

# COLLEGE of CHARLESTON

## OFFICIAL POLICY

9.1.7

**Resident Alien vs Nonresident Alien Status**

**10/5/2020**

### **Policy Statement**

. This handout is intended as a general guide on residence status for tax purposes. Please note that there are significant differences between the definitions of residence status for immigration law purposes and tax law purposes.

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### **Policy Manager and Responsible Department or Office**

Office of Human Resources

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### **Purpose/Reason for the Policy**

Immigration And Tax Law Definitions

**IMMIGRATION LAW:** A nonresident alien is a person who is not a citizen or permanent resident of the U.S. who has been admitted for a temporary stay that will end when the purpose of that stay has been met.

A resident alien, for IMMIGRATION purposes, is the same as an immigrant, or a “green card” holder—a non-U.S. citizen who has been authorized to live and work in the U.S. indefinitely.

**TAX LAW:** A nonresident alien for tax purposes is a non-U.S. citizen or permanent resident who, during his or her stay in the U.S. either pays U.S. tax only on income from sources inside the U.S. or else is exempt from paying U.S. income tax because of a treaty between the U.S. and the government of his or her country of residence for tax purposes. Most nonresident aliens receive no tax exemption for dependents. A nonresident alien for tax purposes must file an income tax return on IRS Form 1040NR (U.S. Nonresident Alien Income Tax Return).

A resident alien **FOR TAX PURPOSES** must pay tax to the U.S. government on income from all sources, worldwide, and may in certain limited circumstances enjoy benefits of tax treaty exemptions. Individuals who are resident aliens for tax purposes can claim exemptions for dependents, while nonresident aliens generally may not. A resident alien for tax purpose files a return on IRS Form 1040, 1040A, or 1040EZ.

Categories established for immigration purposes do not necessarily coincide with those set up for tax purposes. Under certain circumstances, a nonresident alien for **IMMIGRATION** purposes may be a resident for **TAX** purposes. Thus, students and scholars who are not citizens of the United States must take care to determine whether they are resident or nonresident aliens for tax purposes. Only then will they know how their income will be taxed and which income tax return form to file. For current information on tax laws regarding resident and nonresident aliens, IRS Publications 513, 515, 519, and 901 should be consulted.

When a person who has been a nonresident for tax purposes becomes a resident for tax purposes under the rules discussed below, he or she will be taxed differently for the part of the year before becoming a resident and the part after becoming a resident. This is discussed in IRS Publication 519 under the heading “Dual Status”.

## RESIDENCY DETERMINATION FOR TAX PURPOSES

### Resident for Tax Purposes

A resident for tax purposes is a person who is not a U.S. citizen and who meets either the “green card” test or the “substantial presence” test described in Publication 519, U.S. Tax Guide for Aliens. With regard to residency determination for tax purposes:

- F and J student visa holders are generally considered residents after their first five (5) calendar years in the U.S.
- J non-students (researchers, scholars, teachers, etc.) are generally considered residents after their first two (2) calendar year in the U.S.
- H-1s are considered residents once they meet the “substantial presence” test.

### Nonresident for Tax Purposes

A nonresident for tax purposes is a person who is not a U.S. citizen and who does not meet either the “green card” test or the “substantial presence” test described in Publication 519, U.S. Tax Guide for Aliens. With regard to residency determination for tax purposes:

- F and J students are generally considered nonresidents during their first five (5) calendar years in the U.S.
- J non-students (researchers, scholars, teachers, etc.) are generally considered nonresidents during their first two (2) calendar years in the U.S.
- H-1s are considered nonresidents unless they meet the “substantial presence” test

### GREEN CARD TEST

A person is a resident for tax purposes if he/she is a lawful permanent resident of the U.S. A person has this status if he has issued an alien registration card, also known as a “green card”, by the Immigration and Naturalization Service (INS). The person need not be in possession of the “green card” itself. The right to lawful permanent residence is granted at the time of the final interview with Immigration and Naturalization Service officials and is evidenced by the Service’s stamp in the applicant’s passport. The “green card” may not arrive for several months after the interview.

### SUBSTANTIAL PRESENCE TEST

#### Counting Days

A person is a resident for tax purposes if he/she meets the substantial presence test for the calendar year. To meet this test, the person must be physically present in the U.S. on at least:

31 days during the current year, (the year for which the tax return is being filed) and

183 days during the three-year period that includes the current year and the two years immediately before that, counting:

- All the days the person was present in the current year, and
- 1/3 of the days the person was present in the first year before the current year, and
- 1/6 of the days the person was present in the second year before the current year

### DAYS THAT ARE NOT COUNTED

A J non-student (professor, researcher, etc.) who is substantially complying with the requirements of the visa, does not count days for the first two calendar years.

An F or J student who substantially complies with the requirements of the visa does not count days for the first five calendar years.

#### CIRCUMSTANCES THAT DISQUALIFY FROM THE SUBSTANTIAL PRESENCE TEST

A person will not meet the “substantial presence” test if (1) he is present in the U.S. on fewer than 183 days during the current year, and (2) it is established for the current year that the person has a tax home in the foreign country and that he has a closer connection to that country than the U.S. IRS Publication 519 gives details on what is required to establish a closer connection to a foreign country, including such things as the location of a person’s permanent home, family, personal belongings, etc.

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#### **Departments/Offices Affected by the Policy**

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#### **Procedures Related to the Policy**

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#### **Related Policies, Documents or Forms**

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**Issue Date:2/8/16**  
**Date of Policy Review: 10/5/2020**

**Next Review Date:10/8/2025**

**POLICY APPROVAL**

**(For use by the Office of the Board of Trustees or the Office of the President)**

Policy Number: 9.1.7

President or  
Chairman, Board of Trustees



**Date: 10/5/2020**