

READ THIS before doing tax return!

RESIDENT VERSUS NONRESIDENT STATUS

FOR U.S. INCOME TAX PURPOSES

TAX YEAR 2016

This handout is designed to give a basic summary of the definitions of "Resident" and "Nonresident" for tax purposes and help you calculate your filing status for 2016. [More detailed information is available in IRS Publication 519.]
(Note that the IRS [Tax] 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 and salary from home country employer institution, unless exempt under a treaty)
- is usually responsible for paying Social Security Tax (FICA/Medicare), regardless of immigration status [Resident students may be exempt from paying FICA while working for university.]
- may usually claim an exemption of \$4050 for Tax Year 2016 (\$4050 for 2017) 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 \$6300 (or \$12,600 for married filing jointly) for 2015 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 do not pay FICA or Social Security Tax
- may claim \$4050 exemption only for self [for Tax Year 2016] (\$4050 for 2017), 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 (such as state income tax, if paid)
- 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 in addition to 1040NR/1040NR-EZ

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

(See separate Tax Residency Calculation sheets for F and J students, J scholars and others; See IRS Publication 519 for detailed information, especially if you have a complex immigration history.) Or let the **GTP** software calculate for you.

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

In the simplest cases, a student and dependents are considered Nonresidents 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 more than 5 years in F/J status, but were in U.S. less than 183 days in 2016, consult IRS Pub.519, GLACIER TAX PREP (GTP).** If you have had significant periods of time outside the U.S., consult a Tax Advisor

Example: If you entered the U.S. as a student or dependent (F or J) for the first time in **2012** or later, and have been in the U.S. as a student since that date (except for brief absences), then you are a **Tax NonResident** for 2016.

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 2016, you are probably a **Tax Resident** for 2016.

Example: If you were a J-2 dependent in 1998 & 1999, and an F-1 student in 2013, 2014 & 2015, and have been an F-1 student since that time, you are probably a **Resident** for 2016. (Your five years as non-resident are 1998, 1999, 2013, 2014, 2015).

If you were a J-1 scholar (or J-2 dependent of scholar) for more than two years consult GTP

J-1 Scholars and Their Dependents

In the simplest case, a J-1 scholar and dependents are considered **Nonresidents** 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 183 days that year. (If completely funded by non-U.S. sources, you may be considered a **Tax Nonresident** for 3-4 years.) If you were in U.S. in F/J status in two previous years and more than 183 days in 2016, consult IRS Pub. 519 or use GTP.

Example: You arrived in the U.S. for the first time as a J-1 scholar in November 2015 and have been here since then as a J-1 scholar. You were a **Nonresident** for 2015 and 2016

Example: You arrived in the U.S. for the first time as a J-1 scholar in November 2014 and have been here since then as a J-1 scholar. You were a Nonresident for 2014 and 2015 and would be a **Resident** for the **entire year** of 2016.

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** [2010 - 2015], and were in the U.S. as a J-1 scholar for 183 days or more in 2016, you are probably a **Resident** for 2016.

Example: You were in the U.S. as an F-1 student in 2010 and 2011 (two out of the previous six years), returned to the U.S. as a J-1 scholar in May 2016 and have remained here as a scholar since that time, then you are probably a **Tax Resident** (or Dual Resident) for 2016 because you were in the U.S. for more than 183 days in 2016.

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 from scholar to student more than once, consult GTP. You may be a nonresident again!

Others

Persons who have never had F or J status calculate as follows: Count all days in U.S. in 2016 + 1/3 (days in 2015) + 1/6 (days in 2014) = **X**. If **X** is more than 183, then you are probably a Resident in 2016.

Persons with H-1B status and other non-immigrants not covered in the paragraphs above are Tax Residents or Dual Status Residents in 2016 if they were present in the U.S. for more than 183 days in 2016. Persons who changed status to H-1 from F or J may be dual status residents for 2016 if they were considered Tax Non-residents for the first part of 2016. (See separate handout on dual status filing) If in U.S. for less than 183 days in 2016, but here in 2015 and/or 2014, consult Pub. 519 or use GTP. You may be a Tax Resident.

Example: You arrived in the U.S. as an F-1 student in August 2012. On August 15, 2016, your status was changed to H-1B. During the first part of 2016, you are still in the first five years so are still a Nonresident. You have less than 183 days in H-1B status, so you are a **Nonresident** for all of 2016.

Example: You were in the U.S. as an F-1 student from August 2012, so you began 2016 as a Nonresident. Your status was changed to H-1B on May 15, 2016. You have more than 183 days with H-1B status in 2016, so you are a Dual Resident for 2016 (Beginning as a Nonresident, and ending as a Resident)

Example: You were in the U.S. for 36 days in 2014 on a Visa Waiver (WB), 33 days in 2015 on a Visa Waiver, and 175 days in H-1B status in 2016. $6 + 11 + 175 = 192$, so you are probably a Resident (or Dual Resident) in 2016.

If your situation is not described above, or if you have a complicated history, then you should consult IRS Publication 519 or use GTP 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 2016, 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 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 Nonresident 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 2016. (See IRS Form 8840) An F-1 or J-1 student who has been in the U.S. longer than five years may also ask IRS to consider him a Tax Nonresident, 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 "Residency Examples" for examples which further illustrate the calculation of residency status.