1. Residency status: Determining Resident vs. Non-Resident Tax Filing Status
2. Scholarship vs. Wages: Forms of Income
3. Tax Treaties (8833 form)
4. How to Complete the Forms:
   a. 1040nrez (blank form attached)
   b. 8843 (blank form attached)
   c. 8833 example
5. Glacier Tax Prep
6. Refund of Social Security Taxes Paid in Error

Additional Resources:

www.utexas.edu/international/taxes
www.irs.gov
**Residency Status**

Anyone working on campus and/or receiving a scholarship has most likely seen me or Lisa Bartee in Payroll and has had their residency status determined by me. Determining residency status can be a complicated issue for those of you who have had multiple visits on multiple types of visas.

The basic rules are as follows:

**F-1 & J-1 Students**—also applicable to spouses on F-2 & J-2

Students who have been in the U.S. in F-1 or J-1 student visa status for any part of 5 different calendar years before 2012 and were physically present in the U.S. at least 183 days in 2012 are considered Resident Aliens for tax purposes. If you have been in the U.S. for less than 5 years, you are considered a Nonresident Alien for tax purposes (2007 and greater Resident Aliens).

*You will not be allowed to claim an additional 5 years period or additional years whether you go back to your home country or not.*

**J-1 Scholars**—also applicable to spouses on J-2

Researchers and Professors who have been in the U.S. in J-1 visa status for any part of 2 of the current & preceding 6 calendar years, and were physically present in the U.S. at least 183 days in 2012, are considered Resident Aliens for tax purposes. If you have been in the U.S. for less than any part of 2 of the current and preceding 6 calendar years, you are considered a Nonresident Alien for tax purposes.

*A J or Q non-student can actually have years “drop” off as time goes by, with each new year a year in the past “falls off” of the time-line.*

**H1B & other visa holders**

If you have been in the U.S. for at least 183 days in 2012, you are considered Resident Aliens for tax purposes. If you have been in the U.S. for less than 183 days in 2012, most likely you cannot pass the SPT test, than you are considered a Nonresident Alien for tax purposes. You may possibly fall under a Dual Tax Status, and that is a complicated issue to address at this level, you will need to contact a professional tax expert.

Resident Aliens: will file 1040/1040ez world wide income reportable

Nonresident Aliens: will file 1040nr/1040nrez

Must also file form 8843

**Resident Aliens**

For those of you who are able to claim treaty benefits after you are a resident alien, it is STRONGLY recommended by the IRS to attach a Form 8833 to your 1040/1040ez form stating that you are claiming this benefit even though you are a resident alien for tax purposes. You are claiming this benefit based solely on the wording of your treaty, which allows you to claim this benefit even though you are a resident alien for tax purposes. You are claiming treaty benefits based on a savings clause in your treaty. It is not required, just recommended; it serves as a visible “flag” to the IRS.
**Residency Status**

Substantial Presence Test:

Must be physically present in the U.S. for at least 31 days during the current calendar year **AND** pass the mathematical test below:

**The 183-day component of the substantial presence test is a calculation of:**

\[
\text{Total days present for substantial presence test} = \text{Days present in the U.S. during current calendar year} + \frac{1}{3} \text{ Days present in U.S. during 1st preceding calendar year} + \frac{1}{6} \text{ Days present in U.S. during 2nd preceding calendar year}
\]

IF the Total Number of Days for Tax Purposes is 183 or more, the person is a **RESIDENT ALIEN for U.S. Tax Purposes**

IF the Total Number of Days for Tax Purposes is 182 or fewer, the person is a **NON-RESIDENT ALIEN for U.S. Tax Purposes**

You do not have to count days of presence if you were present in the U.S. as an **“exempt Individual”**

The term “exempt individual” only means that the individual is exempt from counting days toward the calculation of the test. The term has nothing to do with whether you will be exempt from paying income or FICA taxes or filing a U.S. income tax return.

**EXEMPT INDIVIDUAL**

The J or Q non-student immigration status individual will not qualify for exempt individual status if he was exempt as a teacher, trainee, non-student or student for any two of the current and past six calendar years. **A J or Q non-student can actually have years “drop” off as time goes by, with each new year a year in the past “falls off” of the time-line.**

The F, J, M or Q student immigration status individual will not be treated as exempt individual if he has had the status for any part of more than five calendar years. **You will not be allowed to claim an additional 5 years period or additional years whether you go back to your home country or not.**

****The most common instance in which a resident alien reverts to a nonresident alien is in the year of departure; however, this issue really only affects the individual at the time of tax return filing and not the withholding agent (the university).
Scholarships and Wages

Section 117 of the Internal Revenue Code sets forth the requirements for determining the taxability of a scholarship or fellowship grant:

A scholarship is generally defined as a payment to an individual to benefit or aid the student in pursuing his studies. A fellowship is generally defined as a payment to an individual to aid the researcher in pursuing his study or research.

Regardless of what the scholarship is called, the taxability of these payments depends on the nature of the payment itself.

- Money received for or waived for tuition, fees, books and/or supplies is not taxable if the money was used for the purpose intended, and there was not a requirement to perform services. This is true for all recipients whether they are U.S. citizens or not.

- Money received for room and board, if no services are required, is usually **TAXABLE**. This is true for all recipients whether they are U.S. citizens or not. Some countries have a tax treaty making it non-taxable. Many of these treaties also have a time limit on them. For nonresident aliens, this taxable portion would be reported on Form 1042S, using income code 15: scholarship or fellowship grants.

- Any money received with the condition that the person receiving the money performs services, such as teaching or research, is treated as **WAGES**. The taxable portion of wages is reported on a W-2. The amount exempt by treaty is reported on Form 1042S, using income code 18 or 19: teaching or compensation during training.

  Income code 18- payments to professors or teachers- may be exempt from U.S. income taxes if a treaty benefit applies. This income would also be reported on a 1042S. All others would be reported on a W2, if no treaty benefit were allowed.

  Income code 19- payments to students and trainees- may be exempt from U.S. income taxes if a treaty benefit applies. This income would also be reported on a 1042S. All others would be reported on a W2, if no treaty benefit were allowed. All treaty benefits for students and trainees have a maximum allowable benefit. If the student or trainee has reached the maximum allowable benefit, the remaining portion of their wages would be reported on a W-2.

- A Form 1099 Misc should never be issued to a nonresident alien for tax purposes; however some of you may have received a Form 1099 MISC for independent services. This sometimes would occur during OPT/CPT. This income has been reported to the IRS and needs to be included in your total wages.

- If you received a Form 1099 INT, this is for simple bank interest. Nonresident aliens are not required to report simple bank interest.

- *If you received a 1098T form, you most likely received it in error. This form would be used to help determine educational credits. NRA’s are not allowed to take educational credits, so please disregard this form.*
**Tax Treaties**

IRS Publication 901, *U.S. Tax Treaties* is a guide or a reference tool to be used to determine if a treaty benefit is available to you or not. A complete listing and the actual written tax treaties is available through the IRS website, [www.irs.gov](http://www.irs.gov).

Many students already know whether or not they qualify for a treaty benefit, so I would like to just go over a few specific treaties and their peculiarities.

The one important thing to remember is that you must be a resident of that country to claim the treaty benefit. The application of the treaty benefit is USUALLY determined by where the person resided immediately before entering the U.S. Some students could possibly be a resident of one country, while being a citizen of their home country.

If you have a treaty benefit and you are taking it, then you must have completed an 8233 form with me or Lisa Bartee in Payroll. We do this once a year, every year that the benefit is available. Your treaty benefits will be reported on a 1042S.

**Special treaties**

- Students of India may take the standard deduction when they file their taxes and they also may claim the personal exemption for a non-working spouse and U.S. born children. The standard deduction is $5800.00 and the personal exemption is $3800.00 for 2011. For Form W7 you must get a certification letter from the OIP.

- Treaty benefits for scholars/researchers from India are very different from those for a student. The scholar benefit for income code 18 is lost **RETROACTIVELY** if the visit lasts longer than two years.

- The treaty for students from China is also very different in that it can be available to BOTH nonresident and resident aliens. A student from China is entitled to the $5000 exemption for as long as it takes for the student to complete his studies. A student normally becomes a resident alien for tax purposes after 5 years, but he is still able to take the treaty benefit for as long as he’s a student. This is also true for residents of Pakistan ($5000) and Bangladesh ($8000), as those treaties continue past the 5 year mark.

- The treaty for scholars from China is longer than normal, the usual treaty length for a scholar/teacher treaty is two years, but for China it is three years. After two years a scholar will normally become a resident alien for tax purposes, but he is still entitled to one more year of tax benefits.
Tax filing for the 2012 tax year!

All individuals who are not U.S. Citizens or Legal Permanent Residents must determine their tax residency before they can determine how they should file their personal income tax returns.

**General NRA Tax Scenarios**

Are you a F1, J1 student or J1 Research Scholar/Professor?
Did you receive compensation (work) at UTSA in 2012?
Did you receive a scholarship in cash (not just applied to tuition & fees) in 2012?
Did you receive a tax treaty in 2012?
Did you work on CPT?
Did you work on OPT (even outside UTSA)?
Do you have a W2?
Do you have, or expect to have, a 1042S form?

**U.S. Tax Residency - Nonresident Alien (NRA) basics:**
- J1 & F1 students, less than five years in the U.S. are usually considered *Nonresident Aliens*.
- J1 Research Scholars/Professors less than two years in the U.S. are usually considered NRA’s.
- H1B’s with less than 183 days in total for 2012 may possibly be a NRA for tax purposes, but most H1B’s are tax residents.

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**Welcome to Glacier Tax Prep**

Solely for the use of our international employees, UTSA has purchased a service, Glacier Tax Prep, to assist you to prepare your U.S. nonresident alien income tax returns for the 2012 tax year. Glacier Tax Prep is easy to use and you may access it from anywhere in the world via internet.

You will need a one-time use ACCESS code to logon to Glacier Tax Prep, once you logon, you will create your Glacier Tax Prep User Account by selecting a password and User ID that will be personal to you and to you only.

**Access Code Request Process**

1. By email only, no phone calls, contact Christine Bodily at Christine.Bodily@utsa.edu
2. In the email provide all the following information:
   a. Your full name, as it appears on your Social Security Card.
   b. Any payment information from UTSA and/or other sources of income.
   c. Indicate all your possible NRA tax scenarios; see above list of *General NRA Tax Scenarios*.
3. Christine Bodily will help you determine if you need to file a nonresident alien income tax return for the 2011 tax year.
4. You will receive your ACCESS code via an email from Glacier Tax Prep and begin your 2012 tax return.

Both the Payroll and the Office of International Programs are very excited about this partnership with Glacier Tax Prep. UTSA already uses the Glacier module for help in determining tax residency and tax treaties, Glacier Tax Prep was just the next step, and we are in year three and going strong!
Requests for Refunds of Social Security Tax

An exemption from Social Security & Medicare taxes applies to nonimmigrant students, scholars, teachers, researchers, and trainees who are temporarily present in the U.S. in F1, J1, M1 or Q1 status, as long as they remain nonresidents for federal income tax purposes. The exemption also applies to any period in which a foreign student is in “practical training” (OPT) or Curricular Practical Training (CPT) or other off-campus employment allowed by the USCIS. Those who become resident aliens for tax purposes must start paying Social Security & Medicare taxes.

In the event that you have had Social Security taxes taken out of your check in error by an off-campus employee, you may file the appropriate forms 843 & 8316 to request a refund of taxes withheld in error. You must approach your employer FIRST and attempt to get a refund from them.

Austin’s website has information about requesting a refund. I strongly suggest that you send your request for reimbursement to the IRS for Social Security taxes SEPARATELY from your Federal return. It is a good idea not to send both together, as they can get lost. If you are asking for a refund for the current 2012 tax year, it is required that you WAIT for at least 6 weeks past your original file date of your taxes in order to give the IRS time.

If anyone believes that they have Social Security coming out of their UTSA paycheck and they do not believe it should you MUST contact me to clarify the situation.

Some additional Information

Canada & 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. They may also be able to claim dependents living with them.

Residents of Korea may take a personal exemption for a spouse and dependents present with them in the U.S. The dependent must live with them at least part of the year.

If no ITIN or SSN, you must apply when you file your taxes, using W7 form.
DOCUMENTATION NEEDED TO PROCESS A SOCIAL SECURITY REFUND CLAIM

F-1 VISA

1. Copy of Form 843
2. Copy of Form 8316
3. Copy of Form I94 (front & back) Arrival/Departure Card
4. Copy of Form I20 Page 1 & 3
5. If on Curricular Practical Training (CPT), no other forms needed
7. If change in visa status, need new Form I797
8. W2

J-1 VISA

1. Copy of Form 843
2. Copy of Form 8316
3. Copy of Form I94 (front & back) Arrival/Departure Card
4. Copy of Form DS2019
5. If change in visa status, need new Form I797
6. W2
Tax Workshop Agenda

1. Residency Status: Determining Resident vs. Non-Resident Tax Filing Status
   a. Brief discussion of SPT test
   b. 5 years for F1 / 2 years for J1

2. Scholarship vs. Wages
   a. Scholarship- NRA 1042S taxable or exempt by treaty (both reported on 1042S)
   b. What’s taxable & what’s not taxable
   c. Wages- NRA 1042S exempt by treaty or reported on W2/1099 Misc

3. Tax Treaties
   a. Reported on 1042S for NRA
   b. For RA able to claim treaty, use 8833 form

4. Complete the forms
   a. 1040NREZ
   b. 8843 Form
   c. attachment to 1042S

5. Glacier Tax Prep

6. Refund of SS Paid in Error
   a. Form 843 & 8316
   b. Necessary attachments / send separate from tax return