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# 2004

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## IRS Volunteer Quick Reference Guide

For Use in Preparing 2004 Federal Tax Returns for Nonresident Aliens



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**Tax Information**  
**1-800-829-1040**

**Tax Forms or Pubs Only**  
**1-800-829-3676**



Department of the Treasury  
Internal Revenue Service

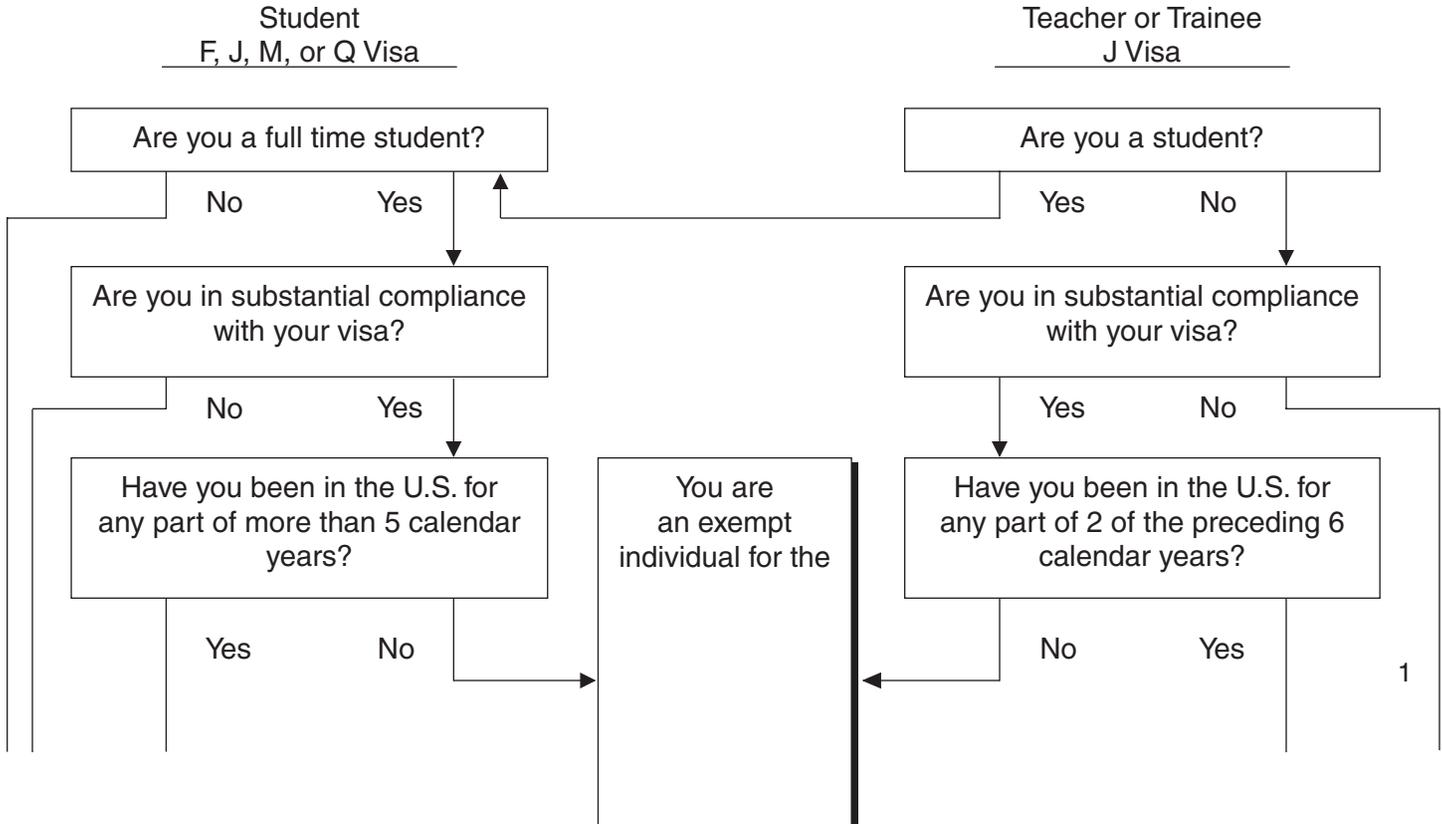
[www.irs.gov](http://www.irs.gov)

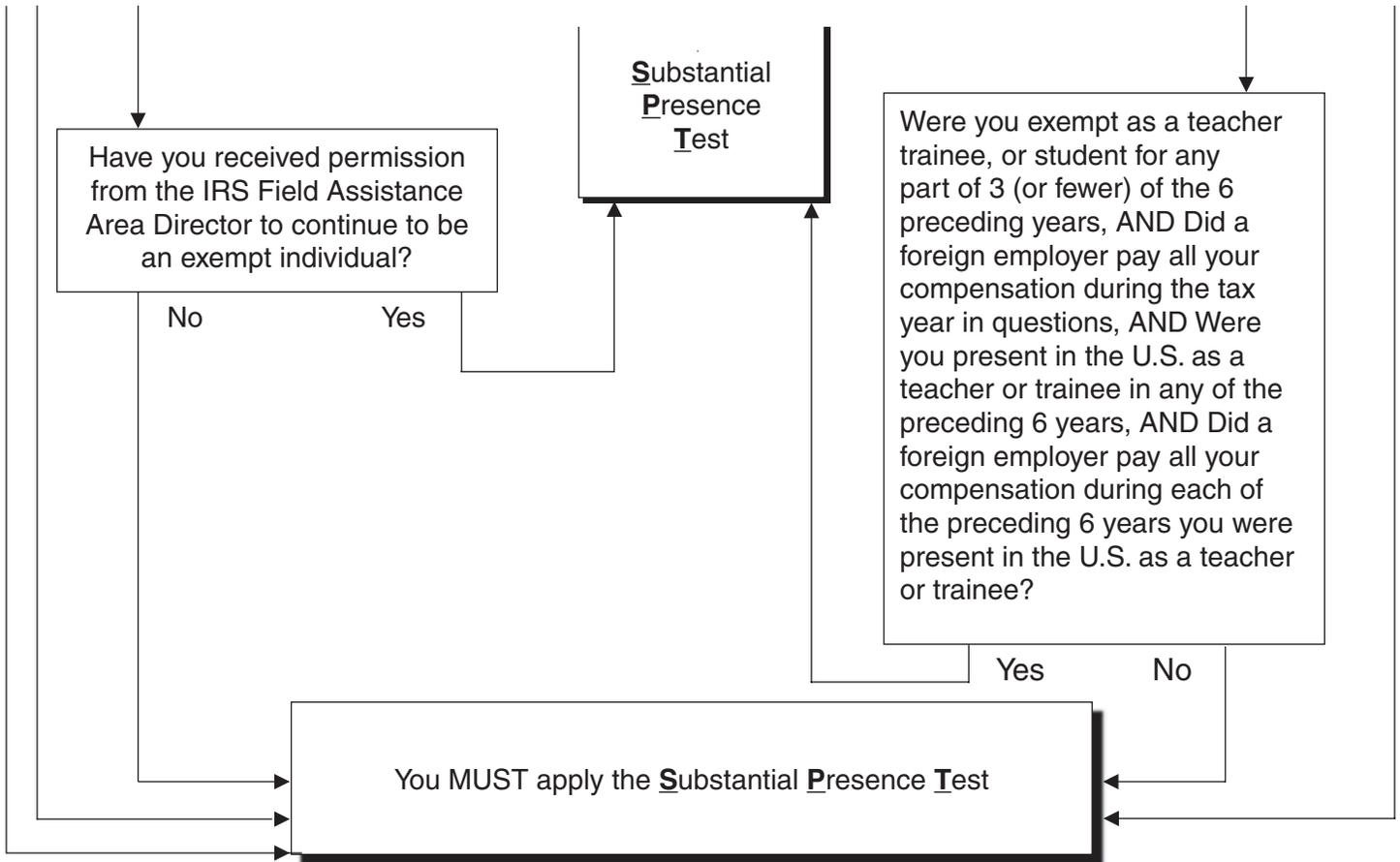
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# ARE YOU AN EXEMPT INDIVIDUAL?

If you are temporarily present in the United States on an “F”, “J”, “M”, or “Q” visa, use this chart to determine if you are an exempt individual for purposes of the Substantial Presence Test (**SPT**).





**Substantial Presence Test**

## Nonresident Alien or Resident Alien?

*Start here to determine your residency status for federal income tax*

Were you a lawful permanent resident of the United States (had a “green card”) at any time during the tax year?

YES

NO

Were you physically present in the United States on at least 31 days during the tax year?<sup>3</sup>

YES

NO

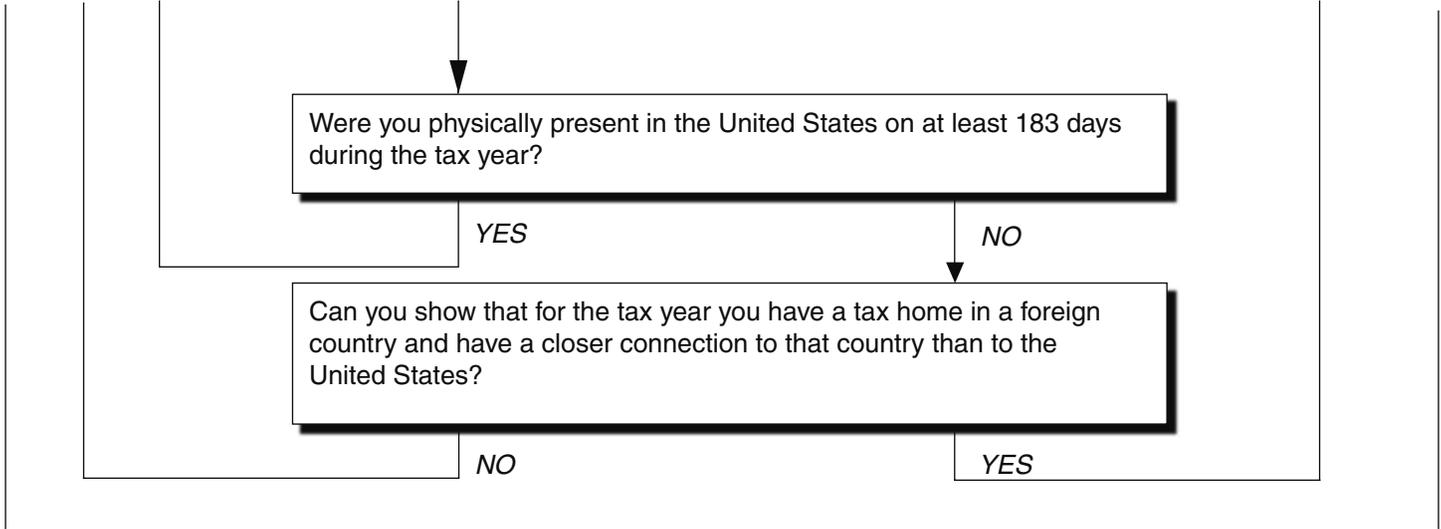
Were you physically present in the United States on at least 183 days during the 3-year period consisting of the tax year and the preceding 2 years, counting all days of presence in the tax year, 1/3 of the days of presence in the first preceding year and 1/6 of the days of presence in the second preceding year?

YES

NO<sup>4</sup>

You are a resident alien for U.S. tax purposes.<sup>1,2</sup>

You are a nonresident alien for U.S. tax purposes.



1 If this is your first or last year of residency, you may have a dual status for the year.

2 In some circumstances you may still be considered a nonresident alien under an income tax treaty between the U.S. and your country. Check the provision of the treaty carefully.

3 See *Days of Presence in the United States* in this chapter for days that do not count as days of presence in the United States.

4 If you meet the substantial presence test for the year after the tax year, you may be able to choose treatment as a U.S. resident alien for part of the tax year.

Caution: The following is a quick-reference summary of treaty benefits. For more information about the application of these treaty benefits, see Publication 901, U.S. Tax Treaties.

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**Countries With Treaty Benefits for Income From Teaching (income code 18)**

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Belgium	2	Unlimited	20
China, People's Rep.	3	Unlimited	19
C.I.S.	2	Unlimited	VI(1)
Czech Rep.	2	Unlimited	21(5)
Egypt	2	Unlimited	22
France	2	Unlimited	20
Germany	2	Unlimited	20(1)
Greece	3	Unlimited	XII
Hungary	2	Unlimited	17
Iceland	2	Unlimited	21
India	2	Unlimited	22
Indonesia	2	Unlimited	20
Israel	2	Unlimited	23
Italy	2	Unlimited	20
Jamaica	2	Unlimited	22
Japan (Old Treaty)*	2	Unlimited	19 (Old Treaty)

**Countries With Treaty Benefits for Income From Teaching (income code 18) (continued)**

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Japan (New Treaty)	2	Unlimited	20 (New Treaty)
Korea	2	Unlimited	20
Luxembourg	2	Unlimited	21(2)
Netherlands	2	Unlimited	21(1)
Norway	2	Unlimited	15
Pakistan	2	Unlimited	XII
Philippines	2	Unlimited	21
Poland	2	Unlimited	17
Portugal	2	Unlimited	22
Romania	2	Unlimited	19
Slovak Rep.	2	Unlimited	21(5)
Slovenia	2	Unlimited	20(3)
Thailand	2	Unlimited	23
Trinidad & Tobago	2	Unlimited	18
United Kingdom	2	Unlimited	20 (Old Treaty)
United Kingdom (New Treaty)	2	Unlimited	20A (New Treaty)
Venezuela	2	Unlimited	21(3)

\* A person who was entitled to the benefits of the old treaty as of March 30, 2004 can continue to apply those provisions.

Caution: The following is a quick-reference summary of treaty benefits. For more information about the application of these treaty benefits, see Publication 901, U.S. Tax Treaties.

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**Countries With Treaty Benefits for Student Wages (income code 19)**

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Belgium	5	\$2,000	21(1)
China, People's Rep.	No limit	5,000	20(c)
C.I.S.	5	Limited	VI(1)
Cyprus	5	2,000	21(1)
Czech Rep.	5	5,000	21(1)
Egypt	5	3,000	23(1)
Estonia	5	5,000	20(1)
France	5	5,000	21(1)
Germany	4	5,000	20(4)
Iceland	5	2,000	22(1)
Indonesia	5	2,000	19(1)
Israel	5	3,000	24(1)
Japan (Old Treaty)*	5	2,000	20(1)
Korea	5	2,000	21(1)
Latvia	5	5,000	20(1)

**Countries With Treaty Benefits for Student Wages (income code 19) (continued)**

<i>Country</i>	<i>Maximum years in U.S.</i>	<i>Amount</i>	<i>Treaty article</i>
Lithuania	5	5,000	20(1)
Luxembourg	2	Unlimited	21(1)
Morocco	5	2,000	18
Netherlands	No limit	2,000	22(1)
Norway	5	2,000	16(1)
Pakistan	No limit	5,000	XIII(1)
Philippines	5	3,000	22(1)
Poland	5	2,000	18(1)
Portugal	5	5,000	23(1)
Romania	5	2,000	20(1)
Slovak Republic	5	5,000	21(1)
Slovenia	5	5,000	20(1)
Spain	5	5,000	22(1)
Thailand	5	3,000	22(1)
Trinidad & Tobago	5	2,000	19(1)
Tunisia	5	4,000	20
Venezuela	5	5,000	21(1)

\* A person who was entitled to the benefits of the old treaty as of March 30, 2004 can continue to apply those provisions.

## India Treaty

An Indian **student** may take a **standard deduction** equal to the amount allowable on Form 1040 and may be able to claim the personal exemptions for a non-working spouse and U.S. born children.

Treaty benefits for a **scholar** from India are very different from those for a **student**. The **scholar** benefit for income code 18 is lost retroactively if the visit exceeds 2 years.

The standard deduction for single taxpayers in 2004 is \$4,850. The deduction for married filing separately is \$4,850.

Nonresident aliens can't file a joint return. Even though a student from India may be able to take an exemption for a non-working spouse, this is not considered a joint return. Thus, the standard deduction for married filing separately must be used.

## **China Treaty**

Almost all U.S. tax treaties are limited to a specific number of years and may not be available for residents for tax purposes.

The U.S. treaty with China provides that a scholar is exempt from tax on earned income for 3 years. After 2 years a scholar will become a resident alien for tax purposes, but is still entitled to 1 more year of tax benefits under the treaty. The treaty also provides that students have an exemption of up to \$5,000 per year for income earned while they are studying or training. In most cases, the student will become a resident for federal tax purposes in their sixth calendar year. Students from China can continue to claim the treaty benefits on their resident alien tax return (if they still meet the definition of a student).

## **Canada Treaty**

The students and scholars are permitted to use article 15 of the tax treaty, which applies to dependent personal services.

The tax treaty with Canada is different from all other tax treaties because it (1) exempts all earned income if the non-resident earned no more than \$10,000 in the tax year, but (2) taxes all income if the nonresident earned over \$10,000. This treaty benefit is lost if the non-resident becomes a resident for tax purposes.

## Wage Calculation Worksheet

Since some employers do not issue the correct reporting documents to international students and scholars, the following formula will help you to accurately compute the amount of wages to be shown on the income tax return.

Wages from Box 1 of Form W-2 (if any)	_____
Add: Code 18 or 19 income from Form, 1042-S (if any)	+ _____
Subtract: Code 18 or 19 treaty benefit (if any)	- _____
EQUALS: Wages to be reported	_____

## Filing Status

Generally, non-resident aliens must either select the **single** filing status or the **married filing separate** status.

**Head of household** filing status can not be used if the taxpayer was a nonresident alien during any part of a year.

Nonresidents who are married to U.S. citizens or other residents for tax purposes can elect to be treated as a resident alien and file a **joint** return.

See Publication 519 for additional information.

## Dependent Issues

Generally, nonresident aliens can claim only one personal exemption.

Nonresidents from the following countries may be able to claim their spouse and children as dependents. Everyone claimed on the return must have either a Social Security number or an Individual Tax Identification Number (ITIN).

Canada  
Mexico  
Japan  
South Korea  
India

See Publication 519 for additional information.

# Dependency Tests

## Must Meet ALL 5 Tests

**Member of Household/Relationship Test** — Dependent must be:

- a. relative, or;
- b. live in taxpayer's household all year. (For more information see Publication 17 or tax form instruction booklet.)

**Joint Return Test** — Dependent can't file a joint return with someone else unless it is only to claim a refund of tax withheld.

**Citizenship Test** — Dependent must be:

- a. a U.S. citizen, resident or national or;
- b. a resident of Canada or Mexico

**Gross Income Test** — Dependent must have less than \$3,100 of gross income unless he/she is taxpayer's child and is:

- a. under 19 years of age, or;
- b. a full-time student (5 months of the year) and under age 24.

**Support Test** — Must provide over 1/2 the total support (includes: food, clothing, shelter, education, medical, recreation).

## Tax Credits and Nonresident Aliens

Tax credits are allowed to nonresident aliens only if they receive effectively connected income. Generally, nonresident alien students and scholars will **not** qualify for tax credits.

**Education Credits** — If the taxpayer is a nonresident alien for any part of the year, they generally can't claim the educational credits, such as the Hope and Lifetime Learning Credits.

**Foreign Tax Credit** — This credit will usually not be available to nonresident alien students and scholars. Their foreign source income is usually not reported on their US income tax return.

**Child Tax Credit** — Nonresident aliens may be able to claim the child tax credit if all of the following conditions are met:

- The child is a US citizen, national or resident alien, and
- The child is claimed as a dependent on the return, and
- The child is a son, daughter, adopted child, grandchild, stepchild or foster child, and
- The child was under age 17 at the end of the year.

**Earned Income Credit** — If the taxpayer is a nonresident for any part of the year, the earned income credit is not available.

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## Countries with Treaty Benefits for Scholarship or Fellowship Grant

- If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax.
- Scholarship or Fellowship Grants that cover tuition and fees (and books and supplies if required of all students) are not subject to U.S. tax. (Financial aid that is dependent of the performance of services, such as a teaching assistant, is treated as wages and subject to the code income 17, 18, or 19 provisions.)
- Scholarship or Fellowship Grants that cover room, board and other personal expenses are subject to U.S. tax unless a treaty benefit (as summarized below) exists.

<i>Country</i>	<i>Maximum years in U.S</i>	<i>Amount</i>	<i>Treaty Article</i>
Belgium	5	Unlimited	21(1)
China, P.R.	Unlimited	Unlimited	20(b)
C.I.S.	5	Limited	VI(1)
Cyprus	5	Unlimited	21(1)
Czech Republic	5	Unlimited	21(1)
Egypt	5	Unlimited	23(1)
Estonia	5	Unlimited	20(1)
France	5	Unlimited	21(1)
Germany	Unlimited	Unlimited	20(3)
Iceland	5	Unlimited	22(1)
Indonesia	5	Unlimited	19(1)
Israel	5	Unlimited	24(1)
Japan (Old Treaty)*	5	Unlimited	20(1)
Kazakhstan	5	Unlimited	19
Korea	5	Unlimited	21(1)
Latvia	5	Unlimited	20(1)
Lithuania	5	Unlimited	20(1)

**Countries with Treaty Benefits for Scholarship or Fellowship Grant (*continued*)**

<i>Country</i>	<i>Maximum years in U.S</i>	<i>Amount</i>	<i>Treaty Article</i>
Morocco	5	Unlimited	18
Netherlands	5	Unlimited	22(2)
Norway	5	Unlimited	16(1)
Philippines	5	Unlimited	22(1)
Poland	5	Unlimited	18(1)
Portugal	5	Unlimited	23(1)
Romania	5	Unlimited	20(1)
Russia	5	Unlimited	18
Slovak Republic	5	Unlimited	21(1)
Slovenia	5	Unlimited	20(1)
Spain	5	Unlimited	22(1)
Thailand	5	Unlimited	22(1)
Trinidad and Tobago	5	Unlimited	19(1)
Tunisia	5	Unlimited	20
Ukraine	5	Unlimited	20
Venezuela	5	Unlimited	21(1)

\* An individual who was entitled to treaty benefits under Article 20 of the U.S./Japan treaty, as of March 30, 2004 can continue to apply those provisions.

## Source Documents

You may see many types of income documents when you are assisting International Students and Scholars. The following list may help you in identifying the documents you may see.

### **Form 1042-S, Foreign Person's US Source Income Subject to Withholding**

Many students and scholars will receive this form if they have income that is subject to treaty benefits. Publication 678FS provides more information on how to record the entries from this form.

### **Form W-2, Wage and Tax Statement**

Most students and scholars are allowed to work. If they earn more than the amount exempt by their treaty, the excess should be reported on the W-2. When students and scholars work off campus, they often receive a W-2 for the full amount they earned. That is why it is important to use the wage calculation worksheet on page 11 of this guide.

**Form 1098-T, Tuition Payments Statement**

Academic institutions issue form 1098T to students who paid tuition during the tax year. This form helps the students calculate the educational credits. Since nonresident aliens usually can not claim the educational credits, the form is not part of their tax return.

**Form 1099INT, Interest Income**

Many banks and savings institutions issue the 1099INT to nonresident alien and scholars. Since most nonresident student and scholars do not need to report their interest income, the form is not part of their tax return.

**Form 1099MISC, Miscellaneous Income**

Sometimes a nonresident alien student or scholar will give you a 1099MISC. There are several complicated issues involved when this happens. If you or the other volunteers at your site do not know the procedures to follow when a nonresident alien student or scholar receives a 1099MISC, refer the taxpayer to a paid professional.

## ▶▶ QUALITY REVIEW CHECKLIST◀◀

- ▶ Are the name, address, and Social Security number correct?
- ▶ Is the Social Security number written to the right of the label?
- ▶ Is the filing status correct? Is the box marked?
- ▶ Are any allowable dependents properly listed?
- ▶ Are the dependents' identification numbers written correctly?
- ▶ Are income items correctly transferred from Form W-2, Form 1042S, and Form 1099?
- ▶ Is all income reported? Be sure to include any gambling winnings and stock sales.
- ▶ Is the itemized deduction line completed accurately?
- ▶ Are the correct number of dependents claimed?
- ▶ If the taxpayer was eligible for any credits, have they been computed correctly?
- ▶ Does the amount of tax reported as withheld agree with the amounts listed on the Forms W-2 and 1042S? Did you include any withholding shown on Form 1099?
- ▶ Is the overpayment (balance due) computed correctly?
- ▶ Did you use a calculator to check your math?
- ▶ Is the return signed?
- ▶ Are all Forms W-2 and 1042S, as well as schedules and forms, attached to the return?
- ▶ Is the volunteer designation on the return?