

SPECIAL TOPICS

1. The W-2 earnings statement includes a variety of taxes and payment withholdings. Among these are **Social Security (FICA) and Medicare Withholding and California State Disability Insurance (CASDI)**.

- Social Security (FICA) and Medicare

Under IRC 3121(b)(19), principal individuals in a F/J/M/Q immigration status who are NRA for federal tax purposes and employed either on-campus or off-campus, with appropriate work authorization, are exempt from Social Security and Medicare tax payments. A spouse or dependent children of the primary visa-holder (-1) (i.e. F-2/J-2/M-2/Q-2 status) are not eligible for this exemption. This exemption generally terminates with the first day of physical presence in the year federal tax residency is established.

If you are a nonresident alien for federal tax purposes in the above immigration classifications and you feel that Social Security and/or Medicare taxes were incorrectly withheld from your pay, the federal government requires that you first contact the employer who issued the Form W-2 - inform them of the error AND ask that they refund you the money withheld. But if the employer cannot or will not issue the refund, the following is a special procedure you can use to obtain a refund of these taxes:

You will need to complete and submit two federal tax documents to the IRS - **Forms 843 and 8316**. These forms are fairly easy to understand and complete. They are mailed together in the same envelope, but this envelope must be mailed totally separate from your annual tax return filing. The paperwork requires that you attach a copy of the Form W-2 showing the withholding, a copy of your I-94 and visa stamp, and pp I & 3 of your I-20 (or p 1/DS2019) pertaining to the employment authorization. There is NO deadline to submit. Mail the packet of documents to the same Philadelphia Service Center as NRA tax returns and processing generally takes approximately eight to ten weeks. It is important to remember that you should **always keep a photocopy of everything you send to the IRS**.

- California State Disability Insurance (CASDI)

The State of California requires participation in the Disability Insurance program, also known as Worker's Compensation, by the majority of employers. The program is an insurance policy that covers medical expenses and compensates an employee for the employment-time missed in association with a job-related injury. Generally, a certain percentage of income is deducted from an employee's pay, with a matching contribution from the employer. The deductions are reported in either BOX 14 or BOX 20 of the Form W-2, but these withholdings are **never** refundable on either a federal or state tax return.

2. Life-Long Learning/Hope Scholarship Credit OR Tuition Deduction (Form 1098-T)

The most significant difference between a resident and nonresident taxpayer is the tax credits that can be used to reduce an individual's tax liability. At San Jose State University, the Bursar's Office will annually send all students a reporting of qualified tuition payments made using the IRS Form 1098-T. For the international student classified as a nonresident alien for federal tax purposes, this document acts as an accounting of payments made and **cannot** be used to reduce tax liability. However, federal tax residents, whether they are a U.S. citizen, legal permanent resident, or resident alien for federal tax purposes, can use this information to either reduce taxable income, using a tuition deduction, or claim a tax credit, in the form of the *Life-Long Learning or Hope Scholarship*.



Procurement and Support Services

www.sjsu.edu/pass/facultystaff/nrat/index.shtml

One Washington Square
San José, CA 95192-0041
408.924.2262
anderso@sjsu.edu

**International Students & Scholars
Should Know About U.S. Income
Tax Laws & Tax Filing
Responsibilities**



WHAT IS MY TAX CLASSIFICATION?

It has long been a misconception by international students and visiting scholars that, because of their temporary status, they had no tax liability or reporting responsibilities in the United States (U.S.). But in fact, all individuals receiving income of any sort are subject to U.S. tax law and are differentiated by alien tax classification, resident or nonresident. So as an international student or scholar, the first question you should ask is - **what is my federal tax classification?**

DETERMINING ALIEN TAX CLASSIFICATION

Students in a primary F/J/M/Q (-1) status and their dependents (-2) are considered **nonresident alien** (NRA) for federal tax purposes for the first 5 calendar years of their stay in the U.S. For primary J/Q (-1), non-student categories, and dependents (-2), consideration as a NRA for tax purposes is determined by looking at the number of years in an exempt category. A J/Q, non-student, is a nonresident alien if they have not been present in the U.S. under a F/J/M/Q exempt status for more than two out of the current and past six calendar years. Filing a special application (Form 8840, Closer Connection Exception Statement for Aliens) to the Internal Revenue Service (IRS) can extend either of these nonresident periods.

Once your tax classification is established, you then must determine your tax filing responsibilities to both the federal and state governments. Unfortunately, U.S. tax laws can be very complex, but **filing federal tax documents is the personal responsibility of every international student and scholar classified as a NRA, whether or not you received taxable payments during the reporting year.** However, state tax liability and filing responsibilities will depend on separate regulations governed by the State of California. Generally, your California tax residency will be determined much differently than federal tax residency and is usually dependent upon the length of time you reside within California.

The U.S. income tax system depends to a large extent upon voluntary compliance. However, if you have friends or colleagues who don't pay their income taxes and encourage you to do the same, you should consider the following facts:

1. It is a crime to willfully fail to correctly file an income tax return.
2. If you incorrectly claim "exempt" status on your federal Form W-4, you will be subject to a \$500 fine.
3. Individuals classified as nonresident alien, generally, may never be claimed as a dependent on another taxpayer's return.
4. If you are going to be in the U.S. for an extended period of time, the IRS will eventually catch-up with your failure to pay income taxes. At that time, you will not only be required to pay the taxes that you owe, but you will also be required to pay interest on the tax and you most likely will be assessed additional penalties for the failure to file as well.
5. In addition, there can also be immigration consequences for not filing. For example, applicants who change from F-1 to H-1b (professional worker status) may be asked by the immigration service to show evidence that they have fulfilled their tax obligations by submitting copies of previous years' income tax return(s) as part of their H-1b application process. Additionally, applicants for lawful permanent residence ("green cards") may also be asked and if the applicant has failed to file tax returns, will be required to file late

returns and pay all taxes owed or risk having the application for adjustment of status denied. It is important to retain copies of tax documents after you return to your country of origin, because you may be asked by a U.S. consulate abroad to present evidence that you fulfilled income tax obligations during previous visits as a condition for future entry to the U.S.

IMPORTANT - All international students & scholars, in a F, J, M, or Q immigration status, who are classified as a federal nonresident alien taxpayer, must file tax return(s) every year, whether or not you were employed or received taxable payments in the United States during the reporting year. Those individuals who were not employed or received U.S.-sourced taxable income during the reporting year file ONLY Form 8843. Individuals who either received compensation subject to wage withholding or income subject to U.S. taxation will file both the Form 8843 and may also be required to file either the 1040NR or 1040NR-EZ depending on the total income earned for the reporting year.

FORM 8843

If you are a NRA for federal tax purposes and have no earned income or taxable payments from U.S. sources, you will file only a completed Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, to the IRS. Spouse/dependents in F/J/M/Q (-2) status must also individually file this same document. The purpose of this document is to verify that the individual qualifies to exempt days of presence in the U.S. from the purpose of the substantial presence test, thus shielding the individual from taxation as a resident alien and subject to taxation on worldwide income.

FORM 1040NR/1040NR-EZ

If you received any wage income or other payments while present in the U.S. during the tax year, you may also be required to file a financial tax return. An indicator that these payments were subject to federal & state taxation is receipt of a tax earnings statement from an employer or educational institution. An example of these documents may include: Forms W-2, 1042-S, 1099-Misc, 1099-R, etc. These tax statements are mailed to recipients by the end of January for the preceding tax year. You will receive a separate earning statement from each employer (or granting institution), but will combine the earning totals and file only one federal & applicable state financial return(s). If you feel you should have received any one of these earnings statements and have not by mid-February, you should contact the appropriate payer. For the NRA who is required to file income tax documents, not only do you complete Form 8843, but you must also complete either the Form 1040NR (long form) or 1040NR-EZ (short form). Selection of the appropriate Form 1040NR will depend on the complexity of your tax filing and/or your ability to qualify for spouse/dependent deductions based on tax treaty benefits. Keep in mind that most professional tax preparers will be unfamiliar with these tax rules and documentation associated with the tax status. If you intend to seek professional assistance, be careful that you choose someone who is **an expert in nonresident alien tax law.** Presently, tax preparation software, such as Turbo Tax, is designed only for the resident taxpayer and should not be used by individuals classified as NRA for federal tax purposes. If you want to prepare your own tax returns, we strongly recommend that you obtain the following publications from the IRS:

Publication 519 - U.S. Tax Guide for Aliens
Publication 520 - Scholarships & Fellowships
Publication 901 - U.S. Tax Treaties
Instructions & Forms 1040NR/1040NR-EZ - U.S. Nonresident Alien Income Tax Returns
Instructions & Form 8843 - Statement for Exempt Individuals

If it is determined that you are a **resident alien** for federal income tax purposes, you will file the same tax return documents appropriate for a U.S. citizen (i.e. Forms 1040, 1040-A, or 1040-EZ). As a resident alien taxpayer, you will not be required to complete the Form 8843. The most significant difference between a nonresident and resident alien for federal tax purposes is the sourcing of taxable income. Nonresident alien taxpayers are taxed only on U.S.-sourced payments, where as, federal tax residents are subject to taxes on worldwide income. For resident tax document preparation, there are many professional tax preparation services and software available for purchase/download that can assist you. In addition, both federal and state resident tax documents can be filed electronically (e-filed). Whereas, **nonresident alien tax documents must be mailed to:**

**Internal Revenue Service Center
Austin, TX 73301-0215**

The U.S. taxable year encompasses a period from January 1 - December 31. The deadline for filing tax forms is usually April 15th of the following year. However, those individuals who will file only the Form 8843 (having no earned income for the year) have an extended deadline to June 15th. It is extremely important to keep a photocopy of all documents submitted to both the IRS and state tax agencies for a period of **three years beyond the year the tax documents were filed.**

HOW TO OBTAIN ASSISTANCE WITH YOUR INCOME TAX FORMS:

1. Federal Tax Forms - call the Internal Revenue Service at 1-800-829-1040. Assistance is available 24hours/day, 7 days/week OR visit their website at: <http://www.irs.gov>
2. California State Forms - call the California State Franchise Tax Board at 1-800-852-5711 OR visit their website at: <http://www.ftb.ca.gov>
3. It is also recommended that you attend a tax workshop offered by the International Programs & Services Office or the campus Nonresident Alien Tax Specialist - flyers for both are generally posted beginning in February. Helpful information and reference links are also available on the - Immigration & Tax website at: www.sjsu.edu/pass/facultystaff/nrat/index.shtml