

The Interaction of Immigration and Tax

A Discussion of Visa Options, Green Cards, and US Citizenship and the Corresponding Tax Consequences

Florida Bar Tax Section Presentation

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US Person – Income Tax

1. US Citizenship
2. US Green Card
3. Substantial Presence Test (i.e., 183 day test)

US Person

Citizen

- By Birth
- By Naturalization
- Puerto Rico

US Citizenship

– Special Situations

1. “Accidental Americans” – born in the US but live outside the United States
2. Dual citizens from birth living outside the United States
3. Acts of Expatriation

Voluntary Relinquishment of Citizenship

- Presumption Against Expatriation
- By Action
 - Voluntary and Intentional
- By Formal Application before Consular Officer
 - Intent and Capacity
 - Certificate of Loss of Nationality

US Person

Lawful Permanent Resident (Green Card)

- Family Sponsored
- Employment Based

US Green Cards

- Special Situations
 1. 8+ years
 2. Treaty Positions / Expatriation
 3. Domicile (Estate Tax)
 4. Expired Green Card – Continue to be taxed as US income tax resident

Abandonment of Residency

- Application
 - Surrender green card at a US Consulate or Port of Entry
 - Voluntary and knowingly
- Action
 - Absence of more than one year
 - No clear objective intent to resume residency

Substantial Presence Test

1. Present in the US at least 31 days
2. Formula

Current year x 1 = _____

1st preceding year x 1/3 = _____

2nd preceding year x 1/6 = _____

_____ **Total**

183 or more

Substantial Presence Test

- Any part of a day counts
- US transit days not counted
- to see day counts:

<https://i94.cbp.dhs.gov/I94/#/home>

Substantial Presence Test

- 2 Outs
 1. Closer connection exception
 - a) less 183 days current year
 - b) tax home and closer connection to foreign country
 2. Treaty Tie Breaker

Nonimmigrant Status

- Temporary Visitor Status
 - B1/B2 Visa
 - Generally, 10 year multiple entry validity
 - Entry for up to 6 months
 - No work authorization
 - Visa Waiver Program
 - ESTA authorization
 - Entry for up to 90 days
 - No work authorization

Nonimmigrant Status

- F-1 Academic Student
 - ICE approved institution
 - Full course of study
 - Temporary intent
 - Employment authorization limited

Nonimmigrant Status

- L-1 Intracompany Transferee
 - Qualifying employment abroad
 - Related employment entities
 - Managerial/executive or specialized knowledge role
 - 5/7 year limitation

Nonimmigrant Status

- E-2 Investor
 - Relevant treaty
 - Substantial and “at risk” investment
 - Active role
 - Bona fide commercial enterprise
 - No time limitation

Special Rules

- Special Visas – **Days do not count**
 1. Student (F)
 2. Foreign government related individuals
 3. Teacher
 4. Certain professional athletes participating in charitable event

Special Rules

– F (Student) Visa

- Days not counted for Substantial Presence Test **BUT** if present 183+ days, US source gains taxed at 30%

Special Rules

- **Treaty Tie Breaker**
 - Reg 301.7701(b) – 7(a)(3)
 - income tax liability – **non-US person**
 - all other purposes – **US person**
 - Reporting (FBAR, 5471, 8938, etc.)
 - No guidance from IRS

Special Rules

- **Form 8854 (Expatriation Form)**
 - Correcting late filed Form 8854

US Person - Domicile

- Gift and Estate Tax – different test
- Domicile