

**\*\*READ THIS before doing tax return!\*\***

**RESIDENT VERSUS NON-RESIDENT STATUS  
FOR U.S. INCOME TAX PURPOSES  
TAX YEAR 2008**

This handout is designed to give a basic summary of the definitions of "resident" and "non-resident" for tax purposes and help you calculate your filing status for 2008. [More detailed information is available in IRS Publication 519.]

**(Note that the IRS definition of "resident" is NOT the same as the immigration (DHS) definition.)**

The basic differences between Resident and Non-resident are as follows:

**Resident**

- ✓ pays federal income tax on income generated outside the U.S. as well as in the U.S. (includes scholarships from home government, unless exempt under a treaty)
- ✓ is usually responsible for paying FICA or Social Security Tax, regardless of immigration status [Resident students may be exempt from paying FICA while working for university.]
- ✓ may usually claim an exemption of \$3500 (for Tax Year 2008) for each dependent as well as for self (This amount is not taxed)
- ✓ may usually file joint return with spouse
- ✓ may use "standard deduction" of \$5450 (or \$10,900 for married filing jointly)[for 2008] or itemize deductions (This amount is also not taxed.)
- ✓ may claim additional tax credits (such as education credit for tuition payments)
- ✓ files income tax return on Form 1040, 1040A or 1040EZ

**Non-resident**

- ✓ normally pays federal income tax only on income which originates in the U.S.
- ✓ normally does not pay tax on bank interest
- ✓ persons with F-1 and J-1 status are exempt from paying FICA or Social Security Tax
- ✓ may claim \$3500 exemption only for self [for Tax Year 2008], and not for dependents (except for residents of Canada, Mexico, and Korea, and some students from India)
- ✓ may not file joint return with spouse (unless spouse is a tax resident, in which case both may file jointly as residents)
- ✓ may not take "standard deduction" (except for students from India); may itemize deductions but only for a very limited list of expenses
- ✓ must usually pay a flat 30% tax on income such as royalties, dividends, capital gains, mutual funds, etc. (income not associated with "business" of being student or scholar) [Treaty may reduce this amount]
- ✓ files income tax return on Form 1040NR or 1040NR-EZ
- ✓ Person in F and J status must normally file Form 8843

**How do you calculate if you are a resident or non-resident?**

(See also separate Tax Residency Calculation sheets for F and J students and scholars)

**Students (F-1 or J-1) and Their Dependents**

- In the simplest cases, a student and dependents are considered non-residents for the first five tax years. (Note that a portion of a calendar year counts as one tax year.) After the first five years, a student will be considered a **resident** in any year he/she is in the U.S. equal to or more than 183 days. **If you have had > 5 years in F/J status, but were in U.S. < 183 days in 2008, consult IRS Pub.519, CINTAX, or a CIE Advisor.**

**Example:** If you entered the U.S. as a student or dependent (F or J) at any time in **2003** or before, and have been in the U.S. as a student since that date (except for brief absences), then you are a Tax Resident for 2008. (If you were previously in the U.S. as a J scholar or dependent, you will probably count those years as well.)

- If you were a student (F or J) or J-1 scholar, or F-2 or J-2, at any time during **any** five previous years (not counting years before 1985), **and** you were a student in the U.S. for equal to or more than 183 days in 2008 you are probably a Tax Resident for 2008.

**Example:** If you were an J-2 dependent in 1990 and 1991, and an F-1 student in 2005, 2006 and 2007, and have been an F-1 student since that time, you are a resident for 2008. (Your five years are 1990, 1991, 2005, 2006, 2007).

- But if you were a J-1 scholar (or J-2 dependent) for more than two years, see an advisor, or consult CINTAX)

## J-1 Scholars and Their Dependents

- In the simplest case, a J-1 scholar and dependents are considered non-residents for the first 2 years in the U.S. (a portion of a calendar year = one tax year.) After the first 2 years, a scholar will normally be considered a Tax Resident if he/she remains for  $\geq 183$  days that year. (If completely funded by non-U.S. sources, you may be considered a Tax Non-resident for 3-4 years.) If you were in U.S.  $< 183$  days in 2008, consult IRS Pub. 519, CINTAX, or a CIE Advisor.

**Example:** You arrived in the U.S. as a J-1 scholar for the first time in November 2006 and have been here since then as a J-1 scholar. You were a Non-resident for 2006 and 2007 but would probably be a Tax Resident for the entire year of 2008.

- If you were in the U.S. as a student or scholar (F or J) during any part of **two out of the last six** years, prior to 2008 [2002 - 2007], and were in the U.S. as a J-1 scholar for 183 days or more in 2008, then you are probably a resident for 2008.

**Example:** You were in the U.S. as an F-1 student in 2002 and 2003 (two out of the previous six years), returned to the U.S. as a J-1 scholar in May 2008 and have remained here as a scholar since that time, then you are probably a Tax Resident (or Dual Resident) for 2008 because you were in the U.S. for more than 183 days in 2008.

**Important:** If you were a student for more than five years and then became a J-1 scholar, or if you changed from student to scholar or scholar to student more than once consult CINTAX or an advisor. You may be a Non-resident again!

## Others

- Persons with H-1B status and other non-immigrants not covered in the paragraphs above are Tax Residents or Dual Status Residents in 2008 if they were present in the U.S. for more than 183 days in 2008. Persons who changed status to H-1 from F or J may be dual status residents for 2008 if they were considered Tax Non-residents for the first part of 2008. (See separate handout on dual status filing) If in U.S. for less than 183 days in 2008, but here in 2007 and/or 2006, consult Pub. 519, CINTAX, or a CIE Advisor. You may be a tax resident.
- Persons who have never had F or J status calculate as follows: Count all days in U.S. in 2008 +  $1/3$  (days in 2007) +  $1/6$  (days in 2006) = **X**. If **X**  $> 183$ , then you are probably a Resident.

**Example:** You were in the U.S. as an F-1 student from August 2004. On August 15, 2008, your status was changed to H-1B. During the first part of 2008, you are still in the first five years so are still a non-resident. You have less than 183 days in H-1B status, so you are a Non-resident for all of 2008.

**Example:** You were in the U.S. as an F-1 student from August 2008, so you began 2008 as a non-resident. Your status was changed to H-1B on May 15, 2008. You have more than 183 days with H-1B status in 2008, so you are a Dual Resident for 2008 (Beginning as a Non-resident, and ending as a Resident)

**Example:** You were in the U.S. for 36 days in 2006 on a visa Waiver (WB), 33 days in 2007 on a Visa Waiver, and 175 days in H-1B status in 2008.  $6 + 11 + 175 = 192$ , so you are probably a Resident in 2008.

- If your situation is not described above, or if you have a complicated history, then you should consult IRS Publication 519, CINTAX, and/or a CIE advisor to determine your residency status. For instance, if you held H-1B status (or any non-immigrant status other than F or J) status for less than 183 days in 2008, if you have been in the U.S. for more than one separate visit, or if you changed immigration status while in the U.S., read Publication 519. A tax advisor or CIE Advisor can help you interpret Publication 519.

We have prepared some worksheets for persons in F or J immigration status which may be useful in determining tax residency status.

- Note: A person who would normally be classified as a Tax Resident can sometimes get IRS permission to be a Non-resident if he/she can document a "closer connection" to another country, if he/she was in the U.S. for less than 183 days in 2008. An F-1 or J-1 student who has been in the U.S. longer than five years may also ask IRS for permission to be considered a Tax Non-resident, by writing a letter to the IRS and including it with the tax return.
- A person who is married to a Tax Resident may choose to file taxes as a Tax Resident for the entire year if he/she files jointly with the spouse.

**See separate handout called "Resident versus Non-resident Examples" for examples which further illustrate the calculation of residency status..** It is printed on light yellow paper.