



2008 **VITA/TCE**

Publication 4011

Foreign Student and Scholar Volunteer Resource Guide

(for use in preparing Tax Year 2008 Returns)

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Department of the Treasury
Internal Revenue Service

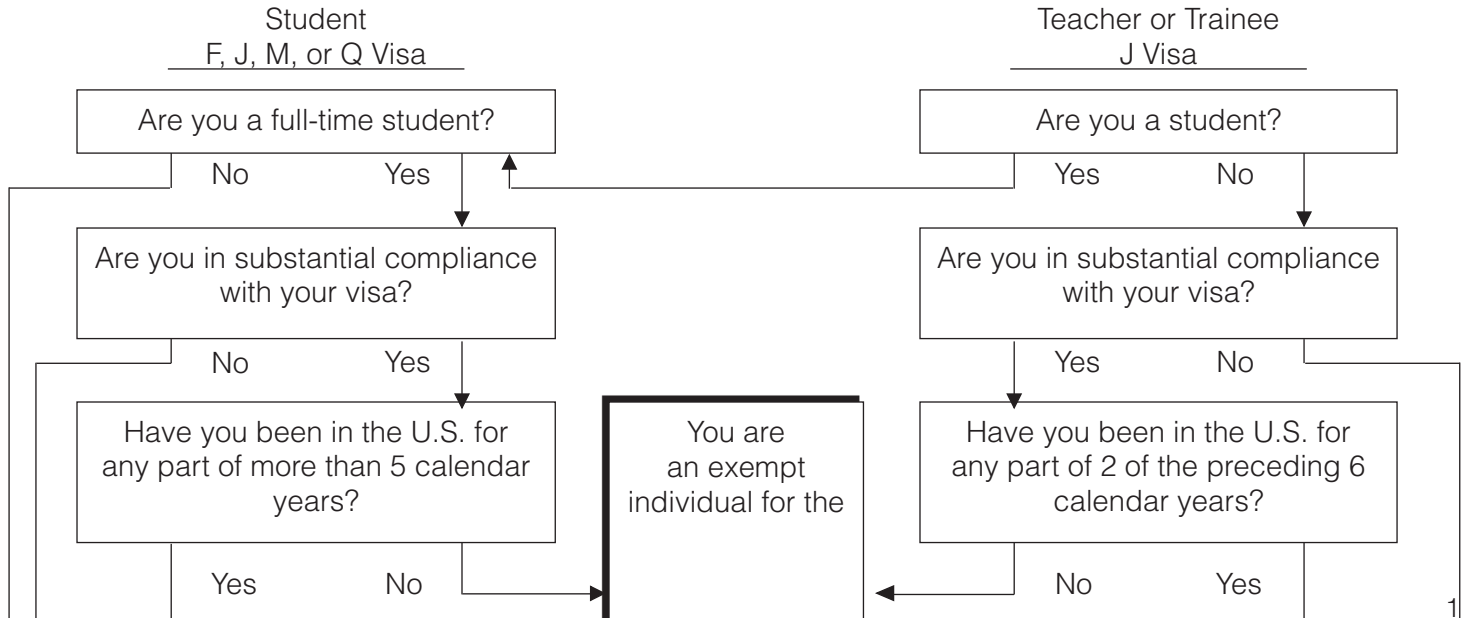
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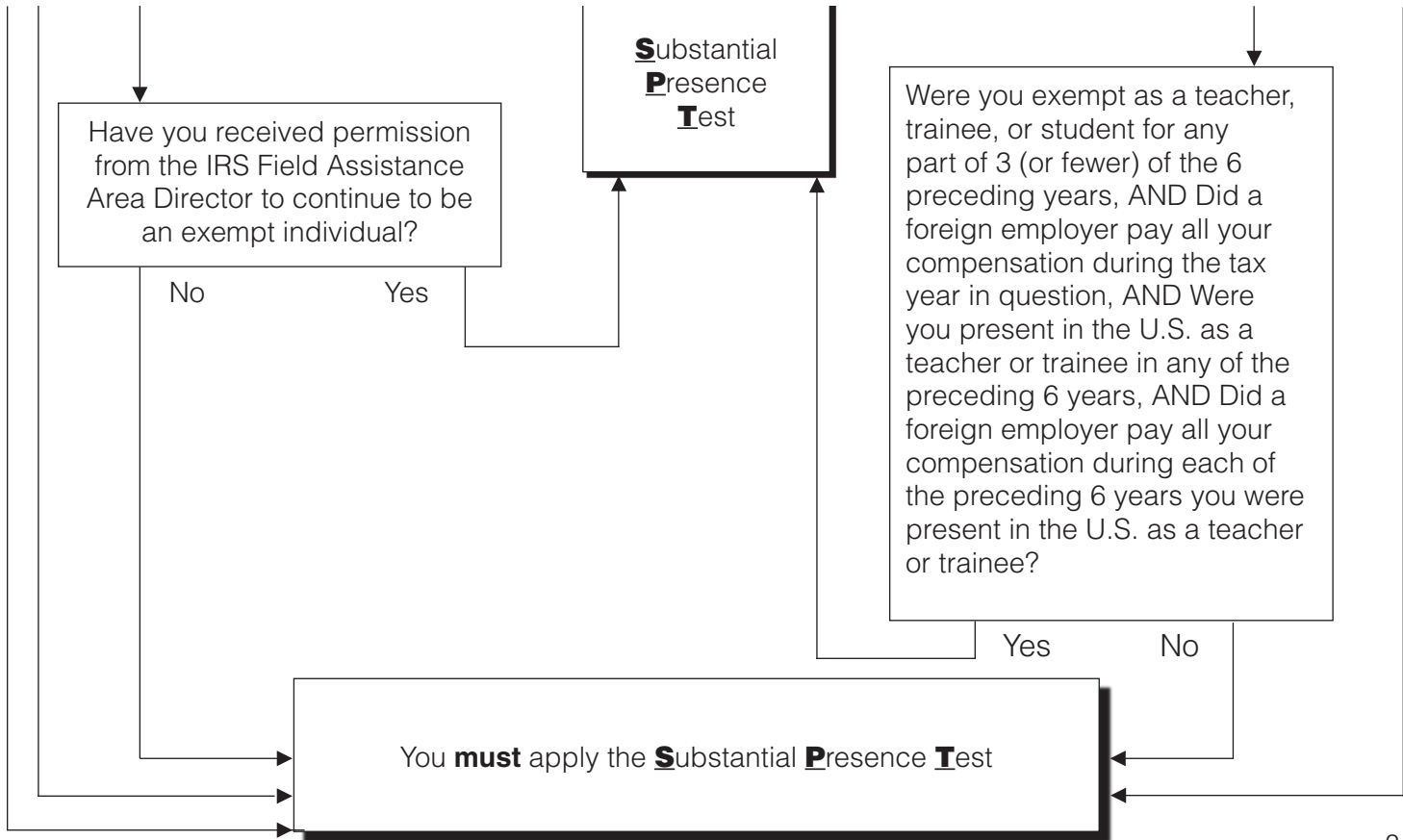
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Coming together to strengthen communities through free volunteer tax return preparation programs

Are you an exempt individual?—Decision Tree

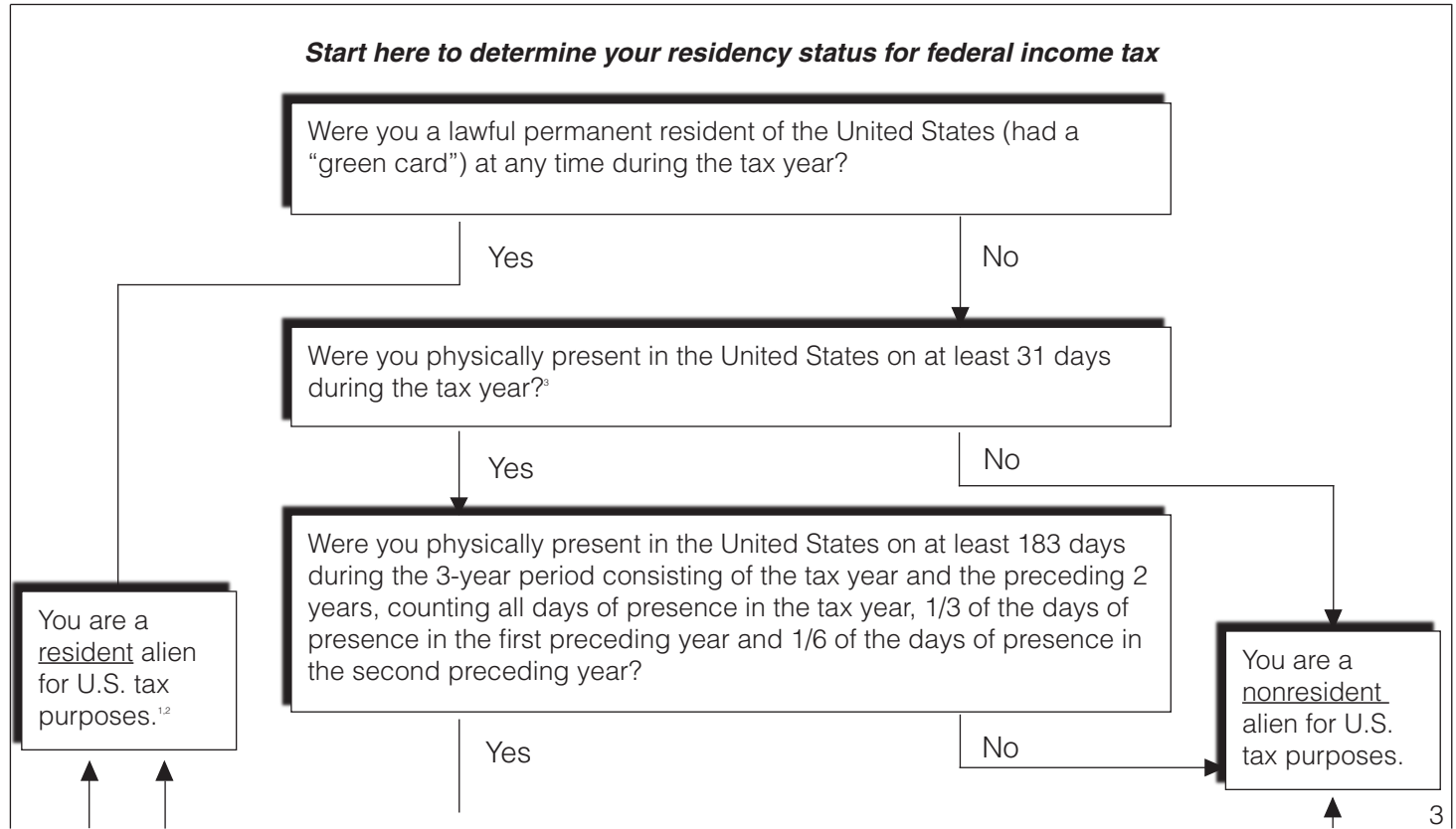
If you are temporarily present in the United States on an F, J, M, or Q visa, use this chart to determine if you are an exempt individual for purposes of the **S**ubstantial **P**resence **T**est (**SPT**).

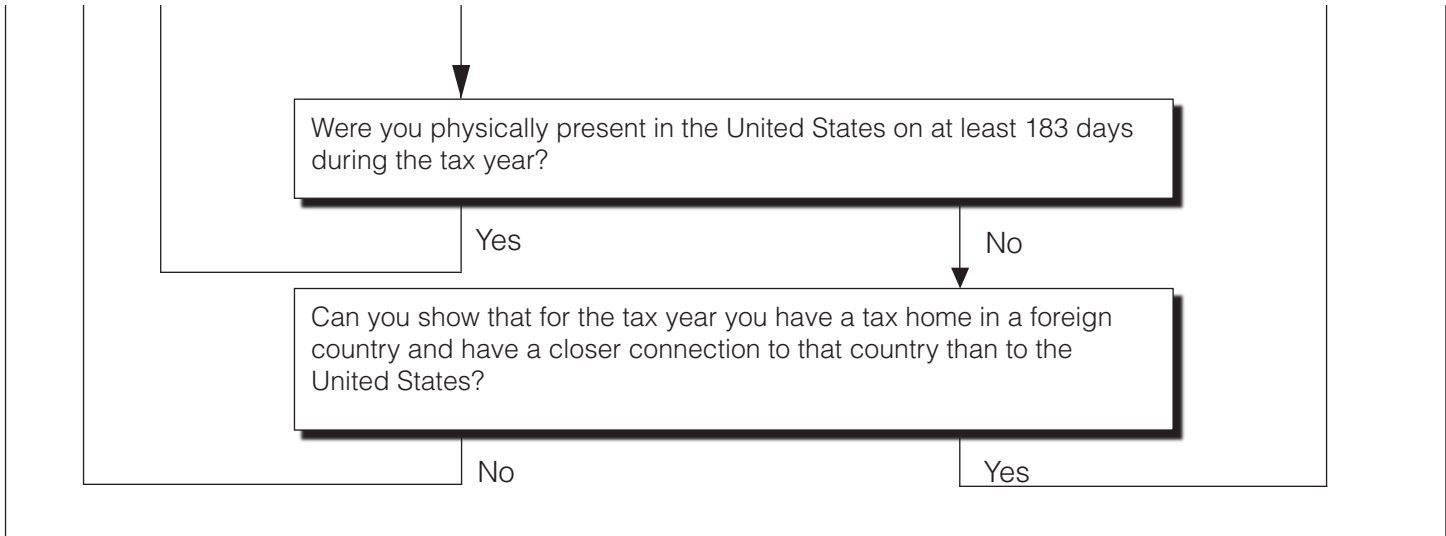




Substantial Presence Test

Nonresident Alien or Resident Alien?—Decision Tree





1 If this is your first or last year of residency, you may have a dual status for the year.

2 In some circumstances you may still be considered a nonresident alien under an income tax treaty between the U.S. and your country. Check the provision of the treaty carefully.

3 See *Days of Presence in the United States* in Publication 519 for days that do not count as days of presence in the United States.

4 If you meet the substantial presence test for **the year after the tax year**, you may be able to choose treatment as a U.S. resident alien for part of the tax year.

Countries with Treaty Benefits for Scholarship or Fellowship Grant (Income Code 15)

- If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax.
- Scholarship or fellowship grants that cover tuition and fees (and books and supplies if required of all students) are not subject to U.S. tax. (Financial aid that is dependent of the performance of services, such as a teaching assistant, is treated as wages and subject to the code income 17, 18, or 19 provisions.)
- Scholarship or fellowship grants that cover room, board and other personal expenses are subject to U.S. tax unless a treaty benefit (as summarized below) exists.

<i>Country</i>	<i>Maximum years in U.S</i>	<i>Amount</i>	<i>Treaty Article</i>
Bangladesh	2	Unlimited	21(2)
Belgium (Old Treaty)	5	Unlimited	21(1)
China, People's Republic of	No Limit	Unlimited	20(b)
C.I.S.	5	Limited	VI(1)
Cyprus	5	Unlimited	21(1)
Czech Republic	5	Unlimited	21(1)
Egypt	5	Unlimited	23(1)
Estonia	5	Unlimited	20(1)
France	5	Unlimited	21(1)
Germany	No Limit	Unlimited	20(3)
Iceland	5	Unlimited	22(1)
Indonesia	5	Unlimited	19(1)
Israel	5	Unlimited	24(1)
Kazakhstan	5	Unlimited	19
Korea	5	Unlimited	21(1)
Latvia	5	Unlimited	20(1)
Lithuania	5	Unlimited	20(1)

Countries with Treaty Benefits for Scholarship or Fellowship Grant (Income Code 15)
(continued)

<i>Country</i>	<i>Maximum years in U.S</i>	<i>Amount</i>	<i>Treaty Article</i>
Morocco	5	Unlimited	18
Netherlands	3	Unlimited	22(2)
Norway	5	Unlimited	16(1)
Pakistan	No Limit	Unlimited	XIII(1)
Philippines	5	Unlimited	22(1)
Poland	5	Unlimited	18(1)
Portugal	5	Unlimited	23(1)
Romania	5	Unlimited	20(1)
Russia	5	Unlimited	18
Slovak Republic	5	Unlimited	21(1)
Slovenia	5	Unlimited	20(1)
Spain	5	Unlimited	22(1)
Thailand	5	Unlimited	22(1)
Trinidad and Tobago	5	Unlimited	19(1)
Tunisia	5	Unlimited	20
Ukraine	5	Unlimited	20
Venezuela	5	Unlimited	21(1)

Caution: The following is a quick-reference summary of treaty benefits. For more information about the application of these treaty benefits, see Publication 901, *U.S. Tax Treaties*.

Countries With Treaty Benefits for Income From Teaching (income code 18)

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Bangladesh	2	Unlimited	21(1)
Belgium (Old Treaty)	2	Unlimited	20
Belgium (New Treaty)	2	Unlimited	19(2)
China, People's Republic of	3	Unlimited	19
C.I.S.	2	Unlimited	VI(1)
Czech Republic	2	Unlimited	21(5)
Egypt	2	Unlimited	22
France	2	Unlimited	20
Germany	2	Unlimited	20(1)
Greece	3	Unlimited	XII
Hungary	2	Unlimited	17
Iceland	2	Unlimited	21
India	2	Unlimited	22
Indonesia	2	Unlimited	20
Israel	2	Unlimited	23
Italy	2	Unlimited	20
Jamaica	2	Unlimited	22

Countries With Treaty Benefits for Income From Teaching (income code 18) (continued)

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Japan	2	Unlimited	20
Korea	2	Unlimited	20
Luxembourg	2	Unlimited	21(2)
Netherlands	2	Unlimited	21(1)
Norway	2	Unlimited	15
Pakistan	2	Unlimited	XII
Philippines	2	Unlimited	21
Poland	2	Unlimited	17
Portugal	2	Unlimited	22
Romania	2	Unlimited	19
Slovak Republic	2	Unlimited	21(5)
Slovenia	2	Unlimited	20(3)
Thailand	2	Unlimited	23
Trinidad and Tobago	2	Unlimited	18
Turkey	2	Unlimited	20(2)
United Kingdom	2	Unlimited	20A
Venezuela	2	Unlimited	21(3)

Caution: The following is a quick-reference summary of treaty benefits. For more information about the application of these treaty benefits, see Publication 901, *U.S. Tax Treaties*.

Countries With Treaty Benefits for Student Wages (income code 19)

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Bangladesh	2	\$8,000	21(2)
Belgium (Old Treaty)	5	2,000	21(1)
Belgium (New Treaty)	No Limit	9,000	19(1)(b)
China, People's Republic of	No Limit	5,000	20(c)
Cyprus	5	2,000	21(1)
Czech Republic	5	5,000	21(1)
Egypt	5	3,000	23(1)
Estonia	5	5,000	20(1)
France	5	5,000	21(1)
Germany	4	5,000	20(4)
Germany (Modified)	4	9,000	20(4)
Iceland	5	2,000	22(1)
Indonesia	5	2,000	19(1)
Israel	5	3,000	24(1)
Korea	5	2,000	21(1)

Countries With Treaty Benefits for Student Wages (income code 19) (continued)

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Latvia	5	\$5,000	20(1)
Lithuania	5	5,000	20(1)
Morocco	5	2,000	18
Netherlands	No limit	2,000	22(1)
Norway	5	2,000	16(1)
Pakistan	No limit	5,000	XIII(1)
Philippines	5	3,000	22(1)
Poland	5	2,000	18(1)
Portugal	5	5,000	23(1)
Romania	5	2,000	20(1)
Slovak Republic	5	5,000	21(1)
Slovenia	5	5,000	20(1)
Spain	5	5,000	22(1)
Thailand	5	3,000	22(1)
Trinidad and Tobago	5	2,000	19(1)
Tunisia	5	4,000	20
Venezuela	5	5,000	21(1)

India Treaty

Article 21(2)

An Indian **student** may take a **standard deduction** equal to the amount allowable on Form 1040 and may be able to claim the personal exemptions for a nonworking spouse and U.S.-born children.

Treaty benefits for a **scholar** from India are very different from those for a **student**. The **scholar** benefit for income code 18 is lost retroactively if the visit exceeds 2 years.

The standard deduction for single taxpayers in 2008 is \$5,450. The deduction for married filing separately is \$5,450.

Nonresident aliens can't file a joint return. Even though a student from India may be able to take an exemption for a nonworking spouse, this is not considered a joint return. Thus, the standard deduction for married filing separately must be used.

China Treaty

Article 19, 20(c)

Almost all U.S. tax treaties are limited to a specific number of years and may not be available for residents for tax purposes.

The U.S. treaty with China provides that a scholar is exempt from tax on earned income for 3 years. After 2 years, a scholar will become a resident alien for tax purposes but is still entitled to 1 more year of tax benefits under the treaty. The treaty also provides that students have an exemption of up to \$5,000 per year for income earned while they are studying or training. In most cases, the student will become a resident for federal tax purposes in their sixth calendar year. Students from China can continue to claim the treaty benefits on their resident alien tax return (if they still meet the definition of a student).

Canada Treaty

Article 15

The students and scholars are permitted to use Article 15 of the tax treaty, which applies to dependent personal services.

The tax treaty with Canada is different from all other tax treaties because it (1) exempts all earned income if the nonresident earned no more than \$10,000 in the tax year, but (2) taxes all income if the nonresident earned over \$10,000. This treaty benefit is lost if the nonresident becomes a resident for tax purposes.

Wage Calculation Worksheet

Since some employers do not issue the correct reporting documents to international students and scholars, the following formula will help you to accurately compute the amount of wages to be shown on the income tax return.

Wages from Form W-2, box 1 (if any)	_____
Add: Code 18 or 19 income from Form, 1042-S, box 2 (if any)	+ _____
Total W-2 and 1042-S	_____
Subtract: Code 18 or 19 treaty benefit (if any)	- _____
Equals: Wages to be reported	= _____

Filing Status

Generally, nonresident aliens must select either the **single** or the **married filing separately** filing status.

Head of household filing status cannot be used if the taxpayer was a nonresident alien during any part of a year.

Nonresidents who are married to U.S. citizens or other residents for tax purposes can elect to be treated as a resident alien and file a **joint** return.

Dependent Issues

Generally, nonresident aliens can claim only one personal exemption.

Nonresidents from the following countries may be able to claim their spouse and children as dependents. Everyone claimed on the return must have either a social security number or an Individual Tax Identification Number (ITIN).

Canada
Mexico

India
South Korea

Economic Stimulus Payment (ESP) and Nonresident Aliens

Nonresident aliens, individuals without social security numbers and individuals who file Forms 1040 NR, 1040 NR-EZ or 1040 SS were excluded by law from receiving the Economic Stimulus Payment in calendar year 2008.

This exclusion will continue in calendar year 2009 for the Recovery Rebate Credit. The rules for this credit are similar to the ESP. It can only be claimed on 2008 Forms 1040EZ, 1040A or 1040. Also, the credit is reduced by any ESP received in calendar year 2008.

Local Information

(Use this page to list local contact numbers or state information.)

Tax Credits and Nonresident Aliens

Tax credits are allowed to nonresident aliens only if they receive effectively connected income. Generally, nonresident alien students and scholars will **not** qualify for tax credits.

Education Credits — If the taxpayer is a nonresident alien for any part of the year, they generally can't claim the educational credits, such as the Hope and lifetime learning credits.

Foreign Tax Credit — This credit will usually not be available to nonresident alien students and scholars. Their foreign-source income is usually not reported on their U.S. income tax return.

Child Tax Credit — Nonresident aliens may be able to claim the child tax credit if all of the following conditions are met:

- The child is a U.S. citizen, national, or resident alien, and
- The child is a son, daughter, adopted child, grandchild, stepchild, or foster child, and
- The child was under age 17 at the end of the year.

Note: For additional information, see Form 8901, Information on Qualifying Children Who are Not Dependents (For Child Tax Credit).

Earned Income Credit — If the taxpayer is a nonresident for any part of the year, the earned income credit is not available.

Where to File

Forms 1040NR, 1040NR-EZ and 8843 must be mailed to:

Department of the Treasury
Internal Revenue Service
Austin, TX 73301-0125
USA

Note: Tax returns cannot be faxed to the Internal Revenue Service (IRS)

When to File

If you are an employee and you receive wages subject to U.S. income tax withholding, file your return and pay any taxes due by April 15, 2009 for the calendar year 2008.

If you are not an employee who receives wages subject to U.S. income tax withholding, file your return and pay any taxes due by June 15, 2009 for the calendar year 2008.

Note: If the regular due date for filing falls on a Saturday, Sunday, or legal holiday, file by the next business day.

Source Documents

You may see many types of income documents when you are assisting international students and scholars. The following list may help you in identifying the documents you may see.

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

Many students and scholars will receive this form if they have income that is subject to treaty benefits.

Link & Learn Taxes for Foreign Students and Scholars provide more information on how to record the entries from this form.

Form W-2, Wage and Tax Statement

Most students and scholars are allowed to work. If they earn more than the amount exempted by their treaty, the excess should be reported on the W-2. When students and scholars work off campus, they often receive a W-2 for the full amount they earned. That is why it is important to use the wage calculation worksheet on page 13 of this guide.

Form 1098-T, Tuition Payments Statement

Academic institutions issue Form 1098T to students who paid tuition during the tax year. This form helps the students calculate the educational credits. Since nonresident aliens usually cannot claim the educational credits, the form is not part of their tax return.

Form 1099INT, Interest Income

Many banks and savings institutions issue the 1099INT to nonresident alien and scholars. Since most nonresident student and scholars do not need to report their interest income, the form is not part of their tax return. To avoid receiving a Form 1099 INT, file Form W-8 BEN with the bank or financial institution.

Form 1099MISC, Miscellaneous Income

Sometimes a nonresident alien student or scholar will give you a 1099MISC. There are several complicated issues involved when this happens. If you or the other volunteers at your site do not know the procedures to follow when a nonresident alien student or scholar receives a 1099MISC, refer the taxpayer to a tax professional.

Additional References

Link & Learn Taxes for Foreign Student and Scholars

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

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

Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident

Form 8316, Information Regarding Request for Refund of Social Security Tax

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

Publication 519, U.S. Tax Guide for Aliens

Publication 597, Information on the United States-Canada Income Tax Treaty

Publication 901, U.S. Tax Treaties

Publication 970, Tax Benefits for Education

Publication 972, Child Tax Credit

▶▶ **QUALITY REVIEW SHEET** ◀◀

- ▶ Are the name, address, and social security number or individual taxpayer identification number correct?
- ▶ Is the social security number or individual taxpayer identification number written to the right of the label?
- ▶ Is the filing status correct? Is the box marked?
- ▶ Are any allowable dependents properly listed?
- ▶ Are the dependents' identification numbers written correctly?
- ▶ Are income items correctly transferred from Form W-2, Form 1042-S, and Form 1099?
- ▶ Is all income reported? Be sure to include any gambling winnings and stock sales.
- ▶ Is the itemized deduction line completed accurately?
- ▶ Is the correct number of dependents claimed?
- ▶ If the taxpayer was eligible for any credits, have they been computed correctly?
- ▶ Does the amount of tax reported as withheld agree with the amounts listed on the Forms W-2 and 1042-S? Did you include any withholding shown on Form 1099?
- ▶ Is the overpayment (balance due) computed correctly?
- ▶ Did you use a calculator to check your math?
- ▶ Is the return signed?
- ▶ Are all Forms W-2 and 1042-S, as well as schedules and forms, attached to the return?
- ▶ Is the volunteer designation on the return?