

# **Nonresident Alien Reference Guide**

## **Definition**

Nonresident Alien (NRA) is defined as any employee who is NOT a United States Citizen or a Permanent Resident (Resident Alien or Green Card holder).

## **Responsibilities**

- Meet with a representative from the Office of International Education upon arrival to the campus.
- Provide all required documents by the established timeline
- Maintain legal status at all times. It is the NRA's responsibility to ensure there is adequate planning time to maintain their legal/work status.
- Notify the Office of International Education of visa changes.
- Notify the Department Payroll Representative of visa changes, tax status, change of address, healthcare benefits, etc.

It is required by the University of Maryland System and Central Payroll Bureau that all NRA's must complete a Citizenship Status Form (CSF) and accompanying tax documents in November of each year. Completed forms are then given to the Department Payroll Representative.

**NOTE:** ANY EMPLOYEE IN THIS STATUS IS RESPONSIBLE FOR ENSURING THAT THEY MAINTAIN THEIR VISA AND IF APPLICABLE, CURRENT WORK AUTHORIZATION.

## **General Information**

NRA's are required to have a valid social security number. Temporary numbers may only be used if the person has a valid receipt or application from the Social Security Administration showing that an application has been submitted for a permanent social security number.

Once the employee receives the permanent social security card, the hiring department (or primary department) must submit a Change PAR Form to update the temporary number to the valid social security number.

The following documentation is necessary to complete this transaction:

- Change PAR form (action inclusive of: social security number change)
- Copy of the social security card
- Citizenship Status Form ((Supporting documents such as United States visa, I-94, I-20, IAP66, etc.)
- W-4 Form
- I-9 form

NRA's must have valid social security numbers to receive tax treaty exemption benefits.

All NRAs are required to pay State of Maryland Income Taxes. There is no treaty exemption for NRAs from Maryland State Income taxes.

**Please Note:** Any employee who lives in Virginia or Pennsylvania may be exempt from paying Maryland State Income taxes regardless of visa status.

### **U.S. Tax - Tax Resident Status**

The Internal Revenue Service recognizes four categories for tax residency status. These are NOT Immigration categories.

- United States Citizen
- Permanent Resident Alien
- Resident Alien for tax purposes
- NRA for tax purposes

When UMBC makes a payment to someone who is not a U.S. Citizen or Permanent Resident Alien, federal law determines whether the person meets the tax residency criteria of:

- Resident Alien for tax purposes (RA)
- Nonresident Alien for tax purposes (NRA)

The Substantial Presence Test (SPT) is used to determine whether the individual is a Resident Alien (RA) or NRA. The key factors of the substantial presence test are the history of U.S. visits and the immigration classification during those visits. The form used to calculate this information is the Citizenship Status Form (CSF). An annual renewal is required. The Citizenship Status form (CSF) for the current calendar year can be found on the HR website.

<http://www.umbc.edu/hr/Payroll/indexnew.html>

If the information for the Substantial Presence Tax is not available, Central Payroll Bureau, by law, presumes the individual is a NRA and withholds tax accordingly.

A Resident Alien (RA) for tax purposes is subject to the same tax regulations as a U.S. Citizen.

Payment for services performed by a NRA outside the U.S. is considered “foreign source” income. Therefore, it is not taxable in the U.S. However, it may still be taxable in the home country.

NRA and Resident Alien (RA) definitions apply only to federal taxes. They do not apply to state taxes.

## **Tax Treaties (Representative Letters)**

- An income tax treaty is an agreement between the United States and a foreign country to minimize double taxation.
- Certain taxable payments made to foreign nationals may be exempt from (not subject to) U.S. taxes based on the terms of the income tax treaty between the U.S. and a foreign national's country of tax residency.
- The U.S. maintains tax treaties with over 60 countries throughout the world.
- No two treaties are alike
- Tax Treaty exemptions are typically for a specified number of years and specified money amount.
- Income tax treaties apply to federal tax not to state tax. The State of Maryland does not recognize tax treaties.

Listed below are the countries that have agreements with the U.S. The actual Representation Letter and form 8233 [exemption from withholding for independent (and certain Dependent) Personal Services for a NRA individual can be found on the HR website. <http://www.umbc.edu/hr/Payroll/indexnew.html>

### **Tax Treaty Tips:**

1. BACK TO BACK CLAUSE: prevents an individual from claiming the exemption:
  - a. during a period that immediately follows one in which he/she has claimed a "student/trainee" exemption, or
  - b. for the same purpose on multiple occasions.

The individual must re-establish residency in her home country (1 year), then re-enter the U.S. to claim a Treaty benefit.

2. ONCE IN A LIFETIME CLAUSE: the "Teacher/Researcher" exemption may be used only ONCE by an individual. Re-establishing residency does not permit use of this exemption. The treaties that have this clause are: the Czech Republic, France, Indonesia, Portugal, and Slovak Republic.
3. RETROACTIVE CLAUSE: Time Limits. Some treaties require "retroactive" taxation of all earnings if an exempted person has been present in the U.S., exceeding the allowable time.
4. The whole exemption would be lost and would be taxable. Treaties that include this restriction are: India, the Netherlands, the Philippines, and the U.K.)

(updated 04-28-2008)

5. CHINA: does not have a back-to back clause, but does require that an individual who has used the student exemption must re-establish residency in China before she is allowed to use the teacher/researcher exemption.

Individuals using the tax treaty exemption must:

- Have a permanent Social Security Number.
- Submit, each calendar year, the following forms:
  - W-4 form
  - 8233 form
  - Representation letter
  - Citizenship Status Form
- Use the appropriate representation letter for the “primary purpose” of coming to the United States (check the I-20, DS-2019, H-1 Approval Notice). For example, a F-1(student) on Optional Practical Training (OPT), whose title is “professor”, completes the “Student” representation letter, not the “Teacher/Researcher” letter, because the primary purpose for being in the U.S. is to be a student.
- Attach copies of appropriate immigration documents as required.

## **FICA Taxes**

FICA consists of Social Security and Medicare Taxes which funds pension payments for retired persons in the U.S., and medical insurance for retired persons. Usually, F-1 and J-1 Nonresident Alien students are exempt when enrolled a student, and J-1 nonresident alien teacher/researcher are exempt from this tax. However, if an employee becomes a Resident Alien for tax purposes, they would be subject to FICA taxes. F-1 & J-1 students may still be FICA exempt under the "student FICA exemption" if enrolled & regularly attending classes & working for the school where enrolled. U.S. tax law requires that you pay the tax based on tax residency status, regardless of whether or not the employee will receive benefits from the FICA taxes paid.

## **U.S. Taxes- Federal and State withholdings for Nonresident Alien for Tax Purposes**

A NRA subject to wage withholding must give the employer a completed Employee Withholding Allowance Certificate (W-4 form) on wages paid to enable the employer to withhold the appropriate taxes.

In completing an Employee Withholding Allowance Certificate (W-4) form NRA for tax purposes should follow the instructions below.

#### Section 2 - Federal Withholding Form W-4

- Check “single” on line 3 (regardless of actual marital status)
- Claim only one (1) withholding allowance on line 5, unless a resident of Canada, Mexico or South Korea, or a U.S. national.
- NRAs are not permitted to claim “Exempt” from federal tax withholding.

#### Section 3- Maryland Withholding Form MW507, District of Columbia Withholding Form D-4, and West Virginia Withholding Form WV/IT-104

- NRA can claim either “0 or 1” exemptions for State taxes.
- NRA can claim “exempt” from state taxes if living in Pennsylvania or Virginia which is line 4.

The actual Withholding Allowance Certificate (W-4 form) for State of Maryland Employees, State of Maryland Employees Residing in Washington, D.C., and State of Maryland Employees Residing in West Virginia can be found on the HR website.

<http://www.umbc.edu/hr/Payroll/indexnew.html>

**REPRESENTATION LETTERS FOR STUDENTS** (updated 05-12-2011)

COUNTRY	ARTICLE NUMBER	# OF EXEMPT YEARS	EXEMPT DOLLAR AMOUNT (employees)	FELLOWSHIP ARTICLE?
BANGLADESH	21	Student=no limit (apprentice=2 years)	8,000	Yes
BELGIUM	19	5	2,000	Yes
BULGARIA	19	Student=no limit (trainee=2 years)	9,000	NO
PEOPLES REPUBLIC OF CHINA (NOT HONG KONG OR TAIWAN)	20(c)	Reasonable time to complete studies	5,000	Yes
COMMONWEALTH OF INDEPENDENT STATES*	VI(d)	5 (fellows only)	N.A.	Yes
CYPRUS	21(1)	5 or time to complete studies	2,000	Yes
CZECH REPUBLIC	21	5	5,000	Yes
EGYPT	23	5	3,000	Yes
ESTONIA	20	5	5,000	Yes
FRANCE	21	5	5,000	Yes
GERMANY	20(4)	4	9,000	Yes
ICELAND	19	5	9,000	Yes
INDONESIA	19(1)	5	2,000	Yes
ISRAEL	24	5	3,000	Yes
KAZAKHSTAN	19	5 (fellows only)	N.A.	Yes
S. KOREA	21(1)	5	2,000	Yes
LATVIA	20	5	5,000	Yes
LITHUANIA	20	5	5,000	Yes
MALTA	20	5	9,000	NO
MOROCCO	18	5	2,000	Yes
NETHERLANDS	22	as long as full-time student/trainee	2,000	Yes
NORWAY	16(1)	5	2,000	Yes
PAKISTAN	XIII	no explicit limit	5,000	NO
PHILIPPINES	22(1)	5	3,000	Yes
POLAND	18(1)	5	2,000	Yes
PORTUGAL	23	5	5,000	Yes
ROMANIA	20(1)	5	2,000	Yes
RUSSIAN FEDERATION	18	5 (fellows only)	N.A.	Yes
SLOVAK REPUBLIC	21	5	5,000	Yes
SLOVENIA	20	5	5,000	Yes
SPAIN	22(1)	5	5,000(-\$3750 personal Exemption in 2011)	Yes
THAILAND	22	5	3,000	Yes
TRINIDAD & TOBAGO	19(1)	5	2,000	Yes
TUNISIA	20	5	4,000	Yes (Art.20a)
UKRAINE	20	5 (fellows only)	N.A.	Yes
VENEZUELA	21	5	5,000	Yes

\*Former USSR treaty applies to:

Armenia,Azerbaijan,Belarus,Georgia,Kyrgyzstan,Moldova,Tajikistan,Turkmenistan,Uzbekistan.

## Representation Letters for Teachers/Researcher

### Article #/country/special clauses

- (21) Bangladesh
- (20) Belgium – Back-to-Back Clause Teachers only.
- (19) Bulgaria
- (19) China - (DOES **NOT** INCLUDE HONG KONG or TAIWAN) 3 Year Exemption
- (21) Czech Republic- Back to Back and Once in a Lifetime Clauses
- (22) Egypt – Back-to-Back Clause (5 year TOTAL use if Student Article was used)
- (20) France - ONCE IN A LIFETIME (5 year TOTAL use if Student Article was used)
- (20<1>) Germany – Back-to-Back Clause
- (XII) Greece – 3 Year Exemption (from date of arrival) Teachers/professors only.
- (17) Hungary
- (21) Iceland – Back-to-Back Clause (eligibility for student article qualifies as “use”)
- (22) India – Retroactive Clause
- (20) Indonesia – Once in a Lifetime Clause
- (23) Israel – Back-to-Back Clause (5 year TOTAL use if Student Article was used)
- (20) Italy
- (22) Jamaica – Once in a Lifetime Clause
- (20) Japan
- (20) Korea - Back-to-Back Clause
- (21) Luxembourg - Retroactive Clause
- (21<1 >) Netherlands – Retroactive and Back-to-Back Clauses
- (15) Norway – Back-to-Back Clause
- (XII) Pakistan
- (21) Philippines – Retroactive and Back-to-Back Clauses
- (17) Poland – Back-to-Back Clause
- Portugal - Back to Back and Once in a Lifetime Clauses
- (19) Romania - Back-to-Back Clause (5 year TOTAL use if Student Article was used)
- (21) Slovak Republic – Back to Back and Once in a Lifetime Clauses
- (20) Slovenia - (5 year TOTAL use if Student Article was used)
- (23) Thailand – Retroactive Clause (5 year TOTAL use if Student Article was used)
- (18)Trinidad & Tobago - Back-to-Back Clause (5 year TOTAL use if Student Article was used)
- (VI) U.S.S.R.- Armenia
- (VI) U.S.S.R.- Azerbaijan
- (VI) U.S.S.R.- Belarus
- (VI) U.S.S.R.- Georgia
- (VI) U.S.S.R.- Kyrgyzstan
- (VI) U.S.S.R.- Moldova
- (VI) U.S.S.R.- Tajikistan
- (VI) U.S.S.R.- Turkmenistan
- (VI) U.S.S.R.- Uzbekistan
- (20) United Kingdom – Retroactive Clause
- (21) Venezuela

*All teacher/researcher articles are for 2 years from date of arrival unless otherwise noted.*

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## VISA Classifications

**A-1, A-2, A-3:** Staff of foreign embassies & members of their immediate family. A-3 are attendants, servants of A-1, A-2. Clearance for any work beyond diplomatic work must be given in advance by the Protocol Division of the Department of State. Will have Employment Authorization Document (EAD).

**B-1:** Visitors for business. May be paid by foreign source; limited to reimbursement of travel & per diem from U.S. source; no salary/honorariums.

**B-2:** Visitors for pleasure. May receive no payment whatsoever from any U.S. source.

**B-2 Prospective Student Alien:** Clear intent to study in the U.S.; will change to F-1 status. May receive no payment whatsoever from any U.S. source until visa has been officially changed to F-1.

**B-2 Prospective Exchange Visitor:** Alien with clear intent to change to J-1 status for study, research or teaching. May receive no payment whatsoever from any U.S. source until visa has been officially changed to J-1.

**C-1, C-2, C-3:** Visitors in transit. May receive no payment whatsoever from any U.S. source.

**D:** Foreign crewman. May be paid only for work done in connection with shipping/transport.

**E-1, E-2:** Treat traders, treaty investors & their dependents. May be paid for business and investing work used as justification for issuance of visa; no other work is legally permitted.

**F-1:** Foreign students. On-campus work permitted by USCIS regulations (with restrictions – i.e. 20 hours/week when school is in session, 40 hours/week during school vacations); Off-campus work possible if employer has filed labor attestation or student has been approved for practical training; Off-campus permission given on 3<sup>rd</sup> page of I-20 or on EAD.

**F-2:** Dependents of foreign students. May receive no payment whatsoever from any U.S. source.

**G-1, G-2, G-3, G-4, G-5:** Employees of international organizations & their immediate family members. G-5s are attendants, servants of G-1 to G-4. May be paid only by the organization for which they received their G designation; no other work legally permitted. Spouses & dependents may apply for special work permission from the Dept. of State.

**H-1A:** Registered nurses. Can only be paid by the facility that filed the labor attestation & applied for the H-1A.

**H-1B:** Temporary workers in a specialty occupation other than nurses, agricultural workers, athletes or entertainers. Visa is job specific – can only be paid by the organization which filed the petition for H-1 status.

**H-2A:** Aliens coming to U.S. to perform agricultural work of a temporary/seasonal nature. Can only be paid by petitioner or original sponsor – Job specific.

**H-3:** A trainee. Cannot be paid by other than original sponsor or petitioner – job specific.

**H-4:** Dependents of H-1A, H-1B, H-2A, H-2B or H-3s. May receive no payment whatsoever from any U.S. source.

**I:** Journalists, representatives of the media & their dependents. May work only for media organization that obtained I visa for them.

**J-1 Student:** Students in the U.S. under Exchange Visitor Program. May work on- or off-campus if granted permission by Exchange Visitor sponsor.

**J-1 Professor & Research Scholar:** Researchers, professors, scholars here under Exchange Visitor program. May work for university academic department or organization that issued or is listed on DS-2019 form; permission for other work granted by petition to U.S. Information Agency.

**J-1 Short-term Scholar:** Short-term researchers & professors. Limited to 6 month stay. No extensions permitted. May work for the university academic department or organization that issued or is listed on DS-2019 form; permission for other work granted by petition to U.S. Information Agency.

**J-2:** Dependents of J-1 Exchange Visitors. May request work authorization from USCIS so long as monies earned will not be used to support the J-1; work permission is shown on EAD.

**K-1:** Fiancés of U.S. citizens. May request work authorization upon entry to U.S.; permission shown on EAD. Must marry U.S. citizen w/in 90 days & apply for permanent residence.

**L-1:** Intra-company transfers – i.e. managers, executives who have worked abroad for branch of U.S. firm. May work only for the company that obtained L-1 visa; no other work permitted.

**L-2:** Dependents of L-1s. May receive no payment whatsoever from any U.S. source.

**M-1:** Students at vocational schools. May receive permission to work for six months after completion of studies; shown on EAD.

**M-2:** Dependents of M-1s. May receive no payment whatsoever from any U.S. source.

**NATO 1-7:** Aliens from NATO member countries in the U.S. under sponsorship of NATO for study, research, or training. Payment limited to funds provided through NATO award.

**O-1:** Alien who has extraordinary ability in the sciences, arts, education, business, athletics, motion pictures or T.V. May be paid only by the organization that petitioned.

**O-2:** Alien coming to U.S. solely to assist in the artistic or athletic performance by an O-1. May be paid only by the sponsor of the O-1 alien.

**P-1:** Alien coming to U.S. to perform at a specific athletic competition. May be paid only by the sponsoring organization.

**P-2:** Alien coming to U.S. to perform as artist or entertainer. May be paid only by sponsoring organization.

**P-3:** Alien coming to perform as an artist or entertainer in a culturally unique program. May be paid only by sponsoring organization.

**P-4:** Dependents of P-1, P-2, P-3s. May receive no payment whatsoever from any U.S. source.

**Q:** Alien coming to participate in an int'l exchange program for sharing of attitudes, customs, history, heritage, philosophy and/or traditions of alien's country. May be paid only by sponsoring agency.

**R:** Alien who is a member of a bona fide nonprofit, religious organization in the U.S. May be paid only by sponsoring agency.

**S:** Federal Witness. Not eligible for change to another non-immigrant status.

**TN:** Professional from Canada or Mexico who entered the U.S. under NAFTA agreement. Employment is restricted to the employer sponsoring the TN.

**TD:** Dependents of TN professional. May receive no payment whatsoever from any U.S. source.

**WB:** Visa Waiver Business. Limited to countries participating in the Visa Waiver Pilot Program. Maximum stay of 90 days; cannot be extended or changed to another visa status. Reimbursement for travel and per diem only; no salary or honorariums.

**WT:** Visa Waiver Tourist. Limited to countries participating in the Visa Waiver Program. Maximum stay of 90 days; cannot be extended or changed to another visa status. May receive no payment from any U.S. source.

**Asylum Applicants:** Those who have filed for asylum in the U.S. May request work authorization; permission shown on special card.

**Asylees/Refugees:** Those granted asylum or refugee status. May request work authorization; permission shown on EAD.

**Pending Immigrants:** Those who have filed for adjustment to Immigrant status. May request work authorization; permission shown on EAD.

**Immigrants (Permanent Residents/Resident Aliens):** Those who have been granted residence in the U.S. No limits on employment; status shown on Green Card.

**Temporary Residents:** Those who have been approved for legalization after having been here in illegal status for 5 years. May request work authorization for the year (or longer) it will take to obtain permanent residence; permission shown on EAD.

**Conditional Permanent Residents:** Those who have applied for immigrant status through marriage to U.S. citizen or permanent resident. No limits on employment; permission on EAD.

**Undocumented Aliens:** Those who have entered the U.S. illegally or who lost legal status. Not eligible for employment.

## TAX FORMS REQUIRED FOR NON-RESIDENT/RESIDENT ALIENS

CITIZENSHIP STATUS	FORMS	WHEN FILED	HOW THE W-4 CAN BE COMPLETED:
Permanent Resident	W4 CSF W-9	Once- Upon Hire	As a US Citizen
Resident Alien for tax Purposes	W-4 CSF W-9	Renew every calendar year	As a US Citizen
NRA for tax purposes, no Tax Treaty applies:	W-4 CSF	Renew every calendar year	Must file single Federal is 0 <u>or</u> 1 State is 0 <u>or</u> 1 Cannot use line 7
NRA for tax purposes, Tax Treaty applies:	W-4 CSF 8233 (Oct, 2001) Rep. Letter	Renew every calendar year	Must file single Federal is 0 <u>or</u> 1 State is 0 <u>or</u> 1 Cannot use line 7
NRA for tax purposes, Tax Treaty applies: H-1 Needs a W-9 & a W-9 Attachment	W-4 CSF 8233 (Oct, 2001) Rep. Letter	Renew every calendar year	Must file single Federal is 0 <u>or</u> 1 State is 0 <u>or</u> 1 Cannot use line 7

**FYI:** NONRESIDENT ALIENS WITH A TEMPORARY SOCIAL SECURITY NUMBER CAN NOT USE A TAX TREATY.

TAX TREATY FORMS MUST BE FILED CORRECTLY BY THE CURRENT YEAR END DEADLINE TO BE EXEMPT FROM FEDERAL TAXES ON JANUARY 1 OF THE NEW YEAR

Key:      NRA=                                  Nonresident Alien  
              W4=                                    Employee withholding allowance certificate  
              CSF=                                    Citizenship status form  
              W-9=                                    Request for taxpayer identification number  
              8233=                                    IRS form 8233, December 2001  
              Rep. Letter=                            Representation letter or attachment for 8233 form

W-4, CSF, W-9, W- 9 Attachment, 8233, and Representation Letters can be found here:  
<http://www.umbc.edu/hr/Payroll/NRA.html>

## NONRESIDENT ALIEN REQUIRED DOCUMENTS

CLASSIFICATION	REQUIRED ATTACHMENTS MUST BE SUBMITTED WITH THE PAYROLL DOCUMENTS AND CITIZENSHIP STATUS FORM
<b>Permanent Resident</b>	Resident Alien Card or I-551 Stamped from passport OR Copy of USCIS approval letter
<b>Permanent Resident Applicant</b>	A valid (unexpired) Employment Authorization Card OR Letter from INS stating Permanent Resident application has been processed OR A stamped Passport indicating "Processed for I-551"
<b>Asylee, Refugee, or TPS</b>	Valid Employment Authorization Card OR Copy of Notice of Adjustment of Status from (USCIS) OR Copy of stamp from passport OR Copy of I-94 indicating status
<b>F-1 Student</b>	I-94 Departure Card AND Form I-20 - Certificate of Eligibility (F-1 Status) AND Copy of US VISA ** *** If student is on OPT (Optional Practical Training) also attach a valid Employment Authorization Card indicating "Practical Training"
<b>J-1 Student</b>	I-94 Departure Card AND DS-2019 - Certificate of Eligibility (J-1 Status) AND Copy of US VISA **
<b>J-1 Non-student (professor, teacher, or researcher)</b>	I-94 Departure Card AND DS-2019 - Certificate of Eligibility (J-1 Status) AND Copy of US VISA **
<b>J-2 Spouse *Not eligible for Tax Treaty</b>	I-94 Departure Card AND Copy of US VISA** AND Valid Employment Authorization Card
<b>H-1B Worker</b>	I-94 Departure Card AND I-797 AND Copy of US VISA **

CLASSIFICATION	REQUIRED ATTACHMENTS MUST BE SUBMITTED WITH THE PAYROLL DOCUMENTS AND CITIZENSHIP STATUS FORM
<b>G-4 Dependent of G-1 (Employee of Int'l Organization)</b>	I-94 Departure Card AND Copy of US VISA** AND Valid Employment Authorization Card
<b>O-1</b>	I-94 Departure Card AND Copy of US VISA
<b>TN</b>	I-94 Departure Card AND I-797 AND Copy of US VISA
<b>Pending Immigrants (PP)</b>	I-94 Departure Card and Valid Employment Authorization Card AND Copy of US VISA

**Reminders**

- **Non Resident Aliens are responsible for ensuring that that they maintain their VISA and if applicable, work authorization current.**
- **Maintain legal status at all times.**
- **Notify the Department Payroll Representative regarding VISA changes, change of address, tax status, etc.**
- **Notify the Department of International Education regarding VISA changes.**
- **Every November it is required that all NRA's complete a Citizenship Status Form (CSF and accompanying tax documents). Completed forms are given to the Department Payroll Representative.**