

# Contents

1 Introduction .....	1
1.1 Work Authorization .....	1
1.2 Taxpayer Identification Number .....	2
2 U.S. Tax Residency Rules .....	3
2.1 Residency Status Based on U.S. Presence .....	3
(a) U.S. Days That Do Not Count .....	4
(b) Closer Connection Exception .....	5
2.2 Nonresidency Status Claims Based on an Income Tax Treaty .....	5
3 Residency Start and Termination Dates .....	7
3.1 Residency Start Date .....	7
(a) The 10-day “de Minimis” Rule .....	7
(b) Residency Start Date Under an Income Tax Treaty .....	8
3.2 Tax Residency Elections .....	9
(a) The First-Year-Choice Election .....	9
(b) Full-Year Residency Elections .....	11
3.3 Residency Termination Date .....	12
(a) Closer Connection Exception .....	12
(b) Limitations Based on a Subsequent Year’s Residency Status .....	13
(c) Residency Termination Dates Under an Income Tax Treaty .....	15
(d) H-1B Workers on Assignment Abroad .....	15
4 Changes to H-1B Status .....	17
4.1 Change of Status from J-1 Nonstudent to H-1B .....	17
4.2 Changes from F-1 or J-1 Student Status .....	18
5 Federal Income Tax Rules .....	21

5.1 Tax Rules for Nonresidents.....	21
(a) U.S.-Source Income .....	21
(b) Effectively Connected Income .....	22
5.2 Tax Rules for Residents.....	23
(a) Currency Translations .....	23
(b) Sales of Assets Denominated in a Foreign Currency .....	23
(c) Rental of Foreign Real Estate.....	24
(d) Sale of a Principal Residence.....	24
(e) Avoidance of Double Taxation.....	24
(f) Disclosure of Foreign Financial Accounts.....	25
5.3 Tax Rules for Dual-Status Aliens .....	25
5.4 Stock Ownership in a Foreign Corporation .....	26
6 Income Tax Treaty Benefits .....	27
6.1 U.S.-Source Income.....	27
6.2 Employment Compensation .....	27
(a) Pre-Relocation Visits .....	28
(b) Loss of Benefits .....	28
6.3 Compensation of Teachers and Researchers.....	29
(a) Institution Where Teaching or Research Takes Place.....	30
(b) Article Limitations .....	31
(c) Successive Treaty Article Claims.....	34
(d) Combined Benefit Periods .....	35
(e) Back-to-Back Limitations .....	35
6.4 Special Considerations for Research Scholars .....	36
(a) Compensation for Services vs. Scholarship or Fellowship .....	36
(b) Public Benefit Requirement .....	36
7 State Income Taxes.....	39
7.1 Domicile .....	39

7.2 Residence .....	40
7.3 State Tax Rules.....	40
7.4 Income Tax Treaty Exemptions.....	40
8 Withholding and Reporting .....	43
8.1 Benefits in Kind .....	43
(a) Temporarily-Away-from-Home Expenses vs. Relocation Expenses.....	43
(b) Tax Home .....	43
(c) Temporarily-Away-From-Home Expenses.....	44
(e) Company-Provided Automobiles.....	45
(f) Moving Expenses.....	46
(g) Pension Plan Contributions.....	47
(h) Tax-Return Preparation Fees.....	47
(i) Immigration Fees .....	47
8.2 Special Withholding Rules for Nonresidents.....	48
(a) Residency Change Year .....	49
(b) Full-Year Residency Elections .....	49
8.3 Treaty-Exempt Compensation.....	49
(a) Form 8233 for Nonresident Treaty Claims .....	50
(b) Form W-9 for Residents' Treaty Claims .....	50
(c) Taxpayer Identification Number Requirement .....	51
(d) Form 1042 and 1042-S Requirements.....	51
(e) Coordination with Form W-2 Reporting.....	51
8.4 Social Security and Medicare Taxes .....	52
(a) No Internal Revenue Code Exemption.....	52
(b) Exemption from Tax under a Social Security Agreement.....	53
(c) Exemption from Tax Under an Income Tax Treaty.....	54
8.5 State Income Taxes .....	55

9 U.S. Tax Returns .....	57
9.1 Sailing Permit Requirement .....	57
9.2 Federal Tax Return .....	57
(a) Nonresident Tax Return .....	58
(b) Resident Tax Return.....	58
(c) Dual-Status Tax Return .....	58
9.3 Treaty Claims.....	60
(a) Tax Nonresidents .....	60
(b) Tax Residents.....	60
9.4 State Tax Returns .....	61
10 Individual Taxpayer Identification Numbers .....	63
10.1 Individuals Eligible for ITINs.....	63
10.2 Documentation Requirements.....	64
10.3 Application Submission Procedures.....	65
(a) Submissions with Tax Returns .....	65
(b) Tax-Return Extensions .....	66
(c) Exceptions to the Tax-Return Submission Procedures.....	66
10.4 Acceptance Agents .....	67
10.5 Acceptance Agent Application Procedures .....	67
11 Resources.....	69
11.1 Websites .....	69
The Internal Revenue Service (IRS) Website, <a href="http://www.irs.gov">www.irs.gov</a> .....	69
The Social Security Administration (SSA) Website, <a href="http://www.socialsecurity.gov">www.socialsecurity.gov</a> .....	69
Windstar Technologies, Inc. (Windstar), <a href="http://www.windstar.com">www.windstar.com</a> .....	69
11.2 IRS Publications.....	70
Publication 15, Circular E, Employer’s Tax Guide.....	70
Publication 463, Travel, Entertainment, Gift, and Car Expenses .....	70
Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities .....	71

Contents

---

Publication 521, Moving Expenses..... 71  
Publication 519, U.S. Tax Guide for Aliens ..... 71  
Publication 901, U.S. Tax Treaties ..... 72  
Other Helpful Publications ..... 72  
Index ..... 73