

International Students and Scholars Taxation Workshop
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Scope Limitation Disclaimer: The following handout is limited to a discussion of **federal** income tax reporting requirements for international students and scholars who live and work in **Texas**. Texas does not have an individual state income tax. Individuals who receive income while living or working in another state might have state income tax reporting requirements that are not covered in this material. Please consult with a competent state income tax preparer if you have a question about your state income tax reporting obligation.

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I. Introduction

The purpose of this workshop is to explain the U.S. federal tax reporting rules that international students and visiting scholars (collecting referred to as “internationals”) must follow. This material is written at a basic level, to introduce you to common tax situations of nonresidents. I have found that U.S. tax rules applicable to internationals are confusing to most people, including even CPAs and other tax preparers if they are not trained in how to prepare nonresident tax returns. How ironic that this very confusing area of U.S. income tax law applies to a group of taxpayers (ie, internationals) that are perhaps the most unfamiliar with our tax system.

Thesis: Visiting scholars and international students working in the U.S. are taxed on their U.S. income based on two levels of tax rules: (1) U.S. tax law, and possibly (2) a bilateral tax treaty between the U.S. and the country in which the individual is a resident.

II. Residency Status for Federal Tax Purposes

In order to understand U.S. tax rules, it is important to clarify some terms.

The Internal Revenue Service (IRS) and the U.S. Citizenship and Immigration Services (USCIS) [formerly known as the Immigration and Naturalization Service (INS)] use the term “**alien**” to refer to someone who is not a citizen of the U.S. You can be a resident alien or a nonresident alien. The word “alien” means that the person’s citizenship is from another country, outside of the U.S. Because U.S. tax laws primarily involve individuals and businesses that are from the U.S., there are separate tax rules for those who come from outside the U.S. Tax rules for nonresident aliens are different than the tax rules for U.S. citizens and resident aliens. My goal for this workshop is that you will understand how U.S. tax laws apply to your situation, and that you will be able to identify the confusing areas of U.S. income tax law that you need to learn.

Part of the confusion in the IRS literature is the term “**resident for tax purposes.**”

The term “**permanent resident**” is a USCIS term involving immigration status. It refers to the country in which the individual has permanent residency at that moment in time. People from the U.S. can be citizens, resident aliens, or nationals. People from other countries can be citizens or residents of their home country. In

IRS literature, the term “resident” is sometimes used to identify the country where an international was a permanent resident at the moment that he or she arrived in the U.S. Note that the country where you have permanent residency (which might be different than where you were born or your citizenship) is the sole factor for determining which tax treaty might apply to you.

The term “**resident for tax purposes**” is an IRS term involving tax status. An international is classified as either a resident (of the U.S.) or nonresident for tax purposes according to four criteria: green card test, substantial presence test, residency through marriage, and dual-status alien. It is possible to be a resident of the U.S. for tax purposes, and still be a nonresident of the U.S. for immigration purposes.

If you are a resident for tax purposes for the entire year, then you would use the federal income tax forms (Form 1040, 1040A, or 1040EZ) applicable to U.S. citizens, residents, and nationals in order to report your income and taxes as an individual. You are also entitled to all of the tax benefits applicable to U.S. citizens, residents, and nationals when preparing your tax return, such as education credits, earned income credit, and child tax credit.

If you are not a resident for tax purposes, then you would use the federal income tax forms (Form 1040NR or 1040NR-EZ) applicable to nonresident individuals.

The next few pages will focus on a discussion of these four criteria, to determine whether or not an individual is a resident for tax purposes.

A. Green Card Test

If you applied for and have received approval from USCIS to stay in the U.S. permanently, then the wallet-size Permanent Resident Card that USCIS issues is sometimes called a “green card”. From 1945 to 1977, INS issued an Alien Registration Receipt Card (form I-151) on green paper. Beginning in 1977, the card was renamed Permanent Resident Card (form I-551) and printed on a light background. The date that permanent residency began is shown on the card. This card must be kept with you at all times, similar to a driver’s license. In addition to the Permanent Resident Card, USCIS also mails the applicant a letter-size notice that serves as a legal document of permanent residency. It is very important to keep this notice in a secure place, since it is proof of one’s lawful, permanent residency status. Beginning on the effective date of the notice from USCIS, the person is a resident for tax purposes based on the green card test. Of course,

simultaneously that individual has also become a permanent resident of the U.S. for immigration purposes. In order to determine residency status (for tax purposes) prior to the date of permanent residency, the individual must rely on one of the other three criteria to determine residency status. Refer to dual-status alien on page 9 regarding one's tax status during the first year of permanent residency.

B. Substantial Presence Test

Another way that you can become a resident for income tax purposes is by living in the U.S. for an extended time period. For some people, such as someone who has a working permit (H-1B visa) from the USCIS, how many days one is in the U.S. each year will determine if one is a resident for tax purposes in that year. Note that the following calculation might not apply to you for up to the first five years that you are in the U.S. Refer to the discussion of exempt individual on the next few pages.

First, one must be physically present in the U.S. for at least 31 days in the most recent calendar year (eg: 2008).

Second, one must calculate the days of physical presence in the U.S. based on the following formula. If you entered or left the U.S. during a year, count each day that you entered or left as being in the U.S. the entire day.

Count all the days in the most recent calendar year (eg: 2008).

Count $\frac{1}{3}$ of the days in the second most recent calendar year (eg: 2007).

Count $\frac{1}{6}$ of the days in the third most recent calendar year (eg: 2006).

Add up the sum of the above three calculations. If the total is 183 days or more, then that person has passed the second part of the substantial presence test for the most recent calendar year (eg: 2008). Assuming that person was also physically present in the U.S. for at least 31 days in 2008, then that person is considered a resident of the U.S. for tax purposes for 2008, even if he or she is not a permanent resident of the U.S. according to the USCIS.

Here is an example of this calculation, using the years 2006 to 2008.

| | | | |
|---|-----|---------|-------|
| Number of days physically present in U.S. in 2008 | | | 155.0 |
| Number of days physically present in U.S. in 2007 | 365 | X 1/3 = | 121.7 |
| Number of days physically present in U.S. in 2006 | 35 | X 1/6 = | 5.8 |
| | | | ----- |
| Add the total of the far right column | | | 282.5 |

Since the result of 282.5 days is 183 days or more, that person has passed this part of the test. Also, because he or she lived in the U.S. for at least 31 days in 2008, this person is a resident of the U.S. for tax purposes in 2008, assuming this person is not exempt from the substantial presence test.

B1. Exempt individual

During the first two calendar years (for scholars) or the first five calendar years (for students) that you are in the U.S., you are exempt from the substantial presence test. You are called an “exempt individual”. This means that you are considered a nonresident for tax purposes, and you would not normally become a resident for tax purposes during this time. There are some exceptions to this general rule about being exempt from the substantial presence test.

An exempt individual is not exempt from U.S. income tax. The term “exempt individual” means that the days you are physically present in the U.S. do not count for the substantial presence test. The clock does not start until you are no longer an exempt individual (starting January 1st of your third or sixth calendar year). This exempt individual status is based on U.S. tax law and is not optional. You do not choose whether or not you are exempt from the substantial presence test. It is determined based on your current visa classification and how long you have lived in the U.S. If you violate the requirements of your visa (either by not maintaining your status as a student or scholar with your university, or by engaging in activities prohibited by U.S. immigration laws), then you would lose your exempt individual status.

The definition of exempt individual status extends to immediate family members of the international student or scholar, which includes a spouse and unmarried children under age 21 who live with the student or scholar.

There is a subtle difference between students and scholars in determining exempt individual status, explained below.

B1a. Student (and immediate family members)

If you are in the U.S. with an F-1 or J-1 visa in order to study, you and your immediate family members (with F-2 or J-2 visas) are exempt from the substantial presence test for up to five calendar years with the F or J visa. Any part of a calendar year that you are physically present in the U.S. counts as a full year. Note that you do not have to enter the U.S. with an F or J visa. If you change your visa status to F-1 while in the U.S., you become an exempt individual starting on the date that the F-1 visa was issued, subject to the five calendar year time limit. An example of this is when someone with an H-1B visa has a child living in the U.S. with an H-4 visa. Assuming the child graduates from high school in the U.S., that individual can apply for an F-1 visa while in the U.S. in order to attend college as an international student. Starting with the calendar year in which the son or daughter begins college with an F-1 visa, he or she is an exempt individual for up to five calendar years.

B1b. Teacher or researcher (and immediate family members)

If you **entered** the U.S. with a J-1 visa in order to teach or to do research (not to study), you and your immediate family members (with J-2 visas) are exempt from the substantial presence test for up to two calendar years. Any part of a calendar year that you are physically present in the U.S. counts as a full year. An additional condition is that the IRS considers any time you were in the U.S. as an exempt individual in the past six years (eg: 2003 to 2008) to determine if you are exempt from the substantial presence test. For example, if you were a student in the U.S. with an F-1 visa, you left the U.S., and then you returned to the U.S. sometime later with a J-1 visa in order to teach or to do research, the time spent in the U.S. as a student anytime in the past six years would count toward your two calendar years as an exempt individual.

B1c. Form 8843

International students and scholars (and their family members in the U.S.) must prepare IRS Form 8843 when they are exempt from the substantial presence test for either the first two calendar years (for scholars) or the first five calendar years (for students) that they are in the U.S. This form is a statement in an IRS format with specific questions about your status as a student or scholar. It is important that you correctly complete this form for yourself and each member of your family that is in the U.S. with you as an F-2 or J-2 visa holder. Failure to file this form

with the IRS could result in the loss of exempt individual status for yourself or your family member. When completing this form for a family member, the educational institution information should be filled out based on the F-1 or J-1 visa holder, even though the form is for a family member. If you were at more than one university during the year, report the last university you were at during the year. Each person who has an F or J visa in the family must have his or her own Form 8843, for each year that the person is an exempt individual. The parent of a young child can sign the form on behalf of the child. Be sure to mail Forms 8843 with your tax return, if you are filing a tax return.

B2. Closer connection to a foreign country

Besides the exempt individual exception from the substantial presence test, there is another way to be treated as a nonresident. This applies even if one meets the substantial presence test. If you maintain your primary residence in a country outside the U.S. (such as Mexico or Canada), and commute to the U.S. to work or study, then you have a closer connection to a foreign country. Of course you would still need a visa in order to be in the U.S. Refer to IRS Form 8840 and page 7 of 2007 Publication 519 if you believe this applies to you.

B3. Requirement to file an information return

Although these “information return” tax forms are not applicable to all nonresidents, for both Form 8840 and Form 8843, there is a requirement to timely file these information returns, even if you don’t need to file a tax return. Otherwise, you cannot claim being an exempt individual (Form 8843) or having a closer connection to a foreign country (Form 8840). You should not file both information returns, since they involve different reasons for claiming to be a nonresident for tax purposes.

C. Residency Through Marriage

A nonresident alien who does not meet either the green card test or the substantial presence test might still be a resident for tax purposes if, as of December 31st of the tax year covered by the tax return, his or her spouse is a U.S. citizen, lawful permanent resident (for immigration purposes), or has met the substantial presence test (ie, “resident for tax purposes”). Note that this is not a requirement, but it is a choice. Both spouses must agree to treat the nonresident spouse as a resident for tax purposes. To do so, they must file a joint tax return (1040, 1040A, or 1040EZ), and they must attach a self-prepared statement as the last page of their tax return,

after all other schedules and attachments. No IRS preprinted form exists for this purpose. **A suggested form for this purpose is at the end of this handout.** The statement must include the following:

State that one spouse was a U.S. citizen or resident on December 31 of the tax year, and that the other spouse was a nonresident alien on that same date. Both spouses agree to treat the nonresident alien spouse as a resident of the U.S. for the entire year. List the name, address, and social security number (or individual taxpayer identification number) of each spouse. Both spouses sign the statement, as well as the income tax return for that year.

In subsequent years, the spouses can choose whether to file joint or separate tax returns. The election the first year continues on in future years. There is no need to resubmit a copy of the statement each year.

It is important to note that if a nonresident alien spouse chooses to be treated as a resident for tax purposes, he or she must report and pay tax on their worldwide income (rather than just their U.S. income). They might also lose the benefit of any tax treaty provisions they would otherwise be entitled to claim. The benefits of filing as a resident include lower tax rates for married filing jointly, the ability to claim dependents, certain tax credits (such as education credits, child tax credit, and earned income credit) and the ability to claim either the standard deduction or expanded itemized deductions. For internationals who are married to a U.S. citizen or resident spouse as of December 31st of the tax year, filing a resident return jointly with one's spouse is usually better than filing a nonresident return.

D. Dual-status Alien

In the discussion of the green card test on pages 3-4 above, I briefly mentioned dual-status alien reporting might apply to an individual in the year in which one receives lawful permanent residency from the USCIS. The tax rules for dual-status alien reporting are very extensive and beyond the scope of this workshop. I will offer one example that I think is relevant to internationals at this workshop, so that you will have some idea of when to consider if you are a dual-status alien.

If you receive a “green card” to remain in the U.S. as a permanent resident, you might not be a resident for tax purposes for the entire year. Assume that you are an international student with an F-1 visa, and you have been in the U.S. since 2006. You win the 2007 diversity visa lottery (2007 DV). On 7/15/2008, you receive lawful permanent residency as a result of the 2007 DV. From your date of entry in the U.S. in 2006 until 7/14/2008, you are an exempt individual with an F-1 visa. Between 7/15/2008 and 12/31/2008, you are a resident for tax purposes, since you have a green card. You do not meet the substantial presence test, since as an exempt individual, you exclude your days physically present in the U.S. prior to being awarded a green card on 7/15/2008. In this case, you are a nonresident from 1/1/2008 to 7/14/2008, and a resident for tax purposes from 7/15/2008 to 12/31/2008. You are a dual-status alien.

Please refer to pages 8-9 of IRS Publication 519 if you believe this area of tax law might apply to you.

Dual-status aliens must complete both a regular U.S. tax return (1040, 1040A, or 1040EZ) and a nonresident tax return (1040NR or 1040NR-EZ). The nonresident tax return is appended as a statement to the primary tax return. The primary tax return is whichever one reflects the status of the taxpayer on 12/31/2008 (in this case, 1040, 1040A, or 1040EZ). Write “Dual-Status Return” on the top of the primary tax return. Attach the nonresident tax return (1040NR or 1040NR-EZ) as the last few pages after the regular tax return. Write “Dual-Status Statement” on the top of the nonresident tax return which serves as a statement. Because the method of allocating income, deductions, and tax credits between the two time periods can be complex, you might need the assistance of a professional tax preparer who has experience preparing dual-status tax returns. Refer to chapter 6 (pages 30-33) of Publication 519 for detailed instructions for how to complete a dual-status return.

III. How to Report Income

A. Resident Aliens

Residents for tax purposes are taxed on their worldwide income, the same as U.S. citizens. They enjoy the same benefits, filing status (eg: they can file as married filing jointly), and claim dependents as U.S. citizens. The tax reporting of residents is the same as U.S. citizens. Resident aliens use the same tax forms (1040, 1040A, or 1040EZ) as U.S. citizens.

Except for international students and visiting scholars from China, tax treaty provisions do not apply to resident aliens. After becoming a resident for tax purposes, international students from China may continue to claim a \$5,000 treaty exemption for compensation earned while studying in the U.S., for as long as the person remains a student in the U.S. Use IRS Form 8833 in order to claim this treaty benefit. Visiting scholars are exempt for three calendar years from income earned for teaching or doing research (except for private research). Use IRS Form 8833 in order to claim this treaty benefit in the third year, if the person meets the substantial presence test in the third year. Refer to the U.S.-China tax treaty provisions in articles 19 and 20(c) for specific requirements. You can download a copy of the U.S.-China tax treaty from the IRS web site at <http://www.irs.gov/businesses/international/article/0,,id=169483,00.html>. Summary information about this tax treaty is also available in IRS Publication 901.

B. Nonresident Aliens

B1. Who is subject to filing a tax return (F-1 visa, J-1 visa)?

B1a. Who must file?

The answer to this question depends on the amount of income you have, the types of income you have, how long you have been in the U.S. as an international student or scholar, and other factors. Also, there are two different tax forms that apply to international students and scholars. IRS Form 1040NR or Form 1040NR-EZ is a U.S. income tax return. IRS Form 8843 is an information return.

B1b. Who should file?

Even if you are not required to file a tax return, you should still file one if you had income tax withheld. Filing a nonresident income tax return (IRS Form 1040NR or Form 1040NR-EZ) is the only way for you to receive a refund of withheld federal income tax. Note that there are separate forms (IRS Form 843 and Form 8316) to request a refund for Social Security and Medicare taxes withheld in error.

B1c. Who should not file?

If you (and anyone in your family) did not have income in 2008 and did not have income tax withheld, you don't need to file a U.S. income tax return. But you should still file a statement claiming exempt individual status as discussed earlier under "Form 8843" (pages 6-7).

B2. Spouse and dependents

The term "spouse" refers to the husband or wife to whom the international student or visiting scholar is married. Usually the spouse has an F-2 or J-2 visa, because they are a family member of the person with an F-1 or J-1 visa.

The term "dependent" refers to someone other than a spouse who meets the tests of dependency. Typically this is a child who is a citizen or resident of the U.S., and who lived with the student or scholar for more than half of the year. Note that if the student or scholar is from South Korea, the child does not have to be a citizen or resident of the U.S.

The following list briefly identifies the tests of dependency. Please refer to IRS Publication 678, *VITA/TCE Volunteer Student Guide* (pages 1-8 to 1-16) for a complete explanation of these tests. Note that these tests apply when claiming a child; they do not apply when claiming a spouse.

Relationship (eg: son or daughter)

Age (under age 19, or full-time student and under age 24)

Citizen or resident (does not apply if taxpayer is from Korea)

Support (taxpayer paid for more than half of the expenses of the dependent)

Dependent lived with taxpayer for more than half of the year

Most nonresidents cannot claim a spouse or dependent on his or her tax return. Students and scholars from Canada, Mexico, South Korea, and India might be able to claim their spouse and/or dependents on their tax return.

In the next few sections, the quoted material are excerpts from 2007 IRS Publication 678-FS, *Foreign Student and Scholar Text* (pages 4-2 and 4-3), which is used by IRS Volunteer Income Tax Assistance (VITA) volunteers. You can download this publication from the IRS web site. Refer to the list of additional resources at the end of this text.

B2a. Exemptions for persons from Canada or Mexico

“Residents of Canada or Mexico can claim a personal exemption for a spouse if the spouse had no gross income for U.S. tax purposes and was not a dependent on another U.S. return.”

“Dependents can be claimed if they meet all the tests for dependency listed in Publication 678, *VITA/TCE Volunteer Student Guide*, and Publication 17, *Your Federal Income Tax Guide*.”

B2b. Exemptions for persons from South Korea

“Residents of the Republic of Korea (South Korea), may be able to claim a personal exemption for a spouse. The spouse must live with the taxpayer. If the student or scholar also has income from outside the United States, the exemption will have to be prorated. See IRS Publication 519 for more information.”

“Dependents must live with the nonresident in the U.S. at least part of the year. The dependency exemption will need to be prorated if the nonresident has both U.S.-source income and foreign income.”

B2c. Exemptions for persons from India

“Some nonresidents from India are eligible to claim a personal exemption for a spouse. The deduction applies only to students and business apprentices. A student can claim an exemption for a spouse if the spouse had no gross income during the year and cannot be claimed on someone else’s U.S. return. When completing Form 1040NR, write the spouse’s information on line 7c.”

“Dependents can be claimed if they were not admitted to the United States on an F-2, J-2, or M-2 visa. They must also meet the tests for dependency listed in Publication 678, *VITA/TCE Volunteer Student Guide*, and Publication 17, *Your Federal Income Tax Guide*.”

B3. Income threshold for filing a nonresident tax return

Prior to 2006, the income threshold was \$0. In the past, for each year that you had any income while you were in the U.S., generally you were required to prepare a U.S. income tax return for that year. Starting with 2006, the income threshold changed to the personal exemption amount, which is \$3,300 for 2006. **In 2008, if you are a nonresident for income tax purposes, and you have income of more than \$3,500 while living in the U.S., then you must prepare IRS Form 1040NR or Form 1040NR-EZ to report your income while you are living in the U.S.** As a nonresident, you generally are not required to report to the IRS any income you receive from non-U.S. sources while you are outside the U.S. The source of the income (inside U.S. or outside U.S.) and where you are living when you receive the income determines whether or not you must report the income on a U.S. income tax return.

B4. Possible consequences for failure to file tax forms

If you fail to file a U.S. tax return when required, you may be liable for any income tax owed. If you fail either to file a U.S. tax return, or anyone in your family fails to file IRS Form 8843 as an exempt individual when applicable, you or your family members might not be granted permanent residency. The USCIS considers compliance with U.S. tax laws when considering whether or not to grant permanent residency in the U.S. Thus, it is important that you keep copies of all tax forms you file with the IRS to prove that you have complied with U.S. tax laws. The IRS does not share your tax information with other government agencies, pursuant to U.S. government privacy laws.

B5. Tax filing status

For most nonresidents, you can either file as single (if you are not married) or married filing separately (even if your spouse is living with you). You cannot choose to file married filing jointly on a nonresident tax return. But you might be able to claim a personal exemption for your spouse on your tax return if you are from Canada, Mexico, South Korea, or India.

If you are married to someone who qualifies as a U.S. citizen or resident under U.S. immigration laws, then you can choose to be treated as a resident for tax purposes if you file a joint return with your spouse. In this case, you would file a regular U.S. income tax return, such as IRS Form 1040, 1040A, or 1040EZ. You should include a statement with your tax return stating that you are choosing to be treated as a resident for U.S. tax purposes by filing a joint tax return with your spouse who is a U.S. citizen or resident, even though you are not a U.S. resident.

B6. Which forms should you use?

B6a. Tax forms

The following is a list of federal tax forms that are commonly used by international students and scholars.

| <u>IRS Form</u> | <u>Description</u> |
|-----------------|---|
| 1040NR | U.S. nonresident alien income tax return |
| 1040NR-EZ | Short-form U.S. nonresident alien income tax return for certain individuals with no dependents |
| 8843 | Statement for exempt individual |
| 843 | Claim for refund of Social Security and Medicare taxes erroneously withheld from wages |
| 8316 | Additional information needed from F and J visa holders who file Form 843 to claim a refund of Social Security and Medicare taxes |
| W-4 | Withholding certificate used to determine federal income tax withholding |
| 8233 | Claim an exemption from withholding taxes based on a tax treaty provision |

B6b. Tax publications

The following are IRS publications that relate to the tax reporting requirements of international students and scholars.

| <u>IRS Publication</u> | <u>Description</u> |
|------------------------|----------------------------------|
| 519 | Tax guide for aliens |
| 678-FS | Foreign student and scholar text |
| 901 | U.S. tax treaties |

Please refer to the following IRS web site to review a specific tax treaty.

<http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>

B6c. Tax documents

The following is a list of federal tax forms that international students and scholars might receive in order to prepare a tax return.

| <u>IRS Form</u> | <u>Description</u> |
|-----------------|--|
| W-2 | Wage and tax statement from employer |
| 1042-S | Foreign person's U.S. source income subject to withholding |
| 1098-T | Tuition and fees paid, and scholarship income received |
| 1099-MISC | Payments received for services performed as an independent contractor (total is at least \$600.00) |
| 1099-INT | Interest income received (total is at least \$10.00) |
| 1099-DIV | Dividend income and capital gains distributions received (total is at least \$10.00) |
| 1099-B | Proceeds from selling investments |

B7. Explanation of certain tax forms and documents

B7a. Definition (purpose) of W-2 and who should use this document

IRS Form W-2 is a wage and tax statement prepared by an employer and given to an employee by January 31st of each year. The employer also sends this form to the Social Security Administration by February 28th of each year. The Social Security Administration enters the information in their database and forwards the data to the IRS.

IRS Form 1042-S is another similar tax document that reports income exempt from tax under tax treaty or U.S. tax laws, or income that was taxed at a specified tax treaty rate. The payor sends the recipient Form 1042-S by January 31st of each year. The payor also sends this form to the IRS by February 28th of each year.

If you receive either Form W-2 or Form 1042-S, you should attach a copy to your tax return. If you should have received one of these forms but did not, you should contact your employer or payor to request a reissued Form W-2 or Form 1042-S. You must have these forms prior to preparing your tax return. If your employer

fails to provide either of these forms after you have requested them, contact the IRS for assistance. You may be able to prepare IRS Form 4852, which is used in place of Form W-2 in order to file your tax return.

The IRS uses both Form W-2 and Form 1042-S to compare them with the tax returns submitted by taxpayers. If the information on a Form W-2 or Form 1042-S does not appear on a tax return, the IRS flags that taxpayer's account for further review and possible audit. If the taxpayer does not have enough income to be required to file a tax return, then the IRS will take no further action. Typically, the first contact the IRS initiates with a taxpayer in this situation is a letter notifying the taxpayer of the discrepancy.

B7b. Definition (purpose) of W-4 and who should use this form

IRS Form W-4 is a withholding certificate form prepared by an employee and given to an employer. Form W-4 determines how much federal income tax should be withheld from an employee's paycheck, based on the filing status and personal exemptions claimed by the employee on Form W-4.

IRS Form 8233 is an exemption form to claim a tax treaty benefit based on one's country of residency. Note that residency, not citizenship, is the basis for claiming any tax treaty benefits. Form 8233 is prepared by the student or scholar and given to the payor or employer prior to the payment of wages, scholarship, or other income that is covered by the tax treaty benefit. If the student or scholar fails to give the payor or employer Form 8233, the student or scholar may still claim a tax treaty benefit on his or her tax return in order to receive a refund of the federal income tax withheld.

IV. Taxpayer Numbers

A. What is a Social Security Number?

The Social Security Administration issues Social Security cards with nine digit numbers in the following format: NNN-NN-NNNN. The first three digits identify the Social Security office region where the person applied for a Social Security card. Social Security numbers issued to applicants in Texas begin with the number 4. In order to work in the U.S. for an employer, one must have a valid Social Security card issued by the Social Security Administration. This number is used by both the Social Security Administration and the IRS to track a taxpayer's employment history and tax records.

A1. Who is eligible to receive a Social Security number?

If you are legally able to work in the U.S., you can apply for a Social Security card. Once you receive your Social Security card, keep it secure. You will need to show it to employers who hire you in the future. Your Social Security card is a permanent account number assigned to you for life, even if you later become ineligible to work in the U.S.

A2. Who is not eligible to receive a Social Security number?

Dependent children of international students and scholars are not eligible to receive a Social Security number. Spouses of international students also are not eligible to receive a Social Security number, unless the spouse changes his or her visa status from F-2 to F-1.

Anyone who has an F-2 visa is not eligible to work in the U.S., unless they change their visa status to F-1, H-1B, or some other visa classification. The reason the dependent is in the U.S. is because they are a family member of the primary F-1 visa holder. U.S. laws do not permit such family members to work in the U.S.

B. What is an ITIN?

An Individual Taxpayer Identification Number (ITIN) is issued by the IRS for taxpayers, their spouses, and their dependents whenever the person is not eligible to receive a Social Security number. ITINs are used solely for U.S. income tax reporting purposes. There must be a valid tax filing reason for obtaining an ITIN.

ITIN numbers are nine digits, with the same NNN-NN-NNNN format as Social Security numbers.

B1. Who is eligible to receive an ITIN?

If a taxpayer is required to file a tax return, but a spouse or dependent listed on the tax return is not eligible to receive a Social Security card, then the family member (“applicant”) is eligible to apply for an ITIN. Use IRS Form W-7 to apply for an ITIN. This form is used to establish the identity of the applicant and the reason the ITIN is needed. The form and proof of identity documents must be submitted to an IRS approved certifying agent for verification and certification. Once the Form W-7 has been certified, the taxpayer must include it with the tax return so that the IRS can verify there is a legitimate tax reporting requirement for the applicant to be issued an ITIN.

An ITIN may be needed in order to claim a tax benefit on a U.S. income tax return, such as a spouse or dependency exemption, child tax credit, or child and dependent care credit. Note that if you are married to a U.S. citizen or resident and file a joint return, you cannot use an ITIN to claim the earned income credit.

B2. Who is not eligible to receive an ITIN?

If the applicant does not need to file a U.S. federal tax return, there is no need to apply for an ITIN. In that case, the IRS will not issue an ITIN to the applicant. In this case, Form W-7 would not be prepared.

Note that no ITIN is required to file Form 8843. If the nonresident alien does not have an ITIN or Social Security card, Form 8843 may still be prepared. Leave the taxpayer identification number field blank in that case.

V. Additional Resources

A. I recommend the following Internet web sites for additional help. They are good sources for international students and scholars to learn how U.S. income tax laws apply to you.

<http://www.utexas.edu/international/taxes/>

<http://www.dartmouth.edu/~intl/updates/tax/info.html>

<http://www.dartmouth.edu/~intl/faq.html>

<http://www.dartmouth.edu/~intl/updates/tax/webresources.html>

B. The following IRS web site pages are training materials specifically for how to prepare a nonresident tax return for international students and scholars.

<http://www.irs.gov/pub/irs-pdf/p678fs.pdf>

http://www.irs.gov/app/vita/foreign_student.jsp

C. The following IRS web site pages are useful reference materials for understanding U.S. tax law and tax treaties with other countries.

<http://www.irs.gov/pub/irs-pdf/p519.pdf>

<http://www.irs.gov/pub/irs-pdf/p901.pdf>

<http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>

Statement to Elect to Treat Nonresident Spouse
as a Resident for Tax Purposes for Tax Year 2008

Resident Taxpayer: _____ SSN: _____

Non-resident Spouse: _____ SSN: _____

Address of both taxpayers:

The above married taxpayers both affirmatively elect to treat the non-resident spouse as a resident for tax purposes starting with tax year 2008. We are filing a joint U.S. resident tax return as a married couple.

The first spouse shown above was a U.S. citizen or resident for tax purposes on December 31, 2008. The second spouse shown above was a non-resident for tax purposes on December 31, 2008. We both choose to treat the non-resident spouse as a resident for tax purposes for the entire tax year 2008. The address shown above is the current address for both taxpayers.

Signed: _____ Date: _____

Signed: _____ Date: _____