

Tax Procedures for Nonresident Alien (Foreign) Employees

Under U.S. tax laws, all non-U.S. citizens are considered to be permanent resident aliens, resident aliens for tax purposes or nonresident aliens. Permanent resident aliens and resident aliens for tax purposes are taxed the same as U.S. citizens but nonresident aliens are taxed under special laws.

Definitions

Duration of Status (D/S):

The time during which a student is pursuing a full course of studies at an educational institution approved by U.S. immigration for attendance by foreign students. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies and is in compliance with specific visa regulations.

Form I-94/ I-94W:

The U.S. Immigration Arrival/Departure card (the small white or green card stapled in the front of the passport). This card indicates the passport holder's place and date of entry to the U.S., their nonimmigrant status and the length of time they may remain (the "until") in the U.S., i.e.: An I-94 for an F-1 student would indicate admitted F-1 and until D/S.

Nonresident Alien:

The U.S. tax residency status of a non-U.S. citizen who is temporarily present in the U.S. Nonresident aliens are required to pay taxes only on their income from U.S. sources.

Permanent Resident Alien:

An individual granted lawful U.S. permanent residence status. Permanent resident aliens (often referred to as green-card holders) are taxed in the same manner as U.S. citizens.

Resident Alien for Tax Purposes:

The U.S. tax residency status of an individual who has been present in the U.S. for a period of time long enough to meet the substantial presence test (defined below) and are not otherwise exempt. Resident aliens are taxed on their worldwide income and in the same manner as U.S. citizens.

Residency Status Change Date:

Earliest possible date that an exempt individual's tax status will change, calculated by the withholding agent. Ex: An F-1 student visa holder who arrived in the U.S. for the first time on 1/1/2013 would have a residency status change date of 7/2/2018. As an F-1 visa holder, the student is exempt from counting days of presence towards the substantial presence test for a period of 5 calendar years - 2013, 2014, 2015, 2017 and 2018. On 1/1/2018, the F-1 visa holder must begin counting days towards the substantial presence test. The Residency Status Change Date would be 7/2/2018, 183 days from 1/1/2018.

Residency Starting Date or Residency Start Year:

First day of presence in the U.S. during the calendar year in which the individual met the substantial presence test. This is the day the employer begins to tax the individual as a resident alien. Using the example above, 1/1/2018 is the Residency Starting Date for the F-1 visa holder who arrived in the U.S. in 2013. On 1/1/2018 the employee is considered a resident alien for tax purposes.

Substantial Presence Test (SPT):

A test used to determine an individual's U.S. residency status for tax purposes. You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

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

Any day is excluded as a day of presence if the alien individual is physically present in the United States on that day and is an individual who is (1) exempt, (2) physically unable to leave the United States because of a medical condition, (3) in transit between two points outside the United States, or (4) commuting from Mexico or Canada to work for a U.S. employer.

Tax Treaty:

The U.S. maintains income tax treaties or agreements with over 50 countries in an effort to reduce or eliminate double taxation. Most of these treaties provide tax-free status (up to a specified amount and within a limited timeframe) on income earned in the United States. Approximately half of these treaties extend benefits to students.

Visa Type: (Also known as Immigration Status)

"Visa Type" refers to the category of visa that a non-U.S. citizen holds. The "visa type" is marked on the visa stamp or sticker in the individual's passport, I-94 and/or I-20 or DS-2019 form. Student visa types are listed below.

The following visa types are issued to nonresident aliens and their spouses and dependents. Authorization to work on campus is indicated by visa type. F-1 and J-1 are the most common visa types seen at Rutgers, the State University.

F-1: Students. Work authorized for host institution under limited conditions.

F-2: Spouse and dependents of F-1 visa holders. No work authorization.

J-1: Exchange visitors including students, scholars, teachers and researchers. Work authorized under certain conditions.

J-2: Spouse and dependents of J-1 visa holders. Work authorized under certain conditions.

Payments Made to Nonresident Aliens through the Payroll System

The steps in this section are necessary to ensure that Rutgers, the State University complies with U.S. Immigration and Internal Revenue Service (IRS) rules as they apply to employment.

All new employees are required to complete a Form I-9 Employment Eligibility Form at the time of hire.

All hiring departments must review the information on the form to determine whether the new employee is a U.S. citizen or permanent resident alien. This information is on the upper right hand side of the Form I-9. All new employees are required to complete this question and provide information about their U.S. citizenship/permanent residency status on this form, regardless of whether there is a reason to believe that the individual may or may not be a U.S. citizen.

1. If the new employee indicates on Form I-9 that he or she is a "citizen or national of the United States" or "lawful permanent resident alien", the employee is taxed as a U.S. resident.

2. If the new employee indicates on Form I-9 that he or she is an "other alien authorized to work until xx/xx/xxxx", the hiring department must ask the employee to provide copies of their I-20 or DS-2019 Form, visa and Form I-94. Immigration Form I-94 shows how long the individual may stay in the U.S. For a student, this is generally indicated as D/S, for duration of status, with no specific end date. Note: Visa types F-1, J-1 (Student) and M-1 are student visas which provide authorization (with the endorsement of the institution) for the student to work on campus for the sponsoring institution. The sponsoring institution is the institution listed on the visa holders' I-20 or DS-2019 Form. Q-1 visa types must be approved by U.S. immigration to work on campus.
3. In addition to reviewing the nonresident alien's immigration documents, the hiring department must obtain an International Payroll Form from the individual. The International Payroll Form is issued to an individual during a mandatory workshop given by the Center for Faculty and Student Service (CFISS). This form is completed by an International Advisor who examines the individual's immigration documents to determine if he/she is authorized to work on campus. This form will help Payroll Services in determining the tax residency status of the employee by applying the substantial presence test. The individual must complete the current and previous nonimmigration status section on the form in order for Payroll Services to determine the correct residency start year of the individual.
4. Rutgers, the State University requires employees to have a social security number to be compensated. If a prospective employee does not have a social security number, one must be applied for immediately. Form SS-5, Application for a Social Security Card can be downloaded at the <http://www.socialsecurity.gov/online/ss-5.pdf>.
5. Payroll Services will determine whether the employee qualifies for a U.S. tax exemption under any income tax treaty by reviewing IRS Publication 901 and by assisting the employee with the completion of Form 8233 (and the accompanying attachment) or Form W8-BEN (and the accompanying attachment) as discussed below. Please note, that tax treaty benefits may not be applied until the employee has a social security number. You can obtain additional information regarding U. S. Tax treaties on the IRS website (www.irs.gov).