

LB&I International Practice Service Process Unit – Audit

Shelf		Individual Outbound		
Volume	9	Jurisdiction to Tax Outbound (Individual Outbound)	UIL Code	9431
Part	9.1	Determination of Residency Status	Level 2 UIL	9431.01
Chapter	9.1.2	Lawful Permanent Resident (Green Card)	Level 3 UIL	9431.01-02
Sub-Chapter	N/A	N/A		

Unit Name	Determining Tax Residency Status of Lawful Permanent Residents
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Document Control Number (DCN)	JTO/9431.01_02(2013)
Date of Last Update	08/28/14

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Process Overview

Determining Tax Residency Status of Lawful Permanent Residents

Process Description

The purpose of this unit is to determine whether an individual is a lawful permanent resident (LPR) who must file a Form 1040.

An LPR is not a citizen of the United States. Instead, such individual is authorized to reside permanently in the United States as a legally recognized and lawfully recorded immigrant. Although an LPR is generally treated as a resident alien for U.S. income tax purposes, there are some circumstances in which an LPR may be taxed as a nonresident alien.

Example Circumstances Under Which Process Applies

- An examiner receives a case involving an individual who is an LPR and must determine whether the individual has filed the appropriate tax return.

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Determination of Process Applicability

Determining Tax Residency Status of Lawful Permanent Residents

Generally, an LPR is treated as a resident alien for U.S. income tax purposes and must report worldwide income from whatever source derived.

However, such individual may be treated as a nonresident alien if he or she is also a resident of a foreign country under its laws and is eligible to be treated, and claims treatment, as a resident of the foreign country under the residency tiebreaker rules of an income tax treaty).

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Individual was an LPR; ▪ Gross income from worldwide sources reached the threshold amounts that require a return to be filed; and ▪ Residency status was not affected by an income tax treaty (If so, see “Treaty Implication” under Step 3 of this unit.) 	<ul style="list-style-type: none"> ▪ IRC § 6012(a)(1) ▪ Publication 17 ▪ Publication 54 ▪ IRC § 7701(b)(6) ▪ Treas. Reg. § 301.7701(b)-7 	

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Summary of Process Steps

Determining Tax Residency Status of Lawful Permanent Residents	
<u>Step 1</u>	Determine whether the individual is a LPR.
<u>Step 2</u>	If LPR status began or ended in a year under audit, determine residency start or termination date.
<u>Step 3</u>	Determine whether the individual has filed the appropriate tax return(s).

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Step 1

Determining Tax Residency Status of Lawful Permanent Residents

Step 1: Determine whether the individual is a LPR.



DECISION POINT: Determine whether the individual has been granted LPR status by United States Citizenship and Immigration Services (USCIS). A “green card” (USCIS Form I-551) is issued to all LPRs as proof that they are authorized to live and work in the United States. Such individuals are sometimes referred to as having met the “green card test.” Obtain verification that a “green card” has been issued, when it was issued, and whether it was formally abandoned or rescinded. If the green card was formally abandoned or rescinded, find out when it was abandoned or rescinded.

Considerations	Resources	6103 Protected Resources
<p>If the individual has not been granted LPR status, he or she may still be considered a resident alien for U.S. tax purposes if he or she:</p> <ul style="list-style-type: none"> ▪ met the Substantial Presence Test (SPT) under IRC § 7701(b)(3), or ▪ made a First-Year Election under IRC § 7701(b)(4). 	<ul style="list-style-type: none"> ▪ IRC §§ 7701(b)(1)(A)(ii) and 7701(b)(3) ▪ IRC §§ 7701(b)(1)(A)(iii) and 7701(b)(4) ▪ Treas. Reg. § 301.7701(b)-4(c)(3) <p>U.S. Citizenship and Immigration Services</p> <ul style="list-style-type: none"> • http://www.uscis.gov 	

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Step 1 (cont'd)

Determining Tax Residency Status of Lawful Permanent Residents

Step 1: Determine whether the individual is a LPR.



DECISION POINT: Determine whether the individual has been granted LPR status by United States Citizenship and Immigration Services (USCIS). A “green card” (USCIS Form I-551) is issued to all LPRs as proof that they are authorized to live and work in the United States. Such individuals are sometimes referred to as having met the “green card test.” Obtain verification that a “green card” has been issued, when it was issued, and whether it was formally abandoned or rescinded. If the green card was formally abandoned or rescinded, find out when it was abandoned or rescinded.

Considerations	Resources	6103 Protected Resources
<p>If the individual is a nonresident alien who is married to a U.S. citizen or resident alien, the individual may be treated as a resident alien for U.S. tax purposes if he or she:</p> <ul style="list-style-type: none"> made an election with his or her spouse under IRC § 6013(g) (that has not been terminated) to file a joint return as a resident of U.S., or for the year in which he or she became a resident of the U.S., made a joint election with his or her spouse under IRC § 6013(h) to be treated as a resident of the U.S. for the entire year. 	<ul style="list-style-type: none"> IRC §§ 6013(g) and (h) Treas. Reg. §§ 1.6013-6 and 1.6013-7 	

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Step 2

Determining Tax Residency Status of Lawful Permanent Residents

Step 2: If LPR status began or ended in a year under audit, determine residency start or termination date.

 **DECISION POINT:** Did the individual become an LPR in a year under examination? If so, determine the **residency start date**.

Considerations	Resources	6103 Protected Resources
<p><u>Residency start date.</u> If the individual became an LPR during the year under examination and was not a resident alien for any part of the preceding calendar year, the residency start date is the first day during the calendar year on which the individual was physically present in the U.S. as an LPR. If the individual also met the SPT for that year, however, the residency starting date is the earlier of (1) the first day of presence in the U.S. under the SPT or (2) the first day the individual is physically present in the U.S. as an LPR.</p>	<ul style="list-style-type: none"> ▪ IRC § 7701(b)(2)(A) ▪ Treas. Reg. § 301.7701(b)-4(a) 	
<p> CAUTION: If the individual was a resident alien (under either the SPT or as an LPR) during any part of the preceding calendar year, he or she will be taxable as a resident alien at the beginning of the year under examination.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. § 301.7701(b)-4(e)(1) 	

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Step 2 (cont'd)

Determining Tax Residency Status of Lawful Permanent Residents

Step 2: If LPR status began or ended in a year under audit, determine residency start or termination date.



DECISION POINT: Did the individual cease to be an LPR in a year under examination? If so, determine the **residency termination date**.

Considerations	Resources	6103 Protected Resources
<p>Whether residency was terminated. An individual who has been granted LPR status remains a resident alien for U.S. income tax purposes, unless LPR status is taken away (rescinded) or is administratively or judicially determined to have been abandoned.</p> <p>Rescission – Resident status is considered to have been taken away on the date the U.S. government issued a final administrative or judicial order of exclusion or deportation. A final judicial order is an order that may no longer be appealed.</p> <p>Abandonment – Resident status is determined to have been abandoned</p> <ul style="list-style-type: none"> ▪ if the individual initiated the determination, on the date of receipt of either of the following by the USCIS or a U.S. consular officer: an application for abandonment (USCIS Form I-407) or a letter stating intent to abandon LPR status together with an Alien Registration Receipt Card attached; or ▪ if the U.S. government initiated the determination, on the date the final administrative order of abandonment was issued or, if the individual was granted an appeal, the date of the final judicial order. 	<ul style="list-style-type: none"> ▪ IRC § 7701(b)(6) ▪ Treas. Reg. § 301.7701(b)-1(b)(1) ▪ Treas. Reg. § 301.7701(b)-1(b)(2) 	

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Step 2 (cont'd)

Determining Tax Residency Status of Lawful Permanent Residents

Step 2: If LPR status began or ended in a year under audit, determine residency start or termination date.

 **DECISION POINT:** Did the individual cease to be an LPR in a year under examination? If so, determine the **residency termination date**.

Considerations	Resources	6103 Protected Resources
<p> DECISION POINT: For U.S. immigration law purposes, an LPR may be found to have abandoned lawful permanent resident status if he or she commits certain acts such as moving to another country and failing to file income tax returns. However, there may not be a formal determination that such a person abandoned their LPR status unless and until the person tries to return to the U.S. Therefore, a determination of abandonment might not take place until many years after the actual abandoning act.</p> <p>When there has been no formal administrative or judicial determination of abandonment under U.S. immigration laws, a person continues to be treated as a resident alien for U.S. income tax purposes.</p>	<ul style="list-style-type: none"> ▪ IRC § 7701(b)(6) ▪ CCA 200235026, 2002 WL 1999527 	
<p> TREATY IMPLICATION: An LPR is not treated as a resident alien for U.S. income tax purposes but is treated as a nonresident alien if the individual is both a U.S. resident alien and a resident of a foreign country under its laws, and he or she is eligible to be treated, and claims treatment, as a resident of the foreign country under the residency tiebreaker rules of an income tax treaty.</p>	<ul style="list-style-type: none"> ▪ IRC § 7701(b)(6) ▪ Treas. Reg. § 301.7701(b)-7 ▪ Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b) 	

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Step 2 (cont'd)

Determining Tax Residency Status of Lawful Permanent Residents

Step 2: If LPR status began or ended in a year under audit, determine residency start or termination date.



DECISION POINT: Did the individual cease to be an LPR in a year under examination? If so, determine the **residency termination date**.

Considerations	Resources	6103 Protected Resources
<p>Residency termination date. Generally, the residency termination date is the first day during the calendar year the person is no longer an LPR if the individual establishes that, for the remainder of the calendar year, (1) his or her tax home was in a foreign country <u>and</u> (2) he or she maintained a closer connection to that foreign country than to the United States.</p> <p>The residency termination date for a person who was an LPR and also satisfied the SPT for the year under examination, will be <u>the later of</u></p> <ul style="list-style-type: none"> ▪ the first day he or she is no longer an LPR <u>or</u> ▪ the last day of physical presence in the U.S. <p>if, for the remainder of the calendar year, (1) his or her tax home was in a foreign country <u>and</u> (2) he or she maintained a closer connection to that foreign country than to the U.S.</p>	<ul style="list-style-type: none"> ▪ IRC § 7701(b)(2)(B) ▪ Treas. Reg. § 301.7701(b)-4(b)(2) 	
<p>CAUTION: If the individual was a resident alien (LPR or met the SPT) for any part of the year under examination <u>and</u> was a resident alien during any part of the following year (regardless of whether there was a closer connection to a foreign country than to the U. S. in the year under examination), the individual will be taxable as a resident alien through the end of the year under examination.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. § 301.7701(b)-4(e)(2) 	

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Step 3

Determining Tax Residency Status of Lawful Permanent Residents

Step 3: Determine whether the individual has filed the appropriate tax return(s).

In general, an LPR files a Form 1040 reporting worldwide income. Under the circumstances below, however, an LPR may file a Form 1040NR in addition to, or in lieu of, a Form 1040.

Considerations	Resources	6103 Protected Resources
<p>An LPR may be a resident alien for part of a tax year and a nonresident alien for another part of the same tax year (sometimes referred to as a “dual-status” taxpayer). This issue usually arises in the year of arrival or departure, or in the year there has been a final administrative or judicial determination that LPR status has been rescinded or abandoned. It may be necessary for such an individual to file <u>both</u> Forms 1040 and 1040NR for the same year.</p>	<ul style="list-style-type: none"> ▪ Form 1040 ▪ Form 1040NR ▪ Treas. Reg. § 1.871-13 ▪ Treas. Reg. § 1.6012-1(b)(2)(ii) 	
<p>T TREATY IMPLICATION: An LPR may be a tax resident of both the U.S. and a country with which the United States has an income tax treaty (sometimes referred to as a “dual-resident” taxpayer). If so, the individual might be eligible to be treated as a resident of the other country under the residency “tiebreaker” rules of the treaty with respect to that taxable year (or portion thereof) during which the person was considered a dual-resident taxpayer.</p> <p>A dual-resident taxpayer may also elect not to be treated as a nonresident alien by not claiming treatment as a resident of a treaty country under the residency rules of an income tax treaty and continuing to file returns as a resident alien, i.e., Form 1040.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. § 301.7701(b)-7 ▪ Form 1040NR ▪ Form 8833, <i>Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)</i> ▪ Treas. Reg. § 301.7701(b)-7(e), Example 4 ▪ Form 1040 	

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Other Considerations / Impact to Audit

Determining Tax Residency Status of Lawful Permanent Residents		
Considerations	Resources	6103 Protected Resources
 <p>CAUTION: An LPR may be subject to special <u>expatriation</u> tax rules if, among other conditions,</p> <ul style="list-style-type: none"> ▪ LPR status has been rescinded or there has been a final administrative or judicial determination that LPR status has been abandoned, <u>or</u> if he or she has taken the position that he or she is a resident of a treaty country, <i>and</i> ▪ he or she has been an LPR for at least 8 of the last 15 years ending with the year when U.S. residency ended. See Section 4 of Publication 519. 	<ul style="list-style-type: none"> ▪ IRC § 877 ▪ IRC § 877A, ▪ IRC § 7701(b)(6) ▪ Publication 519 	

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Training and Additional Resources

Chapter 9.1.2 Lawful Permanent Resident (Green Card)		
Type of Resource	Description(s) and/or Instructions for Accessing	References
Model U.S. Income Tax Convention	Article 4 - Resident	http://www.irs.gov/Individuals/International-Taxpayers/The-U.S.-Model-Income-Tax-Convention-and-Model-Technical-Explanation
Other Training Materials	U.S. Tax Guide of Aliens	Publication 519
United States Tax Treaties	List of U.S. Income Tax Treaties	http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z

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Glossary of Terms and Acronyms

Acronym	Definition
DCN	Document Control Number
IPN	International Practice Network
IPS	International Practice Service
LPR	Legal Permanent Resident
SPT	Substantial Presence Test
UIL	Uniform Issue List
USCIS	United States Citizenship and Immigration Services

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Index of Related Issues

Issue	Associated UIL(s)	References
Election to Treat Nonresident Alien Spouse as Resident Alien		DCN:JTO/9431.02_xx(201x)
Expatriation		DCN:JTO/9431.05_xx(201x)
First Year Election		DCN:JTO/9431.02_xx(201x)
Substantial Presence Test		DCN: JTO/9431.01_03(2013)