

# NONRESIDENT ALIEN GUIDE

## Section I. PRELIMINARY ISSUES:

These are categorization issues that need to be done prior to beginning the return to determine if the individual is a resident or a nonresident for tax purposes. If they are a resident, they file a 1040 or a 1040EZ and this document is no longer useful.

If they are a nonresident, then they file a 1040NR or a 1040NR-EZ and you will use this document to guide you through their taxes.

### Step 1: Common Cases:

If the filer is a student with an F or J Visa and has been in the United States for less than 5 years, is single and does not have a green card, the filer is a NONRESIDENT for tax purposes. Skip to **Section II. Other Necessary Forms.** Otherwise, continue through the steps.

**J students, like F students, are exempt from the substantial presence test for 5 years. J scholars are exempt for only 2 years and can then file resident returns. H – Visa holders are not exempt from the substantial presence test.**

### Step 2: Determining Exemption:

In general, there are three ways to be a resident: the substantial presence test, the green card test or marriage. **Exemption deals specifically with the substantial presence test:**

If an individual is “exempt,” they are exempt from the substantial presence test of residency and will be considered a nonresident for tax purposes unless they satisfy either the green card or marriage test.

The following are “exempt”:

F, J, M and Q student status holders (and their spouses or children who come on the same visa) for 5 years.

J and Q teacher or trainee status holders (and their spouses or children who come on the same visa) for 2 of the last six years. Years spent as an “exempt” student count toward the 2-year limit.

If an individual is “exempt” they are a NONRESIDENT unless they satisfy either the green card test or marriage.

### Step 3: Determining Residency Status (any of the following may result in Residency Status).

#### Green Card Test

If you are a permanent resident, you are a RESIDENT for tax purposes. This is NOT optional.

#### Residency Through Marriage

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

#### Substantial Presence Test

You are a resident if:

You lived in the U.S. for 31 days during the current year AND  
You lived in the U.S. for 183 days during the three-year period ending  
with the current year. Calculated as followed:

All days of the current year+  
1/3 of the (nonexempt) days of presence in the year before+  
1/6 of the (nonexempt) days of presence in the second  
preceding year.

#### Closer Connection exception to the Substantial Presence Test

You will be considered to have a closer connection to a foreign country  
than to the United States if you or the IRS establishes that you have  
maintained more significant contacts with the foreign country than with  
the United State.

You were present in the U.S. less than 183 days in the current year and  
Have maintained a tax home in a foreign country  
Have a closer connection to the foreign country in which you have the  
tax home during the calendar year

**In which case you must file Form 8840 (Closer Connection  
Exception Statement for Aliens).**

#### Dual Status Aliens

If, over the last year, you were both a resident and a nonresident for tax  
purposes, you are a dual status alien.

Dual status alien tax returns are **OUT OF SCOPE FOR VITA.**

#### Step 4: Impact of Residency

Resident Aliens will be treated the same as U.S. citizens for tax purposes. This  
document is no longer useful.

Nonresident Aliens will have to file (if they file) either a 1040NR or a 1040NR-EZ.  
Proceed to Section II. Other Necessary Forms.

## Section II. Other Necessary Forms

#### Step 1: Other filing requirements

M, Q, F and J Visa holders must file a form 8843.

This is true EVEN THERE IS NO INCOME.

This is true even if you are in the U.S. on a dependent Visa (i.e., if you are the  
spouse or dependent of a nonresident student). If this is the case, each  
dependent's form must be filed separately.

#### Step 2: Filing form 8843

Why must 8843 be completed?

The form 8843 must be filed whether the individual has any U.S. income.  
If it is not filed, the IRS could tax the individual on their worldwide income.  
Failure to file an 8843 could be deemed as noncompliance with Visa  
requirements.

Page two of form 8843 must be signed.

The filing deadline for form 8843 is June 15 if it is not accompanying a federal  
tax return.

## Completing form 8843

### Top portion

Complete filer name and social security number (SSN) or taxpayer identification number (ITN). If filer does not have an SSN or ITN, leave this portion blank.

The address section is only completed if this form is filed by itself.

**Parts I through III** are self-explanatory. The answers for question 4a. should match the answers from previous 8843 and tax returns completed.

**Parts IV and V** we have never had to deal with as they typically do not pertain to the tax filers we serve.

**Bottom of page two. Sign and date.** Filer's signature or that of a parent or guardian if under the age of 18 is required, (if not accompanying a tax return).

## Section III. Determining the Appropriate Tax Form

### Step 1: Is your U.S. source income greater than \$4,400? (See step 2 for definition of U.S. source income).

If so, All F and J Visa holders must file a 1040NR or 1040NR-EZ

If not, then only a form 8843 needs to be filed. (Miscellaneous Forms – Exempt and Individual with Medical Condition).

### Step 2: What is U.S. source income?

Wages

Wages for Teachers and Researchers

Scholarships, Fellowships and Grants that represent a stipend.

### Step 3: Determining the appropriate form

1040NR-EZ is appropriate when:

No dependents are claimed

The taxpayer cannot be claimed as a dependent on another U.S. tax return

The only sources of income were wages, salaries, tips, taxable refunds of state and local income taxes, and scholarship or fellowship grants.

Taxable income is under \$100,000

The only adjustment to income is the student loan interest deduction or scholarship exclusion

No tax credits are claimed

~~No exemption is claimed for a spouse, if married (2017 – 2025) \*~~

The only itemization deduction is state and local income tax (Note: Residents of India who were students or business apprentices may be able to take the standard deduction in lieu of itemized deductions for state and local income taxes.

The only taxes owed are income tax. No claim for excess social security and tier 1 RRTA tax withheld

Not filing an "expatriation tax" return (Applies to U.S. citizens who have lost their citizenship or long-term residents who have ended their residency status)

Otherwise, 1040NR is correct

## Section IV. Filing Status, Exemptions and Dependents

### Step 1. Filing Status

Single individuals will file as single (S).

Married nonresidents married to a U.S. resident may file Married Filing Jointly (MFJ) if they do, they (and their spouse) would collectively file a 1040.

All other married nonresidents must file Married Filing Single (MFS)

Nonresident aliens **cannot** file as head of household (HOH).

### Step 2. Spousal Exemption (~~This is a separate issue from filing status~~) 2017 -- 2025.

Canada and Mexico

~~Spouse can be claimed if the spouse had no U.S. income and is not claimed as a dependent on another U.S. return.~~

South Korea

~~Spouse can be claimed but must live with student in the U.S. and have no U.S. income.~~

~~If the student has both foreign and U.S. income the exemption must be prorated.~~

India

~~A student can claim an exemption for a spouse who has no gross income and cannot be claimed on someone else's U.S. return.~~

### Step 3: Dependents

Canada and Mexico (**Border countries**)

Dependents are treated the same as U.S. dependents.

South Korea

The dependent **must** live with the nonresident for part of the tax year. If the nonresident has U.S. and foreign income the exemption must be prorated.

India

Dependent child can be claimed if born in the U.S.

**ALL OTHER COUNTRIES MAY NOT COUNT THEIR DEPENDENTS ON THEIR RETURNS.**

### Step 4. Child Tax Credit

If you press the box next to the dependent's name, TaxSlayer will check to make sure that the exception applies. In general, however:

Child tax credit may be claimed if:

The child is a U.S. citizen or resident, and

Is under 17 years old, and

Can be claimed as a dependent on the tax filers tax return, and

Is descended from the taxpayer (may include step/adopted children)

Only tax filers from Canada, Mexico, South Korea, and India (as detailed in previous step) can take the child tax credit.

For more information on the Child Tax Credit and Additional Child Tax Credit, see publication 972, Child Tax Credit.

## Section V. Income

### Step 1. Preliminary note

For nonresidents, the type of income matters a lot – and each kind of income is subject to its own treaty. Reproduced below are the general rules and treaty information that should help with most returns.

Generally, someone who is here working toward a degree or certification of any kind will be considered to have student wages (even if they are teaching as part of their time here). Only those who have come to the U.S. solely to teach should be considered under teaching wages.

### Step 2. Treaties

**When completing Foreign Student and Scholar tax returns through VITA, please ALWAYS keep handy and refer to IRS publication 4011.**

The treaty income codes most applicable to the foreign student and scholar tax returns typically seen through this VITA coalition are:

Income Code 16 – Countries with treaty benefits for scholarship or fellowship grants.

Income Code 19 – Countries with treaty benefits for teaching

Income Code 20 – Countries with treaty benefits for studying and training (training can include paid internships and other paid work for the tax filers field of study).

Publication 901 will tell you whether a tax treaty between the United States and a particular country offers a reduced rate of, or possibly a complete exemption from, U.S. income tax for residents of that country.

Please note that for treaty purposes the IRS and Duke recognize the country of residency and not the county on the passport. **For example:** A holder of a passport from China was a resident of Japan immediately before coming to the U.S. The China treaty no longer applies.

#### Notable treaty provisions:

##### China

Students are entitled to a \$5,000 wage exemption for the time necessary to complete their education. They should still be entitled to the exemption after 5 years.

After 5 years they will file and show the wage exemption on their 1040.

##### Canada

Exempts all income up to \$10,000.

Once that amount is exceeded all the income is taxable. (Note: this is very different from how most countries treaties work. This treaty says that income <\$10,000 is untaxable, but if the income is >\$10,000 then ALL of the income is taxable. \$9,999.99 is untaxable \$10,000.00 is taxed as \$10,000.00 (This might me \$10,000.01)).

### **Step 3: How to handle Teaching wages (if the individual is here on a teaching Visa)**

Professor's and teacher's pay may be exempt from U.S. income taxes for either two or three years if they are temporarily in the U.S. to teach or do research. These exemptions by treaty apply to income earned by the visiting professor or teacher only, not to any earnings of a spouse or dependents.

If the "Teacher" is paid with a W2:

Fill out the W2 in TaxSlayer. The amount earned will appear on line 6 of Form 140NR-EZ or line 22 of Form 1040NR.

If a treaty excludes this income: go to line J (1040NR-EZ, page 2) or line L (1040NR, page 5). Add the amount excluded to BOTH the "d" and the "W2 Income" columns. If done properly, the W2 amount on page 1 should be reduced to the appropriate amount.

Example: W2 has \$8,000 of income, treaty excludes \$7,000, 1040NR-EZ

Step 1: Enter W2. Line 3 should show \$8,000

Step 2: Enter \$7,000 on page 2 Line J, column "d" and "W2 Income"

Step 3: Confirm that Line 3 now shows \$1,000. The form should report \$1,000 as the new adjusted gross income (AGI).

If the "Teacher" is paid through a 1042-S:

If the teacher doesn't need to pay taxes (the income is excluded by a treaty) and no taxes were paid, add the excluded income to line J, column "d".

If the teacher paid taxes but doesn't need to (because the income is excluded by a treaty), add the excluded income to line J, column "d" and at the taxes paid to line 18(b).

### **Step 4: How do I handle Scholarship Income?**

Click on Scholarships and Fellowship Grants. Enter the amount.

If the income is reported on 1042-S and either the student has only income from the 1042-S (e.g., no income from a W2) or the income reported on a W2 is less than the treaty benefit, the difference between the treaty benefits and the W2 income will need to be included in the box "Scholarships and fellowship grants excluded."

Scholarships for other expenses, such as room and board are taxable.

### **Step 5. How do I handle Interest Income (from a personal savings account, whether it was in the U.S.)?**

Interest income from personal accounts is not taxable. Do not report it.

### **Step 6. How do I handle other income (income that is not wages or scholarship and was earned in the U.S.).**

Input the form in TaxSlayer, and the program should handle the rest.

### **Step 7. What do I do with Social Security Taxes?**

Wages paid to students which are related to their purpose here in the U.S. are not subject to social security or Medicare taxes. Generally, spouses and dependents of F2 and J2 holders are subject to these taxes.

If the taxes were withheld in error the student should contact the payer and ask for a refund. If the employer does not comply the student can complete IRS Form 843 (Claim for Refund and Request for Abatement).

**Step 8. How do I input the State Tax Refund?**

This is reported in the income section under "State and Local Refunds".

**Section VI. Adjustments**

**Step 1. How do I handle Student Loan Interests? (Form 1098-E)**

Student loan interest is an adjustment and is reported on line 9 of the 1040NR-EZ or line 33 of form 1040NR.

Requirements: Note, TaxSlayer will double check to ensure these requirements are satisfied.

- Must have been paid during the tax year,
- Filing status must be Single,
- Tax filer must be at least a half-time student.

**Section VII. Itemized Deductions**

**Step 1. How do I handle State and Local Taxes? (Boxes 17 & 19 Form W2)**

TaxSlayer pulls the figures from the W2 and the 1042S. The offset of this is that the state and local refunds are reported as income in the next year's tax return.

**Step 2. How do I handle contributions to U.S. charities?**

Contributions to charities can only be reported on Form 1040NR and goes under Deductions, Itemized Deductions, Gifts to Charity.

Please be aware of the **Cinderella Treaty**. Germany, India, Luxemburg, Netherlands, Thailand, and UK are all under the Cinderella Treaty. Under this treaty, if the taxpayer's filing status changes to that of a U.S. Resident (in the U.S. 5 or more years, obtains a green card, becomes a naturalized citizen), they must repay any of the monies pardoned by the treaty.

If a taxpayer becomes a resident alien (5 years of residency) they can still benefit from their treaty if they have not exceeded the limitations of their treaty.

**Example:** Article 20 of the U.S. – China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under the Internal Revenue Code, a student may become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, the treaty allows the provision of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. **Unfortunately, preparation of this type of return is OUT OF SCOPE OF VITA).**

**Caution:** The student/trainee and teacher/researcher articles of the tax treaties generally contain time limits beyond which the treaty exemption may not be claimed. An alien student/trainee or teacher/researcher who has become a resident alien of the United States should consult the applicable tax treaty article to make sure that the time limit of the treaty benefit has not expired. If the treaty article time limit has expired, the student/trainee or teacher/researcher is not allowed to claim any further tax exemption under the applicable treaty article.