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# Tax Reporting for Inbound Students

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# US Tax Residence 101

- Defined in Internal Revenue Code (IRC) Section 7701(b)
  - Determined based on physical presence in the U.S., green card status or citizenship
  - Substantial Presence Test (SPT) - magic number is 183
  - Special provisions for F, J, M or Q visa holders

# US Tax Residence 101

- F, J, M or Q **STUDENT** Visa Holder
  - Excepted from Substantial Presence Test if you comply with requirements of your visa
  - Days of presence not counted toward residency if:
    - Not already treated as exempt in any part of more than 5 calendar years,

OR...

- Facts and circumstances indicate closer connection to home country

# Typical Income Sources, Taxability and Exceptions

- U.S. Scholarships
- Wages
  - OPT
  - Teaching or research performed as a condition of receiving scholarship
- Treaties

# Scholarships

- Qualified Scholarship (IRC Section 117): Not Taxable Income If . . .
  - Paid to a degree candidate (undergraduate or graduate degree)
  - Amounts used for qualified expenses:
    - Tuition or fees for enrollment
    - Fees, books, supplies and equipment required for courses

# Scholarships

- Not Qualified: Treated As Taxable Income If . . .
  - Amount received by non-degree candidate
  - Amounts used for non-qualified expenses:
    - Room and board
    - Travel reimbursement
    - Expenses incidental to grant
  - Other IRS code sections may reduce or eliminate taxation on some of the above non-qualified expenses dependent upon facts and circumstances

# Scholarships: Tax Forms You May Receive For Tax Filing

- Qualified Scholarship for F, J, Q or M Status:
  - No Forms or perhaps letter from university indicating payments were for qualified expenses (institution specific)
- Non-Qualified Scholarship Income for Degree Candidate:
  - Form 1042S\*\*
- Non-Degree Candidate Scholarship Income:
  - Form 1042S\*\*
  - \*\*Tax withholding may occur at 14%, 30% or tax table rate

# Wages

- OPT: Internship or training with a local company
- Services such as teaching or research if performed as a condition of receiving scholarship



# Wages: Tax Forms You May Receive

- Upon Commencing Employment
  - **Form W-4:** Withholding allowance certificate
  - **Notice 1392:** Special instructions for non-residents
- For Tax Filing
  - W-2, wage and tax statement

\*\*Wages may be exempt from US social security tax

# Treaties

- Treaties override US domestic tax law
- Each treaty is unique in itself and must be consulted when students claim exempt status
- Treaties may exempt students from withholding or taxation on income that would not otherwise be exempt

# Treaties

- Typical Relevant Articles
  - Dependent personal services/income from employment
  - Students and trainees
- Even if a student is exempt from tax as a result of a treaty, filing a U.S. tax return may still be required

# Treaties: Relevant Withholding Forms

- Form 8233
  - Informs employer that amount paid for services is treaty exempt
- Form W-8BEN
  - Used when scholarship income is exempt from tax, regardless if qualified or non-qualified

\*\*Form 1042S will be issued to report exempt income

# Forms You Receive For Personal Tax Filing

- Forms You May Receive at Tax Time
  - **Form W-2:** Reporting wages and withholdings
  - **Form 1042S:** Reporting taxable scholarship income and withholdings
  - **Form 1042S:** Reporting treaty exempt income
  - **Form 1098T:** Generally an irrelevant form\*\* that reports tuition billed, tuition payments received by the educational institution, scholarship or grants paid to the student.
  - \*\*Reporting rules change for 2017 tax returns.

# Forms You May Need to Submit For Tax Filing Purposes

- Form 1040NR Required If You:
  - Have taxable income to disclose
  - Have income that is exempt from US tax under a tax treaty or any other section of the US Internal Revenue Code
  - Are claiming a refund but otherwise do not have a tax filing requirement

# Forms You May Need to Submit For Tax Filing Purposes

- Form 8843: To exclude days of presence in the US from SPT (to maintain non-resident status)
  - File with Form 1040NR if you are required to file a tax return
  - File as stand-alone if 1040NR is not required
  - Note: The IRS indicates that you should file this form even if you have no income (there is no statutory authority that can disallow excluding days of presence for students if this form is not filed)

# Forms You May Need to Submit For Tax Filing Purposes

- **Form 843 and Form 8316**
  - Whoops! My employer withheld social security tax and is not inclined to apply for a refund. These forms are used to request refund of erroneously withheld social tax
- **Form MI-1040 and Schedule NR**
  - Don't forget that if you have federal taxable income you likely will have to file a Michigan return



# Researchers/Teachers

- Also excepted from SPT but a more limited 2 out of 6 year threshold
- Typical income may include:
  - Grant/Fellowship if payment for teaching, research or other services
  - Stipend
  - Wages
- Specific treaty provisions exist for teachers and researchers separate from the student provision

# Researcher/Teacher vs. Student

- Individual is both studying and a teacher or research assistant: To determine applicable treaty article, IRS will look to immigration documents to determine primary purpose in the US
- How income is classified also determines applicable treaty article and income exemption.
  - If payment furthers education it may be treated as a grant and the student article would apply
  - If payment is for services benefitting the payor it may be treated as compensation and the teacher article would apply

# Online and Other Free Resources

- **Federal Filing**
  - Form 1040NR Instructions
  - Form 8843 Instructions
  - Publication 519
  - Publication 901
- **Michigan Filing**
  - Form MI-1040 instructions
  - Schedule NR instructions

# Online and Other Free Resources

- Websites:
  - For IRS Forms:
    - <http://www.irs.gov/Forms-&-Pubs>
  - For US Treaties:
    - <http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>
  - For Michigan Forms:
    - [http://www.michigan.gov/taxes/0,4676,7-238-44143\\_44144-318822--,00.html](http://www.michigan.gov/taxes/0,4676,7-238-44143_44144-318822--,00.html)
    - Web browser search for the topic/forms you are looking for!

# Questions & Comments