



## **Information and Resources on Taxation in the U.S. for those in F-1, F-2, J-1 or J-2 Status**

### **U.S. FEDERAL TAXES**

All F and J nonimmigrants (including their F-2 and J-2 dependents) are required to file certain federal tax forms for each year they have been present in the U.S.— even if they did not earn any income during that year. Federal tax forms for the year 2006 must be filed no later than April 15, 2007 with the U.S. Internal Revenue Service (IRS). Individuals who for any reason are unable to file their tax forms by April 15 must submit an application for extension of the filing deadline on IRS Form 4868.

Neither the staff of International Student and Scholar Services nor other Florida Tech staff are licensed nor qualified to provide personalized tax advice. The following information has been prepared to assist Florida Tech's F and J visa holders understand general tax filing obligations and to answer some of the most common questions international students and scholars generally have about taxation in the U.S. ISSS is also providing access to NRAware! (CINTAX), a software program that will allow you to complete nonresident tax forms by answering a series of questions about your situation.

Students and scholars requiring more detailed assistance beyond the NRAware! And the information provided below should consult a qualified tax specialist. Be aware, however, that nonresident tax regulations are only a very small part of U.S. tax laws, so not all tax specialists are experts in nonresident tax matters. If you do work with a tax specialist, be sure to ask him or her what qualifications and experience they have with nonresident taxes.

### **Determining Your Federal Tax Status**

Your first task is to consider whether you were a *resident* or *nonresident* for federal tax purposes during the tax year for which you are now filing your return. Do not confuse the immigration designations of "nonimmigrant" and "immigrant" with the tax designations of "nonresident" and "resident." In many cases, they are not the same—all F-1s and J-1s hold nonimmigrant status, yet many are residents for federal tax purposes!

A nonresident is taxed on income from U.S. sources only, whereas a resident is taxed on worldwide income. Nonresidents may also be exempt from certain types of taxes (such as Social Security tax) whereas residents are not. Nonresidents are more restricted than residents as to the types of tax "exemptions" they can claim. (A "tax exemption" is like a tax credit. Each tax exemption that a taxpayer is eligible to claim reduces the amount of his or her total tax for the year.)

For F-1 and J-1 students, the following general guidelines apply: F-1 and J-1 students are normally considered nonresidents for federal tax purposes only during the first five calendar years of study. Calculations should include any part of a calendar year within the first five years, e.g., a student who arrived in August 2006 should count the entire year of 2006, and not just five months of it, when calculating five years. After five years, F-1 and J-1 students are presumed to be residents for federal tax purposes by the IRS.

For J-1 professors and research scholars, the following general guidelines apply:

J-1 professors and research scholars are normally considered nonresidents for federal tax purposes during their first two calendar years in the U.S., unless their entire income is from a foreign source, in which case they would be nonresidents for tax purposes for four calendar years.

### **Determining Which Forms You Must File**

Links to each of the nonresident tax forms referred to below, as well as to other IRS forms and publications that you may find useful, are provided at the end of this section.

**If you were a resident for federal tax purposes during the tax year for which you are currently filing your tax return**, file form 1040 or 1040EZ, and any attachments as appropriate for your situation. ISSS does not provide tax information for resident taxpayers as it is readily available from other sources.

***If you were a nonresident for federal tax purposes during the tax year for which you are currently filing your tax return AND***

- you were not present in the U.S. during the year 2006: you do not need to file any tax forms.
- **you were present in the U.S. during the year 2006 but did not earn any U.S.-source income at all during 2006 (including F-2 and J-2 visa holders!)**: you only need to file IRS Form 8843 by June 15, 2007. (Note: individuals who do not have or are ineligible to apply for a social security number will first need to apply for an “Individual Taxpayer Identification Number” (ITIN) on IRS Form W-7 before being able to fill out and file IRS Form 8843.)
- you were present in the U.S. during the year 2006 and earned U.S. source income from on-campus employment, scholarships/fellowships, and/or off-campus employment: you must file IRS Form 8843 and IRS Form 1040NR-EZ or 1040NR by April 15, 2007. Individuals who are eligible to claim the benefits of a tax treaty and who did not file any treaty claim forms directly with their employer would also need to file Form 8843 and a statement like that provided in Appendix A of IRS Publication 519.

Links to IRS Forms

Form 8843 - Statement for Exempt Individual

<http://www.irs.gov/pub/irs-pdf/f8843.pdf>

Form 1040NR-EZ - US Tax Return for Nonresident Aliens (for those who earned less than \$50,000; other conditions that apply are listed on the 1040NR-EZ Instructions, below)

<http://www.irs.gov/pub/irs-pdf/f1040nre.pdf>

Form 1040NR-EZ - Instructions

<http://www.irs.gov/pub/irs-pdf/i1040nre.pdf>

Form 1040NR - US Tax Return for Nonresident Aliens (for those who earned more than....)

<http://www.irs.gov/pub/irs-pdf/f1040nr.pdf>

Form 1040NR - Instructions

<http://www.irs.gov/pub/irs-pdf/i1040nr.pdf>

Form W-7 - Application for Individual Taxpayer ID Number

<http://www.irs.gov/pub/irs-pdf/fw7.pdf>

Form 8233 - Exemption from Withholding on Compensation

<http://www.irs.gov/pub/irs-pdf/f8233.pdf>

Form 8233 Instructions

<http://www.irs.gov/pub/irs-pdf/i8233.pdf>

Form 4868 - Application for Automatic Extension of Time to File

<http://www.irs.gov/pub/irs-pdf/f4868.pdf>

Form 843 - Claim for Refund and Request for Abatement

<http://www.irs.gov/pub/irs-pdf/f843.pdf>

Instructions for Form 843

<http://www.irs.gov/pub/irs-pdf/i843.pdf>

Links to IRS Publications

Publication 515 - Withholding of Tax on Nonresident Aliens

<http://www.irs.gov/pub/irs-pdf/p515.pdf>

Publication 519 - United States Tax Guide for Aliens

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

Publication 520 - Scholarships and Fellowships

<http://www.irs.gov/pub/irs-pdf/p520.pdf>

Publication 901 - United States Tax Treaties

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

## **Frequently Asked Questions about Federal Taxation and Nonresident Taxes**

### *1. How is the U.S. income tax system structured?*

During the course of a calendar year, employers are required to withhold estimated taxes from their employees' paychecks and give those estimated withholding dollars to the IRS. Sometime between January 1 and April 15 of the following year, every individual is required to file a tax return with the IRS; the tax return compares the estimated amount withheld by the employer against the actual amount of tax owed. If an employer withheld more in estimated taxes than what the employee actually owes, the employee will get a tax refund. If the employer withheld too little, the employee will need to pay additional taxes.

### *2. How does my employer estimate how much to withhold from my paycheck?*

Employers are required to have all employees complete and submit a Form W-4 when they start working. The way the employee completes the form will determine how much the employer will withhold on an estimated basis. Nonresident taxpayers do not have many choices in completing Form W-4, however. The way a nonresident completes Form W-4 must comply with revenue codes that are different from the printed instructions on the Form W-4 itself. (Be careful: although the instructions on the W-4 do not specify this, the printed instructions on the W-4 form apply to resident taxpayers only!)

IRS Publication 519 explains more about estimated withholding and the Form W-4 for nonresident taxpayers.

*3. What about Tax Treaties? Doesn't a tax treaty between my country and the U.S. mean I don't have to pay taxes here?*

Not necessarily. Although certain countries have tax treaties with the U.S., the existence of a tax treaty with your country does not automatically exempt you from paying U.S. taxes. A treaty might provide a tax exemption for research scholars from a certain country, but not for students from that country; or it might provide a full exemption for students with fellowships but only a partial exemption for students with assistantships. Some treaties that might have exempted you last year might not exempt you this year. IRS Publication 901 provides a list of treaties and their specific provisions, *but interpreting treaties is a complex matter, and no one at Florida Tech is qualified to interpret treaties for you.*

Treaties will sometimes allow for partial or even full exemption from paying federal taxes, and in some cases will even permit you to request your employer not to withhold your taxes, but unless you are absolutely certain that a particular treaty applies to you, you are safer to let your employer withhold your taxes at the non-treaty rate, and then when filing your tax return the following year, to make your treaty claim directly to the IRS. At that time, if you are eligible for the treaty benefit the IRS will give you a refund. But if you have asked your employer not to withhold because you thought a treaty applied to you, and then it turns out that you are NOT eligible to claim the treaty, you will have to pay a penalty to the IRS. If you are certain that a tax-treaty exemption is available to you, and if you hold a job at Florida Tech that comes with benefits (for example, a post doc position, or a TA or GA), you must file originals of Form 8233 with the Office of Human Resources along with duplicate copies of a statement for the specific section of your country's treaty that you believe applies to you and a completed Florida Tech International Tax Questionnaire. Upon receipt of a complete package, the Form 8233 and the justification statement are sent to the IRS for review. If not returned by the IRS, your withholding status will be changed to exempt. This exemption must be requested at the beginning of every calendar year. Just because there may be a treaty between your country and the U.S., tax exemption is not automatic. **You must submit the forms to request exemption.** If you believe you are eligible to claim a treaty, but your employment at Florida Tech is not one with benefits, Florida Tech will withhold your estimated taxes at a non-treaty rate and you will have to make your treaty claim directly to the IRS with Form 8843 and the required statement.

*4. Do I really have to file tax returns and pay taxes in the U.S.? What will happen if I just don't file any tax returns?*

Federal law requires you to file tax returns; if you fail to do so, you are out of compliance with the law, which can result in serious legal difficulties with both the IRS and USCIS (formerly INS). Remember, if you earned income in the U.S., your employer has already turned over your withholding dollars to the IRS, so the IRS already knows you had income.

*5. A lot of IRS publications and forms refer to "the Substantial Presence Test." What is it, and how do I know if it applies to me?*

The Substantial Presence Test is a formula the IRS uses to determine when a nonimmigrant visa holder becomes a resident for tax purposes. J-1 researchers and scholars are subject to the substantial presence test after two years, and F-1 and J-1 students after five years.

*6. But I read that if the Substantial Presence Test doesn't apply to me, I'm an "exempt individual." Why do I have to pay taxes if I'm "exempt?"*

This is a point of great confusion resulting from the IRS's use of the word "exempt" to have different meanings in different contexts. An "exempt individual" in the context of the Substantial Presence Test only means that the person does not need to use the Substantial Presence Test to determine his or her tax status, i.e., she or he is "exempt from using the Substantial Presence Test." This does NOT mean the person is exempt from filing tax forms and/or exempt from paying taxes, however!

*7. What about Social Security Taxes? Do I have to pay these taxes, too?*

The obligation to pay Social Security (FICA) tax correlates directly with whether you are a resident or nonresident for federal tax purposes. If you are a nonresident F-1 or J-1 for federal tax purposes, you do not have to pay FICA. Employers should not withhold FICA taxes from your paycheck if you are not required to pay this tax. Once you become a resident taxpayer, however, your obligation to pay FICA taxes begins, and your employer must begin to withhold for FICA as well.

*8. I worked last summer on OPT, and my employer withheld FICA tax from my paycheck. But I was only in my third year in the U.S. as an F-1 student, so I was a nonresident for federal tax purposes and shouldn't have had FICA taxes withheld! Is there anything I can do about this?*

You can try to get a refund from your employer. (Show your employer IRS Publication 515 if they do not know the regulations.) If your employer will not give you a refund on erroneous FICA withholding, you can file IRS Form 843 directly with the IRS and request a refund on your FICA withholding.

*9. What documents do I need before I begin to fill out my tax forms?*

Everyone who files a tax return must have a Form W-2 from your employer OR a Form 1042-S (for students with fellowships or scholarships), or both. The W-2 is the legal document showing how much you earned and, of that, how much tax actually was withheld. The 1042-S is the legal document showing the dollar amount of your fellowship or scholarship, and other information required for tax filing. Your employer or fellowship granting organization is required by law to provide you with your W-2 and/or 1042-S. If you have not received your W-2 and/or 1042-S by early to mid-February, tell your department or contact the Office of the Controller.

In addition, when you sit down to do your tax forms, you should also have the following items:

- your I-94
- your passport
- your Form I-20 (for F-1s) or your Form DS-2019 (for J-1s)
- your social security number (or, alternatively, your ITIN )
- your current U.S. address
- your permanent foreign address
- address of academic institution or visa sponsor
- any fellowship or scholarship grant letters you have received from your academic institution or sponsor

*10. I am an F-1 student who did not work in the U.S. at all in 2006; my parents abroad funded me completely in 2006. Do I have to file U.S. tax returns?*

Although you do NOT need to file a 1040NR, **all F-1 and J-1 students and scholars and all F-2 and J-2 dependents are required to file Form 8843 with the IRS, even if you had no income in the U.S., by June 15.**

*11. Are there any special rules for students who want and are eligible to claim a tax treaty benefit for fellowship or scholarship income?*

Yes. Information is available on the IRS website at:

<http://www.irs.gov/businesses/small/international/article/O,,id=106254,00.html>

*12. How can I contact the U.S. Internal Revenue Service (IRS)?*

Web site: <http://www.irs.gov>

Contact information page of website: <http://www.irs.gov/contact/index.html>

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