U.S. Tax for International Students

Helpful Information from IRS Sources
Responsible for the University’s compliance
  o We CANNOT answer personal questions for employees or students
  o We do issue Form 1042-S to certain non-U.S. students
  o We do collect Form W-8 BEN from certain non-U.S. students
  o We are not involved with the VITA program

This presentation is not intended to be tax or accounting advice and cannot be relied upon for the purpose of avoiding federal tax penalties
This presentation is primarily based on IRS materials available at www.irs.gov

- Form and Instructions for 1040NR and 1040NR-EZ
- Publication 519 U.S. Tax Guide for Aliens
- Publication 4011 Foreign Student and Scholar Volunteer Guide
- Publication 4152 Electronic Toolkit for Nonresident Alien VITA Sites
- Form and Instructions for 8843
“Volunteer” Tax System

Who Must File

In the United States it is the individual’s responsibility to know what taxes must be filed with the government.

Some students and scholars think that their tax liability has been satisfied because money was withheld from their pay.

Some students and scholars come from a country where the government tells the taxpayers how much to pay and when to pay it. Some countries have a per capita tax in place of an income tax.
Consequences of Failure to File

• If no taxes are owed—no penalty from the IRS

• However, nonimmigrant alien status requires that the individual not violate any U.S. laws, including tax laws
Nonresident Alien or Resident Alien?

- Green card test
- Residency through marriage
- Substantial Presence Test

Pub. 4152, pg. 18
Pub 519, pg 4, 10
Green Card Test

- Permanent resident card
Married to a Resident

✧ If a nonresident alien is married to a citizen or resident alien, they can choose to treat the nonresident alien as a U.S. resident.
✧ Attach a statement to return.
✧ Nonresident married to another nonresident cannot file jointly
  o File jointly, report worldwide income

Pub 519, pg. 10
Pub. 4152, pg. 23
Substantial Presence Test (SPT)

- 31 days in the current year (2011)
- 183 days in the last 3 years (2009-2011)
- 2011: 1 day for 1 day
- 2010: each day counts for 1/3
- 2009: each day counts for 1/6
- Once you pass the test, you are a resident alien for tax purposes from the first day you were in the U.S. that year

Pub 519, pg 4
SPT Example 1

- Physically present in U.S. on 120 days in each of the years 2009, 2010, and 2011
- Count 120 days in 2011 (passes 31 day test)
- Count 40 days in 2010 (1/3 of 120)
- Count 20 days in 2008 (1/6 of 120)
- Total for the 3-year period = 180 days
- NOT a resident under the SPT for 2011

Pub 519, pg 4
Student on F-1 visa arrives in U.S. on June 1, 2005, stays in U.S. through 2012

- Begin counting days in 2010
- In 2010, passes 31 days on Jan 31 and passes 183 days on July 2, 2010—passes SPT, becomes resident for tax purposes
SPT Example 3

- Student on F-1 visa arrives in U.S. on Dec 1, 2005, leaves for mission outside of U.S. on June 1, 2006, returns to U.S. as student on August 31, 2008, stays in U.S. as student through 2012
- Begins counting days in 2011
- In 2011, passes 31 days on Jan 31 and passes 183 days on July 2, 2011—passes SPT
“Exempt Individual”

- Not exempt from U.S. taxes
- Exempt from counting days for SPT
- Student in U.S. on F, J, M, or Q visa
- Don’t count for first 5 calendar years
  - Just one day during the year counts as one year
- Must file Form 8843 during exempt years
  - With return or alone by June 15

Pub 519, pgs 6-7; Pub. 4011, pg. 17
**Form 8843**

**Statement for Exempt Individuals and Individuals With a Medical Condition**
For use by alien individuals only.

For the year January 1—December 31, 2011, or other tax year

Your first name and initial | Last name | Your U.S. taxpayer identification number, if any

| Fill in your addresses only if you are filing this form by itself and not with your tax return | Address in country of residence | Address in the United States |

<table>
<thead>
<tr>
<th>Part I</th>
<th>General Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Type of U.S. visa (for example, F, J, M, Q, etc.) and date you entered the United States</td>
</tr>
<tr>
<td>1b</td>
<td>Current nonimmigrant status and date of change (see instructions)</td>
</tr>
<tr>
<td>2</td>
<td>Of what country were you a citizen during the tax year?</td>
</tr>
<tr>
<td>3a</td>
<td>What country issued you a passport?</td>
</tr>
<tr>
<td>3b</td>
<td>Enter your passport number</td>
</tr>
<tr>
<td>4a</td>
<td>Enter the actual number of days you were present in the United States during:</td>
</tr>
<tr>
<td>2011</td>
<td>2010</td>
</tr>
<tr>
<td>4b</td>
<td>Enter the number of days in 2011 you claim you can exclude for purposes of the substantial presence test</td>
</tr>
</tbody>
</table>
Form 8843

Part III  Students

9 Enter the name, address, and telephone number of the academic institution you attended during 2011 ►

10 Enter the name, address, and telephone number of the director of the academic or other specialized program you participated in during 2011 ►

11 Enter the type of U.S. visa (F, J, M, or Q) you held during: 2005 □ 2006 □
2007 □ 2008 □ 2009 □ 2010 □. If the type of visa you held during any of these years changed, attach a statement showing the new visa type and the date it was acquired.

12 Were you present in the United States as a teacher, trainee, or student for any part of more than 5 calendar years?

   If you checked the “Yes” box on line 12, you must provide sufficient facts on an attached statement to establish that you do not intend to reside permanently in the United States.

13 During 2011, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to change your status to that of a lawful permanent resident of the United States?

   If you checked the “Yes” box on line 13, explain ►

For Paperwork Reduction Act Notice, see page 4.
Income Tax

- Resident aliens taxed on WORLDWIDE income
  - ALL interest, dividends, wages, rent, royalties...

- Nonresident aliens taxed only on U.S. income
  - Interest, dividends, wages, rent, royalties earned in the U.S. or from U.S. payers
  - Scholarships from U.S. payers (including BYU) in excess of tuition and books
    - Taxable scholarships: room & board, travel, research, equipment

Pub 519, pgs. 11-12, 14, 17
What to File

- Resident aliens file 1040 or 1040A or 1040-EZ
  - Same rules and deductions of U.S. citizens or permanent residents
  - See Pub. 17 of Pub. 519

Pub 519, pgs. 18,
What to File

Nonresident aliens file 1040NR or 1040NR-EZ

- Generally one personal exemption
  - Residents of Mexico, Canada, & South Korea see pg. 28 of Pub. 519
- Generally not standard deduction
  - Residents of India see pgs. 28-30 of Pub. 519

Pub 519, pgs. 18, 26, 28
What to File

Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents if all of the following apply.
1. No dependents claimed
2. Taxpayer cannot be claimed as a dependent on another person’s return.
3. The only U.S. sources of income were from wages, salaries, tips, taxable state and local income tax refunds, and scholarships and grants.
4. Taxable income (line 14) is less than $100,000.
5. The only exclusion is for scholarship and fellowship grants and the only adjustment to income is for the student loan interest deduction.
6. No tax credits claimed.
7. If married, no exemption claimed for the spouse.
8. The only itemized deduction claimed is for state and local income taxes.
(Note: Residents of India who were students or business apprentices may be able to take the standard deduction in lieu of itemized deductions for state and local income taxes).
9. The only taxes owed are income tax.
10. No claim for excess social security and tier 1 RRTA tax withheld.
11. Not filing an “expatriation tax” return
(Appplies to U.S. citizens who have lost their citizenship or long-term residents who have ended their residency status).

If all of the above conditions are not met, Form 1040NR must be filed.

Form 1040NR, U.S. Nonresident Alien Income Tax Return if any of the following applies.
1. Nonresident alien engaged in a trade or business in the United States.
2. Nonresident alien not engaged in a trade or business in the U.S.
3. Representative of a deceased person who would have had to file Form 1040NR.
4. Representative of an estate or trust that has to file Form 1040NR.

See also Publ. 4152, pgs. 31-34
Pub. 4011, pg. 17
**Form 1040NR**

**U.S. Nonresident Alien Income Tax Return**

For the year January 1, 2011, to December 31, 2011, or other tax year.

---

### Tax and Credits

- **37. Amount from line 36 (add all gross income).**
- **39. Itemized deductions from page 6, Schedule A, line 19.**
- **40. Exclusions (see instructions).**
- **41. Taxable income. Subtract line 40 from line 39 if line 40 is more than line 39, enter -0- in line 41.**
- **42. Tax (see instructions).** Check if any tax is from either Form 8814 or Form 9232.
- **43. Alternative minimum tax (see instructions).** Attach Form 6221.
- **44. Add lines 42 and 43.**
- **45. Foreign tax credit.** Attach Form 1116 if required.
- **46. Credit for child and dependent care expenses.** Attach Form 2441.
- **47. Retirement savings contributions credit.** Attach Form 8880.
- **48. Child tax credit (see instructions).**
- **49. Residential energy credits, Attach Form 5695.**
- **50. Other credits from Form 8814.**
- **51. Add line 45 through 50. These are your total credits.**
- **52. Subtract line 51 from line 44. If line 51 is more than line 44, enter -0- in line 52.**

### Other Taxes

- **53. Tax on income not effectively connected with a U.S. trade or business from page 6, Schedule NEC, line 10.**
- **55. Self-employment tax.** Attach Schedule SE (Form 1040).
- **56. Unreimbursed employee business expenses (see instructions).**
- **57. Medicare tax.** Attach Form 8849.
- **58. Additional tax on IRA's, other qualified retirement plans, etc.** Attach Form 5329 if required.
- **59. Transportation tax (see instructions).**
- **60. Additional tax on IRA's, other qualified retirement plans, etc.** Attach Form 5329 if required.
- **61. Federal income tax withheld from wages.**
- **62. Estimated tax payments and amount applied from 2010 return.**
- **63. Additional child tax credit.** Attach Form 8812.
- **64. Amount paid with respect to substantiation for tax (see instructions).**
- **65. Excess social security and Tier 1 RITA tax without (see instructions).**
- **66. Credit for federal tax paid on tips.**
- **67. Credits from Form 8962.**
- **68. Credit for credit paid with Form 1140-C.**
- **69. Add lines 59 through 68. These are your total payments.**

### Refund

- **70. Amount of line 72 you want refunded if Form 8822 is attached, check here.**
- **71. Subtract line 51 from line 60, subtract line 51 from line 60. This is the amount you owe.**

### Amount You Owe

- **72. Amount of line 73 you want to apply to your 2012 estimated tax.**
- **73. Amount you owe. Subtract line 59 from line 60. For details on how to pay, see instructions.**
- **74. Estimated tax penalty (see instructions).**

### Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)?

- **Yes. Complete below.**
- **No.**

### Sign Here

Keep a copy of this return for your records.

- **Your signature.**
- **Date.**

### Paid Preparer

- **Use Only.**
- **Name:**
- **Address:**
- **Phone:**
- **Identification:**
- **Check if self-employed:**

---

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions.
Utah follows Federal Laws

- Starts from
  - 1040 line 37
  - 1040A line 21
  - 1040EZ line 4
  - 1040NR line 36
  - 1040NR-EZ line 10

Filing Status

Generally, nonresident aliens must select either the single or the married filing separately filing status. Head of household filing status cannot be used if the taxpayer was a nonresident alien during any part of a year. Nonresidents who are married to U.S. citizens or resident aliens can choose to file a joint return for tax purposes and file as married filing jointly.

Exemption (personal/dependency) Issues

Generally, nonresident aliens can claim only one personal exemption. Nonresidents from the following countries may be able to claim their spouse and children as dependents. Everyone claimed on the return must have either a social security number or an Individual Taxpayer Identification Number (ITIN).

Canada  Mexico  India  South Korea

The exemption amount for 2011 is 3,700.

Standard Deduction

Nonresident aliens are generally not eligible for the standard deduction. For those entitled, they must use the amount for the single or married filing separately filing status.

The standard deduction amount for single and married filing separately for 2011 is 5,800.
Nonresident aliens cont’d

- Only certain credits
  - Foreign tax credit (if paid foreign tax on U.S. income)
  - Child tax credit (if child is a U.S. citizen)
- Usually not
  - Education credits
    - American, Hope, Lifetime Learning
  - Earned income credit

Pub 519, pgs. 32-33; Pub. 4011, pg. 16
Tax Information Forms

- **W-2**
  - my.byu.edu → Work → W-2

- **1042-S**
  - will be mailed by March 15

- **1098-T**
  - If you are a resident alien and need a 1098-T, email 1098T@byu.edu

---

Form 1098-T, Tuition Payments Statement
Academic institutions issue Form 1099-T to students who paid tuition during the tax year. This form helps the students calculate the educational credits. Since nonresident aliens usually cannot claim the educational credits, the form is not part of their tax return.

Pub. 4152, pg. 19
**W-2**

Form W-2 Wage and Tax Statement 2011

<table>
<thead>
<tr>
<th>Column</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wages, tips, other compensation</td>
</tr>
<tr>
<td>2</td>
<td>Federal income tax withheld</td>
</tr>
<tr>
<td>3</td>
<td>Social security wages</td>
</tr>
<tr>
<td>4</td>
<td>Social security tax withheld</td>
</tr>
<tr>
<td>5</td>
<td>Medicare wages and tips</td>
</tr>
<tr>
<td>6</td>
<td>Medicare tax withheld</td>
</tr>
<tr>
<td>7</td>
<td>Social security tips</td>
</tr>
<tr>
<td>8</td>
<td>Allocated tips</td>
</tr>
<tr>
<td>9</td>
<td>Dependent care benefits</td>
</tr>
<tr>
<td>10</td>
<td>Nonqualified plans</td>
</tr>
<tr>
<td>11</td>
<td>Other</td>
</tr>
<tr>
<td>12a</td>
<td>See instructions for box 12</td>
</tr>
<tr>
<td>12b</td>
<td></td>
</tr>
<tr>
<td>12c</td>
<td></td>
</tr>
<tr>
<td>12d</td>
<td></td>
</tr>
</tbody>
</table>

Employer's name, address, and ZIP code:

BRIGHAM YOUNG UNIVERSITY  
D-55 ASB  
PROVC UT 84602

Employee's name, address, and ZIP code:

Employer's state ID number:

UT 11691946-005-WTH

State tax rate:

17 State income tax

Local wages, tips, etc.:

18 Local income tax

Locality name:

20 Locality name

Copy B-To Be Filed With Employee's FEDERAL Tax Return

This information is being furnished to the Internal Revenue Service.

O&M No. 15-15-6068

Dept. of the Treasury - IRS

Visit the IRS website at www.irs.gov/efax
<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Income code</td>
</tr>
<tr>
<td>2</td>
<td>Gross income</td>
</tr>
<tr>
<td>3</td>
<td>Withholding allowances</td>
</tr>
<tr>
<td>4</td>
<td>Net income</td>
</tr>
<tr>
<td>5</td>
<td>Tax rate</td>
</tr>
<tr>
<td>6</td>
<td>Exemption code</td>
</tr>
<tr>
<td>7</td>
<td>Federal tax withheld</td>
</tr>
<tr>
<td>8</td>
<td>Withholding by other agents</td>
</tr>
<tr>
<td>9</td>
<td>Total withholding credit</td>
</tr>
<tr>
<td>10</td>
<td>Amount repaid to recipient</td>
</tr>
<tr>
<td>11</td>
<td>Withholding agent's EIN</td>
</tr>
<tr>
<td>12a</td>
<td>WITHHOLDING AGENT'S name</td>
</tr>
<tr>
<td>12b</td>
<td>Address (number and street)</td>
</tr>
<tr>
<td>12c</td>
<td>Additional address line (room or suite no.)</td>
</tr>
<tr>
<td>12d</td>
<td>City or town, province or state, country, ZIP or foreign postal code</td>
</tr>
<tr>
<td>13a</td>
<td>RECIPIENT'S name</td>
</tr>
<tr>
<td>13b</td>
<td>Recipient code</td>
</tr>
<tr>
<td>13c</td>
<td>Address (number and street)</td>
</tr>
<tr>
<td>13d</td>
<td>Additional address line (room or suite no.)</td>
</tr>
<tr>
<td>13e</td>
<td>City or town, province or state, country, ZIP or foreign postal code</td>
</tr>
<tr>
<td>14</td>
<td>Recipient's U.S. TIN, if any</td>
</tr>
<tr>
<td>15</td>
<td>Recipient's foreign tax identifying number, if any</td>
</tr>
<tr>
<td>16</td>
<td>Country code</td>
</tr>
<tr>
<td>17</td>
<td>NOI's/FLOW-THROUGH ENTITY'S name</td>
</tr>
<tr>
<td>18</td>
<td>Country code</td>
</tr>
<tr>
<td>19a</td>
<td>NOI's/Entity's address (number and street)</td>
</tr>
<tr>
<td>19b</td>
<td>Additional address line (room or suite no.)</td>
</tr>
<tr>
<td>19c</td>
<td>City or town, province or state, country, ZIP or foreign postal code</td>
</tr>
<tr>
<td>20</td>
<td>NOI's/Entity's U.S. TIN, if any</td>
</tr>
<tr>
<td>21</td>
<td>PAYER'S name and TIN (if different from withholding agent's)</td>
</tr>
<tr>
<td>22</td>
<td>Recipient account number (optional)</td>
</tr>
<tr>
<td>23</td>
<td>State income tax withheld</td>
</tr>
<tr>
<td>24</td>
<td>Payer's state tax no.</td>
</tr>
<tr>
<td>25</td>
<td>Name of state</td>
</tr>
</tbody>
</table>
Qualified scholarships not taxable
  - Tuition
  - Required books and equipment

Nonqualified scholarships have to be included on tax return
  - Amount more than tuition and books
  - Room and board
  - Travel to/from home country
When to File

 Returns generally due April 15\textsuperscript{th}
  o April 17, 2011 this year
 File Form 4868 to extend to October 15\textsuperscript{th}
  o Does NOT extend deadline to pay tax

Pub 519, pg. 46
Some treaties exempt scholarship and/or personal income
See Pub 519, pgs. 56-60
See Pub. 4011 pgs. 5-12
See Pub. 901
<table>
<thead>
<tr>
<th>Bangladesh</th>
<th>Morocco</th>
</tr>
</thead>
<tbody>
<tr>
<td>China, People’s Republic of</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Commonwealth of Independent States</td>
<td>Norway</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Pakistan</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Philippines</td>
</tr>
<tr>
<td>Egypt</td>
<td>Poland</td>
</tr>
<tr>
<td>Estonia</td>
<td>Portugal</td>
</tr>
<tr>
<td>France</td>
<td>Romania</td>
</tr>
<tr>
<td>Germany</td>
<td>Russia</td>
</tr>
<tr>
<td>Iceland</td>
<td>Slovak Republic</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Slovenia</td>
</tr>
<tr>
<td>Israel</td>
<td>Spain</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Thailand</td>
</tr>
<tr>
<td>Korea, South</td>
<td>Trinidad and Tobago</td>
</tr>
<tr>
<td>Latvia</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Ukraine</td>
</tr>
<tr>
<td></td>
<td>Venezuela</td>
</tr>
</tbody>
</table>

Pub. 4011, pgs. 5-6
Special Treaty Exceptions

India Treaty
Article 21(2)

An Indian student may take a standard deduction equal to the amount allowable on Form 1040 and may be able to claim the personal exemptions for a nonworking spouse and U.S.-born children.

Treaty benefits for a scholar from India are very different from those for a student. The scholar benefit for income code 18 is lost retroactively if the visit exceeds 2 years.

The standard deduction for single taxpayers in 2011 is $5,800. The deduction for married filing separately is $5,800.

Nonresident aliens can't file a joint return. Even though a student from India may be able to take an exemption for a nonworking spouse, this is not considered a joint return. Thus, the standard deduction for married filing separately must be used. In determining their tax liability, they must use the tax tables or tax rate schedules for married filing separately.
Special Treaty Exceptions

China Treaty
Article 19, 20(c)

Almost all U.S. tax treaties are limited to a specific number of years and may not be available for residents for tax purposes.

The U.S. treaty with China provides that a scholar is exempt from tax on earned income for 3 years. After 2 years, a scholar will become a resident alien for tax purposes but is still entitled to 1 more year of tax benefits under the treaty. The treaty also provides that students have an exemption of up to $5,000 per year for income earned while they are studying or training. In most cases, the student will become a resident for federal tax purposes in their sixth calendar year. Students from China can continue to claim the treaty benefits on their resident alien tax return (if they still meet the definition of a student).

Canada Treaty
Article 15

The students and scholars are permitted to use Article 15 of the tax treaty, which applies to dependent personal services.

The tax treaty with Canada is different from all other tax treaties because it (1) exempts all earned income if the nonresident earned not more than $10,000 in the tax year, but (2) taxes all income if the nonresident earned more than $10,000. This treaty benefit is lost if the nonresident becomes a resident for tax purposes.
BYU VITA is not trained for 1040NR or 1040NR-EZ

Glacier Software—International Services

http://www.irs.gov/businesses/small/international/article/0,,id=96431,00.html

Instructions to 1040NR and 1040NR-EZ

Pub. 519, pgs. 63-64 lists possible resources

Pub. 4152, FAQ at end of document

Local professionals