



Mobility Matters

Understanding U.S. Tax Obligations for International Student Interns: A Comprehensive Guide for Employers

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Tell me and I forget,
teach me and I
may remember,
involve me and
I learn.

— Benjamin Franklin



As spring begins to give way to summer many companies are preparing to hire and onboard summer interns. A robust internship program offers employers many benefits, not the least of which is the opportunity to discover and attract top talent who may bring fresh ideas and perspectives to the organization. For a student, an internship offers an opportunity to gain hands-on experience in his or her area of study, strengthen professional skills, and begin the process of building a professional network.

International students attending school in the United States often take advantage of the opportunity to gain work experience in their field of study by participating in summer internship programs. One avenue available to international students who want to gain experience in their chosen field is the Optional Practical Training (OPT) program administered by U.S. Citizenship and Immigration Services (USCIS). The OPT program offers up to 12 months of work authorization to students who have entered the United States under an F-1 student visa.¹

Whether they are hiring OPT program participants or other international students trying to gain work experience, employers often have questions about their federal income and social security (FICA) tax withholding and reporting responsibilities related to a student's compensation.

Where to start....?

Under U.S. income tax laws, a foreign citizen or national may be subject to tax in different ways, depending on whether the individual is considered a resident or nonresident. Residents are taxed on worldwide income and are entitled to the same deductions and credits available to U.S. citizens.² Nonresidents are taxed on income received from U.S. sources only, such as income earned from the performance of personal services in the United States.³ So, the first step in determining an international student's U.S. federal income tax obligations, and his or her employer's corresponding withholding and reporting responsibilities, is to determine the student's tax residency status.

U.S. tax residency

An international student's residency status depends on his or her immigration classification and the number of days the student is present in the United States over a period of three calendar years.

As a foreign citizen or national, a student present in the United States on an F visa is treated as a nonresident.⁴ A nonresident becomes a tax resident by either becoming a lawful permanent resident (i.e., obtaining a green card), or having "substantial presence" in the United States.⁵

When enacting the tax residency rules, U.S. lawmakers decided it was appropriate to treat individuals who spend a significant amount of time in the United States as tax residents who are taxable on worldwide income. It was determined that a residency regime that focuses on a person's length of stay, the substantial presence test, would be appropriate as the test would be objective (because it is based on day counting) in establishing the individual's nexus (i.e., connection) with the United States.⁶

The substantial presence test focuses on an individual's physical presence in the United States. Under the test, a foreign citizen who is present in the United States for 31 days during the calendar year and whose days of U.S. presence are 183 days or more will be a U.S. resident.⁷ The 183 days are figured as the sum of (1) the days present during the current calendar year, plus (2) one-third of the days present during the preceding calendar year, and (3) one-sixth of the days present during the second preceding calendar year.⁸ An average of 122 days of U.S. presence per year over three years will trigger residency status.

Example

Michel, a French citizen, is present in the United States and must determine his U.S. tax residency for the 2024 tax year. He does not have a green card. Michel spent 130 days in the United States during 2024, 120 days during 2023, and 180 days during 2022. Michel is a U.S. tax resident for 2024 because he is present in the United States on at least 31 days in 2024, and on more than 183 days under the substantial presence test formula.

Year	Days Present in the United States	Weighted day count
2024	130 x 1	130
2023	120 x 1/3	40
2022	180 x 1/6	30
		200



U.S. lawmakers also recognized that there are situations in which taxation of a person as a U.S. resident would be inappropriate because of the reason for the individual's U.S. stay.⁹ Thus, an exception to the substantial presence test is available to an individual who comes to the United States to learn. Under this exception, days present as an "exempt individual" (a term that includes students) do not count as days of U.S. presence when applying the substantial presence test.¹⁰ Therefore, a student in the United States on an F visa and who substantially complies with the requirements of the visa will not count the days he or she is physically present in the United States in establishing whether the 183-day threshold has been crossed for determining U.S. tax residency status.

The exemption does not apply indefinitely. Generally, a student cannot be treated as an exempt individual if he or she has had that status for any part of more than five calendar years. But is an F visa holder who has been present in the United States for more than five years *automatically* deemed a U.S. tax resident? Not necessarily. If the student has substantially complied with the requirements of the F visa and can show he or she has no intention to reside permanently in the United States, the student may continue to be treated as an exempt individual.¹¹ In that case, the student's days of U.S. presence would not count when applying the substantial presence test, and he or she would continue to be a nonresident for federal tax purposes.

Substantial compliance with visa requirements means the student has not engaged in activities that are prohibited under U.S. immigration law that could result in a loss of visa status.¹² A student participating in the USCIS OPT program for F-1 visa holders is most likely in compliance with F visa requirements.

However, consultation with an immigration adviser to address visa requirements is recommended.

Whether a student intends to remain in the United States permanently is determined by the facts and circumstances of his or her situation. Factors to be considered include whether the student has taken steps to become a lawful permanent resident of the United States, and whether the student has maintained a closer connection to a foreign country than the United States.¹³ A tax adviser can assist in determining whether a student has maintained more significant contact with another country.¹⁴

A student who is eligible to exclude days of U.S. presence must file a fully completed Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition*, with the Internal Revenue Service (IRS).¹⁵ The form instructions provide information about when and how to file the form. However, it is interesting that although the law requires a student to file Form 8843, failure to file the form will not result in the student's days of U.S. presence being counted for the substantial presence test.¹⁶

U.S. federal income taxation

A student may be an exempt individual for the purpose of determining tax residency, but this does not mean he or she is exempt from U.S. income tax. For a nonresident, U.S.-source income, including compensation from the performance of personal services in the United States, is subject to U.S. income tax¹⁷ unless a provision of the Internal Revenue Code (I.R.C. or the Code) or a treaty operates to exempt the income.





Employment with a U.S. employer

Compensation earned by a student working in the United States for a U.S. employer is subject to U.S. federal income tax at regular graduated tax rates.¹⁸ Prior to starting work, the student should complete and submit to his or her employer Form W-4, *Employee's Withholding Certificate*.¹⁹ The form should be completed by following the special rules for nonresidents included in the form instructions and IRS [Notice 1392](#).

The U.S. employer must withhold and deposit federal income taxes (and state taxes, if applicable) and file Form W-2, *Wage and Tax Statement*, to report the wages and withholding to the IRS and the student.²⁰ As discussed in more detail later, a nonresident student (F visa holder) is not subject to the FICA tax on wages paid for services performed to carry out the purpose for which the student was admitted to the United States.²¹ Thus, no FICA withholding and reporting would be required.

The student must file a Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, by April 15 to report all U.S.-source income received during the tax year and to pay any federal income tax due or to claim a refund.²² A state income tax return may also have to be filed.

Employment with a foreign employer

The result is different for federal income tax purposes if the student is employed in the United States by a "foreign employer." U.S.-source compensation paid by a foreign employer to an F visa holder is not includible in the student's gross income.²³ For purposes of this exemption, a foreign employer includes a nonresident individual, foreign corporation, or foreign partnership, or an office or fixed place of business (e.g., a "permanent establishment") that a U.S. corporation, U.S. partnership, or U.S. citizen or resident maintains in a foreign country or U.S. possession.²⁴

Further, the student's compensation is not considered "wages" subject to withholding at source.²⁵ Thus, no Form W-4 or Form W-2 filings are required for federal income tax purposes. The foreign employer may exempt payments to the student from withholding if the employer can reliably associate the payments with a Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*, that the student has completed (including his or her social security number) and provided to the employer.²⁶ U.S.-source amounts paid to the nonresident student are reported by the employer on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.²⁷ The completed Form 1042-S is filed with the IRS and furnished to the student by March 15 of the subsequent year.²⁸ Form W-2 reporting may be required if the exemption from the FICA tax (discussed later) does not apply.

Not all states conform to federal tax laws, so the exemption from federal income tax provided by the Code may not apply for state income tax purposes. A Form W-2 may have to be filed to report the compensation and any state tax withheld to the applicable state tax authorities. The Form 1042-S provides a box to report state income tax withheld (box 17a), but unlike the Form W-2, not all states are known to accept Form 1042-S filings.

A nonresident F visa holder who is temporarily present in the United States and who has no U.S.-source income subject to federal income tax is not required to file a Form 1040-NR.²⁹ Thus, a student whose U.S.-source compensation is paid by a foreign employer, and who receives no other U.S.-source income, would not have to file Form 1040-NR with the IRS. If state tax law does not conform to federal and the compensation is includible in the student's gross income, a state tax return may have to be filed.

Relief from federal income tax—tax treaties

An income tax treaty may provide a limited exemption from U.S. income tax and from withholding on compensation paid to a nonresident student. Tax treaties are independently negotiated and not all treaties contain the same relief provisions. Students and their employers should refer to the terms of the income tax treaty (if any) between the United States and their home country, or consult with their tax adviser, to determine what, if any, income tax and withholding relief may apply.

If an income tax treaty offers relief from U.S. income tax, the student must provide to the employer a completed Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, to claim a tax treaty withholding exemption.³⁰ The form, which is valid for one year, must include the student's social security number.³¹ To complete the form, the student would check the box on line 10 and attach a statement.³² Failure to attach the required statement is a common error that may delay IRS processing.

Upon receipt, the employer should follow the Form 8233 instructions regarding acceptance and subsequent submission of the form and statement to the IRS. The employer must wait at least 10 days from mailing Form 8233 to the IRS to see whether the IRS has an objection to the claim.³³ If not, the withholding exemption will be effective for payments retroactive to the date of the first payment covered by the form.³⁴

After the close of the year, Form 1042-S is filed with the IRS and furnished to the student,³⁵ as explained above. If the wages are subject to state and local tax, or FICA, Form W-2 filing may be required.³⁶

The student must file Form 1040-NR to claim exemption from U.S. federal income tax under an income tax treaty.³⁷ Some, but not all, states honor U.S. tax treaties. If the state does not comply with the provisions of federal income tax treaties, the student may have to file a return and pay state tax on income that is exempt for federal tax purposes.

U.S. social security tax (FICA)

Generally, both the employer and employee are liable for the U.S. FICA tax on wages paid for personal services performed in the United States.³⁸ This rule applies regardless of the citizenship or residency of either party,³⁹ and wages that are exempt from federal



income tax under a tax treaty may still be subject to FICA. However, wages paid for services performed by a nonresident temporarily present in the United States on an F visa and performed to carry out the purpose of the visa are not subject to the FICA tax.⁴⁰ This FICA tax exemption applies to employment performed under the OPT program by foreign students if the employment is authorized by USCIS.⁴¹

Breaking the law into its components, to qualify for the FICA tax exemption the individual must be:

- (i) a nonresident,⁴²
- (ii) temporarily present in the United States on an F visa, and
- (iii) providing services which are performed to carry out the purpose of the F visa.

If any one of the three conditions is not satisfied, the wages will not be exempt from FICA tax. For example, if the five-year limit prevents the student from claiming "exempt individual" status, and as a result he or she is considered a tax resident under the substantial presence test, the student will no longer be eligible for the FICA tax exemption as of his or her residency start date because condition (i) is not met. Similarly, if the individual's visa classification changes from an F visa (student) to an H-1B visa (temporary worker in a specialty occupation), the FICA tax exemption will no longer apply from the date the new visa classification is effective due to failure of the second condition.

Note that the FICA tax exemption does not consider the *employer's* residency status. Thus, a nonresident student (F visa holder) working for a U.S. employer in the United States is eligible for the FICA exemption if the services being provided are carried out for the purpose of the visa, although such income would probably be subject to federal income tax.

Conclusion

A summer training program in the United States offers employers the opportunity to screen new talent and evaluate their skills with an eye toward future employment with the organization. In addition, students are afforded the chance to gain practical experience in their selected field of study while being exempt from certain U.S. taxes. Internship programs undeniably offer tangible benefits to both parties, but there are federal, and perhaps state, tax responsibilities to be addressed when an international student is welcomed into an organization. The income and FICA tax reporting and withholding obligations can be unlike what the organization

typically encounters when hiring a student who is a U.S. citizen or resident. Immigration status and the federal tax laws that apply to students present in the United States under an F visa can make the payroll process more challenging.

Both the employer and the international student would be well advised to confirm the student's compliance with the F visa requirements to help ensure eligibility for tax relief. Employers should confirm the correct processes are in place to document and comply with their U.S. tax withholding and reporting obligations. Consultation with a tax professional for advice specific to the organization and the students to be hired is recommended.

Footnotes:

¹ See USCIS website: <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students>.

² I.R.C. § 1; Treas. Reg. § 1.1-1(b). Unless otherwise indicated, all references to "section" or "sections" herein are to the Internal Revenue Code of 1986, as amended, or to regulations promulgated thereunder.

³ I.R.C. § 871.

⁴ I.R.C. § 7701(b)(1)(B).

⁵ I.R.C. § 7701(b)(1)(A).

⁶ Staff of the Joint Comm. on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, JCS-41-84 (December 31, 1984), at page 464.

⁷ I.R.C. § 7701(b)(3); Treas. Reg. § 301.7701(b)-1(c).

⁸ Id.

⁹ Staff of the Joint Comm. on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, JCS-41-84 (December 31, 1984), at page 464.

¹⁰ I.R.C. §§ 7701(b)(3)(D); 7701(b)(5)(A)(iii) and 7701(b)(5)(D); Treas. Reg. § 301.7701(b)-3(b)(1)(iii); Treas. Reg. § 301.7701(b)-3(b)(4).

¹¹ I.R.C. § 7701(b)(5)(E)(ii); Treas. Reg. § 301.7701(b)-3(b)(7)(iii).

¹² IRS Pub. 519, *U.S. Tax Guide for Aliens* (February 12, 2024), at page 7.

¹³ Treas. Reg. § 301.7701(b)-3(b)(7)(iii).

¹⁴ Treas. Reg. § 301.7701(b)-2; IRS Pub. 519, at page 9. Factors to be considered include the location of the student's permanent home and where family, personal belongings, and social, political, cultural, professional, or religious affiliations are located. This is not an exhaustive list.

¹⁵ Treas. Reg. §§ 301.7701(b)-8(a)(2)(i); 301.7701(b)-8(b)(2).

¹⁶ Treas. Reg. § 301.7701(b)-8(d).

¹⁷ I.R.C. § 871.

¹⁸ I.R.C. §§ 861(a)(3); 871(b).

¹⁹ I.R.C. § 3402(f)(2).

²⁰ I.R.C. §§ 6041; 6051.

²¹ I.R.C. § 3121(b)(19).

²² I.R.C. § 6072(c); Treas. Reg. § 1.6012-1(b)(1)(i); Treas. Reg. § 1.6072-1(c).

²³ I.R.C. § 872(b)(3); Treas. Reg. § 1.872-2(b)(1).

²⁴ I.R.C. § 872(b)(3); Treas. Reg. § 1.872-2(b)(2).

²⁵ Treas. Reg. § 31.3401(a)(6)-1(f).

²⁶ Treas. Reg. § 1.1441-1(e)(1)(ii); Treas. Reg. § 31.3401(a)(6)-1(f). See IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities* (2024), Pay for Dependent Personal Services (Income Code 18), Graduated Rates, Exception 2 at page 55.

²⁷ Treas. Reg. § 1.1461-1(c)(2)(i)(E).

²⁸ Treas. Reg. § 1.1461-1(c)(1).

²⁹ Treas. Reg. § 1.6012-1(b)(1)(i); *Form 1040-NR Instructions* (2023), Filing Requirements, page 6.

³⁰ Treas. Reg. § 31.3401(a)(6)-1(f); Treas. Reg. § 1.1441-4(b)(2).

³¹ Treas. Reg. § 1.1441-4(b)(2).

³² The format and content of the statement are shown in Appendix A in IRS Publication 519, *U.S. Tax Guide for Aliens* (2024).

³³ Treas. Reg. § 1.1441-4(b)(2)(i).

³⁴ Id.

³⁵ Treas. Reg. § 1.1461-1(c)(1).

³⁶ See IRS Pub. 515 (2024), *Wages Paid to Employees – Graduated Withholding*, Reporting requirements for wages and withheld taxes paid to nonresidents, at page 54.

³⁷ Treas. Reg. § 1.6012-1(b)(1)(ii).

³⁸ I.R.C. §§ 3101; 3111; 3121(a) and (b).

³⁹ I.R.C. § 3121(b).

⁴⁰ I.R.C. § 3121(b)(19).

⁴¹ IRS Pub. 515 (2024) at page 56.

⁴² Nonresident status does not have to be due to the student being classified as an exempt individual. If the five-year limit causes a student to lose exempt individual status in the sixth year, days of U.S. presence would have to be counted when applying the substantial presence test. However, the student may be a nonresident if he or she spent less than 183 days in the United States as days spent in the United States as an exempt individual in the prior two years would not count toward U.S. tax residency.

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