



UNIVERSITY OF RICHMOND
FOUNDED 1830

TO:
FROM: Nancy Colón
International Taxation Specialist
DATE:
RE: Explanation of a J-1 Visa

Foreign visitors who are traveling under a J-1 visa are considered “exchange visitors.” That is they are foreign nationals coming to the US to participate in a specific exchange program approved and designated by the Department of State. The J-1 exchange visitors are employment-authorized within the parameters of their program.

To Explain:

1. Prior to departure, the foreign scholar’s J-1 visa describes the parameters and duration of his work in the US. The J-1 visa holder must remain within the stated parameters.
2. J-1 visas are granted to:
 - a. Students enrolled in a full-time course of study in a designate exchange program at the college or university level. J-1 students must receive funding from sources other than personal sources. They must remain in the US during their stay.
 - b. Sort term scholars who come to the US to research, lecture, or demonstrate special skills. Their stay can last no more than 6 months. (Not considered to be a student for tax treaty purposes.)
 - c. Professors and research scholars who come to the US to teach, lecture, research and consult may stay in J-1 status for up to three years. (Not considered to be a student for tax treaty purposes.)
 - d. Form 1-94: A J visa holder typically receives the notation “D/S” (duration of status).
3. The purpose of a J-1 program is training for the individual. In the strictest sense, the application and SEVIS fees contribute to the individual benefit. However, an exchange program is supposed to go both ways, benefiting the host as well as the individual by fostering cultural diversity at the host’s institution. Accordingly, a policy under which the host would pay the fees is perfectly acceptable. The rationale is different form the H-1B scenario, where the benefit inures to the employer that gets its job filled, but is equally supportable as long as applied equally to all J-1s.
4. An J-1’s employment may not commence until the DS-2019 start date which is the beginning of the exchange program period. And, the J-1 may not work past the end date on the DS_2019. The I-94 card date(s) are not used for employment authorization. Immigration allows aliens to enter before the program and leave after

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the program concludes in order to provide time for set-up and close-down of personal activities. These are periods of authorized stay, but not of work authorization.

5. I-9 Satisfaction for J-1 Visa Holder:
 - a. Non-Canadians – List A combination of:
 - i. Unexpired foreign passport
 - ii. Unexpired Form I-94 (or annotated D/S if the J-1 is a student)
 - iii. DS-2019 issued via SEVIS rules, which should indicate a program that permits the employment for which you are verifying employment authorization
 - b. Canadian citizens
 - i. List B: any document, such as a Canadian driver's permit
 - ii. List C #7: I-94 and DS-2019
 1. Unexpired Form I-94 (or annotated D/S if the J-1 is a student)
 2. DS-2019 issued via SEVIS rules, which should indicate a program that permits the employment for which you are verifying employment authorization
6. If both the J-1 document and the I-94 expire, the one that expires first controls the end of the status and with it the end of work authorization (to the extent the individual was authorized to work.)
7. SPT:
 - a. For tax policy reasons, foreign nationals in J exchange visitor status do not count their days of US presence for purposes of the 183-day residency formula for a specified number of calendar years, thus remaining nonresident aliens for US income tax purposes longer than most other nonimmigrants. These foreign nationals are referred to as “exempt individuals” for the periods that they are exempt from counting days for purposes of the 183-day residency formula.
 - b. A J-1 Exchange Visitor's category determines which special exceptions apply for counting days. One rule applies to students and another rule to teachers and trainees. The DS-2019 gives the category.
 - c. The tax rules apply to spouses and other dependents in the US in J-2 derivative status as well as to the J-1 principal.
 - d. J-1 Student: A special 5-calendar year rule applies to maintain nonresidency status for J-1 students. J-1 students are exempt from counting US days for purposes of the 183-day residency formula for 5 calendar years. J-1 students in the SU for more than 5 calendar years must generally begin counting US days for purposes of the 183-day residency formula. Just one US day in the calendar year counts as one calendar year for purposes of determining exempt years. This is a once-in-a-lifetime test. J-1 students, who have been exempt from counting US days for 5 calendar years, must count their US days for purposes of determining

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their US tax residency status. In the typical situation, a J-1 student must begin counting days in the 6th calendar year in the US as a student. However, the individual must also take into consideration calendar years as an exempt individual in any F, M, J, or Q immigration status in the prior years as well. The rules allow student to continue to be exempt from counting days for purposes of the 183-day residency formula if they can prove to the IRS their intent not to reside permanently in the US. This extension is claimed on a supplementary statement that is filed with Form 8843.

- e. J-1 Non-Student: exempt from counting days for 2 out of the current 7 years. Under this exception, a J-1 non-student who has not been in the US as an exempt individual at any time in the prior 6 calendar years is a nonresident alien for tax purposes. Under Internal Revenue Code, the exempt years include prior calendar years as an exempt student as well as an exempt non-student. In the typical situation, a J-1 non-student is a nonresident alien for two calendar years in the US. Non-students in the US for two years or longer become resident aliens in their 3rd calendar year when their US days add up to 183 days. If during any 2 of those 6 past years the individual was an “exempt individual” either as a student, teacher or researcher, then they are not an exempt individual in the current year. (For 2007, the look back period would be 2001- 2006.)
8. J-1 Student Employment: USCIS has set a policy that restricts J-1 students to working no more than 20 hours per week while school is in session and full-time during school breaks and holidays.
 - a. UR has interpreted “full-time” as 40 hours per week. This is a hard and fast rule. (Anything above 40 hours eliminates the student’s FICA exemption and gets into overtime issues.)
 - b. While special demands of research may require a student’s participation for a marginal longer period from time to time, exceeding the work hour limit would only be possible with permission from OIT, OIE, and Student Employment, in consultation with the student’s instructor. This permission would have to be given in advance of the work. The work would have to be in the student’s field of study and would have to actually provide a learning opportunity for the student.
 - c. While supervisors have been informed of this policy, it is the student’s responsibility to adhere to the correct number of weekly work hours. If a student has concerns about the number of work hours a supervisor has required, the student should contact the Student Employment Office in Financial Aid, prior to working the hours.
 - d. To remain “in status” and eligible to work, an J-1 student must adhere to the 20/40 hour per week rule.
 - e. The total number of work hours is for all combined jobs worked on campus each week. (For example, if a student has two jobs during the school year and in the same week works 10 hours in one job and 11 hours in the second job, the student

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would be violation of the US government regulations because the student worked 21 total hours.)

- f. Also, if a student is employed in a salary (RA, Drill Instructor, etc.) or lump sum payment situation, the student should contact Student Employment if the student is unsure of how many hours to attribute to that week's total hours.
9. Housing costs for a J-1:
- a. If the J-1 is UR's employee, and the J-1's anticipated period of stay is less than a year, his tax home has not changed to our location.
 - b. The reimbursed housing expenses are temporarily-away-from-home expenses and excludable from income if reimbursed under an accountable plan (i.e. based on receipts or within the per diem rules.)
 - c. If the J-1's tax home has changed to the US then the housing is not excludable. The value of the housing should be taxed as wages.
10. Moving Expenses:
- a. To be allowed as moving expenses (without taxation), the individual must be moving for a new job
 - b. Normal withholding and reporting rules apply when using an international moving company (for example, moving a new employee from Canada to US)
 - c. UR would be responsible to withhold and report the amount related to US services. (Section 864 spells out the rules for determining US source and foreign source income for payments to individuals for services.)
 - d. Tax exemption:
 - i. Foreign company may be exempt from withholding if the company does not have a permanent establishment in the US and can complete a W-8BEN (Part I and II) and has a US EIN
 - ii. Foreign company may be exempt from withholding if the company is engaged in a US trade or business and submits a W-8ECI and has a US EIN
 - e. Separate invoices should be submitted for foreign and US-based services.
11. Travel Reimbursements:
- a. When Services are Performed: Travel and expenses are reimbursable without taxation.
 - b. When Services are not Performed:
 - i. Travel and expenses are to be taxed as a travel grant.
 - ii. Tax at 14%
 - iii. Section 1441 regulation allow the use of a withholding allowance on Form 1042-S for the amount of the personal exemption (\$3400 in 2007) to offset taxable travel grants as long as the travel grant is less than the withholding allowance.

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- iv. This offset is limited to recipients in F, J, M, or Q status.
- v. The activity in the US can be construed to be for the purpose of "studying, training, or research"
- vi. The stay in the USA will not exceed 365 days
- vii. Classify this income as a scholarship/fellowship
- viii. The visitor would file a specially-prepared form W-4 claiming the travel and lodging expenses as "away from home expenses"
- ix. The taxable income is effectively reduced to zero
- x. All federal withholding taxes are eliminated
- xi. Tax Navigator:
 - 1. Code the travel grant as a taxable scholarship
 - 2. Run the treaty analysis – TaxNav will create the 1042-S record with the appropriate income code
 - 3. Make sure the personal exemption amount has been applied
 - 4. Enter the gross amount of the award
 - 5. Enter the withholding amount (which should be the same as the gross if the total grant is \$3400 or less)
 - 6. The exemption code will be “0” and the tax rate will be 14%
- xii. Exception: An exception would be a federal grant from USAID. The amount would still be subject to Form 1042-S reporting and the recipients would be required to submit a Form 1040NR-EZ tax return. The exception is at Section 1441(c)(6) of the Code where it addresses individuals participating in “any program of training in the US under the Mutual Security Act of 1954, as amended”

12. J-1 Fulbright -- Teaching Assistant:
- a. Required to teach languages courses
 - b. Required to audit 2 courses
 - c. Not required to be a fulltime student – i.e. not required to carry a full course load
 - d. May work on-campus in an additional job as long as all work does not exceed 20 hours per week during the school year.
 - e. NOTE: A regular Fulbright student is required to be enrolled fulltime the same as an F-1 student

13. J-1 on sabbatical abroad:
- a. If considered a resident alien for tax purposes, will still be considered a RA for the full calendar year (December 31st.) May possibly be considered a nonresident alien starting in January, if the individual plans to have less than 31 countable days in US and does not become a lawful permanent resident in the calendar year.
 - b. Sabbatical pay would be considered US-sourced because it is related to past services performed in the US, not to services being performed abroad.

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14. J-1 teacher exchange:
 - a. A true program where a US teacher goes to a school abroad for a short exchange/observation program and in return an individual from the foreign school comes to the US school for a similar program
 - b. The IRS has commented informally that such equal exchanges do not result in applying the NRA taxation rules to payments otherwise treated as made to the US citizen.

15. A student in J-1 status who is a nonresident and receives a noncompensatory fellowship can
 - a. Elect to have the fellowship taxed at a graduated rate as if it were wages.
 - b. The fellowship is not subject to Social Security and Medicare taxes.
 - c. The fellowship would be reported on a 1042 and 1042-S
 - d. (A noncompensatory fellowship is one where the recipient is not required to provide services as a condition of receiving the fellowship.)

16. Other Expenses:
 - a. Benefits such as paying an individual's home phone bill, cable bill and cost of SDL set-up are benefits in kind when made to an employee. These are generally treated as additional wages.
 - b. Housing expenses to a J-1 who is in the 30 day grace period after his DS-2019 expires and who has applied for another status (example asylum) is not allowed to work. However, his living expenses could be paid for as a stipend as long as no services are required in return. The amount should be treated as income, not excluded under accountable plan rules.

17. A J-1 visitor, with permission from his home US institution, may participate in occasional lectures and consultations outside the location of their exchange program as long as the lectures and consultations are:
 - a. Substantiated by the sponsor that the honorarium-type activity is a meeting or service that fits the purpose of the J-1 program
 - b. Related to the program objectives
 - c. Incidental to their primary program activities
 - d. Not specifically disallowed by their sponsor (i.e. program disallows self-employment)
 - e. Note: Honorarium rules (9/5/6) do not apply, as J-1s do not receive honorarium.
 - f. Steps to take:
 - i. Written invitation should be sent to individual specifying the:
 1. activity which he will be engaged in
 2. subject matter to be covered
 3. date(s) of the activity
 4. nature and amount of any money he will be paid

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- ii. Invitee must obtain written authorization in advance from his sponsoring institution's J-1 Responsible Officer (RO). The authorization must state that:
 - 1. J-1 may give the lecture at UR
 - 2. J-1 may be compensated by UR
 - 3. J-1's activity is sufficiently related to his primary J-1 program for them to authorize the activity
 - g. J-1 student paid an "honorarium"
 - i. The RO must give permission stating that the honorarium-type activity meets the purpose of the J-1's program and receipt of payment is allowed
 - ii. The Academic Advisor must give permission specifically stating that the work is to be done under academic training. (i.e. academic training authorization)
 - iii. UR invitee must present a written invitation specifying the type of activity, subject matter, dates of travel and type of payment (honorarium and/or travel reimbursement.)
 - iv. The honorarium payment is subject to 30% withholding (not 14%.) A one-time lecture is self-employment income not a non-qualified scholarship/grant.
18. Payment for Services:
- a. The foreign visitor is usually considered a nonresident alien for tax purposes
 - b. The standard withholding rates apply:
 - i. "Honoraria" are taxed at 30%
 - ii. May be offered a tax treaty, if eligible
 - iii. There is not a payment maximum for honoraria
 - iv. Travel and expenses are reimbursable
 - v. FICA is not withheld
 - vi. Pay the individual directly (not his home institution)
19. An individual that requests that their honorarium be a contribution made on the individual's behalf to a non-profit (whether US or foreign) in lieu of direct payment to the individual for the services performed will find that the income is still considered to be the individuals and not that of the non-profit. Individuals who assign their income to other entities under our tax rules are still obligated for the taxes. Taxpayers are not allowed to assign away their income tax obligations by having their income paid to others.

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