

Ways in and Out of US Tax Residency

To Be or Not To Be a US Resident Alien!

January 30, 2010

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The goal of this article is to provide a comprehensive checklist of information for the US person to consider prior to accepting an assignment inside the US. This article is not designed to teach you the technical competence required to perform self compliance; however it will certainly arm you with the knowledge to determine if your US tax preparer knows all that they should know to provide you with technically competent professional services.

To Be or Not To Be a US Resident Alien:

All United States (US) citizens, green card holders and foreign national individuals in the US meeting the Substantial Presence Test (SPT)- comprising the addition of the actual days of US presence in the current year with a fractional two year look back rule- are US resident aliens.

You meet the SPT if you have at least 31 days of US presence in the current year and where the following sums to 183 days or greater: 100 % of the physical days of US presence in the current year + 1/3 of the days of US presence in the preceding year + 1/6 of the days of US presence in the second preceding year. For the purposes of the SPT part days count as full days and while fractional days add, any remaining fractional days are neither rounded up or down, but dropped. The SPT must continue to be met on an annual US calendar tax period basis for an individual to continue to be considered a continuing US resident alien year after year.

Ways Out of US Tax Residency:

Under US domestic law the fractional two year look back rule is effectively negated when an individual meets the SPT to become a US resident alien having less than 183 days in the current year but is in excess of the requirements using the fractional two year look back rule. In such cases, these individuals will be able to file IRS Form 8840- Closer Connection Exception Statement for Aliens- claiming a “tax home” and “closer connection” to a foreign country and remain US non resident aliens.

Such US domestic relief- the Closer Exception Connection- is not available in cases where the SPT test is met based upon days of US presence in the current year alone. In such cases, the US resident alien would need to seek relief under a US-XX income tax treaty article covering residency, generally referred to as the “treaty tiebreaker” article. Please see below.

Therefore, an individual may be classified as a US resident alien if they meet the above SPT, failing which they are automatically classified as a US non resident alien. In limited circumstances an individual’s physical days of US presence may be excluded for purposes of determining the SPT, in cases where they were: a) exempt individuals: a student in the US on a F, J, M or Q visa, a trainee or a teacher in the US on a J or Q visa, a professional athlete, or an individual with a medical condition, or b) others: regular commuters to work in the US from Canada or Mexico when in transit in the US between other points for less than 24 hours, days in the US as a crew member of a foreign vessel and all employees of international organizations or foreign governments. Some exempt individuals need to complete IRS Form 8843- Statement for Exempt Individuals and Individuals with a Medical Condition- and attach it for filing with their annual US tax return, either IRS Form 1040NR or 1040.

Income from personal services performed as a US nonresident alien temporarily in the US for a period or periods of not more than 90 days, where the compensation for such services are performed for a foreign employer and is not more than \$3,000, is exempt from US taxation.

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