

Sara's Third Year in the U.S. on a J-1 Visa Three Scenarios

Sara has a J-1 visa, is a teacher, and entered the U.S. from Italy in September, 2015, to teach. Her contract runs through May, 2017. She is paid from U.S. source funds. She will file Form 1040NR for each of the first two calendar years she teaches. 2017 will be the third calendar year she teaches in the U.S. She will begin counting days toward substantial presence on January 1, 2017. What form(s) will she file for her third year, 2017? Answer: It depends!

First Scenario:

Sara leaves the U.S. before meeting the substantial presence test.

She leaves before she reaches 183 days in the U.S. She leaves before July 2, or even a little later if she spent some days outside the U.S. during January through June.

She will file on Form 1040NR. She will take the remaining months of her tax treaty income exclusion on Schedule OI, the same way she did on her first two tax returns. Her remaining months of treaty income exclusion are more than the months she worked. All her teaching income will be tax exempt on her federal, IRS, return. The last page of the 1040NR will show the date she left the U.S. and list her days present as 182 or fewer. Form 8843 is not needed because Sara does not have any eXempt or non-countable days. She is not eXcluding any days from presence because of her J visa. Form 8840 may be useful since she stayed fewer than 183 days in the U.S. in the tax year.

Second Scenario:

Sara signs a new U.S contract and does not leave the U.S. to resume teaching in Italy.

She will file on Form 1040 because she will meet the substantial presence test.

She will claim the remaining months of her tax treaty income exclusion on Form 1040 and document it in a return note. Her teaching months will be more than her remaining tax-exempt months, so some of her teaching income will be taxable wages on Form 1040.

Third Scenario:

Sara returns to Italy after she has met the substantial presence test. She resumes teaching at the University of Florence.

To protect her Italian wages from U.S. income taxes, Sara will file a dual-status return. The "return" portion will be on Form 1040NR and cover the time from when she left the U.S. until December 31. The "statement" portion on Form 1040 will cover the period from January 1, through her last day in the U.S. As in the second scenario, she will take the remaining months of her federal, IRS, tax treaty income exclusion on the Form 1040, and document it in a return note. She also will use a statement or return note to document her residency termination date. Form 8840 does not apply but could be included. She spent more than 183 days in the U.S. She should include in her statement on the termination date of her of U.S. residency, the type of information that is entered on Form 8840 to claim a Closer Connection to Italy and claim that her tax home was in Italy after her U.S. residency terminated.