

Contents

1 Introduction	1
1.1 Work Authorization.....	1
1.2 Taxpayer Identification Numbers.....	2
2 U.S. Tax Residency Rules.....	3
2.1 Residency Status Based on U.S. Presence	3
2.2 U.S. Days That Do Not Count	4
2.3 Two-out-of-Seven Calendar-Year Rule	5
(a) Prior Visits in F, M, J, or Q Status	5
(b) Rules for Dependents in J-2 Derivative Status	7
2.4 Nonresidency Under the Closer Connection Exception.....	7
2.5 Nonresidency Status Based on an Income Tax Treaty	7
3 Residency Start and Termination Dates	9
3.1 Residency Start Date	9
(a) The 10-Day de Minimis Rule	9
(b) Residency Start Date Under an Income Tax Treaty	10
3.2 Tax Residency Elections.....	11
(a) The First-Year Choice Election.....	11
(b) Full-Year Residency Elections.....	13
3.3 Residency Termination Date	14
(a) Closer Connection Exception	14
(b) Limitations Based on a Subsequent Year's Residency Status	15
(c) Residency Termination Dates Under an Income Tax Treaty	16
4 Changing to Another Immigration Status.....	17
4.1 Changes to H-1B Status	17
4.2 Changes to F-1 or J-1 Student Status.....	18
5 Federal Income Tax Rules	19

5.1 Tax Rules for Tax Nonresidents	19
(a) U.S.-Source Income.....	19
(b) Effectively Connected Income.....	20
5.2 Tax Rules for Tax Residents	21
(a) Currency Translations.....	22
(b) Sales of Assets Denominated in a Foreign Currency.....	22
(c) Rental of Foreign Real Estate	22
(d) Sale of a Principal Residence	22
(e) Avoidance of Double Taxation	23
(f) Disclosure of Foreign Financial Accounts	23
5.3 Tax Rules for Dual-Status Aliens.....	24
5.4 Stock Ownership in a Foreign Corporation	24
6 Income Tax Treaty Benefits	25
6.1 How Tax Treaties Work	25
6.2 Fellowship Grant vs. Compensation	26
(a) Nonservice Fellowship Grants	26
(b) Recipient of Grants Defined.....	27
(c) Impact of Change in Status to H-1B.....	28
6.3 Student/Trainee Articles	28
(a) Compensation Paid by a U.S. Employer.....	29
(b) Governmental Technical Assistance Programs	30
(c) Compensation Paid by an Employer Resident in the Treaty Country	30
(d) Residency Election	30
(e) Grant, Allowance, or Award	31
6.4 Teacher/Researcher Articles	31
(a) Institution Where Teaching or Research Takes Place	32
(b) Article Limitations.....	33
(c) Successive Treaty Article Claims	37
(d) Combined Benefit Periods	37
(e) Back-to-Back Limitations	38
(f) Public Benefit Requirement.....	38

6.5 Income from Self-Employment Article	39
6.6 Income from Employment Article	39
7 State Income Taxes	41
7.1 Domicile	41
7.2 Residence	42
7.3 State Tax Rules	42
7.4 Income Tax Treaty Exemptions	42
8 Withholding and Reporting	45
8.1 Benefits in Kind	45
(a) Temporarily-Away-From-Home Expenses vs. Relocation Expenses.....	45
(b) Tax Home.....	46
(c) Temporarily-Away-From-Home Expenses	46
(d) Per Diems.....	47
(e) Company-Provided Automobiles	47
(f) Travel Grants	48
(g) Moving Expenses	48
(h) Immigration Fees.....	49
8.2 Special Withholding Rules for Tax Nonresidents	49
(a) Residency Change Year.....	50
(b) Residency Elections	51
8.3 Treaty-Exempt Income.....	51
(a) Form 8233 for Tax Nonresidents' Treaty Claims	51
(b) Form W-8BEN for Nonservice Grants	52
(c) Form W-9 for Tax Residents' Treaty Claims.....	52
(d) Taxpayer Identification Number Requirement	53
(e) Form 1042 and 1042-S Requirements	53
(f) Coordination with Form W-2 Reporting	53
8.4 Social Security and Medicare Taxes	54
(a) Section 218 Agreement.....	54
(b) Exception for Certain Tax Nonresidents.....	55
(c) Exemption from Tax Under an Income Tax Treaty	55
8.5 State Income Taxes	56

9 J-1 Nonstudents Paid by a Foreign Employer	57
9.1 Section 872(b)(3) Exceptions	57
(a) Income Tax Exemptions	57
(b) Four-out-of-Seven calendar-Year Rule	57
9.2 Commercial Traveler Exception.....	58
9.3 Social Security and Medicare Taxes.....	59
(a) Exception for Certain Tax Nonresidents.....	59
(b) Exemption from Tax Under a Social Security Agreement	59
10 U.S. Tax Returns	63
10.1 Sailing Permit Requirement	63
10.2 Federal Tax Return.....	64
(a) Nonresident Tax Return.....	64
(b) Resident Tax Return	65
(c) Dual-Status Tax Return.....	65
10.3 Treaty Claims	66
(a) Tax Nonresidents.....	66
(b) Dual Residents.....	67
(c) Tax Residents	67
10.4 State Tax Returns.....	68
11 Individual Taxpayer Identification Numbers	69
11.1 Individuals Eligible for ITINs	69
11.2 Documentation Requirements	70
11.3 Application Submission Procedures	71
(a) Submissions with Tax Returns.....	71
(b) Tax-Return Extensions	72
(c) Exceptions to the Tax-Return Submission Procedures	72
11.4 Acceptance Agents.....	72
11.5 Acceptance Agent Application Procedures.....	73
12 Resources.....	75
12.1 Websites.....	75
The Internal Revenue Service (IRS) Website, www.irs.gov	75

The Social Security Administration (SSA) Website, www.socialsecurity.gov	75
NAFSA: Association of International Educators, www.nafsa.org	75
The U.S. Department of State (DOS) Bureau of Education and Cultural Affairs Website, http://exchanges.state.gov/education/jexchanges	76
Windstar Technologies, Inc. (Windstar), www.windstar.com.....	76
12.2 IRS Publications.....	77
Publication 15, Circular E, Employer's Tax Guide	77
Publication 463, Travel, Entertainment, Gift, and Car Expenses.....	77
Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.....	78
Publication 519, U.S. Tax Guide for Aliens.....	78
Publication 521, Moving Expenses	78
Publication 901, U.S. Tax Treaties	78
Other Helpful Publications	79
Index	81