# U.S. Taxation of International Students and Scholars

Meg E. Manchester | February 26, 2024





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## MILES & STOCKBRIDGE

## Agenda/Overview

Introductory concepts

Nonresident U.S. tax return filing basics and forms

State tax return filing basics and forms

Questions and Answers



# U.S. Taxation of International Students and Scholars INTRODUCTORY CONCEPTS



## Federal Tax Residency

- First step is to determine whether you are considered a tax <u>Resident</u> or tax <u>Nonresident</u> for U.S. federal tax purposes.
  - Determination independent of visa/immigration status.
- Substantial Presence Test used to determine tax Resident status for those that are not U.S. citizens or U.S. permanent residents.

- Certain international students and scholars (and their dependents) are exempt from the Substantial Presence Test for a certain period of time.
  - J1 and F1 Students Generally nonresidents for first 5 calendar years in the U.S.
  - J1 Scholars Generally nonresidents for first 2 years calendar years in the U.S.



## Federal Tax Residency

# <u>Substantial Presence Test ("SPT")</u> – physically present in the U.S. for:

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

Days in the U.S. under certain Visas (F1/J1) are exempt from counting toward SPT for a certain period of time (but prior history, including past Visas, effects this). NRA status always determined using SPT.



## Federal Tax Residency

#### Resident Alien (RA)

- Pay U.S. tax on worldwide income.
- May itemize deductions or take the standard deduction.
- May take education tax credits, if eligible (Form 1098-T).
- Subject to ACA insurance mandate (Form 1095-B/C).
- IRS Form 1040 and applicable state forms.

#### Nonresident Alien (NRA)

- Pay U.S. tax only on U.S.-source income.
  - Generally cannot take a standard deduction (exception for Indian students under Tax Treaty).
- Generally unable to take education tax credits.
- Not subject to ACA insurance mandate.
- IRS Forms 8843, 1040NR and applicable state forms.





Immigration Status	Date of U.S. Arrival	2023 Tax Status	Earned Income	Forms to file
F or J student	After December 31, 2018	NRA	Yes	1040NR, 8843 and applicable state form
F or J student	After December 31, 2018	NRA	No	8843 only
F or J student	Before January 1,2019	SPT/likely RA	Yes	Filing requirements same as U.S. citizens and permanent residents. 1040 and applicable state forms.
J - Non students (Scholars etc)	After December 31, 2021	NRA	Yes	1040NR, 8843 and applicable state form
J - Non students (Scholars etc)	After December 31, 2021	NRA	No	8843 only
J - Non students (Scholars etc)	Before January 1,2021	SPT/ likely RA		Filing requirements same as U.S. citizens and permanent residents. 1040 and applicable state forms.



#### **U.S.-Source Income**

- Second step is to determine whether you have U.S.- Source income.
  - NRA federal tax filing obligations differ based on whether there is U.S. Source Income.
- Income from non- U.S. sources is not taxable in the U.S. for NRAs.
- <u>Examples</u>: rental income from non- U.S. property; gifts from relatives overseas; non- U.S. investment income.
- All U.S.- Source income is taxable in the U.S.
  - <u>Examples</u>: Income from employment in U.S.; rental income from U.S. property; U.S. investment income.

# **U.S.-Source Income- Income Sourcing**



Type of Income	Factor Determining Source		
Salaries, wages, other compensation	Where services performed		
Business income: Personal services	Where services performed		
Business income: Sale of inventory - purchased	Where sold		
Business income: Sale of inventory - produced	Where produced (Allocation may be necessary)		
Interest	Residence of payer		
Dividends	Whether a U.S. or foreign corporation (some exceptions)		
Rents and Sale of real property	Location of property		
Royalties: Patents, copyrights	Where property is used		
Sale of personal property	Seller's tax home (some exceptions)		
Pensions	Where services were performed that earned the pension		
Scholarships - Fellowships	Generally, the residence of the payer		

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# U.S.-Source Income – Common Income Types



- Common types of nontaxable income for NRAs:
  - Qualified Scholarship or Fellowship: for tuition and enrollment fees, or books, supplies and equipment required for courses ONLY.
  - Non-U.S. Scholarships: received from sources outside of the U.S.
  - <u>Foreign Gifts</u>: money transferred from parents or relatives overseas.
  - <u>Home Country Income</u>: income earned in home county (non-U.S. investment income, income from job before moving to U.S., etc.).

# U.S.-Source Income – Common Income Types



- Common types of taxable income for NRAs:
  - <u>Compensation for Services</u>: teaching or graduate assistantships, other on or off campus employment. Wages are most commonly reported on Form W-2.
  - <u>Scholarships, Fellowships or Grants:</u> from a U.S. source that goes toward living or travel expenses (room and board; stipend). Generally reported on Form 1042-S.
  - <u>Dividends or Capital Gains</u>: from U.S. stocks, bonds, or mutual funds. Generally reported on Form 1099-B.
  - Other Income: prizes, awards, gambling winnings, royalties from U.S. sources. Generally reported on Form 1099 or 1042-S.

# U.S.- Source Income – Common Income Types and Taxability



U.SSourced Income Type	Taxable as Income	Withholding Required	Form Received
Qualified Scholarship or Fellowship	No	No	None
Non-Qualified Scholarship or Fellowship	Yes	Yes – 14% absent treaty	1042-S
Prize or Award	Yes	Yes - 30%	1042-S or 1099
Compensation	Yes	Yes – varied	W-2
Compensation – non- employee	Yes	Yes – 30% absent treaty	1042-S or 1099
Compensation from individual or foreign organization	Yes	No	None
Royalties	Yes	Yes – 30% absent treaty	1042-S

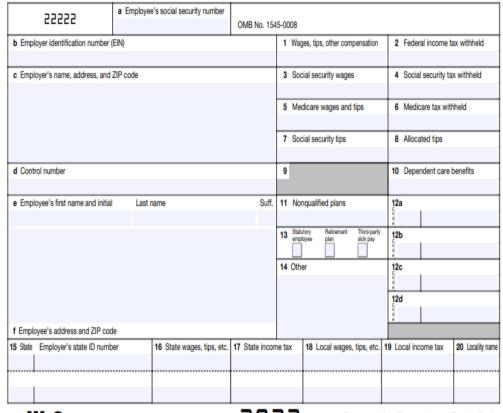
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## U.S.-Source Income – Income Documents



#### • <u>FORM W-2</u>

- Outlines wages, salary and compensation for the entire year.
- Indicates federal and state taxes withheld.
- F1 and J1 Visa holders are generally exempt from FICA (U.S. social security and Medicare taxes) – these should not be withheld.
- Received by January 31, 2024



Form W-2 Wage and Tax Statement
Copy 1—For State, City, or Local Tax Department

5053

Department of the Treasury-Internal Revenue Service

## U.S.-Source Income – Income Documents



#### • FORM 1042-S

- For NRAs.
- Used to report taxable fellowships, scholarships and non-degree aid.
- Used to report treaty-exempt salary, wages, stipends and prizes.
- Used to report taxable stipends, prizes and royalties.
- Received by March 15, 2024

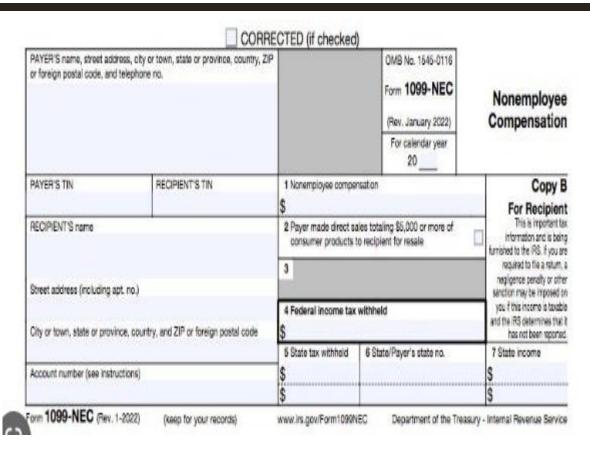


## U.S.-Source Income – Income Documents



#### • FORM 1099

- Generally, for tax residents.
- Reports nonemployee compensation (independent contractor).
- Also used to report certain prizes and awards.
- Certain 1099 Forms used to report investment income.
- Received by January 31, 2024

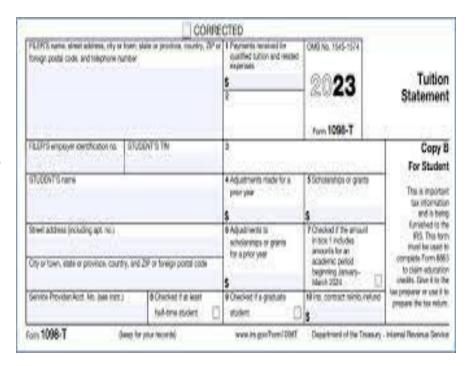




#### Other Tax Documents

#### • FORM 1098-T

- Tuition Statement. Used for those claiming certain education tax credits.
- NRAs are generally <u>not</u> eligible for education tax credits.
- NRAs can generally ignore this form.

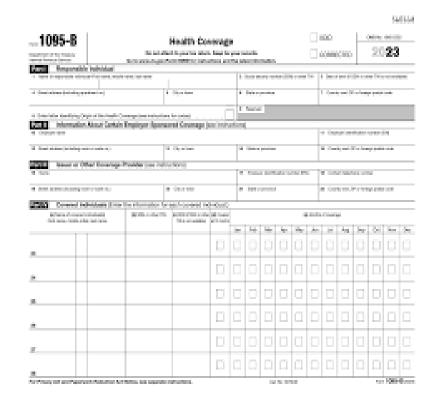




#### Other Tax Documents

#### • <u>FORM 1095-B/C</u>

- Health Coverage/Insurance form.
- NRAs are generally exempt from Affordable Care Act heath insurance mandate.
- This form is for information only; no reporting needed resulting from receipt of this form.



# Other Introductory Concepts – FICA Taxes



- <u>FICA Taxes</u> refers to U.S. social security and Medicare taxes.
  - NRAs students and scholars (J1 & F1 Visas) are generally exempt from paying FICA taxes.
  - H-1B, J2 and TN Visa holders are subject to FICA taxes from their first day of employment.
- If you have had FICA Taxes withheld and paid over incorrectly you can correct/claim back.
  - From employer or
  - By filing Forms 843 and 8316 to claim refund.

# Other Introductory Concepts – Tax Treaties



- <u>Tax Treaties:</u> Agreements between the U.S. and other countries that limit or modify the application of domestic tax laws to residents or citizens of the other country to avoid double taxation of income.
  - U.S. has tax treaties with 63 countries.
  - Each tax treaty varies, but some limit or exempt U.S. taxation of certain types of income to residents of foreign countries.
  - Some tax treaties benefits are limited by amount of income or amount of time spent in the other country per year. Not all treaty benefits apply to students or scholars.
  - Check with your tax preparer or other professional on application of any Tax Treaty to your situation.
- See IRS Publication 901 at the IRS website for more information.

## Other Introductory Concepts – ITINs



- Individual Taxpayer Identification
   Number (ITIN).
  - Required for filing tax returns for those not eligible for a U.S. Social Security Number.
  - May also be used to request an ITIN for dependents who can be claimed on your tax returns, if applicable (only tax residents of Mexico, Canada, South Korea, India, and the U.S. may claim dependents for U.S. tax purposes).
  - Applications processed by the IRS (Form W-7); instructions provide guidelines for how to file and supporting documentation (certified copy of passport, etc.).





# U.S. Taxation of International Students and Scholars NONRESIDENT U.S. TAX RETURN FILING BASICS AND FORMS



#### **US Income Tax Process - Basics**

- Tax year is based on the calendar year. In 2024 you pay taxes based on income earned in 2023 calendar year.
- During the year, employers and others will deduct or withhold money from your income for certain applicable federal and state taxes based on an estimate.
- Taxpayers receive income forms (i.e. W-2, 1042-S, etc.) outlining income for the year and withholdings.
- Each Taxpayer is then required to file a tax return (both federal and state) to determine amount of tax owed. This reconciles tax due with withholding amounts. Additional tax owed should be paid with the return. If a refund is due, a return must be filed to claim the refund.

# Nonresident U.S. Tax Return Filings



Every NRA has some type of tax filing requirement.

- Every nonresident who is an exempt individual must complete and file Form 8843.
- There is no exemption amount, so any nonresident who has received taxable U.S. Source income of any amount will have a federal tax filing obligation, and must file a Form 1040-NR in addition to the Form 8843.

# Nonresident U.S. Tax Return Filings - Forms



- Form 8843.
  - This is the minimum required filing for all nonresidents.
  - NRAs with <u>no</u> U.S.- Source income for 2023 will generally only file Form 8843 . Generally, no State tax return required if no income.
- NRAs with U.S.-Source income for 2023 will file Form 8843 as well as Form 1040-NR (and applicable State tax forms).



# Nonresident U.S. Tax Return Filings - Forms



- Form 1040-NR.
  - Must be filed if <u>any</u> amount of U.S.-Source income was received in 2023 (reported on W-2, 1042-S, 1099, etc.).
  - Must also file Form 8843 in additional to 1040-NR.
  - Will generally have a State tax return filing requirement as well.



## Nonresident U.S. Tax Return Filings – NRA Spouses and Dependents



- Nonresident alien spouses and dependents have the same filing requirements as the main visa holder.
  - Obligations:
    - Minimum is separate Form 8843
    - Separate Form 1040-NR if dependent or spouse earned U.S. Source income
  - No joint returns for nonresidents.
  - Nonresident can elect to file as a resident, if married to a tax resident, but do the math on both options first before filing.

#### Nonresident U.S. Tax Return Filings – Deadlines and Extensions



- The Due Date for Federal Tax Returns is April 15, 2024.
  - Both Form 8843 and 1040-NR should be filed by this date.
  - If you cannot file your return by the due date, make sure to file an extension by the due date.
  - IRS Form 4868 is used to request an extension. The extended due date is October 15, 2024.
  - Note that the extension is <u>not</u> applicable for tax payments due. Taxes must be paid with the Form 4868 by April 15, 2024, or penalties and interest can accrue.

## Nonresident U.S. Tax Return Filings – Implications of Not Filing



- There are serious potential implications of not filing tax returns.
  - Filing all tax forms and complying with tax laws is part of maintaining visa status in the U.S.
  - Not filing (even if only 8843) could affect future immigration status and future tax status (days not disregarded for SPT if no 8843 is filed).
  - Fines, penalties, and interest can accrue on unfiled or late filed returns if taxes are owed on U.S.-Source income.
  - You might be missing out on a tax refund.



# U.S. Taxation of International Students and Scholars STATE TAX RETURN FILING BASICS AND FORMS



## **State Tax Return Filings – Basics**

- Tax residency for State tax purposes is different than for federal taxes.
  - No differentiation based on immigration or Visa status.
  - If you are living in a State, you are almost always considered a resident of that Sate for State tax purposes. If you earned income in a different State from where you live, you may have a tax filing obligation in that State as well.
  - If you move States during a tax year, you may be considered a partial year resident of both the State your moved to and the State you moved from. Check the rules and requirements for both States.



## State Tax Return Filings – Basics

- Complete your federal tax returns first.
  - Most States use federal adjusted gross income ("FAGI") as the starting point for your state return. FAGI can be found on line 11 of Form 1040-NR.
- You many claim the exemption amount in computing State taxes, if applicable
  - District of Columbia: \$0
  - Maryland: \$3,200 (reduced once FAGI exceeds \$100,000)
  - Virginia: \$930
  - Above are standard amounts for 2024 for full year residency. If you are not filing as a full year resident, see State instructions for specific applicable amount.
- Since States require you to claim the same type of deductions on your State return as your federal return, most NRAs <u>cannot</u> take the standard deduction on their state Tax returns (exception for Indian students under Tax Treaty).



## State Tax Return Filings – Forms

- District of Columbia: Form D-40
- Maryland: Form 502
- Virginia: Form 760
- The above Forms assume full year residency. If you moved
   States, consult the form instructions for both States to determine
   the proper Forms to be filed. Some States have different part-year
   residency Forms.
- Again, note that if you lived or earned income in a State other than DC, MD, or VA, you may also have a State tax filing requirement in that State.

# State Tax Return Filings – Deadlines



#### The Due Date for State Tax Returns:

- District of Columbia: April 15, 2024
- Maryland: April 15, 2024.
- Virginia: May 1, 2024.

#### Nonresident U.S. Tax Return Filings – Deadlines and Extensions



- As with federal tax returns, most States permit extensions for filing State tax returns. If you cannot file your return by the specific due date, make sure to file an extension by the due date for the State return.
  - District of Columbia: Extension is filed on <u>Form FR-127</u>
  - Maryland: Extension is filed on <u>Form PV</u>
  - Virginia: No application for extension is required.
  - The extended due date for filing a return once an extension is filed is October 15<sup>th</sup> 2024.
- Note that the extension is <u>not</u> applicable for tax payments due. Taxes must be paid with the applicable extension form , or penalties and interest can accrue.





#### **FEDERAL**

- <u>http://www.irs.gov/Forms-&-Pubs</u>
  - Publication 519: U.S. Tax Guide for Aliens
  - Publication 901: U.S. Tax Treaties
  - Form 8843 Form and Instructions
  - Form 1040-NR Form and Instructions

#### <u>DC</u>

http://otr.cfo.dc.gov

#### **MARYLAND**

https://www.marylandtaxes.gov

#### **VIRIGINIA**

• <a href="http://tax.Virginia.gov">http://tax.Virginia.gov</a>



## **QUESTIONS?**



## Thank you!

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