I had no U.S. earned income or scholarships. Do I need to file any federal income tax papers?

Yes. You must file Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition*. If any family members are here with you (F-2 status) they must also file a Form 8843. For additional information see the instructions included in Form 8843.

I arrived in the U.S. in December of last year. Do I still have to file a Form 8843?

Yes. If you were present in the U.S. for even 1 day, you must file Form 8843 if you are excluding days of presence from the substantial presence test.

Filing Status, Dependents and other Family Issues Nonresident Aliens

Can you please review which nonresidents can claim dependents?

Nonresidents (for income tax purposes) from the following countries may be able to claim their dependents and/or spouse on their return.

Canada, Mexico, South Korea and Students from India

Refer to Publication 519, *U.S. Tax Guide for Aliens*, for additional information.

For additional information, see Publication 501, *Exemptions, Standard Deduction and Filing Information*.

I thought that children from the 4 countries you mentioned can only be claimed if they were US citizens or permanent residents. Is that true?

To meet the citizen or resident test, a person must be a U.S. citizen or resident, or a resident of Canada or Mexico, for some part of the year. For additional information, see Publication 501, *Exemptions, Standard Deduction and Filing Information*.

I have a child who was born in the U.S. Can I claim an exemption for my wife and child?

If you are a nonresident alien for federal income tax purposes you generally can't claim exemptions for your family members. There are exceptions for students and scholars from Canada, Mexico, Korea and India. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I am a married nonresident alien. My wife is here with me in J-2 immigration status. Can we file a joint return?

Generally, you cannot file as married filing jointly if either spouse was a nonresident alien at any time during the tax year. However, nonresident aliens married to U.S. citizens or residents can choose to be treated as U.S. residents and file joint returns. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*. Married nonresident aliens who are not married to US citizens or residents generally must use the Tax Table column or the Tax Rate Schedule for married filing separate returns when determining the tax on income effectively connected with a US trade or business. They normally cannot use the Tax Table column or the Tax Rate Schedule for single individuals. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I am a scholar from Canada. My wife died last year and I have two dependent children. What filing status should I use on my U.S. income tax return?

You may be eligible to file as a qualifying widow and use the joint return tax rates if you meet certain requirements. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I am the head of my household. As a nonresident alien, how do I claim the head of household filing status?

You cannot file as head of household if you are a nonresident alien at any time during the tax year. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Form 2555, Foreign Earned Income Exclusion

Do I have to meet the 330-day presence test or have a valid working resident visa to meet the requirement for foreign income exclusion?

To claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, you must have foreign earned income, your tax home must be in a foreign country, and you must be one of the following:

- A U.S. citizen, who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty with a nondiscrimination article in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or a U.S. resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months. U.S. tax law does not specifically require a foreign resident visa or work visa for this purpose, but you (must/should) comply with the other country's laws. For additional information see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

I am a nonresident alien. Can I take the foreign earned income exclusion if I meet the bona fide resident test or physical presence test? If yes, what is the tax form used for nonresident taxpayer? No, nonresident aliens do not qualify for the foreign earned income exclusion. Only if you are a U.S. citizen or a resident alien of the United States and live abroad, may you qualify to exclude part of your foreign earned income. But, if you are the nonresident alien spouse of a U.S. citizen or resident alien, you can elect to be treated as a U.S. resident in order to file a joint return. In this case, you can take the foreign earned income exclusion if otherwise qualified. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

What is foreign earned income? Is it income from a foreign source or income paid by a U.S. company while living abroad?

Earned income is pay for personal services performed, such as wages, salaries, or professional fees. Foreign earned income is income you receive for services you perform in a foreign country during a period when your tax home is in a foreign country and during which you meet either the bona fide residence test or the physical presence test. It does not matter whether earned income is paid by a U.S. employer or a foreign employer. Foreign earned income does not include the following amounts.

- Interest, ordinary dividends, capital gains, alimony, etc..
- Pension or annuity payments including social security benefits.
- Payments by the U.S. Government, or any U.S. government agency or instrumentality, to its employees.
- Amounts included in your income because of your employer's contributions to a nonexempt employee trust or to a nonqualifying annuity contract.
- Recaptured unallowable moving expenses
- Payments received after the end of the tax year following the tax year in which you performed the services that earned the income.

For additional information see Publication 54, *Tax guide for U.S. Citizens and Resident Aliens Abroad*.

I am a U.S. citizen. If I move to Canada to live and work there as a Canadian permanent resident, do I pay both U.S. and Canadian Taxes?

United States citizens living abroad are required to file annual U.S. income tax returns and report their worldwide income if they meet the minimum income filing requirements for their filing status and age. You must contact the Canadian Government to determine whether you must file a Canadian tax return and pay Canadian taxes. For the United States income tax return, you will have several options available to you regarding claiming a foreign tax credit or excluding some or all of your foreign earned income. For additional information, see Publication 54, *Tax Guide for Citizens and Resident Aliens Abroad*.

I am a U.S. citizen working abroad. Are my foreign earnings taxable?

A U.S. citizen or resident alien is generally subject to U.S. tax on total worldwide income. However, if you are a United States citizen or a resident alien who lives and works abroad, you may qualify to exclude all or part of your foreign earned income. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

I live in a foreign country. Where can I find local tax assistance and forms?

The IRS has a full-time permanent staff in 6 U.S. Embassies. These offices have tax forms and publications, can help you with account problems, and answer your questions about notices and bills. For more information about these offices, please refer to www.irs.gov.

I worked out of the country for one year. Do I have to pay U.S. income tax?

As a U.S. citizen, your worldwide income generally is subject to U.S. income tax, regardless of where you are living. However, you may qualify for the foreign earned income exclusion, foreign housing exclusion or foreign housing deduction, or the foreign tax credit. These tax benefits can reduce or eliminate the U.S. tax you would otherwise have to pay on your foreign income. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

I am a U.S. citizen working for a U.S. firm in a foreign country. Is any part of my wages or expenses tax deductible?

U.S. citizens are taxed on their worldwide income, no matter where they work. Some taxpayers may qualify for the foreign earned income exclusion, foreign housing exclusion, or foreign housing deduction, if their tax home is in a foreign country and they were either a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or were physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months. If the taxpayer is temporarily away from his or her tax home in the United States on business (less than a year), the taxpayer may qualify to deduct away from home expenses (for travel, meals, and lodging) but would not qualify for the foreign earned income exclusion. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

I am a U.S. citizen living and working overseas. Can I have a tax credit on my U.S. taxes for the taxes I pay to the foreign country?

The foreign tax credit is intended to relieve U.S. taxpayers of the double tax burden when their foreign source income is taxed by both the United States and the foreign country from which the income is derived. Generally, only income taxes paid or accrued to a foreign country or a U.S. possession qualify for the foreign tax credit. You can choose to take the amount of any qualified foreign taxes paid or accrued during the year as a foreign tax credit or as an itemized deduction. You may not take either a credit or a deduction for taxes paid or accrued on income you exclude under the foreign earned income exclusion or the foreign housing exclusion. There is no double taxation in this situation because the income is not subject to U.S. tax. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad* and Publication 514, *Foreign Tax Credit for Individuals*.

Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts

Who is required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts?

Each citizen or resident of the United States who has a financial interest in or signature authority over any financial accounts, including bank accounts, must file the form if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year. For additional information, see the instructions included in Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*.

Are there any exceptions to the filing requirement?

Yes, some exceptions apply. For additional information, see the instructions included in Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*.

When should the form be filed?

The form must be filed by June 30 of the year after the calendar year in which the specified financial accounts exceeded \$10,000. This form needs to be filed annually, if the filing requirements are met.

Where do you file the completed form?

The form should be mailed to:

Department of the Treasury
Post Office Box 32621
Detroit, MI 48232-0621

You can also take the completed form to an IRS Taxpayer Assistance Center. For the location of the nearest center, go to www.irs.gov.

Form 1116, Foreign Tax Credit

I am a U.S. citizen living and working overseas. Can I have a tax credit on my U.S. taxes for the taxes I pay to the foreign country?

The foreign tax credit is intended to relieve U.S. taxpayers of the double tax burden when their foreign source income is taxed by both the United States and the foreign country from which the income is derived. Generally, only income taxes paid or accrued to a foreign country or a U.S. possession qualify for the foreign tax credit. You can choose to take the amount of any qualified foreign taxes paid or accrued during the year as a foreign tax credit or as an itemized deduction. You may not take either a credit or a deduction for taxes paid or accrued on income you exclude under the foreign earned income exclusion or the foreign housing exclusion. There is no double taxation in this situation because the income is not subject to U.S. tax. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad* and Publication 514, *Foreign Tax Credit for Individuals*.

How, When and Where to File Form 1040NR, U.S. Nonresident Alien Tax Return or Form 1040NR/EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents

Can Form 1040NR be filed electronically?

Not at this time. Private companies offer software that helps prepare the forms, but the forms must be printed out and mailed to the Internal Revenue Service. The forms can't be faxed. For additional information see the *Instructions to Form 1040NR, U.S. Nonresident Alien Tax Return*.

Where can I find the mailing address? Can the tax forms be folded? What size envelope is needed? What needs to be attached to the form?

The mailing address for the return is listed in the instructions to the form. You may fold the tax return before sending it. There is no specified envelope size for your return. Attach one copy of each W-2 or 1042-S form that you received. For additional information see the *Instructions to Form 1040NR, U.S. Nonresident Alien Tax Return*.

What is the due date for the Form 1040NR? Is it the same for the Form 1040NR-EZ?

If the alien received any wages subject to withholding, such as nonresident alien student working on campus, the return is due on the 15th day of the fourth month following the end of the year. This generally means that the return will be due on April 15. The type of form (1040NR or 1040NR-EZ) does not change the due date. For additional information see the *Instructions to Form 1040NR, U.S. Nonresident Alien Tax Return*.

What private delivery services can I use to file my forms?

Certain private delivery services are designated by IRS to meet the "timely mailing as timely filing/paying" rule. These delivery services can't deliver to a P.O. Box. For additional information see the *Instructions to Form 1040NR, U.S. Nonresident Alien Tax Return*.

Who signs the form?

Form 1040NR (or Form 1040NR-EZ) is not considered a valid return unless the nonresident alien signs it. Under certain conditions, an agent may sign for the nonresident alien. For additional information see the *Instructions to Form 1040NR, U.S. Nonresident Alien Tax Return*.

What is the difference between the Form 1040NR and the Form 1040NR-EZ? Which form should I use? Will using the longer form save me some money?

It is always advisable to use the simplest form that will accommodate all of your income and deductions. The instructions to the forms explain who can file the form. Using the longer form will only save you money, if you have items to list on it that you could not list on the shorter form (ex. Gifts to US charities)

Should I keep a copy of my tax return?

Yes. You should make a copy of your completed return and keep it in your files.

Will the IRS send me anything to let me know that they got my return?

No. You can however, take the return to the local IRS office to turn it in. They can stamp your copy of the return with a receipt stamp.

What happens if I fail to file my taxes?

If you owe taxes and don't file, you may be assessed penalty and interest. There may also be immigration consequences for failing to file taxes. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I'm a first-year F-1 student and I had no U.S. earned income or scholarships. Do I need to file any federal income tax papers?

Yes. You must file Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition*. If any family members are here with you (F-2 status) they must also file a Form 8843. For additional information see the instructions included in Form 8843.

If I owe tax, to whom do I make the check payable?

The check should be made payable to **United States Treasury**. You should include your social security number on the check.

Pension Income

Does a nonresident alien (including international students and scholars) need to include pension income on the U.S. tax return?

A nonresident alien usually is subject to U.S. income tax only on U.S. source income. The source of pension income is usually determined based on where the services were performed that earned the pension. A nonresident alien would report pension income that is determined based on services performed in the U.S. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

What pension income must be included on the U.S. tax return for a U.S. citizen or resident alien?

If you are a U.S. citizen or resident alien, the rules for filing income tax returns and for paying estimated tax are generally the same whether you are in the United States or abroad. Generally, you are required to report your world-wide income; however, if you are a U.S. resident, nongovernmental pensions and annuities you receive may be exempt from the income tax of treaty countries. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

Is a pension considered earned income?

For purposes of the foreign earned income exclusion, the foreign housing exclusion, and the foreign housing deduction, amounts received as pensions or annuities are unearned income. For additional information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

In addition to U.S. Social Security benefits, are the monthly benefits received from the Canada Pension Plan taxable?

By provision of the income tax treaty between the U.S. and Canada, benefits paid under the Canada Pension Plan (CPP), Quebec Pension Plan (QPP), and Old Age Security (OAS) program to a U.S. resident are taxable, if at all, only in the United States. These Canadian benefits are treated as U.S. social security benefits for U.S. tax purposes. Canadian benefits that are treated as U.S. social security benefits are reported on Social Security line of the U.S. income tax return. For additional information, see Publication 597, *Information on the United States – Canada Income Tax Treaty*.

How should the British Social Security income be reported?

Under the U.S.-United Kingdom income tax treaty that entered into force during 2003, social security income is taxable only by the country of residence. If you are a resident of the U.S. for tax purposes, the income would be reported and taxed in the U.S. You would **not** treat the income as U.S. social security benefits. The entire amount would be taxable as pension and annuity income on your U.S. tax return. Your “investment in the contract” for purposes of determining the portion of each payment that is taxable would be \$0. Under the prior treaty with the UK, social security benefits were treated the same way. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*, and Publication 575, *Pension and Annuity Income*.

Are Social Security benefits received from Austria or Germany treated like U.S. Social Security benefits? If not, how are they reported?

Austrian social security benefits paid to U.S. residents or citizens are taxable only by Austria and not by the United States. These benefits should not be reported. German social security benefits paid to a U.S. resident are taxable, if at all, only by the United States. These German benefits are treated like U.S. social security benefits. For additional information, see Publication 915, *Social Security and Equivalent Railroad Retirement Benefits*.

Scholarships, Fellowships, Grants and Awards for Nonresident Aliens

As a condition of their employment, Resident Assistants are required to live in the dorm. The room is provided for free, is this taxable income?

Since the employment required the student to live in the dorm for the convenience of the employer, the value of the lodging is not taxable. For additional information, see Publication 970, *Tax Benefits for Higher Education*.

Are graduate assistantships taxable?

Yes, the cash stipend (salary portion) of an assistantship, whether a research assistantship or a teaching assistantship, is considered compensation for services rendered and is fully taxable (unless excluded by treaty). The portion of the assistantship which serves as tuition remission (tuition waiver) is considered a scholarship and is exempt from taxation. For additional information, see Publication 970, *Tax Benefits for Higher Education*.

Are athletic scholarships considered earned income since services must be preformed? Is this taxable income?

Athletic scholarships are not considered **earned** income even though they require the recipient to perform services (play sports). An analogy can be made to academic scholarships that require the recipient to maintain a certain GPA. It takes “work” to maintain the GPA, but the scholarship is not considered earned income. However, any scholarship that covers room and board is taxable unless excludable by treaty. For additional information, see Publication 970, *Tax Benefits for Higher Education*.

Social Security Coverage FICA and Medicare Taxes Nonresident Aliens

Are international students and scholars subject to Social Security tax?

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Under my visa as a temporary nonresident alien, I'm not subject to social security and Medicare withholding. My employer withheld the taxes from my pay. What should I do to get a refund of my social security and Medicare?

If social security tax and Medicare were withheld in error from pay received which was not subject to the taxes, you must first contact the employer who withheld the taxes for reimbursement. If you are unable to get a refund from the employer, file a claim for refund with the Internal Revenue Service on Form 843, *Claim for Refund and Request for Abatement*.

You must attach the following to your claim:

- a copy of your Form W-2, *Wage and Tax Statement*, to prove the amount of tax withheld;
- Form I-797, *INS Approval Notice*, is needed if you have changed your status from F-1 or J-1 to another status prior to filing the claim;
- if your visa status changed during the tax year you should attach copies of the pay stubs that cover the period of exemption from social security taxes;
- a copy of INS Form I-94, *Arrival/Departure Record*, if you are still in the United States;
- a copy of your valid entry visa;
- Form 8316, *Information Regarding Request for Refund of Social Security Tax*, or a signed statement stating that you have requested a refund from the employer and have not been able to obtain one; and
- a copy of Form 1040NR, *US Nonresident Alien Income Tax Return* (or Form 1040NR-EZ), for tax the year in question. Processing of your claim may be delayed if you submit it less than six weeks after you filed Form 1040NR or 1040NR-EZ.

In addition to the documentation listed above foreign student visa holders should also attach the following: a copy of Form I-20, *Certificate of Eligibility*, endorsed by your student advisor and stamped by the Bureau of Citizenship and Immigration Services; and a copy of the *Employment Authorization Document* of your *Optional Practical Training* (e.g., Form I-766 or I-688B). If you are an exchange visitor, attach a copy of Form IAP-66 or DS-2019 to your claim. File the claim, with attachments, with the IRS where the employer's returns were filed. If you do not know where the employer's returns were filed, send your claim to the Internal Revenue Service Center, Austin, TX 73301.

I am a graduate student and serve as a teaching assistant. I would like to know whether FICA taxes need to be withheld from my pay.

Students who perform services for the school, college, or university where they are enrolled and regularly attend classes are usually not subject to social security and Medicare taxes.

As I understand the law, student stipends are exempt from FICA and Medicare taxes. If my university takes these taxes out of my stipend income, can these taxes be recovered in some way?

If you are not performing a service for the university, your stipend would be subject to income tax only if it does not meet the qualified scholarship rules. If you are performing a service for the university, your income is taxable for income tax purposes, but would generally be exempt from social security and Medicare taxes if you are enrolled and regularly attending classes. For additional information, see Publication 970, *Tax Benefits for Education*.

I am an F-1 student status who was employed during my school studies and directly afterwards I completed practical training. Do I have to pay FICA taxes? Which taxes should be taken out of my pay?

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security and Medicare programs if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there should be no withholding of social security or Medicare taxes from the pay you receive for these services. These types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment. However, you are covered under the social security and Medicare programs for these services if you are considered a resident alien, even though your nonimmigrant classification (“F,” “J,” “M,” or “Q”) remains the same. Social security and Medicare taxes will be withheld from your pay. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

I entered the U.S. in August and I have a J-2 visa with an Employment Authorization (work permit). Can I be considered as a U.S. resident for tax purposes under the substantial presence test? Since my visa does not allow me to stay in this country am I subjected to social security tax and Medicare tax?

You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. As an exempt individual, a J-2 visa holder will not initially meet this test. In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States. This exception does not apply to a derivative visa holder. For additional information, see Publication 519, *U.S. Tax Guide for Aliens*.

Can you please explain the Social Security Exemption in more detail?

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. These types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment. However, you are covered under the social security program for these services if you are considered a resident alien, even though your nonimmigrant classification (“F,” “J,” “M,” or “Q”) remains the same. Social security and Medicare taxes will be withheld from your pay.

If you are a nonresident alien admitted to the United States as a student, you generally are not permitted to work for a wage or salary or to engage in business while you are in the United States. In some cases, a student admitted to the United States in “F-1,” “M-1,” or “J-1” status is granted permission to work, and it is so noted on the student’s copy of Immigration Form I-94, Arrival-Departure Record. Social security and Medicare taxes are not withheld from pay for the work unless the student is considered a resident alien.

Note: Any student who is enrolled and regularly attending classes at a school may be exempt from social security and Medicare taxes on pay for services performed for that school.

The Immigration and Naturalization Service (INS) permits on-campus work for students in “F-1” status if it does not displace a U.S. resident. On-campus work means work performed on the school’s premises. On-campus work includes work performed at an off-campus location that is educationally affiliated with the school. On-campus work under the terms of a scholarship, fellowship, or assistantship is considered part of the academic program of a student taking a full course of study and is permitted by the INS. In this case, the educational institution endorses the Form I-20. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien. Employment due to severe economic necessity and for optional practical training is sometimes permitted for students in “F-1” status. Students granted permission to work due to severe economic necessity or for optional practical training will be issued Form I-688B or Form I-766 by INS. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

Students in “M-1” status who have completed a course of study can accept employment or practical training for up to six months and must have a Form I-688B or Form I-766 issued by INS. Social security and Medicare taxes are not withheld from “M-1” students’ pay for these services unless the student is considered a resident alien.

For additional information, go to www.irs.gov.

Tax Credits

Nonresident Aliens

Can a nonresident alien claim the Earned Income Credit?

If the taxpayer was a nonresident (for tax purposes) at any time during the year, they generally can't claim the Earned Income Credit (EIC). However, if they are married to a US citizen or resident and choose to file a joint return they may be eligible for the credit. For additional information see Publication 519, *U.S. Tax Guide for Aliens*.

Can nonresident aliens claim the Lifetime Learning Credit for tuition paid to go to school?

If you are a nonresident alien for any part of the year, you generally cannot claim the education credits. However, if you are married and choose to file a joint return with a U.S. citizen or resident spouse, you may be eligible for the Hope or Lifetime Learning Credit. For additional information, see Publication 970, *Tax Benefits for Higher Education*.

My young children live with me and my wife. We are both students (F-1 status) and we must pay someone to watch our children. Can I claim the Child Care Credit?

Generally, no. For additional information see Publication 519, *U.S. Tax Guide for Aliens*.

Treaties

How do I know if the U.S. has an income tax treaty with another country?

Publication 901, *U.S. Tax Treaties*, has information regarding United States tax treaties. You can also locate the complete text of current treaties at www.irs.gov/businesses/international/index.html or use our search engine with keywords “income tax treaties.”

I am a student from the People’s Republic of China currently studying in the United States. How does the income tax treaty between the U.S. and China apply, especially for students with scholarships and fellowships?

If you are in the United States solely for the purpose of your education, training, or obtaining special technical experience, you may be able to exclude from your income grants or awards that you receive from a government, scientific, educational, or other tax-exempt organization. You also may be able to exclude payments that you receive from abroad for the purpose of your maintenance, education, study, research, or training and up to \$5,000 of income that you receive from personal services performed in the United States. Please refer to Publication 901, *U.S. Tax Treaties*, for further details.

What form is used to let the payor know that a treaty exists?

Alien students, teachers, and researchers who perform dependent personal services (as employees) can use Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Service of a Nonresident Alien*, to claim exemption from withholding of tax on compensation for services that is exempt from U.S. tax under a U.S. tax treaty. See Form 8233 for more information.

What about employees who aren’t students or scholars?

If you are not a student, teacher, or researcher, but you perform services as an employee and your pay is exempt from U.S. income tax under a tax treaty, you can avoid having tax withheld from your wages. Give your employer a Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*, for the tax year. For additional information, see Form W-8BEN.

Can resident aliens claim treaty benefits?

Generally, resident aliens can’t claim treaty benefits. However, most treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for income even after the recipient has otherwise become a U.S. resident alien for tax purposes. For additional information see Publication 519, *U.S. Tax Guide for Aliens and Publication 901, U.S. Tax Treaties*.

If someone has met the substantial presence test but is still eligible for treaty benefits, must they wait until they file their return to get the benefit? Can payroll honor the treaty?

A resident who is claiming an income tax treaty exemption from withholding tax based on a treaty article must submit a Form W-9, not a Form 8233, to the withholding agent (employer). For additional information, see Publication 519, *U.S. Tax Guide for Aliens* and Publication 901, *U.S. Tax Treaties*.

What does the term unlimited mean in the amount column of the charts in Publication 901?

Unlimited means that there is not a maximum on the dollar amount that the nonresident can exclude. For additional information, see Publication 901, *U.S. Tax Treaties*.

Are all amounts reported as code 15 on Form 1042S taxable?

Generally, the code 15 (scholarship) amounts reported on Form 1042S represent the portion of the scholarship that was for room and board expenses. Room and board scholarships are taxable unless there is a treaty benefit. Often, you can determine if there is an available treaty by looking at the exemption code in box 6 of the 1042S. For additional information see Publication 519, *U.S. Tax Guide for Aliens* and Publication 901, *U.S. Tax Treaties*.

Where do you put the treaty information on the Form 1040NR?

On the first page of the 1040NR, you report the total income exempt by a treaty. You must also complete question M on page 5 of the form. It is very important that you include the treaty article number in question M. The article number can be found in Publication 901. If the article number is omitted, the form will be returned to the taxpayer. For additional information see the instructions for Form 1040NR.

Where do you put the treaty information on the Form 1040NR-EZ?

On the front of the return, you report the total wages and scholarship exempt by a treaty. You must also complete question J on the back of the form. It is very important that you include the treaty article number in question M. The article number can be found in Publication 901. If the article number is omitted, the form will be returned to the taxpayer.

If a student has a tax treaty, how does this help him on his tax return?

Tax treaties generally allow a nonresident to exclude a specified amount of US source income from their US tax return. This in turn, reduces the tax liability.

A nonresident entered the U.S. in F-2 immigration status but was later granted F-1 status, without leaving the country. How long must the nonresident be out of the country to reestablish residency and potentially become eligible for treaty benefits?

A full year, 365 days.

If a student doesn't have any wages or taxable scholarship, how much is their treaty benefit?

There are treaty benefits for other types of income, such as a reduced tax rate on investment income. If the nonresident doesn't have **any** income, he/she would not benefit from the treaty provisions.

If the student is eligible for a treaty benefit on part of his wages but the full amount of the wages are reported on Form W-2, can he still claim the treaty benefit?

Yes, it is allowable for the nonresident to apply the full treaty benefit that he/she is entitled to on the federal return. However if the nonresident is claiming treaty benefits and he/she failed to submit adequate documentation to their employer, he/she must attach (to the federal tax return) a statement that provides all of the information that would have otherwise been required on the withholding document (Form 8233 or W-8BEN).

Does it make any difference if the amount is being paid by a foreign employer?

Yes, normally amounts received from a foreign employer are not taxable to nonresidents. Nonresidents are taxed on their US source income only.

Section 3 - Publication 678FS

PowerPoint Presentation

Volunteer Return Preparation Foreign Student/Scholar TY 2007

Welcome



- Icebreaker (your choice)
- Teacher and student (general introductions)
- Welcome new and old students and instructors/sponsors, etc.
- Provide scope of program and objectives
- Introduce students to the products (Publication 678FS and Publication 4011) and purpose

e-learning Options



&

Understanding Taxes Website

<http://www.irs.gov/app/understandingTaxes/index.jsp>



Effective for tax year 2007, the Foreign Student and Scholar module is part of Link and Learn taxes. The traditional VITA module and Foreign Student and Scholar module is available on the site beginning in 2008. Thus, you should introduce the concept to your students now.

Share key components of L<:

L<, IRS-SPEC's new e-learning application available 24/7 on www.irs.gov is key to the future of volunteer return preparation training.

This interactive product uses the **same modular approach** as the traditional training package but also provides a strong opportunity for leveraging resources.

It can be used for independent study and certification or as part of a pre- or post- classroom training strategy.

Understanding Taxes:

Encourage them to introduce their children to the tax administration process via Understanding Taxes.

Also encourage their local schools and universities to use the UT site to teach their children about taxes.

International Students and Scholars



This presentation is intended to be used with **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text**. You can download a copy of the publication at www.irs.gov.

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Fact-Gathering Process

Effective Interviewing

- **Steps to Effective Interviews**
- **Interview Tips**
- **Form 13614 NR (NRA Intake and Interview Sheet)**



- Restate the importance of getting accurate and appropriate information from the taxpayer.
- Show the students Form 13614 NR in Pub 678 FS and how it can be used to assist in the interview process.
- Put up two big pieces of paper or use a chalkboard. Label one “Steps” and the other “Tips”. Let the class spend some time brainstorming about what steps and tips they think they might need to assist the foreign students and scholars. List their suggestions on the pieces of paper.
- Encourage the students to keep interviewing in their minds as you work through the rest of this course. They should make notes of what they think would be good interview questions to ask the taxpayer.

Standards of Conduct

- **Volunteers have a responsibility to provide quality service and to uphold ethical standards**
- **Signed copy will be required of all volunteers – Form 13615**



- The Form 13615 can be found in Publication 678FS.
- Discuss the standards of conduct by reading each and explaining the intent and seek comments and understanding from the class.
- The Standards of Conduct is part of the certification process. All volunteers must sign the Standards of Conduct.

Privacy & Confidentiality Guidelines

- **Privacy Act of 1974**
- **Civil Rights Act of 1964**



Privacy Act of 1974

- A key principle of the Internal Revenue Service is to ensure that public trust is protected and confidentiality is guaranteed.
- Publication 4299, Privacy and Confidentiality, addresses areas where diligence to detail is needed to protect the information provided for tax return preparation.
- When the IRS collects information from volunteers, we must adhere to the Privacy Act of 1974. This Act requires that when IRS asks volunteers for information, we tell them our legal right to ask for the information, why we are asking for it, and how it will be used. This statement has been added to applicable Volunteer Return Preparation Program documents.

Note: Civil Rights Act of 1964

- Explain: In accordance with Title VI of the Civil Rights Act of 1964, no one (volunteers or taxpayers) can be subject to discrimination or denied services because of race, color, sex, national origin, disability, reprisal, or age.
- Civil Rights posters Publication 4025 and/or 4053 must be posted at volunteer sites (or similar document created by a partner containing the same information). Poster should be posted throughout your site advising taxpayer of their Civil Rights and where to file a complaint.

Volunteer Testing & Certification

“Assist only with returns, supporting schedules, and forms for which you’ve trained and certified.”



- Explain to students that preparing returns beyond their training and certification may result in errors and cause difficulties for those we wish to help—delayed returns, audit, etc.
- Encourage students to refer taxpayers with difficult returns with issues beyond their training and certification to the Site Coordinator and/or a paid preparer.
- Explain – that “trained and certified” means they have met the training requirements to be a volunteer return preparer and have passed the required test(s) and their sponsor/site coordinator has the required signed certification
- Draw the students attention to the test

Lesson 1

Residency Status for Federal Tax Purposes



Slides 8 through 19 go with Lesson 1 in **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

The determination of residency status for federal income tax purposes is the first step in assisting foreign students and scholars.

Reference Materials for this Lesson Include:

Publication 501, Exemptions, Standard Deduction, and Filing Information

Publication 519, U.S. Tax Guide for Aliens

Form 1040, U.S. Individual Income Tax Return

Form 1040NR, U.S. Nonresident Alien Income Tax Return

Form 8840, Closer Connection Exception Statement for Aliens

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Determination of Residency Status

- **Do not confuse tax residency with:**
 - immigration residency
 - residency requirements for earning a degree etc.



It is possible for an alien to have an immigration residency status that is not the same as his/her federal income tax residency status. It is also possible for the alien to have a state income tax residency that is different than his/her federal income tax residency.

This lesson covers the determination of residency status for federal income tax purposes.

Resident or Nonresident?

- **Substantial Presence Test**
- **Green Card Test**
- **Residency Through Marriage**



Publication 519, U.S. Tax Guide for Aliens, provides additional information about these topics.

There are exceptions to the Substantial Presence Test (SPT) for certain categories of aliens. The student and scholar exceptions are covered later in this presentation.

In some cases, an alien may be both a resident and a nonresident in the same year. This is referred to as a dual-status alien.

See the following slides for additional information.

Substantial Presence Test

- **31 days during the current year, and**
- **At least 183 days during the three year period ending with the current year.**



The 183 days are calculated as follows:

- All days of (nonexempt) presence in the current year, plus
- One-third of the (nonexempt) days of presence in the first preceding year, plus
- One-sixth of the (nonexempt) days of presence in the second preceding year.

For example, Jules was in H-1 immigration status from June 19, 2005 until April 30, 2007 (when he returned to his home country). He is a resident alien for 2007 because he exceeds 183 days of presence using the formula stated above.

As you will see on the subsequent slides, there are exceptions to this test.

Exempt Individuals

- **F, J, M, & Q student status holders**
- **J & Q teacher or trainee status holders**
- **Not exempt from taxation**



The term “exempt” as used in this lesson means that the alien is exempt from counting their days of presence for the substantial presence test.

Aliens often think their exempt status means that they are not required to pay taxes in the U.S. The exempt status does not mean that the student is exempt from filing or paying federal income taxes.

The exempt status is covered in more depth later in this presentation.

Publication 678FS, Volunteer Assistor’s Guide - Foreign Student and Scholar Text, also has several examples and exercises to help determine if someone can be considered exempt from counting their days of presence.

Exempt Students (F & J)

- **5 years**
- **Dependents are generally included**
- **All must file Form 8843**



While most undergraduate international students are in F immigration status, it is possible for an alien with J immigration status to be classified as a student. The determining factor, is what was the primary purpose for the alien's admission to the U.S.

Students (and their dependents who derive their immigration status from the student) are generally exempt from counting their days of presence for 5 years.

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, must be filed when a student or scholar (or their dependents) is excluding days of presence from the Substantial Presence Test.

Exempt Teacher/Trainee

- **Any two years out of a six year period**
- **Dependents are generally included**
- **All must file Form 8843**



Teachers and trainees can be exempt from counting their days of presence for two out of six years. In their “look-back” calculation for the six years, they must consider any time spent in a exempt status as a student.

For example, Hans is in J-1 immigration status and started teaching at the local university in March, 2007. He had previously been in the U.S. in F-1 immigration status as a student in 2003-2005. For 2007, Hans is a resident alien since he cannot exclude any of his days of presence from the substantial presence test.

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, must be filed when a student or scholar (or their dependents) is excluding days of presence from the Substantial Presence Test.

See **Publication 519, U.S. Tax Guide for Aliens**, for additional information

Establishing a Closer Connection

- **Present in the U.S. less than 183 days in the current year**
- **Have a tax home in a foreign country**
- **File Form 8840.**



This option is used when the alien is trying to establish that even though the substantial presence test is met, they should still be considered as a nonresident alien because of their ties to their home country.

To claim a closer connection to their home country, the alien must be present for less than 183 days in the current (2007) year. The alien must also have a home in a foreign country for the entire year.

If you are using this presentation to instruct volunteers, you may want to download a copy of **Form 8840, Closer Connection Exception Statement for Aliens** from www.irs.gov. to share with your class.

Green Card Test

- **Date of adjustment to status--not the date pink 'green card' issued**
- **No option--if you are a Permanent Resident, you are a resident for tax purposes**



When aliens have been granted Permanent Resident immigration status, they will receive an identification card from the immigration authorities. Originally, the Permanent Resident cards were green and the term "green card" continues to be used even though the forms are no longer green.

Residency Starting Date

- **Passes Substantial Presence Test**
- **Granted permanent residence status--green card test**
- **When both apply use the earlier of the two**



When the alien is determined to be a resident by application of the Substantial Presence Test (SPT), their residency starting date for federal income tax purposes is the first day of the year that the SPT is passed.

If the alien is a resident for federal income tax purposes because they have gained Permanent Resident (PR) immigration status, their residency starting date is the first day of their PR status.

For more information on this topic, see **Publication 519, U.S. Tax Guide for Aliens**.

Residency through Marriage

- **Nonresident spouse can be treated as a resident**

- Required to file jointly
- Report world-wide income



If the nonresident is married to a resident or citizen, the couple can make an election to file a joint return. This means that the nonresident spouse will be considered a resident for federal income tax purposes.

(Note: Nonresident aliens who are married to other nonresident aliens cannot file a joint tax return. This will be discussed later in this presentation.)

Dual-status Aliens

- Taxpayer has two residency statuses during the same tax year
- Must file two returns
- Allocate income



It is possible for a taxpayer to have more than one residency status for federal income tax purposes in the same tax year. This creates a dual-status situation. The taxpayer generally must file both a **Form 1040, U.S. Individual Income Tax Return** and a **Form 1040NR, U.S. Nonresident Alien Income Tax Return**. The taxpayer must allocate income and expenses based of the time spent in each status. This can be very complex. The preparation of dual status returns is not covered in the VITA program. Suggest that the taxpayer seek a paid provider for assistance.

Lesson 2

Filing Requirement & What to File



Slides 22-37 go with Lesson 2 in **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

References for this lesson include:

Publication 17, Your Federal Income Tax

Publication 501, Exemptions, Standard Deduction, and Filing Information

Publication 519, U.S. Tax Guide for Aliens

Publication 4152, Electronic Tool-kit for Nonresident Alien VITA Sites

Form W-2, Wage and Tax Statement

Form 1040NR, U.S. Nonresident Alien Income Tax Return

Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents

Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Who Must File

In the United States it is the individual's responsibility to know what taxes must be filed with the government.



Some students and scholars think that their tax liability has been satisfied because money was withheld from their pay.

Some students and scholars come from a country where the government tells the taxpayers how much to pay and when to pay it. Some countries have a per capita tax in place of an income tax.

Resident Aliens

- **File using U.S. citizen rules**
- **IRS Publication 17**
- **Extensive number of resources, public and private**



Aliens who are determined to be residents for federal income tax purposes will file the same type of return as a U.S. citizen.

Publication 17, Your Federal Income Tax, is a comprehensive reference book for the rules that apply to U.S. citizens and resident aliens.

Since resident aliens are treated the same as citizens for tax purposes, they can receive tax assistance from several sources including:

- www.irs.gov
- Volunteer Income Tax Assistance sites (the alien can find the closest site's information at www.irs.gov)
- Local IRS offices that have a Taxpayer Assistance Center
- Paid preparers
- Tax software

Dual Status Aliens

- **Publication 519**
- **Too complex for this training**



It is possible for a taxpayer to have more than one residency status for federal income tax purposes in the same tax year. This creates a dual-status situation. **Publication 519, U.S. Tax Guide for Aliens**, provides a sample of a dual-status taxpayer. The taxpayer generally must file both a **Form 1040, U.S. Individual Income Tax Return** and a **Form 1040NR, U.S. Nonresident Alien Income Tax Return**. The taxpayer must allocate income and expenses based on the time spent in each status. This can be complex. The preparation of dual status returns is not covered in the VITA program. Suggest that the taxpayer seek a paid provider for assistance.

How Nonresident is Different

- **Generally pay tax only on US-source income**
- **Interest may be tax free**
- **Married nonresidents cannot file jointly**



Alien status for federal income tax purposes determines which income the alien must include on the U.S. tax return. The alien status will also affect filing status and the availability of tax credits.

Generally, nonresident aliens pay tax on their U.S. sourced income only. They are not required to report earnings and profits from abroad.

In the case of nonresident aliens some of their U.S. sourced interest income may not be taxable. See **Publication 519, U.S. Tax Guide for Aliens** for additional information.

Nonresident aliens who are married to other nonresident aliens cannot file a joint tax return. However, if one of the spouses is a citizen or resident alien, the nonresident spouse can elect to be treated as a resident and file a joint return.

How Nonresident is Different (cont.)

- **One personal exemption**
- **Most tax credits do not apply**
- **Standard deduction not allowed (except students from India)**



Generally, a nonresident alien cannot claim an exemption for their spouse or dependents. This is explained further in Lesson 4 of this presentation.

Nonresident aliens are not able to claim most of the tax credits. Since most nonresident aliens can't claim their children as dependents, the credits related to children often do not apply. Some credits, such as the earned income credit, specifically state that they are not available for nonresident aliens. **Publication 4152, Electronic Tool-kit for Nonresident Alien VITA Sites**, contains a comprehensive segment on the availability of tax credits for nonresident aliens.

The standard deduction is not available for nonresident aliens, except for students from India. Nonresident aliens must itemize their deductions. Additional information is on the following slide.

For more information, see **Publication 519, U.S. Tax Guide for Aliens**.

Nonresident Rules

- **Itemized deductions limited to:**
 - state and local taxes withheld
 - contributions to charity
 - casualty/theft losses
 - miscellaneous business deductions



Most nonresident aliens must itemize their deductions because they cannot claim the standard deduction (except students from India). **Publication 519, U.S. Tax Guide for Aliens** explains what types of expenses the nonresident can include in their itemized deductions.

Nonresident Aliens Filing Requirements

- **Who**

- All F, J, M, and Q status holders must file a statement to substantiate non-residence and possibly a tax return



It is important to stress that all nonresident aliens who are excluding days of presence from the substantial presence test must file a **Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition** even if they had no income. This is what the slide is referring to when it says “a statement to substantiate non-residence”.

Nonresident Aliens Filing Requirements (cont.)

- Generally, the requirement to file a return has been eliminated for nonresident aliens who earn wages effectively connected with a U.S. trade or business that are less than the amount of one personal exemption, \$3,400 for 2007.



It is important to stress that all nonresident aliens who are excluding days of presence from the substantial presence test must file a **Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition** even if they had no income. This is what the slide is referring to when it says “a statement to substantiate non-residence”.

Nonresident Aliens Filing Requirements (cont.)

- **What**

- Form 8843—mandatory for all nonresidents
- Possibly Form 1040NR or 1040NR EZ



As the previous slide stated, all nonresident aliens who are excluding days of presence from the substantial presence test must file a **Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition** even if they had no income.

If the nonresident had any U.S.-source income, either a **Form 1040NR, U.S. Nonresident Alien Income Tax Return** or a **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents** must also be filed.

Nonresident Aliens Filing Requirements (cont.)

- **When**

- Tax returns by 15 April
 - ✓ Form 1040NR or Form 1040NR EZ
- Form 8843 only by 15 June



The due date for the return is Tuesday, April 15, 2008.

The deadline for nonresidents who are filing only **Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition** is June 15. Since June 15th falls on a Sunday, the due date for the form is Monday, June 16, 2008. If submitting only a **Form 8843**, make sure that the nonresident signs page 2 of the form.

The income tax return must:

- ✓ Be signed
- ✓ Be filed timely to avoid any penalties
- ✓ Have the reporting documents (W-2s, 1042Ss, and 1099s) attached
- ✓ Be prepared using U.S. dollars as the currency denomination
- ✓ The return **should:**
 - Include payment, partial or full, if there is a balance due
- ✓ The return does **not** have to be:
 - Notarized
 - Mailed certified, registered or by a private mail service
 - Mailed in any specific type of envelope
 - Witnessed
 - Prepared on computer

Nonresident Aliens Filing Requirements (cont.)

- **Where**

- Internal Revenue Service Center
- Austin, Texas 73301-0215 U.S.A.



A street address is not needed.

A paper return must be mailed in.

Nonresident returns can't be filed electronically at this time.

Nonresident returns can't be faxed in.

No special mailing needed. Just put in an appropriate size envelope and add the required first-class postage.

1040NR-EZ instead of 1040NR

- **Does not claim dependents**
- **Cannot be claimed as someone's dependent**
- **Under 65**



Even though the alien may have dependent family members here in the U.S., they may not be able to claim those family members on their tax return. See lesson 4 in this presentation for more information.

It is rare that a nonresident alien student or scholar would qualify to be the dependent of another taxpayer.

Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents, can't be used if the nonresident is over age 65. This does not occur very often.

1040NR-EZ instead of 1040NR (cont.)

- **Types of income limited to:**

- Wages, salaries, tips, taxable refunds of state/local income taxes, & scholarships or fellowships



The types of income that can be reported on **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents**, is limited to the items listed on this slide.

If the nonresident has any dividend, capital gain or miscellaneous income, he/she must file a **Form 1040NR, U.S. Nonresident Alien Income Tax Return**.

Additional Limitations of Form 1040NR-EZ

- **Taxable income less than \$100,000**
- **Cannot claim any adjustment to income except scholarship & student loan interest**
- **Cannot claim tax credits**



Adjustments to income on a **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents**, are limited to scholarship and student loan interest. For more information on these deductions, see the instructions to the Form 1040NR-EZ.

As stated previously, nonresident aliens usually can't claim tax credits. However, if they are eligible for any credits, they will need to file a **Form 1040NR, U.S. Nonresident Alien Income Tax Return** to claim the credit.

Additional Limitations of Form 1040NR-EZ (cont.)

- **No exemption claimed for spouse**
- **If itemizes, can only claim state income tax deductions**
- **The only taxes owed are income taxes**



The **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents**, has some additional limitations, as noted in this slide.

The only allowable itemized deduction on **Form 1040NR-EZ** is state income tax. However, students from India can file **Form 1040NR-EZ** and claim the standard deduction (as allowed by their treaty).

Consequences of Failure to File

- **If no taxes are owed--no penalty from the IRS**
- **However, nonimmigrant alien status requires that the individual not violate any U.S. laws, including tax laws**



VITA volunteers are not expected to know or communicate the immigration laws.

Lesson 3

The Effect of Tax Treaties



Slides 37-41 go with Lesson 3 in the **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

References for this lesson are:

Publication 901, U.S. Tax Treaties

Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Form 8233, Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Treaty Overview

- **IRS Publication 901, U.S. Tax Treaties.**
- **www.irs.gov**
 - **Search for tax treaties**



When using Publication 901, make sure that you are in the right column and section of the table.

The full language of the treaties can be found on www.irs.gov. However, it can be challenging to read the actual treaty and apply it to the taxpayer you are assisting.

Points to Consider

- **Purpose.**
- **Tax residency immediately prior to coming to U.S.**
- **Type of Income**



See Lesson 3 in Publication 678FS.

Also see Publication 901.

Form 1042-S - Common Income Codes

- **Scholarship or Fellowship grants – Code 15**
- **Compensation for teaching and research – Code 18**
- **Compensation during study and training – Code 19**



All income on **Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding**, will have an income code. Some of the most frequent codes for students and scholars are listed on this slide.

Scholarship income that is "qualified" is no longer required to be listed on a **Form 1042-S**. The only scholarship that should be listed on the **Form 1042-S** is for nonqualified amounts that are subject to U.S. tax (unless there is a treaty exemption).

Income code 17 is sometimes used for payments to Canadians.

For additional information, see **Publication 901, U.S. Tax Treaties**.

Unique Treaty Provisions

- **India Students**
- **Canada**
- **China**



Students from India can claim the standard deduction.

In general, Canadians can exclude their earned income if they earn less than \$10,000. If they earn over \$10,000 they can't exclude any income.

The treaty for students from China does not have a limit on the number of years that the treaty can be used.

For additional information, see [Publication 901, U.S. Tax Treaties](#).

Lesson 4

Family Issues



Slides 42-46 go with Lesson 4 in the **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

References for this lesson are:

Publication 501, Exemptions, Standard Deduction and Filing Information

Publication 519, U.S. Tax Guide for Aliens

Form W-7 or W-7(SP), Application for IRS Individual Taxpayer Identification Number

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Family Issues

- **Deduction for dependents generally not allowed**
- **Nonresidents from Canada, India, Korea, and Mexico**



In general, nonresident aliens can't claim their family members as dependents. There are exceptions for aliens from Canada, Mexico, Korea, and India. For additional information, see **Publication 519, U.S. Tax Guide for Aliens**.

Any dependents that the nonresident can claim must have a Taxpayer Identification Number (TIN). If the dependent is not eligible for a Social Security Number, they (the dependent) must apply for an Individual Tax Identification Number (ITIN).

Form W-7 or W-7(SP), Application for IRS Individual Taxpayer Identification Number is used to apply for an ITIN. You may download a copy of the most current version of the form from www.irs.gov.

Filing Status & Marital Status

- **Unmarried**
- **Married**
- **Nonresidents from Canada, India, Korea, and Mexico**



Unmarried nonresident aliens must use the Single filing status.

Some aliens may question if they can use the head of household status since they are the head of their household. Nonresident aliens can't file as head of household. Resident aliens can use the head of household filing status if all of the requirements are met.

Nonresident aliens who are married to other nonresident aliens cannot file a joint return.

Exceptions apply for nonresidents from Canada, Mexico, Korea, and India See **Publication 519, U.S. Tax Guide for Aliens** for additional information.

Filing Status & Dependents

- **Most nonresidents cannot claim their dependents—even if the dependent is a U.S. citizen**



Even though the alien may have family members in the U.S., they generally can't take a tax deduction for the dependents as long as they are considered nonresidents for federal income tax purposes.

Some exceptions apply for nonresidents from Canada, Mexico, Korea, and India.

For additional information see [Publication 519, U.S. Tax Guide for Aliens](#).

Spouse and Dependent

- **Form 8843**
- **All income must be reported**



F-2s and J-2s, who are excluding days of presence from the Substantial Presence test must file **Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition** every year.

All U.S. source income must be reported on either **Form 1040NR, U.S. Nonresident Alien Income Tax Return** or **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents**. This includes income that was earned in violation of immigration laws.

Lesson 5

Taxation of Nonresidents



Slides 47-51 go with Lesson 5 in **Publication 678FS Volunteer Assistor's Guide - Foreign Student and Scholar Text**.

Resources for this topic are:

Publication 519, U.S. Tax Guide for Aliens

Publication 901, U.S. Tax Treaties

Publication 970, Tax Benefits for Education

Form 1040NR, U.S. Nonresident Alien Income Tax Return

Form 1099-INT, Interest Income

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Taxation of Nonresidents

– Source of Income

– Type of Income



In general, a nonresident is taxed only on their U.S. sourced income.

Publication 519, U.S. Tax Guide for Aliens contains information on how to determine the source and taxability of income. There is also some good information about source of income on www.irs.gov.

Interest Income

- **May qualify for exclusion from income**



Interest Income

U.S. sourced interest income that is not connected to a U.S. trade or business may qualify for exemption. See [Publication 519, U.S. Tax Guide for Aliens](#), for additional information.

Some banks and other financial institutions still issue a [Form 1099-INT, Interest Income](#), to nonresident aliens. If the alien meets the conditions for the interest to be exempt, they do not need to include the amount from the [Form 1099-INT](#) in their income calculation.

Qualified Scholarships/Fellowships

- **Candidate for a degree**
- **Qualified Expenses**
 - Tuition and mandatory Fees
 - Required fees, books, supplies, & equipment



Qualified scholarships and fellowships are usually not taxable. If the recipient has to perform personal services to receive the scholarship or fellowship, the amount that represents compensation should be counted as earned income.

Publication 970, Tax Benefits for Education for additional information on qualified scholarships.

Scholarships and fellowships that cover room and board are not qualified and must be included in income unless a treaty provision applies.

Other Income

- **Income Not Effectively Connected**
 - 30% (or reduced treaty rate, if applicable)



Income that is not connected to the nonresident's purpose for entering the U.S. is usually taxed at a flat rate of 30%. Some countries have treaty provisions that prescribe a lower tax rate.

For example, a student from South Africa earned \$100 in dividends from an investment she made in a U.S. brokerage account. The dividends will be reported on **Form 1040NR, U.S. Nonresident Alien Income Tax Return**, page 4. She does not have a treaty benefit for this type of income. The student will pay \$30 of U.S. income tax on this investment income.

Lesson 6

Form 8843 Filing Requirement



Slides 52-54 go with Lesson 6 of **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text**.

Resources for this lesson are:

Publication 519, U.S. Tax Guide for Aliens

Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Form 8843

- **Name & TIN—must match exactly**
- **US address only if not filing with 1040NR or 1040NR EZ**



Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition can be filed without a Taxpayer Identification Number. However, if the alien has a number, it must be used.

Form 8843 (cont.)

- **Part II, Scholars**
- **Part III, Students**
- **Signature--only if not filed with 1040NR or 1040NR EZ**



It is up to the students and scholars to know what to include in Part II or Part III. However you may want to put the name and phone number of the Foreign Student Advisor in your reference materials.

Encourage the students and scholars to make a copy of this form for their records before sending it in.

Lesson 7

Finishing the Return



Slides 55-62 go with Lesson 7 in the **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

Resources for this lesson are:

Publication 970, Tax Benefits for Education

Form W-2, Wage and Tax Statement

Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents

Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Form 9465, Installment Agreement Request

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

The 1040NR EZ Return

- **Line 3: Wages, salaries, tips**
- **Line 4: Taxable refunds from state taxes**



A student or scholar may have both a **Form W-2, Wage and Tax Statement** and a **Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding**. They may even have more than one of each type of form.

The following example shows how to calculate the amount of the wages to enter on line 3 of the return:

A student from China is classified as a nonresident alien for federal income tax purposes. He has a **Form 1042-S** showing code 19 income of \$5,000. He also has a **Form W-2** for \$639. His calculation would be:

Box 1 of Form W-2	639
Add Code 17 income in box 2 of Form 1042-S	0
Add Code 18 income in box 2 of Form 1042-S	0
Add Code 19 income in box 2 of Form 1042-S	5,000
Minus Treaty benefits	5,000
Equals Amount to list on line 3	639

Students from India do not need to report their state income tax refund on line 4.

Form 1040NR-EZ (cont.)

- **Line 5: Scholarship/Fellowships (Room & Board)**
- **Line 6: Treaty exemption**



Report scholarships and fellowships on line 5. The student or scholar should have a **Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding** that shows the amount of the taxable scholarship or fellowship.

Line 6 is used to list the amount of effectively connected income that is being excluded from income because of treaty provisions. See the instructions to **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents** for additional information.

Form 1040NR-EZ (cont.)

- **Line 8: Scholarship excluded**
- **Line 9: Student loan interest deduction**



See the instructions for **Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents** for information on what can be included on line 8.

The requirements for deductible student loan interest can be found in **Publication 970, Tax Benefits for Education**.

Form 1040NR-EZ (cont.)

- **Line 11: State taxes withheld.**

- India students : Single, \$5,350/Married, \$5,350

- **Line 13: Personal exemption**

- \$3,400



For all filers, other than students from India, line 11 will be equal to the amount of state income taxes they have had withheld or paid during the year.

Students from India can enter \$5,350 on line 11.

The personal exemption is \$3,400 for 2007. Everyone can claim this deduction unless someone else is claiming them as a dependent.

Form 1040NR-EZ (cont.)

- **Line 14: Taxable income**
- **Line 15: Find tax in tax tables**
- **Line 18: Federal income tax withheld**



Line 14 is the taxable income, if any for the nonresident.

This line should be zero in the following cases:

- the nonresident had less income than what the treaty provision provided
- the nonresident had less than \$3,400 of income
- the nonresident had less than \$3,400 on income in excess of the treaty provision
- a student from India had less than \$8,200 of income

The instructions for the tax forms contain tax tables. Use these tax tables to determine the correct amount of tax on the taxable income.

When completing the withholding information, be sure to include all federal income tax withheld.

Form 1040NR-EZ (cont.)

- **Taxpayer must sign form (VITA volunteers do NOT sign the form)**
- **Direct deposit**
- **Split refund**
- **Installment agreement**



Returns that are not signed will be returned to the taxpayer. This can result in a delay in processing the return.

Encourage the nonresident to consider using direct deposit. Some students and scholars move frequently, but maintain the same bank account. Direct deposit is an easy and secure way to receive the refund, if any.

If they choose direct deposit of their refund, they may be able to split the refund into more than one account by checking the appropriate box and attaching Form 8888.

An IRS installment agreement can be requested by completing **Form 9465, Installment Agreement Request**. While an installment agreement allows the taxpayer to pay the balance due over a period of time, it does not stop the accumulation of interest and any applicable penalties.

Finishing the Return

- **Mail 8843 and return together**
- **Attach W-2s and 1042-Ss**
- **Keep copies**



Forms W-2, Wage and Tax Statement and **Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding** should be attached to the left-hand side of the first page of the return. The best way to attach the forms is with staples. Do not use straight pins.

The student or scholar should keep a copy of all items that are sent in.

Lesson 8

Social Security Tax Matters



Slides 63-66 go with Lesson 8 in **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text**.

Resources for this lesson are:

Publication 519, U.S. Tax Guide for Aliens

Form 843, Claim for Refund and Request for Abatement

All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Social Security Tax

- Exemption from FICA (Social security and Medicare taxes)
- If resident for tax purposes, usually subject to FICA taxes



Generally, services performed by a nonresident alien temporarily in the United States as a nonimmigrant in (F), (J), (M), or (Q) immigration status are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. For additional information, see [Publication 519, U.S. Tax Guide for Aliens](#).

Any student (regardless of residency or citizenship status) who is enrolled and is regularly attending classes at a school may be exempt from social security and Medicare taxes on pay for services performed for that school.

Social Security Tax (cont.)

- Dependents in F2 or J2 status are never exempt from FICA



The FICA exemption does not extend to dependents who derive their immigration status from a nonresident student or scholar.

In general, immigration laws do not allow an F-2 to work while in this country.

A J-2 may receive permission from the immigration authorities to work while in this country. Even though the J-2 may be a nonresident for tax purposes, they are still subject to the FICA tax.

FICA Refunds

- **When withheld in error:**
 - Ask the employer to refund
 - If not refunded, use IRS Form 843 to request a refund



If social security tax and Medicare were withheld in error, the student or scholar must first contact the employer who withheld the taxes for reimbursement. If you are unable to get a refund from the employer, file a claim for refund with the Internal Revenue Service on **Form 843, Claim for Refund and Request for Abatement**.

Publication 519, U.S. Tax Guide for Aliens contains information on what should be attached to the claim form.

File the claim, with attachments, with the IRS where the employer's returns were filed. If you do not know where the employer's returns were filed, send the claim to the Internal Revenue Service Center, Austin, TX 73301-0215 U.S.A.

Lesson 9

State Income Tax Issues



Slides 67-69 go with Lesson 9 of **Publication 678FS, Volunteer Assistor's Guide - Foreign Student and Scholar Text.**

State Income Tax Issues

- Some states do not honor income tax treaties
- Some states base their state returns on the federal adjusted gross income



Most states have a website that provides information about the state income tax system. Some states even allow you to complete the state return on-line.

You can contact the state's income tax authorities to learn more about completing the required state income tax return.

Questions

- Refer to the publications and forms that have been mentioned in this presentation
- www.irs.gov



All forms and publications cited in this presentation are available at www.irs.gov, or you may order a copy by calling 1-800-829-3676.

Course Summary

- Thank you for agreeing to help others with their tax returns
- Always try to establish a system of quality review at your site



Stress again confidentiality, privacy, and security.