Scope Limitation Disclaimer: The following handout is limited to a discussion of federal income tax reporting requirements for international students and scholars who live and work in Texas. Texas does not have an individual state income tax. Individuals who receive income while living or working in another state might have state income tax reporting requirements that are not covered in this material. Please consult with a competent state income tax preparer if you have a question about your state income tax reporting obligation.

Treasury Circular 230 Disclosure: The following handout is provided for educational use within the context of this workshop presentation. If you have a concern about your own income tax reporting obligation, please seek help from a competent tax preparer knowledgeable about U.S. income tax laws, tax treaties, and Internal Revenue Service (IRS) rules concerning international students and scholars. Unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses.
I. Introduction

Thesis: Visiting scholars and international students working in the U.S. are taxed on their U.S. income based on two levels of tax rules: (1) U.S. tax law, and possibly (2) a bilateral tax treaty between the U.S. and the country in which the individual is a resident.

II. Residency Status for Federal Tax Purposes

IRS: Resident for tax purposes (nonresident alien or resident alien)
CIS: Permanent legal resident (resident alien)

The term “resident for tax purposes” is an IRS term involving tax status. An international is classified as either a resident (of the U.S.) or nonresident for tax purposes according to four criteria: green card test, substantial presence test, residency through marriage, and dual-status alien. It is possible to be a resident of the U.S. for tax purposes, and still be a nonresident of the U.S. for immigration purposes.

If you are a resident for tax purposes for the entire year, then you would use the federal income tax forms (Form 1040, 1040A, or 1040EZ) applicable to U.S. citizens, residents, and nationals in order to report your income and taxes as an individual. You are also entitled to all of the tax benefits applicable to U.S. citizens, residents, and nationals when preparing your tax return, such as education credits, earned income credit, and child tax credit.

If you are not a resident for tax purposes, then you would use the federal income tax forms (Form 1040NR or 1040NR-EZ) applicable to nonresident individuals.

The next few pages will focus on a discussion of these four criteria, to determine whether or not an individual is a resident for tax purposes.

A. Green Card Test

If you applied for and have received approval from Citizenship & Immigration Services (CIS) to stay in the U.S. permanently, then the wallet-size Permanent Resident Card that CIS issues is sometimes called a “green card”. The date that permanent residency began is shown on the card. This card must be kept with you at all times, similar to a driver’s license. In addition to the Permanent Resident Card, CIS also mails the applicant a letter-size notice that serves as a legal document of permanent residency. It is very important to keep this notice in a secure place, since it is proof of one’s lawful, permanent residency status. Beginning on the effective date of the notice from CIS, the person is a resident for tax purposes based on the green card test. Of course, simultaneously that individual has also become a permanent resident of the U.S. for immigration purposes. In order to determine residency status (for tax purposes) prior to the date of permanent residency, the individual must rely on one of the other three criteria to determine
residency status. Refer to dual-status alien on page 6 regarding one’s tax status during the first year of permanent residency.

**B. Substantial Presence Test**

Another way that you can become a resident for tax purposes is by living in the U.S. for an extended time period. For some people, such as someone who has a working permit (H-1B visa) from the CIS, how many days one is in the U.S. each year will determine if one is a resident for tax purposes in that year. Note that the following calculation might not apply to you for up to the first five years that you are in the U.S. Refer to the discussion of exempt individual on the next few pages.

First, one must be physically present in the U.S. for at least 31 days in the most recent calendar year (eg: 2014).

Second, one must calculate the days of physical presence in the U.S. based on the following formula. If you entered or left the U.S. during a year, count each day that you entered or left as being in the U.S. the entire day.

Count all the days in the most recent calendar year (eg: 2014).

Count 1/3 of the days in the second most recent calendar year (eg: 2013).

Count 1/6 of the days in the third most recent calendar year (eg: 2012).

Add up the sum of the above three calculations. If the total is 183 days or more, then that person has passed the second part of the substantial presence test for the most recent calendar year (eg: 2013). Assuming that person was also physically present in the U.S. for at least 31 days in 2014, then that person is considered a resident of the U.S. for tax purposes for 2014, even if he or she is not a permanent resident of the U.S. according to the CIS.

Here is an example of this calculation, using the years 2012 to 2014. This example assumes the individual entered the U.S. on 11/27/2012, left the U.S. on 6/4/2014, and resided continuously in the U.S. between those dates.

<table>
<thead>
<tr>
<th>Days in U.S.</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>155</td>
<td></td>
<td></td>
</tr>
<tr>
<td>365</td>
<td>X 1/3 = 121.7</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>X 1/6 = 5.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Add total</td>
<td>282.5</td>
</tr>
</tbody>
</table>

Since the result of 282.5 days is 183 days or more, that person has passed this part of the test. Also, because he or she lived in the U.S. for at least 31 days in 2014, this person is a resident of the U.S. for tax purposes in 2014, assuming this person is not exempt from the substantial presence test.
**B1. Exempt individual**

During the first two calendar years (for scholars) or the first five calendar years (for students) that you are in the U.S., you are exempt from the substantial presence test. You are called an “exempt individual”. This means that you are considered a nonresident for tax purposes, and you would not normally become a resident for tax purposes during this time. There are some exceptions to this general rule about being exempt from the substantial presence test.

**An exempt individual is not exempt from U.S. income tax.** The term “exempt individual” means that the days you are physically present in the U.S. do not count for the substantial presence test. The clock does not start until you are no longer an exempt individual (starting January 1st of your third or sixth calendar year). This exempt individual status is based on U.S. tax law and is not optional. You do not choose whether or not you are exempt from the substantial presence test. It is determined based on your current visa classification and how long you have lived in the U.S. If you violate the requirements of your visa (either by not maintaining your status as a student or scholar with your university, or by engaging in activities prohibited by U.S. immigration laws), then you would lose your exempt individual status.

The definition of exempt individual status extends to immediate family members of the international student or scholar, which includes a spouse and unmarried children under age 21 who live with the student or scholar.

There is a subtle difference between students and scholars in determining exempt individual status, explained below.

**B1a. Student (and immediate family members)**

If you are in the U.S. with an F1 or J1 visa in order to study, you and your immediate family members (with F2 or J2 visas) are exempt from the substantial presence test for up to five calendar years with the F or J visa. Any part of a calendar year that you are physically present in the U.S. counts as a full year. Note that you do not have to enter the U.S. with an F or J visa. If you change your visa status to F1 while in the U.S., you become an exempt individual starting on the date that the F1 visa was issued, subject to the five calendar year time limit. An example of this is when someone with an H-1B visa has a child living in the U.S. with an H4 visa. Assuming the child graduates from high school in the U.S., that individual can apply for an F1 visa while in the U.S. in order to attend college as an international student. Starting with the calendar year in which the son or daughter begins college with an F1 visa, he or she is an exempt individual for up to five calendar years.

**B1b. Teacher or researcher (and immediate family members)**

If you entered the U.S. with a J1 visa in order to teach or to do research (not to study), you and your immediate family members (with J2 visas) are exempt from the substantial presence test for up to two calendar years. Any part of a calendar year that you are physically present in the U.S. counts as a full year. An additional condition is that the IRS considers any time you were in the U.S. as an exempt individual in the six years prior to the year of the tax return (eg: 2008 to 2013).
to determine if you are exempt from the substantial presence test for the year of the tax return. For example, if you were a student in the U.S. with an F1 visa, you left the U.S., and then you returned to the U.S. sometime later with a J1 visa in order to teach or to do research, the time spent in the U.S. as a student anytime in the prior six years would count toward your two calendar years as an exempt individual.

**B1c. Form 8843**

International students and scholars (and their family members in the U.S.) must prepare IRS Form 8843 when they are exempt from the substantial presence test for either the first two calendar years (for scholars) or the first five calendar years (for students) that they are in the U.S. This form is a statement in an IRS format with specific questions about your status as a student or scholar. It is important that you correctly complete this form for yourself and each member of your family that is in the U.S. with you as an F2 or J2 visa holder. Failure to file this form with the IRS could result in the loss of exempt individual status for yourself or your family member. When completing this form for a family member, the educational institution information should be filled out based on the F1 or J1 visa holder, even though the form is for a family member. If you were at more than one university during the year, report the last university you were at during the year. Each person who has an F or J visa in the family must have his or her own IRS Form 8843, for each year that the person is an exempt individual. The parent of a young child can sign the form on behalf of the child. Be sure to mail Forms 8843 with your tax return, if you are filing a tax return. Refer to page 8 for when and where to mail Form 8843.

**B2. Closer connection to a foreign country**

Besides the exempt individual exception from the substantial presence test, there is another way to be treated as a nonresident. This applies even if one meets the substantial presence test. If you maintain your primary residence in a country outside the U.S. (such as Mexico or Canada), and commute to the U.S. to work or study, then you have a closer connection to a foreign country. Of course you would still need a visa in order to be in the U.S. Refer to IRS Form 8840 and page 6 of 2013 IRS Publication 519 if you believe this applies to you.

**B3. Requirement to file an information return**

If you meet the qualifications of an exempt individual (Form 8843) or closer connection to a foreign country (Form 8840), then you should report your nonresident tax status to the IRS. Even if you don’t need to file a tax return, there is a requirement to file Form 8843 (Statement for Exempt Individuals) or Form 8840 (Closer Connection Exception Statement for Aliens), in order to notify the IRS that you are a nonresident for tax purposes. Otherwise, the IRS may consider you to be a resident for tax purposes. For 2014, the deadline to timely file these information returns is April 15, 2015. Mail Form 8843 or Form 8840 to the following address.

Department of the Treasury  
Internal Revenue Service  
Austin, TX 73301-0215
C. Residency Through Marriage

A nonresident alien who does not meet either the green card test or the substantial presence test might still be a resident for tax purposes if, as of December 31st of the tax year covered by the tax return, his or her spouse is a U.S. citizen, permanent legal resident (for immigration purposes), or has met the substantial presence test (ie, “resident for tax purposes”). Note that this is not a requirement, but it is a choice. Both spouses must agree to treat the nonresident spouse as a resident for tax purposes. To do so, they must file a joint tax return (1040, 1040A, or 1040EZ), and they must attach a self-prepared statement as the last page of their tax return, after all other schedules and attachments. No IRS preprinted form exists for this purpose. A suggested form for this purpose is at the end of this handout. The statement must include the following:

State that one spouse was a U.S. citizen or resident on December 31 of the tax year, and that the other spouse was a nonresident alien on that same date. Both spouses agree to treat the nonresident alien spouse as a resident of the U.S. for the entire year. List the name, address, and social security number (or individual taxpayer identification number) of each spouse. Both spouses sign the statement, as well as the income tax return for that year.

In subsequent years, the spouses can choose whether to file joint or separate tax returns. The election for the nonresident spouse to claim residency through marriage continues as long as the spouses remain married. There is no need to resubmit a copy of the statement each year.

It is important to note that if a nonresident alien spouse chooses to be treated as a resident for tax purposes, the nonresident spouse must report and pay tax on his or her worldwide income (rather than just his or her U.S. source income). The nonresident spouse might also lose the benefit of any tax treaty provisions that he or she would otherwise be entitled to claim. The benefits of filing as a resident include lower tax rates for married filing jointly, the ability to claim dependents, certain tax credits (such as education credits, child tax credit, and earned income credit) and the ability to claim either the standard deduction or expanded itemized deductions. For internationals who are married to a U.S. citizen or resident spouse as of December 31st of the tax year, filing a resident income tax return jointly with one’s spouse is usually better than filing a nonresident income tax return.

D. Dual-status Alien

A dual-status alien is someone who is a resident of the U.S. (for IRS tax purposes) for part of the year, and is a nonresident of the U.S. for the remainder of the year. It is possible for an international student or scholar to become a resident of the U.S. for tax purposes before they return to their home country. If you become a resident of the U.S. (for tax purposes) under the substantial presence test, when you finally return to your home country you will cease to be a resident of the U.S. for tax purposes. The date you leave the U.S. is referred to as your residency termination date. You are no longer a resident of the U.S. when you move out of the U.S.

Please refer to Chapter 6 (pages 32-34) of 2014 IRS Publication 519 if you believe this area of tax law might apply to you.
III. How to Report Income

A. Resident Aliens

Residents for tax purposes are taxed on their worldwide income, the same as U.S. citizens. They enjoy the same benefits, filing status (e.g., they can file as married filing jointly), and claim dependents as U.S. citizens. The tax reporting of residents is the same as U.S. citizens. Resident aliens use the same tax forms (1040, 1040A, or 1040EZ) as U.S. citizens. Refer to the discussion on pages 12-13 for how to claim tax treaty benefits as a U.S. resident for tax purposes.

B. Nonresident Aliens

B1. U.S Source Income versus Foreign Source Income

U.S. source income includes both wages or compensation you earn while working in the U.S., as well as other income you receive from a U.S. source. Generally, as a nonresident student or scholar, you should report on your IRS income tax return all income you receive while living in the U.S., as well as income you receive from a U.S. source (such as your final paycheck after you move back to your home country) while living outside the U.S. Some tax treaties exempt certain foreign source income you receive while living in the U.S. Also, according to U.S. tax laws, nonresident students and scholars should not report U.S. bank interest on a nonresident tax return.

The distinction between U.S. source income and foreign source income is important because nonresidents are not taxed on income they receive from non-U.S. sources while living outside the U.S. (foreign source income). Foreign source income generally is not reported on a nonresident tax return. Nonresidents pay income tax only on their U.S. source income.

B2. Who is subject to filing a tax return (F1 visa, J1 visa)?

B2a. Who must file?

The answer to this question depends on the amount of income you have, the types of income you have, how long you have been in the U.S. as an international student or scholar, and other factors. Also, there are two different tax forms that apply to international students and scholars. IRS Form 1040NR or Form 1040NR-EZ is a U.S. individual income tax return. IRS Form 8843 is an information return.

B2b. Who should file?

Even if you are not required to file a tax return, you should still file one if you had income tax withheld. Filing a nonresident income tax return (IRS Form 1040NR or Form 1040NR-EZ) is the only way for you to receive a refund of withheld federal income tax. Note that there are separate forms (IRS Form 843 and Form 8316) to request a refund for Social Security and Medicare taxes withheld in error. Refer to pages 14-16 for how to request a refund.
B2c. Who should not file?

If you (and anyone in your family) did not have income in 2014 and did not have income tax withheld, you don’t need to file a U.S. income tax return. But you should still file a statement claiming exempt individual status as discussed earlier under “Form 8843” (page 5).

B3. Income threshold for filing a nonresident tax return

Prior to 2006, the income threshold was $0. In the past, for each year that you had any income while you were in the U.S., generally you were required to prepare a U.S. income tax return for that year. Starting with 2006, the income threshold changed to the personal exemption amount, which was $3,300 for 2006. **In 2014, if you are a nonresident for income tax purposes, and you have income of more than $3,950 while living in the U.S., then you must prepare IRS Form 1040NR or Form 1040NR-EZ to report your income while you are living in the U.S.** As a nonresident, you generally are not required to report to the IRS any income you receive from non-U.S. sources while you are outside the U.S. The source of the income (inside U.S. or outside U.S.) and where you are living when you receive the income determines whether or not you must report the income on a U.S. income tax return.

B4. Possible consequences for failure to file tax forms

B5. Tax filing status

Single (if not married) or married filing separately (if married) are the only filing statuses available on a nonresident tax return. Residency through marriage means you can use the married filing jointly filing status on a resident tax return. Refer to page 6 above.

B6. When and where to submit a nonresident tax return

The IRS does not accept electronically filed (e-file) nonresident tax returns. This also includes resident tax returns that include Form 8833 Treaty-Based Return Position Disclosure, in order to claim the benefits of a tax treaty on a resident tax return. Refer to pages 12-13 for a discussion of Form 8833. The same is true for submitting Form 8843 to report that an individual is exempt from the substantial presence test for that tax year. Mail a nonresident tax return (or a resident tax return that includes Form 8833) to the following address.

<table>
<thead>
<tr>
<th>If no payment is included:</th>
<th>If you are sending payment with the return:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of the Treasury</td>
<td>Department of the Treasury</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>Internal Revenue Service</td>
</tr>
<tr>
<td>Austin, TX 73301-0215</td>
<td>P.O. Box 1303</td>
</tr>
<tr>
<td></td>
<td>Charlotte, NC 28201-1303</td>
</tr>
</tbody>
</table>

The due date for mailing 2014 tax returns and Form 8843 is April 15, 2015. You may request an extension of time to file the income tax return until October 15, 2015 by submitting Form 4868 by April 15, 2015. The postmark date determines the date the return is submitted to the IRS.
IV. How to Claim Tax Treaty Benefits

A. Personal Exemptions for Spouse and Dependents

Most nonresidents cannot claim a spouse or dependent on his or her tax return. Students and scholars from Canada, Mexico, South Korea, and India might be able to claim their spouse and/or dependents on their tax return. Note that if you are from India, only students and business apprentices from India may claim their spouse, whereas both students and scholars from India may claim their children born in the U.S.

In the next few sections, the quoted material are excerpts from 2007 IRS Publication 678-FS, Foreign Student and Scholar Text (pages 4-2 and 4-3), which is used by IRS Volunteer Income Tax Assistance (VITA) volunteers.

A1. Exemptions for persons from Canada or Mexico

“Residents of Canada or 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.”

“Dependents can be claimed if they meet all the tests for dependency listed in Publication 678, VITA/TCE Volunteer Student Guide, and Publication 17, Your Federal Income Tax Guide.”

A2. Exemptions for persons from South Korea

“Residents of the Republic of Korea (South Korea), may be able to claim a personal exemption for a spouse. The spouse must live with the taxpayer. If the student or scholar also has income from outside the United States, the exemption will have to be prorated. See IRS Publication 519 for more information.”

“Dependents must live with the nonresident in the U.S. at least part of the year. The dependency exemption will need to be prorated if the nonresident has both U.S.-source income and foreign income.”

A3. Exemptions for persons from India

“Some nonresidents from India are eligible to claim a personal exemption for a spouse. The deduction applies only to students and business apprentices. A student can claim an exemption for a spouse if the spouse had no gross income during the year and cannot be claimed on someone else’s U.S. return. When completing Form 1040NR, write the spouse’s information on line 7c.”

“Dependents can be claimed if they were not admitted to the United States on an F-2, J-2, or M-2 visa. They must also meet the tests for dependency listed in Publication 678, VITA/TCE Volunteer Student Guide, and Publication 17, Your Federal Income Tax Guide.”
B. Standard Deduction

Most nonresidents can’t claim the standard deduction on Form 1040NR or Form 1040NR-EZ. Instead, they may claim itemized deductions on page 3 of Form 1040NR (Schedule A). Itemized deductions on Form 1040NR are limited to state and local income taxes withheld or paid (there are none in Texas), gifts to U.S. charities, casualty and theft losses, unreimbursed job-related expenses, and certain miscellaneous itemized deductions (such as gambling losses to the extent of gambling winnings, and fees paid for tax preparation services). The exception to this limitation is that students and business apprentices from India may claim the standard deduction. If you are a nonresident student from India and your itemized deductions are less than the standard deduction amount of $6,200, then write “Standard deduction allowed under U.S.-India tax treaty” on the line that says Itemized deductions, and do not complete Schedule A on page 3 of Form 1040NR. **The amount of the standard deduction is $6,200 for single or married nonresidents in 2014.** Treaty article 21(2) in the U.S.-India tax treaty explains that a student from India “shall be entitled during such education or training to the same exemptions, reliefs, or reductions in respect of taxes available to residents” of the United States. This treaty article does not apply to scholars from India. Refer to 2013 IRS Publication 519, chapter 5, “Itemized Deductions” section, for the paragraph titled “Students and business apprentices from India.”, which appears in the bottom left column on page 28.

C. Income Exempt Under Tax Treaty

In order to claim the benefits of a tax treaty, an international student or scholar should complete Form 8233 (or a substitute form provided by the employer) and give it to his or her employer (in the case of wages) or university (in the case of scholarships or fellowship grants) at the start of work the first year, and again at the start of each calendar year in which you are entitled to a treaty exemption. If the employer or university receives Form 8233, normally it will issue Form 1042-S in January after the year-end to report the income paid to the international that is exempt from U.S. income tax under the tax treaty. If the international student or scholar fails to submit Form 8233 to his or her employer or university, or the employer fails to exclude the exempt income from income tax withholding, the international student or scholar may still claim a treaty exemption on his or her IRS income tax return. To verify that the amount reported on Form W-2 excludes the treaty exempt wage amount, compare the gross wages in Box 1 of Form W-2 to the year-to-date gross wages reported on the final pay stub for the tax year. If the amounts are substantially different, there might have been a Form 1042-S issued for the wage income that is exempt under tax treaty.

Please note that the treaty time period for student wages exempt from U.S. tax is on a calendar year basis, whereas the treaty time period for wages of scholars, teachers, and researchers exempt from U.S. tax is generally on an anniversary date basis, starting on the date that the scholar enters the U.S. with the J1 visa.

**C1. Student Wages (Form 1042-S income code 19)**

If you are an international student with an F1 or J1 visa, depending on which country you are from, you might be able to claim a tax treaty exemption of between $2,000 and $9,000 of student
wage income from being taxed for U.S. income tax purposes. Generally the treaty exemption for students is limited to the first five calendar years that the international student is in the U.S. However there is no set time limit for students from Belgium, Bulgaria, China, The Netherlands, and Pakistan.

For example, a student from China may exclude up to $5,000 of student wages from U.S. income tax, for as long as the student complies with the terms of his or her F1 student visa. This treaty exemption includes wages earned on Curriculum Practical Training (CPT) or Optional Practical Training (OPT), so long as the student’s visa status has not changed from F1.

During the first five calendar years in the U.S., a student from China would report the student wages exempt from U.S. income tax on Form 1040NR, line 22, or on Form 1040NR-EZ, line 6. The treaty exempt amount on this line is not included in the calculation of adjusted gross income or taxable income. Be sure to explain the treaty exemption you are claiming on page 5, item L of 2014 Form 1040NR or on page 2, item J of 2014 Form 1040NR-EZ. The treaty article is 20(c) for wage income paid to an international student from China.

Because exempt individual status (for the substantial presence test) lasts only five calendar years under U.S. tax law, a student from China might become a resident for tax purposes during the time that he or she is an international student. Yet the treaty exemption for students from China is valid for as long as the student from China maintains his or her student status. In order to claim the $5,000 treaty exemption on a regular U.S. income tax return (Form 1040, 1040A, or 1040EZ), the student from China would prepare Form 8833 to report student wage income exempt from U.S. income tax (up to $5,000). The student from China would not report that amount of income as wages on Form 1040, 1040A, or 1040EZ. Refer to the discussion on pages 12-13 for more information about Form 8833.

C2. Scholarship or Fellowship Grants (Form 1042-S income code 15)

If you are an international student with an F1 or J1 visa, depending on which country you are from, you might be able to claim a tax treaty exemption for scholarship or fellowship grant income from being taxed for U.S. income tax purposes. Generally the treaty exemption for students is limited to the first five calendar years that the international student is in the U.S. However there is no set time limit for students from Bangladesh, China, Germany, and Pakistan.

For example, a student from China may exclude an unlimited amount of scholarship income from U.S. income tax, for as long as the student complies with the terms of his or her F1 student visa. Refer to the explanation earlier on this page for student wage income, for a student from China. Report the scholarship income exempt under the U.S.-China tax treaty in the same way, although the amount and treaty article are different. The treaty article is 20(b) for scholarship or fellowship grants paid to an international student from China.

C3. Wage Income of Visiting Scholars (Form 1042-S income code 18)

If you are a visiting teacher, researcher, professor, or lecturer with a J1 visa, depending on which country you are from, you might be able to claim a tax treaty exemption for wage income from
being taxed for U.S. income tax purposes. Generally the treaty exemption for scholars is limited to the first two years (from the date of arrival) that the visiting scholar is in the U.S. However the time limit is three years from the date of arrival for scholars from China and Greece. Depending on the tax treaty involved, the time period ends the day before the second or third anniversary date when the scholar arrived in the U.S.

For example, the wages of a Postdoctoral Research Fellow from China is exempt from U.S. income tax for three years starting on the date of arrival in the U.S.. Assume that this scholar from China arrived in the U.S. on 8/20/2013. Under the U.S.-China tax treaty, the three year treaty exemption time period ends 8/19/2016. Report the entire amount of 2014 gross pay from research on 2014 Form 1040NR, line 22, or on 2014 Form 1040NR-EZ, line 6. The treaty exempt amount on this line is not included in the calculation of adjusted gross income or taxable income. Be sure to explain the treaty exemption you are claiming on page 5, item L of 2014 Form 1040NR or on page 2, item J of 2014 Form 1040NR-EZ. The treaty article is 19 for wage income paid to a scholar from China.

Because exempt individual status (for the substantial presence test) lasts only two calendar years under U.S. tax law (2013 and 2014 in this example), a research scholar from China is subject to the substantial presence test and might become a resident for tax purposes during the third calendar year in the U.S. (2015 in this example). Yet the treaty exemption for scholar wages is valid for three years on an anniversary date basis. In order to claim the treaty exemption on a regular U.S. income tax return (Form 1040, 1040A, or 1040EZ) in 2015 and through 8/19/2016, the research scholar from China would prepare Form 8833 each of those two years, in order to report the amount of wage income exempt from U.S. income tax. The research scholar from China would not report that amount of income as wages on Form 1040, 1040A, or 1040EZ. Refer to the discussion below for more information about Form 8833.

In order to learn the specific provisions of articles 19, 20(b), and 20(c) of the U.S.-China tax treaty, you can download a copy of the treaty from the IRS web site at http://www.irs.gov/businesses/international/article/0,,id=169483,00.html. Summary information about this tax treaty is also available in IRS Publication 901 U.S. Tax Treaties.

Note that nonresident students and scholars should not be taxed for Social Security and Medicare purposes. Refer to the discussion on pages 14-16 regarding a nonresident’s exemption from Social Security and Medicare taxes under U.S. tax law.

**C4. Form 8833 Treaty-Based Return Position Disclosure**

An international student or visiting scholar may become a resident for tax purposes under one of the four criteria identified on pages 2-6. In order to claim a tax treaty benefit as an international student or a visiting scholar on a resident tax return, the taxpayer must use Form 8833. Note that this only applies if the treaty has an “exception to the saving” clause that applies to students and/or scholars, based on the treaty articles included in the exception.
The following excerpt from the U.S.-China tax treaty protocol 1, paragraph 2 is an example of the tax saving clause with the exception included (second sentence) for treaty articles 19 (Teachers, Professors, and Researchers) and 20 (Students), which are cited in bold font for emphasis.

2. Notwithstanding any provision of the Agreement, the United States may tax its citizens. Except as provided in paragraph 2 of Article 8, paragraph 2 of Article 17, and Articles 18, 19, 20, 22, 23, 24 and 26 of this Agreement, the United States may tax its residents (as determined under Article 4).


The term “saving clause” refers to the tax treaty provision that allows the U.S. government to tax residents of the U.S. for tax purposes without regard to any tax treaty benefit. In other words, the U.S. government will not forgo the collection of income tax due to a tax treaty benefit once an individual becomes a resident of the U.S. for tax purposes (i.e., tax saving for the government).

The term “exception to the saving clause” refers to a statement or paragraph within or following the saving clause that specifically allows for certain treaty benefits to be claimed even after a nonresident becomes a resident of the U.S. for tax purposes. (i.e., tax saving is not applied).

Note that the term “saving clause” does not appear in the tax treaty, even though the wording in the tax treaty includes this provision. In the case of the U.S.-China tax treaty, the saving clause appears in Protocol 1, which is an addendum to the tax treaty. In other tax treaties, the saving clause is included within the treaty as a specific article or provision near the beginning or end. One must carefully read the tax treaty and any addenda in order to determine if there is an exception tied to the saving clause that would benefit a taxpayer who becomes a U.S. resident for tax purposes. IRS Publication 901 U.S. Tax Treaties does not identify which tax treaties have an exception to the saving clause. Not all tax treaties include exceptions to the saving clause.

The exception to the saving clause only applies for so long as the U.S. resident taxpayer is eligible to claim the treaty benefit as if they were a nonresident for tax purposes. Once the taxpayer changes his or her visa (such as from J1 to H-1B), the treaty benefit is lost on the date that the visa change is effective. The same is true if an individual leaves the U.S. with one type of visa and enters the U.S. with a different type of visa. If the visa classification changes, the exception to the saving clause for the treaty article that relates to the prior visa classification (e.g., visiting research scholar with a J1 visa) would no longer apply to a U.S. resident for tax purposes under the new visa classification (e.g., temporary guest worker with an H-1B visa).

An F1 student who is on Curriculum Practical Training (CPT) or Optional Practical Training (OPT) is still considered an F1 student in terms of his or her visa classification. If the F1 student becomes a resident of the U.S. for tax purposes and is working under CPT or OPT authorization, the F1 student would still be eligible to claim any tax treaty benefit for students that is included in the exception to the saving clause in the tax treaty.
V. Exemption From Social Security and Medicare Taxes

A. International Students and Scholars

Under U.S. tax law, nonresident students and scholars with an F1 or J1 visa are exempt from withholding or paying Social Security and Medicare taxes as long as they remain nonresidents for tax purposes. These taxes are also referred to as FICA taxes, which stands for Federal Insurance Contributions Act. Under the substantial presence test, normally U.S. residency begins on January 1\textsuperscript{st} of the third calendar year (for scholars) or sixth calendar year (for students), and U.S. residency continues until the student or scholar moves out of the U.S. The employer would begin withholding Social Security and Medicare taxes starting January 1\textsuperscript{st} in the first year of U.S. residency (third or sixth calendar year).

There is no specific IRS form that you prepare to request this exemption from Social Security and Medicare taxes. Normally the employer should identify nonresident students and scholars who are exempt from FICA tax as part of the hiring process. The Office of International Affairs, Visa Office, or International Student Office might request the necessary identifying information (visa type, date of entry in the U.S.) at the time the student or scholar begins employment, in order to notify the university’s Payroll Office not to withhold FICA tax during the calendar years that the international student or scholar is exempt from the substantial presence test. Private employers vary in their understanding of the FICA tax exemption for nonresident students and scholars.

If you find that your employer has withheld FICA tax in error (and you are a nonresident for tax purposes), you should contact your employer to request that they stop withholding FICA taxes. You should also request that your employer refund your FICA taxes withheld in the past. If the employer agrees to request a refund on your behalf, wait for the employer to give you a refund.

If your employer does not give you a refund, ask the employer for a statement explaining that the employer will not claim a refund for the employee. Keep a record of who you spoke with, when, and their contact information. You may need this in order to provide a statement to the IRS about your attempt to obtain a refund from your employer.

If your employer’s payroll office refuses to refund to you the FICA taxes withheld in the past, you may still request a refund directly from the IRS.

Prepare Forms 843 and 8316, and mail them to the following address.

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201-0038

The deadline for mailing Forms 843 and 8316 to the IRS is within 3 years after the year in which the FICA taxes were withheld. For 2014 tax year, the deadline is 12/31/2017.
Enter one of the following two explanations in item 7 on Form 843, depending on your visa status.

**Students on an F1 visa:**
“I am a nonresident alien student on an F1 visa. Section 3121(b)(19) of the Internal Revenue Code and the regulations thereunder state that a nonresident alien student on an F1 visa is not liable for paying Social Security and Medicare taxes on his/her wages for as long as he/she is a nonresident alien under the residency rules stated in Section 7701(b) of the Internal Revenue Code. Under Section 7701(b), a foreign student on an F1 visa becomes a resident alien after five (5) calendar years in the U.S. I state that for calendar year 2014, I was a nonresident alien student and not liable for the Social Security and Medicare tax. I hereby ask for a refund of the Social Security and Medicare taxes withheld from my wages. I have asked my employer for a refund of these taxes and have been refused.”

**Scholars on a J1 visa:**
“I am a nonresident alien teacher/researcher on a J1 visa. Section 3121(b)(19) of the Internal Revenue Code and the regulations thereunder state that a nonresident alien teacher/researcher on a J1 visa is not liable for paying Social Security and Medicare taxes on his/her wages for as long as he/she is a nonresident alien under the residency rules stated in Section 7701(b) of the Internal Revenue Code. Under Section 7701(b), a foreign teacher/researcher on a J1 visa becomes a resident alien after two (2) calendar years in the U.S. I state that for calendar year 2014, I was a nonresident alien teacher/researcher and not liable for the Social Security and Medicare tax. I hereby ask for a refund of the Social Security and Medicare taxes withheld from my wages. I have asked my employer for a refund of these taxes and have been refused.”

Include with Forms 843 and 8316 the following documents:
- Copy of W-2 from your employer for the year in which the FICA taxes were withheld in error because you were a nonresident.
- Copy of employment authorization (I-20, DS-2019, I-766, or I-688B).
- Copy of Form I-94 Arrival/Departure Record information (available online).
- Copy of your U.S. visa (F1 or J1).
- Copy of your nonresident tax return (Form 1040NR or 1040NR-EZ).
- Copy of the statement from your employer regarding their refusal to request a refund on your behalf.

If your employer will not provide a statement (and no refund of FICA taxes), then include a statement you prepare explaining your attempt to obtain a refund from your employer. Include information about your employer’s name, address, phone number, contact person, and what you requested from that contact person and what that contact person said or did to refuse/not cooperate to request a refund on your behalf. Include any other pertinent information, such as the date you spoke with your employer, and the reason the employer gave for not requesting a refund of Social Security and Medicare taxes on your behalf.
The following is sample wording that the employer could use to provide a statement to the nonresident employee.

“No FICA Tax Refund by University – It is the policy of the University of Houston that the University’s Payroll Department may not refund any Social Security and Medicare taxes ("FICA taxes"), even if the taxes were mistakenly deducted (e.g. failure to provide a valid Social Security Number, the effect of dropping/adding courses and the determination of credit hours at the beginning of the semester, etc…). To request a refund of Social Security and Medicare taxes withheld in error, the student employee would obtain IRS Forms 843 and 8316 (available at the IRS website http://www.irs.gov/Forms-&-Pubs or by telephone at (800) 829-3676). These forms should be completed by the student employee and mailed to: Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0038. On Form 843, the type of tax is employment taxes. Refer to 2014 IRS Publication 519, page 44 for a list of documents to include with Forms 843 and 8316.”

The following is sample wording that the nonresident taxpayer could use to provide a statement with Forms 843 and 8316, if the employer refused to provide a statement explaining the employer’s refusal to request a refund on behalf of the nonresident employee.

“My name is Jose Sanchez. My Social Security Number is 130-55-6886. My employer’s name is the University of Houston, tax ID 74-6001399. In 2014, I worked for my employer between 9/1/2014 and 12/31/2014. My employer mistakenly withheld Social Security and Medicare taxes from my paychecks during 2014, even though I was a nonresident student from Mexico with an F1 student visa. I have enclosed a copy of my 2014 Form W-2 from my employer, which shows that $550.80 of Social Security and Medicare taxes were withheld in 2014.”

“On 2/10/2015, I contacted Mrs. Elizabeth Giron, Foreign National Tax Specialist in the Tax Department at University of Houston. Her address is 5000 Gulf Freeway, Bldg. 2 Room 218, Houston, TX 77204-0907. Her telephone number is (713) 743-8987, and her fax telephone number is (713) 743-8610. Her e-mail address is EGiron@central.uh.edu. I requested that the University of Houston refund me the $550.80 in Social Security and Medicare taxes (FICA taxes) withheld in error in 2014. I showed her my visa and Form DS-2019 work authorization, as well as a copy of my 2014 Form W-2. Mrs. Giron made a change in the payroll system so that I would no longer have FICA taxes withheld from my paycheck in 2015. She agreed that I should not have paid the FICA taxes that were withheld from my paycheck. However, she said that it is the policy of the University of Houston not to refund any FICA taxes withheld in error from student employees. Mrs. Giron declined to process a refund request for me, to give me a refund of the FICA taxes withheld in error in 2014. She told me that I should request a refund directly from the Internal Revenue Service. She also gave me instructions as to how to request a refund. However, she refused to provide a written statement regarding these facts. This statement that I have made is being provided to the IRS in lieu of a statement from my employer regarding my employer’s refusal to request a refund of FICA taxes on my behalf.”
B. Spouse of an International Student or Scholar

Under U.S. immigration laws, a spouse (with an F2 visa) of an international student (with an F1 visa) is not permitted to work in the U.S. However, a J2 spouse of a J1 scholar can receive permission from CIS to work in the U.S.

In either instance, if the F2 or J2 spouse earns wages in the U.S., then under U.S. tax law the nonresident spouse is required to pay Social Security and Medicare taxes. There is no justification for asking the employer not to withhold FICA taxes from a nonresident spouse’s wages. Also, Forms 843 and 8316 should not be prepared in this case, since the IRS will not refund the FICA taxes.
VI. Affordable Care Act ("Obamacare")

A. Resident Aliens

A1. Requirements of the Affordable Care Act

Beginning 1/1/2014, U.S. citizens and residents (including residents of the U.S. for tax purposes) are subject to the requirements of the Affordable Care Act (ACA), sometimes referred to as “Obamacare”. As a resident for tax purposes, you will need to report on your 2014 tax return whether or not you had medical insurance that qualifies as “minimum essential coverage” during 2014. This requirement is referred to as the individual shared responsibility. This requirement to have minimum essential coverage medical insurance also applies to your spouse and any dependents you include on your resident tax return (referred to as your “tax household”).

In general, the requirement to have medical insurance is met if you and all members of your tax household have minimum essential coverage for at least 10 months during the calendar year (eg: 2014). If your medical insurance is provided by your employer, this would qualify as minimum essential coverage for those individuals in your tax household who are covered by that insurance. A gap in coverage of more than 2 months during 2014 would generally result in a tax penalty (referred to as the individual shared responsibility payment), unless an exception applies. Refer to the exceptions discussed in the next section below.

Refer to pages 2-4 of the instructions to Form 8965 for a list of ACA terms and their definitions.


If you or a member of your tax household did not have minimum essential coverage for all 12 months of 2014, you will need to prepare Form 8965 for 2014 to determine if you should include an additional tax on your tax return for the individual shared responsibility payment. This additional tax only applies to taxpayers who prepare a resident tax return (Forms 1040, 1040A, or 1040EZ). If you are not required to file a tax return (because your income is below the filing requirement threshold), or you are a nonresident for tax purposes during 2014, then the ACA does not apply to you.

A2. Exceptions to the ACA Individual Shared Responsibility

For 2014, there are 19 exceptions to the individual shared responsibility. Note that certain exemptions are only granted by the Marketplace, certain exemptions are requested only on Form 8965, and certain exemptions may be obtained either through the Marketplace or on Form 8956. For a list of exemptions to the individual shared responsibility, refer to page 2 of the instructions to Form 8965.


If you are a resident for tax purposes and an exemption from the ACA individual shared responsibility applies to you, you would claim the exemption on Form 8965, using one of the exemption codes listed on page 2 of the instructions.
The following are examples of situations when an exemption to the individual shared responsibility would apply. These examples assume you are a resident for tax purposes.

- Your income is below the threshold amount required to file a tax return. For example, if your filing status is single and your 2014 income is less than $10,150, you are not required to file a U.S. resident tax return. Refer to page 7 in the instructions to 2014 Form 1040 for filing threshold minimum gross income amounts based on filing status and age.
- You lived in Texas during 2014 and your family income was below 138% of the federal poverty guidelines. This exception applies because Texas is a state that did not participate in the Medicaid expansion available under the ACA. Refer to the threshold amounts shown below for 138% of the federal poverty guidelines for 2014.
- You are a U.S. resident who lived outside of the U.S. during all of 2014.

Consider seeking guidance and tax advice from a tax preparer who is knowledgeable and trained in the Affordable Care Act’s provisions.

The following IRS web pages provide an overview of the Affordable Care Act’s provisions as they relate to individual taxpayers.
http://www.irs.gov/uac/About-Form-8965

### A3. Federal Poverty Guidelines

Texas is one of 22 states that did not participate in the expansion of Medicaid to cover low income residents under the Affordable Care Act. In order to qualify for coverage on the Marketplace, one would have to qualify for coverage based on income level (income above 138% of the federal poverty level based on household size). The following chart shows the 2014 federal poverty guidelines of 100% federal poverty level based on household size, for the 48 contiguous U.S. states (excludes Alaska and Hawaii). The 138% FPL threshold determines if you qualify for health care coverage on the Marketplace. Because Texas did not expand Medicaid, households with income levels below 138% FPL are exempt from the ACA.

<table>
<thead>
<tr>
<th>Household Size</th>
<th>100% FPL</th>
<th>138% FPL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,670</td>
<td>$16,105</td>
</tr>
<tr>
<td>2</td>
<td>$15,730</td>
<td>$21,707</td>
</tr>
<tr>
<td>3</td>
<td>$19,790</td>
<td>$27,310</td>
</tr>
<tr>
<td>4</td>
<td>$23,850</td>
<td>$32,913</td>
</tr>
<tr>
<td>5</td>
<td>$27,910</td>
<td>$38,516</td>
</tr>
<tr>
<td>6</td>
<td>$31,970</td>
<td>$44,119</td>
</tr>
<tr>
<td>7</td>
<td>$36,030</td>
<td>$49,721</td>
</tr>
<tr>
<td>8</td>
<td>$40,090</td>
<td>$55,324</td>
</tr>
</tbody>
</table>
A4. How to Report Compliance with ACA on a Resident Tax Return

The first step to report compliance with having minimum essential coverage for health insurance is a question on Form 1040, line 61, Form 1040A, line 38, and Form 1040EZ, line 11. If you and all members of your tax household have minimum essential coverage for all 12 months of 2014, check the box on that line of the tax return. If there is a gap in coverage during 1 or more months in 2014 for anyone in your tax household, then complete Form 8965 and attach it to your tax return. In that case, don’t check the box on the tax return for health insurance.

If you prepare Form 8965 for a gap in coverage, to determine what dollar amount to report on the tax return for the line about health insurance, you will need to calculate your individual shared responsibility payment using the worksheet on page 5 of the instructions to Form 8965. This is an additional tax that you must report on your tax return.

As an example of this tax calculation, if you lived in the U.S. during all of 2014 and were a resident for tax purposes in 2014, and you did not have health insurance during 4 months of 2014 (ie, a gap in coverage), then you would owe a penalty equivalent to 4/12 of the annual penalty, based on your income, filing status, age, and how many members of your tax household did not have health insurance. If you were single with no dependents in 2014 and you were under 65 years old on 12/31/2014, your annual penalty is the larger of $95 or 1% of the difference between your adjusted gross income and your filing threshold amount. Assume your income was $20,000. Your filing threshold amount is $10,150 (personal exemption plus standard deduction). The difference of $9,850 times 1% is $98.50, which is greater than $95.00 (the minimum penalty amount for 1 person). Multiply $98.50 times 4/12 (number of months in which there was a gap in coverage) to determine what portion of the annual penalty applies to your gap in coverage. Therefore, your penalty to report on the tax return is $32.83 for 2014.

The actual calculation of the individual shared responsibility payment amount is more complicated than explained above. Refer to the instructions for Form 8965 for specific guidance and worksheets in order to calculate the tax amount correctly.

B. Nonresident for Tax Purposes

During 2014, if you were a nonresident of the U.S. for tax purposes, the requirements of the Affordable Care Act do not apply to you for 2014. Because you are a nonresident of the U.S. for tax purposes, the law specifically excludes your status as a nonresident from the requirements of the ACA. You are permitted to have health insurance, but you are not subject to a penalty if you don’t have health insurance. This exception applies to anyone in your tax household (such as your spouse or dependents), if you can claim them on your nonresident tax return. Refer to the tax treaty benefits applicable to family members discussed above on page 9 to determine who qualifies as a member of your tax household on a nonresident tax return.
Refer to page 9 of the instructions to Form 8965, second column, last bullet point under “Citizens living abroad and certain noncitizens (code C).”


You can also refer to question 11 at the following IRS web page for specific guidance regarding nonresidents for tax purposes.


IRS Form 8965 and the question about individual shared responsibility that appears on a resident tax return do not apply to taxpayers who file a nonresident tax return. Do not prepare Form 8965 if you file a nonresident tax return (Form 1040NR or 1040NR-EZ). There is no such question about health insurance on a nonresident tax return.

If you elect to treat a nonresident spouse as a resident for tax purposes (residency through marriage), then the nonresident spouse would not qualify for the exception as a nonresident for tax purposes. You would need to apply the requirements of the ACA to your tax household. Any other exemptions to the individual shared responsibility might apply, but not the exemption for a nonresident for tax purposes.
VII. Reporting Foreign Bank and Investment Accounts

U.S. residents (including citizens, “green card” holders, and residents for tax purposes) who have a financial interest in or signature authority over a foreign bank or investment account (“foreign financial account”) may be required to report the details of these foreign financial accounts to the U.S. Department of the Treasury. Individuals who are nonresidents of the U.S. for tax purposes under the substantial presence test are not subject to this reporting requirement. If you are not a citizen or permanent resident of the U.S., then I refer you to pages 2 to 10 of the handout “International Students and Scholars Taxation Workshop” for a discussion of who is a resident for tax purposes under the substantial presence test.

A. Report of Foreign Bank and Financial Accounts (FBAR), Form TD F 90-22.1

As discussed on pages 10-11 above, resident taxpayers who have a foreign bank account are required to disclose that fact on Form 1040, Schedule B, Part III. If the total balance in all foreign financial accounts exceeds the equivalent of $10,000 USD at anytime during the year, then a resident taxpayer is required to complete and submit Treasury Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Married taxpayers normally would both sign one FBAR form, although they could choose to file separate forms containing the same information for their joint accounts. The due date to file the form is June 30th following the year of the report. Note that this form is mailed separately from the taxpayer’s IRS tax return, to a different address. The form (with instructions) is available for download from the following website.


The U.S. Treasury Department will require electronic filing of the FBAR form (for those taxpayers who must complete it) beginning 7/1/2013. Electronic filing is currently optional. Enrollment in the Treasury Department’s Bank Secrecy Act (BSA) website is a prerequisite in order to electronically file an FBAR form. The following is the BSA e-filing website.

http://bsaefiling.fincen.treas.gov/Enroll_Individual.html

B. Form 8938 Statement of Specified Foreign Assets

Beginning with 2011, taxpayers may be required to file Form 8938 Statement of Specified Foreign Assets with an IRS tax return if the total value of all foreign assets (including foreign financial accounts) exceeds certain U.S. dollar equivalent thresholds during the year. The dollar thresholds for when you are required to prepare Form 8938 are as follows. Exceeding the dollar threshold in either column (not necessarily both columns) is sufficient to be subject to this filing requirement.

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>Maximum value during year</th>
<th>Balance at 12/31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unmarried taxpayer in U.S.</td>
<td>$75,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>Married filing separately in U.S.</td>
<td>$75,000</td>
<td>$50,000</td>
</tr>
</tbody>
</table>
Married filing jointly in U.S. $150,000 $100,000
Unmarried taxpayer living abroad $300,000 $200,000
Married filing separately living abroad $300,000 $200,000
Married filing jointly living abroad $600,000 $400,000

Refer to page 2 of the instructions for Form 8938 for the definition of a taxpayer living abroad.

Refer to page 4 of the instructions for Form 8938 for an explanation of which foreign financial assets are considered specified foreign financial assets. In general, these reportable financial assets include bank accounts, investment accounts, and similar financial assets which could result in income tax reporting (on a U.S. income tax return) for any related income, even if there is no actual income from your foreign financial assets during the year being reported. Examples of income you could receive from foreign financial assets are listed in Part III of Form 8938. The most common types of income are interest, dividends, and capital gains or losses from the sale of a foreign asset.

Receiving payments from a social security program, social insurance program, or a similar retirement program of a foreign government is not considered a foreign financial asset. Participation in such a program is specifically excluded from the reporting requirement of Form 8938.
VIII. Taxpayer Numbers

A. Social Security Number

A1. Who is eligible to receive a Social Security number?

If you are legally able to work in the U.S., you can apply for a Social Security card. Once you receive your Social Security card, keep it secure. You will need to show it to employers who hire you in the future. Your Social Security card is a permanent account number assigned to you for life, even if you later become ineligible to work in the U.S.

A2. Who is not eligible to receive a Social Security number?

Dependent children of international students and scholars are not eligible to receive a Social Security number. Spouses of international students also are not eligible to receive a Social Security number, unless the spouse changes his or her visa status from F2 to F1.

Anyone who has an F2 visa is not eligible to work in the U.S., unless they change their visa status to F1, H-1B, or certain other visa classifications. The reason the dependent is in the U.S. is because they are a family member of the primary F1 visa holder. U.S. laws do not permit such family members to work in the U.S.

B. Individual Taxpayer Identification Number (ITIN)

An Individual Taxpayer Identification Number (ITIN) is issued by the IRS for taxpayers, their spouses, and their dependents whenever the person is not eligible to receive a Social Security number. ITINs are used solely for U.S. income tax reporting purposes. There must be a valid tax filing reason for obtaining an ITIN. ITIN numbers are nine digits, with the same NNN-NNNN format as Social Security numbers.

B1. Who is eligible to receive an ITIN?

If a taxpayer is required to file a tax return, but a spouse or dependent listed on the tax return is not eligible to receive a Social Security card, then the family member (“applicant”) is eligible to apply for an ITIN. Use IRS Form W-7 to apply for an ITIN. This form is used to establish the identity of the applicant and the reason the ITIN is needed. A completed Form W-7 and certain documents which establish foreign status and proof of identity must be submitted to the IRS for verification. The taxpayer must include Form W-7 and supporting documents with the tax return so that the IRS can verify there is a legitimate tax reporting requirement for the applicant to be issued an ITIN. Refer to the instructions to Form W-7 for the exact requirements.

In Houston, taxpayers with income below $58,000 may take Form W-7 to a Neighborhood Tax Centers Volunteer Income Tax Assistance (VITA) site for assistance with preparing the form. Be sure to bring supporting documents that prove the identity of the person needing an ITIN, such as a foreign passport or birth certificate.
There are three options for submitting Form W-7 to the IRS for processing.

The first option is to bring your tax return, Form W-7, and supporting documents to a local IRS Taxpayer Assistance Center, where the identity of the applicant on Form W-7 can be immediately certified by the IRS in person, based on the supporting documents. The applicant will also need to be present with you when you go to the local IRS Taxpayer Assistance Center. The advantage of this option is that the IRS Taxpayer Assistance Center will return the supporting documents, such as a foreign passport or birth certificate, to the applicant immediately. The IRS representative may take the tax return and Form W-7 and submit it to the IRS on behalf of the taxpayer.

The second option is to bring your tax return, Form W-7, and supporting documents to a IRS-approved acceptance agent for Form W-7. The following website lists acceptance agents in Texas. You or the acceptance agent will need to submit your tax return and Form W-7 to the IRS at the address shown below.

http://www.irs.gov/Individuals/Acceptance-Agents---Texas

The third option is to mail your tax return, Form W-7, and supporting documents (either the original or a copy certified by the issuing authority) to the following address. Note that if you choose the second option and you include the applicant’s original passport with the tax return, it may take up to 10 weeks to receive back the original passport in the mail. That is why it is preferable to take Form W-7 to a local IRS Taxpayer Assistance Center. Attach Form W-7 on top of your tax return.

Internal Revenue Service
ITIN Operation
P.O. Box 149342
Austin, TX  78714-9342

An ITIN may be needed in order to claim a tax benefit on a U.S. income tax return, such as a spouse or dependency exemption, child tax credit, or child and dependent care credit. Note that if you are married to a U.S. citizen or resident and file a joint return, you cannot use an ITIN to claim the earned income credit.

**B2. Who is not eligible to receive an ITIN?**

If the applicant does not need to file a U.S. federal tax return, there is no need to apply for an ITIN. In that case, the IRS will not issue an ITIN to the applicant. In this case, Form W-7 would not be prepared.

Note that an ITIN is **NOT** required to file Form 8843. If the nonresident alien does not have an ITIN or Social Security card, Form 8843 may still be prepared. Leave the taxpayer identification number field blank in that case.
IX. Additional Resources

A. I recommend the following Internet web sites for additional help. They are good sources for international students and scholars to learn how U.S. income tax laws apply to you.

http://www.uthouston.edu/international-affairs/resources.htm
[scroll down the page to the section titled Internal Revenue Service (IRS)]

http://www.utexas.edu/international/taxes/

http://www.dartmouth.edu/~intl/updates/tax/info.html

http://www.dartmouth.edu/~intl/faq.html

http://www.dartmouth.edu/~intl/updates/tax/webresources.html

http://www.temple.edu/isss/international/index.html
(this is a good website for understanding differences in visa classifications)

B. The following IRS web site pages are training materials specifically for how to prepare a nonresident tax return for international students and scholars.


http://www.irs.gov/app/vita/foreign_student.jsp

C. The following IRS web site pages are useful reference materials for understanding U.S. tax law and tax treaties with other countries.


http://www.irs.gov/businesses/international/article/0,,id=96739,00.html
Statement to Elect to Treat Nonresident Spouse as a Resident for Tax Purposes for Tax Year 2014

Resident Taxpayer:________________________ SSN:_____________________

Non-resident Spouse:______________________ SSN:_____________________

Address of both taxpayers:
_____________________________________
_____________________________________

The above married taxpayers both affirmatively elect to treat the non-resident spouse as a resident for tax purposes starting with tax year 2014. We are filing a joint U.S. resident tax return as a married couple.

The first spouse shown above was a U.S. citizen or resident for tax purposes on December 31, 2014. The second spouse shown above was a non-resident for tax purposes on December 31, 2014. We both choose to treat the non-resident spouse as a resident for tax purposes for the entire tax year 2014. The address shown above is the current address for both taxpayers.

Signed:_________________________________ Date:_______________

Signed:_________________________________ Date:_______________