

This document provides IRS and other professional guidelines regarding the individual income taxation of nonresident and resident aliens in the United States, with respect to students and scholars at MIT.

FAQ TOPICS

Dual Status Aliens

- **What is a dual status alien?**
- **How do I know if I am a dual status alien?**
- **Do I have to file two different federal tax forms?**
- **When did I switch from nonresident to resident for tax purposes?**
- **What if I don't want to be a resident for tax purposes because I don't want to pay Social Security and Medicare?**

Foreign Tax Matters

- **Personal Property: Are any of these taxable income?**
- **Sold book rights or articles**
- **Sold real estate property I owned abroad**
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- **I lived and earned income in more than one U.S. state in 2016. Do I have to file tax forms in each state?**
- **Do my tax treaty benefits apply to my state taxes?**

Spouses

- **Do spouses pay/file taxes together or single if they are both MIT students?**

- I am a resident for tax purposes but my wife only arrived within the last year. Since I am a resident on a J-1 or H-1, is my wife also a resident if she is on a J-2 or H-4?
- As a J-2 does my spouse have to pay taxes if s/he worked in the U.S.?

Tax-Related Identity Theft

- What is tax-related identity theft?
- How would I know if my tax identity has been stolen?
- What steps can I take to resolve my tax identity theft and protect myself in the future?

Other Tax Questions

- How do I know what tax year I should be filing for?
- Is money I got as a prize or award honoring me taxable?
- I have a fellowship from an outside MIT source, do I still have to pay taxes?
- I do not have an R.A. but I have a fellowship - how do I get an ITIN#?
- When do we file the W8BEN?

References

- Internal Revenue Service
- Massachusetts Department of Revenue
- Miscellaneous References

FAQ TOPIC AND DISCUSSION

Dual Status Aliens

What is a dual status alien?

A dual status alien is an individual who is classified as both a U.S. resident alien and a nonresident alien in the same tax year. Dual status does not refer to your citizenship, only to your resident status for tax purposes in the United States.

How do I know if I am a dual status alien?

Typically, you will be classified as a dual status alien during the tax year under the following circumstances:

- You arrived in the U.S. during the tax year and received permanent residency status (receive a Green Card) via your employer or spouse.
- You entered the U.S. and passed the substantial presence test during the year (*see below for more information about the substantial presence test*).
- You held a J, F, M, or Q visa the first part of the year and received permanent residency status during the year.
- You left the United States permanently during a year in which you qualified as a tax resident.

Do I have to file two different federal tax forms?

As a dual status alien, the income tax return you file will depend on whether you are a resident alien or a nonresident alien at the end of the tax year. However, only one form will be required, along with the applicable statements, for each residency scenario.

Resident Alien at End of Year

You must file Form 1040, U.S. Individual Income Tax Return, if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a statement to your return to show the income for the part of the year you are a nonresident. You can use Form 1040NR, U.S. Nonresident Alien Income Tax Return or Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents as the statement, but be sure to mark "Dual-Status Statement" across the top.

Nonresident at End of Year

You must file Form 1040NR, U.S. Nonresident Alien Income Tax Return or Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents if you are a dual-status taxpayer who gives up residence in the United States during the year and who is not a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a statement to your return to show the income for the part of the year you are a resident.

A nonresident taxpayer must file Form 1040NR regardless of whether you had any reportable U.S. sourced income or if your income is exempt from U.S. tax under a tax treaty.

Income Tax Liability Rules for Dual-Status Taxpayers

In determining your U.S. income tax liability for a dual-status tax year, different rules apply for the part of the year you are a resident of the United States and the part of the year you are a nonresident.

For The Part of the Year you are a U.S. Resident Alien

For the part of the year you are a U.S. resident alien, you are taxed on income from all sources. Income from sources outside the United States is taxable if you receive said income while you are a resident alien.

For The Part of the Year you are a Nonresident Alien

For the part of the year you are a nonresident alien, you are taxed on income from U.S. sources and your effectively connected income (ECI). Effectively connected income is income from sources within the United States connected with the conduct of that trade or business carried on in the United States, during the tax year.

When did I switch from nonresident to resident for tax purposes?

Generally, most international students who are on F, J, M or Q visas are considered nonresident aliens for tax purposes. International students on F1 visas are automatically considered nonresident aliens for their first 5 calendar years in the U.S., and scholars (and their dependents) on J visas are automatically considered nonresidents for their first 2 calendar years in the U.S.

If you have been in the U.S. for longer than the 5 or 2 calendar years, you will be considered a United States resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year

What if I don't want to be a resident for tax purposes because I don't want to pay Social Security and Medicare?

Residency for tax purposes is determined by the substantial presence test, based on an individual's physical presence in the United States over a three-year period. **You may not elect to be a nonresident in order to avoid Social Security and Medicare withholding.**

Foreign Tax Matters

Personal Property: Are any of these taxable income?

Sold book rights or articles - Royalties from copyrights on literary, musical, or artistic works, and similar property, or from patents on inventions, are taxable as ordinary income.

Sold real estate property I owned abroad – Nonresident aliens do not need to include income derived from foreign sources such as from the sale of property, unless the income is effectively connected with a trade or business in the United States.

Resident aliens must report the sale of the property abroad just as if the property was located and sold in the U.S. If this real estate was your principal residence and you both lived and owned the house for at least 24 months in the last 60 months ending on the sale date, then you can exclude \$250,000 of gains (or \$500,000 in gains if you are married and file a joint return). If the real estate is a rental property, you will need to calculate your taxable gain using Form 4797, Sales of Business Property.

If you are required to pay taxes on the sale in the foreign country where the property is located, you may claim a foreign tax credit on your income tax return using Form 1116.

Sold real estate property I owned in the US – Both resident aliens and nonresident aliens will need to report the sale of property located in the United States. The gain from the sale of a primary residence is tax-exempt for up to \$250,000 of gains for single taxpayers (\$500,000 for married filing joint taxpayers). If the real estate is a rental property, you will need to calculate your taxable gain using Form 4797, Sales of Business Property.

Sold stocks or other investments – Capital gains from the sale of stock or other investments in the United States are taxable at the favorable capital gains rates for individual filers.

If I earned money from my salary or other income source abroad is it taxable in the U.S.?

Nonresident aliens are not required to report salaries or other income earned abroad, unless the income is effectively connected with a trade or business in the United States. Resident aliens must report foreign sourced income on their individual income tax return, which will then be taxable at the applicable rates.

State Tax Matters

What is a part-year resident and how do I know if I was a resident or part-year resident?

Determining whether you are a resident or a part-year resident in a given state is typically a matter of a physical presence. In Massachusetts, the following rules apply:

Massachusetts Full-Year Resident

- Legal residence (domicile) is in Massachusetts for the entire taxable year; or
- Legal residence (domicile) is **not** in Massachusetts for the entire taxable year but who:
 1. Maintains a permanent place of abode in Massachusetts; **and**
 2. Spends in the aggregate more than 183 days of the taxable year in Massachusetts, including days spent partially in and partially out of Massachusetts.

Massachusetts Part-Year Resident

- Moves to Massachusetts during the taxable year and becomes a resident; or
- Terminates his or her status as a Massachusetts resident during the taxable year and establishes a residence outside the state.

An individual is a nonresident if he or she is **not** a resident or inhabitant of Massachusetts as defined above.

Permanent Place of Abode Rules

The Department of Revenue interprets a "permanent place of abode" to mean a dwelling continually maintained by a person, whether or not owned by such person, and will include a dwelling owned or leased by a person's spouse.

A permanent place of abode generally will not include the following:

- A camp, military barracks and housing, dormitory room, hospital room or room in any other similar temporary institutional setting;
- A university owned studio apartment available only to a university affiliated student, faculty and staff.

Students attending school or college in Massachusetts will not establish legal residence in Massachusetts, but may still be required to file as residents if they meet the permanent place of abode and 183 days test.

I lived and earned income in more than one U.S. state in 2016. Do I have to file tax forms in each state?

If you earned income in multiple states in a given tax year, you may need to file a return in each state that you resided in during the tax year as a part-year resident, based on that state's residency and income sourcing rules.

In Massachusetts, part-year residents are generally taxed on all of their income while residents of Massachusetts, whether received from sources inside or outside of Massachusetts. A Massachusetts full-year and/or part-year resident is entitled to claim a credit for incomes taxes

paid to other states on income reported and taxed in Massachusetts. A part-year resident is only allowed credit for taxes paid on income earned and/or received during the Massachusetts residency period.

Do my tax treaty benefits apply to my state taxes?

Whether or not a state chooses to honor federal income tax treaty agreements will vary on a state-by-state basis. In Massachusetts, to the extent that income is excluded federally per a tax treaty, that income will also be exempt from state income tax. The income must still be reported on the return as wages and then claimed as a deduction on Schedule Y, Line 4.

Spouses

Do spouses pay/file taxes together or single if they are both MIT students?

As a MIT student, you are considered a nonresident alien during your first five years in the United States. Generally, you cannot file as married filing jointly if either spouse was a nonresident alien at any time during the tax year. Therefore, you and your spouse would file separate returns using the single filing status.

I am a resident for tax purposes but my wife only arrived within the last year. Can she be a resident if she is on a J-2 or H-4 visa and I am on a J-1 or H-1 because I am?

If you are a U.S. citizen or resident, **you may choose to treat your nonresident spouse as a resident and file a joint tax return.** If you choose to do so, your nonresident spouse will need an SSN or an ITIN. Alien spouses who are claimed as exemptions or dependents are also required to furnish an SSN or an ITIN.

You and your spouse are treated for income tax purposes as residents for the entire tax year. You are both taxed on your worldwide income and must file a joint income tax return (Form 1040, 1040A, or 1040EZ) for the tax year you elect to treat your nonresident spouse as a resident.

As a J-2 does my spouse have to pay taxes if s/he worked in the U.S.?

Yes, if your spouse worked during the tax year, s/he should file Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, and either Form 1040NR or Form 1040NR-EZ. Spouses who enter the U.S. on a J-2 visa and are permitted to work, will also be subject to Social Security and Medicare withholding on their earned income.

Tax-Related Identify Theft

What is tax-related identity theft?

Tax-related identity theft occurs when someone uses your stolen Social Security number (SSN) or ITIN to file a tax return and claim a fraudulent refund.

How would I know if my tax identity has been stolen?

If someone uses your SSN or ITIN to file for a tax refund before you do, the IRS will assume you already filed and received your refund. When you go to file your return later, IRS records will show the first filing and refund issued. Your records could also indicate that you received wages or other income from an employer for whom you did not work. You may also receive a notice or letter from the IRS stating that they have identified a suspicious return using your SSN.

Please note that **the IRS does not initiate contact with taxpayers by email to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.**

What steps can I take to resolve my tax identity theft and protect myself in the future?

Contact the IRS immediately to report the fraud if you believe your tax identity may have been stolen or if the IRS has notified you. Send a copy of your police report or Form 14039, Identity Theft Affidavit and proof of your identity, such as a copy of your Social Security card, driver's license or passport to the IRS.

Protect yourself from future identity theft by:

- Using security software with firewall and anti-virus protections.
- Recognizing phishing emails, threatening calls and texts from thieves posing as legitimate organizations such as your bank, credit card companies and even the IRS.
- Avoiding clicking on links or downloading attachments from unknown or suspicious emails.
- Monitoring your credit reports regularly

Beware of tax preparers who offer to help you prepare your immigration forms: the only individuals authorized to give advice on immigration law are attorneys and representatives accredited by the U.S. Department of Justice's Executive Office for Immigration Review.

Other Tax Questions

How do I know what tax year I should be filing for?

The Internal Revenue Service defines a tax year as an annual accounting period for reporting income and expenses. For most individual tax filers, the tax year is synonymous with the calendar year of 12 consecutive months beginning January 1 and ending December 31. You will file your individual income tax return as applicable for the previous tax year, by the filing deadline set forth in the current tax year. For the 2016 tax year (January 1 – December 31), the individual income tax filing deadline is April 18, 2017.

Is money I got as a prize or award honoring me taxable?

Generally, cash prizes and awards must be included in gross income and taxable at the applicable rates, regardless of your residency status (resident alien, nonresident alien, dual status alien). However, certain exceptions may apply:

Employee achievement award - If you receive tangible personal property (other than cash, a gift certificate, or an equivalent item) as an award for length of service or safety achievement, you generally can exclude its value from your income. The amount you can exclude is limited to your employer's cost, not to exceed \$1,600 (\$400 for awards that are not qualified plan awards) for all such awards you receive during the year. The exclusion does not apply to the following awards:

- A length-of-service award if you received it for less than 5 years of service or if you received another length-of-service award during the year or the previous 4 years.
- A safety achievement award if you are a manager, administrator, clerical employee, or other professional employee or if more than 10% of eligible employees previously received safety achievement awards during the year.

Pulitzer, Nobel, and similar prizes - If you were awarded a prize in recognition of accomplishments in religious, charitable, scientific, artistic, educational, literary, or civic fields, you generally must include the value of the prize in your income. However, you do not include this prize in your income if you meet all of the following requirements.

1. You were selected without any action on your part to enter the contest or proceeding.
2. You are not required to perform substantial future services as a condition for receiving the prize or award.
3. The prize or award is transferred by the payer directly to a governmental unit or tax-exempt charitable organization as designated by you.

Please note that these rules do not apply to scholarship or fellowship awards.

I have a fellowship from an outside MIT source, do I still have to pay taxes?

Regardless of whether you receive a fellowship grant from within the Institute or outside of it, the amount you receive may be partially or entirely tax-exempt. Fellowship grants are tax-exempt under the following conditions:

- You are a candidate for a degree at an educational institution that maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where it carries on its educational activities; and
- The amounts you receive are used to pay for tuition and fees required for enrollment or attendance at the educational institution, or for fees, books, supplies, and equipment required for courses at the educational institution.

The taxable portion of said grants include amounts used for incidental expenses, such as room and board, travel, and optional equipment, as well as amounts received as payments for teaching, research, or other services required as a condition for receiving the fellowship grant. These amounts must be reported on your individual income tax return as part of gross income.

If filing Form 1040, Form 1040A, or Form 1040EZ, include the taxable portion in the total amount reported on the "Wages, salaries, tips" line of your tax return. If the taxable amount was not reported on Form W-2, enter "SCH" along with the taxable amount in the space to the left of the "Wages, salaries, tips" line. If filing Form 1040NR or Form 1040NR-EZ, report the taxable amount on the "Scholarship and fellowship grants" line.

I do not have an R.A. but I have a fellowship - how do I get an ITIN#?

ITINs are issued to foreign nationals and other individuals who have federal tax reporting or filing requirements and do not qualify for SSNs. You may apply for an ITIN using the latest revision of Form W-7, [Application for IRS Individual Taxpayer Identification Number](#). Attach a valid federal income tax return, unless you qualify for an exception, and include your original proof of identity or copies certified by an issuing agency and foreign status documents.

Mail your return, Form W-7 and proof of identity and foreign status documents to:

Internal Revenue Service
Austin Service Center
ITIN Operation
P.O. Box 149342
Austin, TX 78714-9342

When do we file the W8BEN?

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting, is submitted to a withholding agent or payer upon request, if you are a nonresident alien and beneficial owner of an amount subject to withholding (e.g. compensation, dividends, interest, royalties, rents, etc.). This certificate establishes that you are not a U.S. citizen or resident and can be used to claim a reduced rate or exemption from withholding tax, if you are a resident of a foreign country that currently has an income tax treaty with the United States.

REFERENCES

Internal Revenue Service

Foreign Students and Scholars

<https://www.irs.gov/individuals/international-taxpayers/foreign-students-and-scholars>

Taxation of Nonresident Aliens

<https://www.irs.gov/individuals/international-taxpayers/taxation-of-nonresident-aliens>

Substantial Presence Test

<https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>

Effectively Connected Income (ECI)

<https://www.irs.gov/individuals/international-taxpayers/effectively-connected-income-eci>

IRS Publication 519: Nonresident Spouse Treated as a Resident

https://www.irs.gov/publications/p519/ch01.html#en_US_2015_publink1000222193

Aliens – Which Income to Report

<https://www.irs.gov/individuals/international-taxpayers/aliens-which-income-to-report>

IRS Publication 525 – Other Income

https://www.irs.gov/publications/p525/ar02.html#en_US_2015_publink1000229492

IRS Publication 525 – Bonuses and Awards

https://www.irs.gov/publications/p525/ar02.html#en_US_2015_publink1000229094

References for Foreign Students and Scholars

<https://www.irs.gov/individuals/international-taxpayers/references-for-foreign-students-and-scholars>

IRS Publication 519 – Additional Material

<https://www.irs.gov/publications/p519/ar02.html>

Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers and Trainees

<https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes>

Taxation of Dual-Status Aliens

<https://www.irs.gov/individuals/international-taxpayers/taxation-of-dual-status-aliens>

General ITIN Information

<https://www.irs.gov/individuals/general-itin-information>

IRS Topic 421 – Scholarships, Fellowship Grants, and Other Grants

<https://www.irs.gov/taxtopics/tc421.html>

IRS Publication 515 – Withholding of Tax on Nonresident Aliens and Foreign Entities

<https://www.irs.gov/pub/irs-pdf/p515.pdf>

Form W-8BEN

<https://www.irs.gov/uac/form-w-8ben-certificate-of-foreign-status-of-beneficial-owner-for-united-states-tax-withholding>

IRS Taxpayer Guide to Identity Theft

<https://www.irs.gov/uac/taxpayer-guide-to-identity-theft>

Massachusetts Department of Revenue

Who Must File

<http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/filing-requirements/who-must-file.html>

Legal and Residency Status

<http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/residency-status.html#Students>

U.S. Tax Treaties

<http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/residency-status.html#Treaties>

Permanent Place of Abode

<http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/residency-status.html#Permanent>

Directive 95-9: Tax Treatment of Scholarships and Grants for Residents and Nonresidents of Massachusetts

<http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/1990-1999-directives/directive-95-9-tax-treatment-of-scholarships.html>

TIR 95-7: Change in the Definition of “Resident” for Massachusetts Income Tax Purposes

<http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/1990-1999-releases/tir-95-7-change-in-the-definition-of.html>

Directive 87-4: Non-Residents from Other Countries; Effect of Tax Treaty

<http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/1980-1989-directives/directive-87-4-non-residents-from-other.html>

830 CMR 62.5A.1 Non-Resident Income Tax

<http://www.mass.gov/dor/businesses/help-and-resources/legal-library/regulations/62-00-income-tax/830-cmr-625a1-non-resident-income-tax.html>

Students Temporarily Residing in Massachusetts

<http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/residency-status.html#Students>

Letter Ruling 09-5: Residency

<http://www.mass.gov/dor/businesses/help-and-resources/legal-library/letter-rulings/letter-rulings-by-years/2005-2009-rulings/letter-ruling-09-5-residency.html>

Miscellaneous References

U.S. Taxation of J-1 Exchange Visitors

https://tax.thomsonreuters.com/wp-content/pdf/nra-tax/US_Taxation_of_J-1_Exchange_WP.pdf

Personal Income Tax Issues Related to Residency and Domicile

http://www.lanepowell.com/wp-content/uploads/2012/05/PTXL1205_Gadon1.pdf

U.S. Code Section 74 – Prizes and Awards

<https://www.law.cornell.edu/uscode/text/26/74>