



**Taxation Issues:
Nonresident Aliens &
Completing the Foreign
National Data Request Form**



Nonresident Alien Tax Issues: Why?

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- Nonresident Alien's (NRA's) have higher tax liability
 - Payor is *liable* for taxes, interest, and penalties if withholding incorrect
 - IRS has pulled agents from “outreach” into “enforcement” to increase audits
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Nonresident vs. Resident

- Taxed on U.S. source income

- No standard deduction

- No FICA for F-1 & J-1 employees

- No exemptions for family

- Making Work Pay credit unavailable

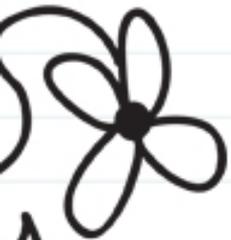
- Taxed on world-wide income

- Standard deduction

- FICA required on wage income

- Exemptions for family available

- Eligible for Making Work Pay credit





What is a Nonresident Alien?



- INS definition:

- non-immigrant in U.S. temporarily who maintains a residence abroad they do not intend to abandon (F-1, J-1, B-1, for example)
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- IRS definition:

- non-immigrant in U.S. temporarily not *substantially present* long enough to be considered a tax resident



Substantial Presence Test (SPT)

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- IRS uses to determine tax residency
 - 183 days of presence gives residency
 - 100% current, 1/3 previous, 1/6 two years prior
 - F and J students are “exempt individuals” for 5-year period
 - NOT exempt from tax, but counting days of presence
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SPT Example #1

- Arrived as F-1 in U.S. 8/15/2004 for PhD
- Was in U.S. as F-1 1989-1993 for BS
- “Exempt Individual” in 1989, 1990, 1991, 1992 and 1993
- Resident or nonresident for tax purposes?





SPT Example #1

Resident Alien

	Year No.	Immigration Status	Days Exempt?	Number of Days	Tax Status
2009	11	F-1	No	365	RA
2008	10	F-1	No	365	RA
2007	9	F-1	No	365	RA
2006	8	F-1	No	365	RA
2005	7	F-1	No	365	RA
2004	6	F-1	No	135	NRA
2003					
2002					
2001					
2000					
1999					
1998					
1997					
1996					
1995					
1994					
1993	5	F-1	Yes		NRA
1992	4	F-1	Yes		NRA
1991	3	F-1	Yes		NRA
1990	2	F-1	Yes		NRA
1989	1	F-1	Yes		NRA
1988					
1987					
1986					
1985					





SPT Example #2

- Arrived as F-1 in U.S. 8/15/2005 for PhD
- “Exempt Individual” in 2005, 2006, 2007, 2008, 2009
- Resident or nonresident for tax purposes?





SPT Example #2

Nonresident
Alien

Year No.	Immigration Status	Days Exempt?	Number of Days	Tax Status	
2009	5	F-1	Yes	0	NRA
2008	4	F-1	Yes	0	NRA
2007	3	F-1	Yes	0	NRA
2006	2	F-1	Yes	0	NRA
2005	1	F-1	Yes	0	NRA
2004					
2003					
2002					
2001					
2000					
1999					
1998					
1997					
1996					
1995					
1994					
1993					
1992					
1991					
1990					
1989					
1988					
1987					
1986					
1985					





SPT Example #3

- Arrived as J-1 student in U.S. 8/15/1985 for 1-year of high school
- Departed 5/20/1986
- Returned for MBA 8/20/06
- “Exempt Individual” in 1985, 1986, 2006, 2007, 2008
- Tax resident or nonresident?





SPT Example #3

Resident Alien

	Year No.	Immigration Status	Days Exempt?	Number of Days	Tax Status
2009	6	F-1	No	365	RA
2008	5	F-1	Yes	0	NRA
2007	4	F-1	Yes	0	NRA
2006	3	F-1	Yes	0	NRA
2005					
2004					
2003					
2002					
2001					
2000					
1999					
1998					
1997					
1996					
1995					
1994					
1993					
1992					
1991					
1990					
1989					
1988					
1987					
1986	2	J-1 student	Yes	0	NRA
1985	1	J-1 student	Yes	0	NRA





SPT Example #4

- Arrived as F-2 on 8/15/2004
- Change to F-1 approved 8/15/07
- “Exempt Individual” in 2004, 2005, 2006, 2007, 2008
- Tax resident or nonresident?





SPT Example #4

Resident Alien

	Year No.	Immigration Status	Days Exempt?	Number of Days	Tax Status
2009	6	F-1	No	365	RA
2008	5	F-1	Yes	0	NRA
2007	4	F-2 / F-1	Yes	0	NRA
2006	3	F-2	Yes	0	NRA
2005	2	F-3	Yes	0	NRA
2004	1	F-4	Yes	0	NRA
2003					
2002					
2001					
2000					
1999					
1998					
1997					
1996					
1995					
1994					
1993					
1992					
1991					
1990					
1989					
1988					
1987					
1986					
1985					





Work Authorization Options

- Optional Practical Training (OPT) is F-1
- Curricular Practical Training (CPT) is for-credit or required academic program experience before graduation
 - Also considered F-1
- Economic Necessity work permit from immigration for F-1





FICA Exemption Rule

- F-1 & J-1 NRA exempt from FICA under Section 3121(b)(19) of the Internal Revenue Code
- Generally, FICA exemption is available for first 5 years in U.S.
 - Exception is when previously present in F or J status





W-4 Restrictions

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- Limit to “single” even if married
 - Limit to “1” allowance, even if dependents
 - NRA must write “NRA” on line 6
 - Requires modification of withholding calculation due to no standard deduction and unavailability of Making Work Pay credit
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Foreign National Data Request Form – Overview

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- Agencies identify who might be a nonresident alien.
 - I-9: “Authorized to work in the US until” – must complete the Foreign National Data Request Form
 - Form requests relevant information for determining immigration status.
 - Form updated annually.
 - If there are no changes, only certify there have been no changes
- 



Foreign National Data Request Form – Overview



The form is processed in three steps:

- **Step One: The Agency:**
 - Reviews the Foreign National Data Request Form,
 - Ensures all required documents are attached and legible, and
 - Forwards the entire package of information to OA Accounting.
 - **Step Two: OA Accounting reviews all documentation and:**
 - Determines whether the employee is a Resident or Nonresident Alien for taxation purposes and
 - Identifies the proper taxation for the employee.
 - Returns the documentation back to the Agency for final entry on SAMII HR TAX window.
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Foreign National Data Request Form – Processing Overview

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- Step Three: Finally, the Agency:
 - Ensures they have a properly completed W-4 on file.
 - Makes the correct entries in the TAX window in SAMII HR.
 - Makes the correct entries on the ESMT.
 - Initials and dates the Form indicating it has been reviewed and the proper SAMII HR entries have been made.
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Foreign National Data Request Form



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF ACCOUNTING
FOREIGN NATIONAL DATA REQUEST FORM

The information requested on this form is used to determine your U.S. tax withholding status. If you checked "An alien authorized to work until" when you completed the I-9 when you were hired, you must complete this form (1) **before beginning employment**, (2) **if your immigration status changes**, and (3) **at the beginning of each calendar year**. If you completed this form last year and there have been no changes, complete only Part 1 and Part 5 and only provide copies of documents which have changed. If you are a Lawful Permanent Resident, you do not need to complete this form.

PLEASE ATTACH A LEGIBLE COPY OF:
US VISAS ISSUED, BIO PAGE AND EXPIRATION DATE FROM YOUR PASSPORT, I-94 (Show Original Entry Date),
ALL I-20s, DS-2019s, or 797's ISSUED, AND EMPLOYMENT AUTHORIZATION CARD

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- **Who must complete the form**
 - "Alien authorized to work until"
 - **When must the form be completed**
 - Within 3 days of beginning employment
 - Immigration Status Changes
 - Beginning of each year – update for changes only
 - **Which documents must be provided. See handouts.**
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Foreign National Data Request Form – Part 1



PART 1 – PERSONAL INFORMATION

Last Name		First Name	Middle Initial	Social Security Number
Street Address (US)			Name of University Overseeing Practical Training	
City	State	Zip Code	State Agency	
Home /Cell Phone		Work Phone	E-Mail Address	
Primary purpose of visit to the United States. Please check the appropriate line and attach the appropriate authorization:				
<input type="checkbox"/> Student: Practical Training		<input type="checkbox"/> Student: Other		<input type="checkbox"/> Other (Explain) _____

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- **Part 1:** The employee provides personal information including where they attend college (if applicable) and the purpose of their visit to the United States.

Foreign National Data Request Form – Parts 2 & 3

PART 2 - CITIZENSHIP AND IMMIGRATION STATUS INFORMATION

Citizen of _____ Country residing in prior to arriving in US (if different from citizenship) _____ Current Immigration Status (F1, J1, etc) _____

Date originally entered USA _____ End Date on Work Authorization _____

PART 3 – DETERMINATION OF RESIDENCE STATUS FOR FEDERAL TAX WITHHOLDING

Furnish the requested information below to show the number of days you will be or were present in the United States during the calendar year listed.

Calendar Year	Purpose: (for example, teacher, researcher, or student)	Immigration Status (F-1, J-1, etc)	Number of days expected to be or actually present in the U.S.
2009			
2008			
2007			
2006			
2005			

- **Part 2:** Employee provides information about his/her immigration status.
- **Part 3:** Employee provides information about stay in the United States; days present, purpose and visa type.



Foreign National Data Request Form –Part 4 & Part 5



PART 4 – CERTIFICATION

I certify that to the best of my knowledge and belief all the information I have provided is true, correct, and complete. If my status changes, I understand I am liable for any resulting increased tax liability.

Signed: _____ Date: _____

NOTE: Any tax treaties for which you are eligible may be claimed when you file your income tax return. Tax treaties are not processed through the state payroll system.

PART 5 – RE-CERTIFICATION – to be completed only in subsequent years with no change to immigration status

I certify that there has been no change in my immigration status. I have provided updated copies (changes only) of all requested documents. If my status changes, I understand I am liable for any resulting increased tax liability.

Signed: _____ Date: _____

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- **Part 4:** The employee certifies that he/she has provided accurate information. Also, employee is responsible for any tax liability that results in a change of status.
 - **Part 5:** To be completed only in subsequent years.



Foreign National Data Request Form Processing – Step 1



AGENCY USE ONLY (First Step):

Verify that the following documents are attached and legible:

US Visas issued

Passport (Bio page and expiration date)

I-94 (show original entry date)

All I-20s, DS2019s or I-797s issued

Employment Authorization Card

Forward the Data Request Form and all requested documentation to OA/Accounting. OA/Accounting will make the final determination as to whether the employee is a Resident or Non-Resident Alien. Following OA/Accounting's review, the forms will be returned to the agency for final ESMT & TAX window update in SAM II HR.

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- The Agency begins by verifying that all of the documentation is attached to the Form and is legible.
 - US Visas issued,
 - Passport: bio page & expiration date,
 - I-94 (Show Original Entry Date),
 - All I-20s, DS-2019s, or 797's issued and
 - Employment Authorization Card
 - Forward the Data Request Form and all documents to OA/Accounting.
- 



Foreign National Data Request Form – Step 2



OA ACCOUNTING USE ONLY (Second Step):

Substantial Presence Test (SPT) met? Y (Resident Alien) N (Non-Resident Alien). If no, date SPT will be met: _____

The employee is:

A Resident Alien. A Non-Resident Alien

Employee is taxed exactly like a citizen. No re-certification is required.

Employment status is "N". Employee is exempt from FICA taxes. Set the tax window to the W-4 as required below.

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- OA Accounting will :
 - Determine whether the substantial presence test has been met and if not, the date it will be met.
 - Mark the employee's status for taxation purposes.
 - Mark whether the employment status and taxation will be affected.
 - NOTE: Nonresident aliens' federal income taxes are withheld in a unique manner. The Employment Status of "N" initiates the correct tax computation in SAM II HR.



Foreign National Data Request Form – Step 2

The employee is:

- A **Resident Alien**: employee is taxed **exactly like a citizen**.
 - No special requirements for the W-4. Not exempt from FICA taxes.
- A **Nonresident Alien**:
 - On **ESMT**, enter **Employment Status** of “N” unless the employee is a resident of India. Federal income taxes are withheld in a unique manner. This employment status initiates the correct tax computation in SAM II HR.
 - If changing an employee to or from an Employment Status of “N”, use “C19” as your **Reason Code**. Include an explanation in remarks.
 - Set the **TAX** window according to the **W-4 as required below**.
 - The employee is exempt from FICA taxes.
 - W-4 Requirements:
 - Claim single marital status
 - Claim only 1 withholding allowance unless a resident of India, Canada, Mexico or South Korea or a U.S. national.
 - Write “Nonresident Alien” or “NRA” about dotted line on line 6.



In VERY RARE instances, an NRA could have to pay FICA taxes! This would be noted on the form by OA Accounting.





Foreign National Data Request Form – Step 2

SAMPLE W-4



----- Cut here and give Form W-4 to your employer. Keep the top part for your records. -----

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Allowance Certificate ▶ Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.	OMB No. 1545-0074 2010
1 Type or print your first name and middle initial. Last name		2 Your social security number
Home address (number and street or rural route)		3 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. <small>Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.</small>
City or town, state, and ZIP code		4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. <input type="checkbox"/>
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)		5 1
6 Additional amount, if any, you want withheld from each paycheck		6 \$ NRA
7 I claim exemption from withholding for 2010, and I certify that I meet both of the following conditions for exemption. <ul style="list-style-type: none"> • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here		
Under penalties of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief, it is true, correct, and complete.		7
Employee's signature (Form is not valid unless you sign it.) ▶		Date ▶
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)		9 Office code (optional)
		10 Employer identification number (EIN)

Foreign National Data Request Form – Step 2

■ Sample ESMT:

Employment Status Maintenance

Employee ID: - - 1234 Appointment ID: [] Alternate ID: []

Prefix: [] First: JANE Middle: E Last: DOE Suffix: []

Effective Date: 10 / 01 / 10 Expiration Date: / / Original Appt Date: 01 / 01 / 10

Job Assignment | Dates | Assignment Attributes | Pay Parameters | Certificate/Remark

Personnel Action / Reason: CHCON / C19 Job Status: R Employment Status: N

Assignment Information

Agency: 300 Organization: 1234 EEO Full-time: Yes No N/A Union Member: Yes No N/A

Position Number: RESIDNT % Full-time: 1.0 Union Affiliation: []

Table Driven Pay: Use Table Do Not Use Table Selection Required Step: F

Application Information

Applicant ID: [] Job Notice ID: []

Nonresident Aliens (unless from India) will have an Employment Status of "N".

When moving an employee to or from "N" the Reason Code will be "C19."

Foreign National Data Request Form – Step 2

- Sample Tax Screen – Nonresident Alien

	Deduction Type	Deduction Plan	Effective Date	Expiration Date	Deduction Amount	Deduction Rate
1						
2						
3						
4						
5						
6						

Missouri tax law follows the IRS, so the employee must also claim S with 1 allowance for state taxes.

Claiming zero allowances for state withholding will lower the likelihood that the employee will have a state tax liability when they file their state income tax return.



Foreign National Data Request Form – Step 3



AGENCY USE ONLY (Final Step):

If the employee is a Non-Resident Alien, the following is required:

- A. Employee's Employment Status on ESMT should be "N" unless they are a resident of India. If moving an employee to or from Employment status of "N", use Reason Code "C19" and note explanation in Remarks.
- B. W-4 must be completed as follows:
 - o Claim single marital status
 - o Claim only 1 withholding allowance unless a resident of India, Canada, Mexico or South Korea or a U.S. national.
 - o Write "Non-Resident Alien" or "NRA" above the dotted line on line 6.
- C. The TAX window must be updated to reflect the W-4 as outlined above. Also, the employee is exempt from FICA withholding until residency status changes.

I have reviewed all of the information above and updated the ESMT & TAX windows in SAM II HR accordingly

Initials: _____ Date: _____

- Final Step
 - Based on the determination provided by OA Accounting, the agency:
 - Updates the ESMT
 - Ensures a properly completed W-4 is on file
 - Updates the TAX window in SAM II HR.
 - Agency records who has reviewed the Data Request Form and updated the ESMT & TAX windows in SAM II HR.
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Foreign National Data Request Form – Setting up the Initial Tax Screen

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- Until you have confirmation of the employee's status for tax purposes, new employees required to complete the FNDR form should NOT be set up on the TAX window as exempt from FICA taxes.





Foreign National Data Request Form – Due Date

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- The I-9 must be completed within three days of beginning of employment.
 - This is also the time to obtain all of the documentation required to complete Foreign National Data Request Form.
 - The completed Foreign National Data Request Form and supporting documentation should be forwarded to the Office of Administration, Division of Accounting ***within the first week of employment.*** This will facilitate a timely turn-around and correct tax withholdings for the employee.
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Nonresident Aliens Summary

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- Non-immigrant in U.S. temporarily - not ***substantially present*** long enough to be considered a tax resident
 - Extra income tax liability
 - Exempt from FICA taxes
 - Gather the information from employees on the Foreign National Data Request (FNDR) Form based on I-9
 - OA Accounting will determine whether nonresident alien
 - Update FNDR Form annually for changes
- 