



## LB&I International Practice Service Process Unit – Overview

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<b>Unit Name</b>	U.S. Territories – Determining Bona Fide Residency Status
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# Introduction

## U.S. Territories – Determining Bona Fide Residency Status

Special income tax rules apply to an individual who is a bona fide resident of a U.S. possession. Therefore, the first issue the examiner will need to resolve is the tax status of the individual and whether the United States has jurisdiction to tax the individual. Jurisdiction to Tax is one of five tax planning areas on the IIC Outbound Face of the International Matrix. One of the strategic priorities of the Jurisdiction to Tax IPN is U.S. Possessions (hereafter referred to as U.S. Territories).

This unit discusses how to determine if an individual is a bona fide resident of a U.S. territory under IRC 937 for tax years ending after January 31, 2006, which for most taxpayers would be the calendar year ended December 31, 2006. This determination is important since an individual must be deemed a bona fide resident of American Samoa, the Commonwealth of Northern Mariana Islands (CNMI), Guam, Puerto Rico, or the U.S. Virgin Islands (USVI) for the entire tax year in order to qualify for certain tax benefits.

While these new bona fide residency determination rules apply to taxable years ending after January 31, 2006, taxpayers, not the IRS, may choose to apply the new rules to all taxable years ending after October 22, 2004, for which the IRC 6511 statute of limitations is open. See IRM 21.8.1.4.2.1(4).

American Samoa, the CNMI, Guam, Puerto Rico, and the USVI each have their own independent tax departments but their tax systems are coordinated with the U.S. Internal Revenue Code. Individuals who have income from these U.S. territories may have to file a U.S. income tax return only, a territory income tax return only, or both returns. This determination generally depends on whether the individual is a bona fide resident of a U.S. territory and the sources of income received by the individual. In some cases, an individual may have to file a U.S. return but may be able to exclude income earned in a territory from U.S. income tax.

 **CAUTION:** The pre-section 937 rules for determining bona fide residency status are not covered in this unit. Under the prior rules, bona fide residency status was determined pursuant to a facts-and-circumstances test.

**NOTE:** Only natural persons can qualify as bona fide residents of a territory.

# Process Overview

## U.S. Territories – Determining Bona Fide Residency Status

IRC 937(a) provides that an individual is a bona fide resident of a U.S. territory if the individual meets a presence test, a tax home test, and a closer connection test.

- IRC 937(a) applies to the following U.S. territories:
  - American Samoa
  - Commonwealth of Northern Mariana Islands (CNMI)
  - Guam
  - Puerto Rico
  - U.S. Virgin Islands (USVI)

**NOTE:** The IRS has entered into agreements (called “coordination” or implementation” agreements) for coordinating tax issues between the IRS and the tax agencies in each of these five U.S. Territories. Each coordination agreement contains exchange of information provisions and establishes mutual agreement procedures to settle issues, including residency, where there is inconsistent tax treatment between the IRS and the taxing authority of a U.S. territory. The mutual agreement procedures generally permit taxpayers to request competent authority assistance when they consider that actions of the United States, a U.S. territory, or both, result or will result in taxation that is contrary to the provisions of a coordination agreement. See Rev. Proc. 2006-23, 2006-20 IRB 900, for additional information. For assistance with obtaining tax information from a territory tax office, contact the LB&I Territory Program Office.

# Detailed Explanation of the Process

## U.S. Territories – Determining Bona Fide Residency Status

### Analysis

For an individual to be deemed a bona fide resident of a U.S. territory for the tax year, there are three tests the individual must meet:

- **Presence Test:** The individual must be present in the relevant territory for at least 183 days during the taxable year. See IRC 937(a)(1). To meet this test, the individual must meet one of five conditions as set forth in Treas. Reg. 1.937-1(c).
- **Tax Home Test:** The individual must have a tax home in a U.S. territory and cannot have a tax home outside the relevant territory during any part of the tax year. See IRC 937(a)(2) and Treas. Reg. 1.937-1(d).
- **Closer Connection Test:** The individual cannot have a closer connection to the United States or a foreign country than to the relevant U.S. territory. See IRC 937(a)(2) and Treas. Reg. 1.937-1(e).

# Summary of Process Steps

## U.S. Territories – Determining Bona Fide Residency Status

### Process Steps

The process of determining whether an individual is a bona fide resident of a U.S. territory is discussed in detail in the following steps:

<a href="#">Step 1</a>	Presence Test
<a href="#">Step 2</a>	Tax Home Test
<a href="#">Step 3</a>	Closer Connection Test

# Step 1: Presence Test

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

An individual who is a U.S. citizen or resident alien will satisfy the presence test for the entire tax year if the individual meets one of the five conditions set forth in Treas. Reg. 1.937-1(c).

Considerations	Resources	6103 Protected Resources
<p>An individual satisfies the presence test if he or she:</p> <ol style="list-style-type: none"> <li>1) Was present in the relevant territory for at least 183 days during the taxable year,</li> <li>2) Was present in the relevant territory for an aggregate minimum of 549 days during the present and two immediately preceding tax years and was present in the relevant territory for at least 60 days during each of these three taxable years,</li> <li>3) Was not present in the United States for more than 90 days during the taxable year,</li> </ol>	<ul style="list-style-type: none"> <li>▪ IRC 937(a)(1)</li> <li>▪ Treas. Reg. 1.937-1(c)(1)(i)-(v)</li> <li>▪ IRM 3.21.3.2.6(2) – <i>U.S. Territories –General information</i></li> <li>▪ Pub. 570, <i>Tax Guide for Individuals with Income from U.S. Possessions</i></li> <li>▪ Treas. Reg. 1.937-1(c)(5)</li> </ul>	

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

An individual who is a U.S. citizen or resident alien will satisfy the presence test for the entire tax year if the individual meets one of the five conditions set forth in Treas. Reg. 1.937-1(c).

Considerations	Resources	6103 Protected Resources
<p>4) Had earned income, as defined in Treas. Reg. 1.911-3(b), in the United States not exceeding \$3,000 and was present in the relevant territory for more days than he or she was present in the United States or</p> <p>5) Did not have a “significant connection” to the United States during the taxable year. A “significant connection” is defined in Treas. Reg. 1.937-1(c)(5). It includes a permanent home in the United States or a current registration to vote in a political subdivision of the United States.</p>		

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

When determining if an individual meets one of the five conditions of the presence test, an examiner must usually also determine the number of days the individual was physically present in the United States.

Considerations	Resources	6103 Protected Resources
<p>To determine days of presence <b>in the United States, include</b> any day the individual is, at any time, physically present in the United States. Do not count the days the individual is in the United States for any of the following reasons:</p> <ul style="list-style-type: none"> <li>▪ For purposes of receiving qualifying medical care or to accompany, on a full time basis, a parent, spouse, or child who is receiving qualifying medical care</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.937-1(c)(3)(ii)(A)-(E)</li> <li>▪ IRC 7701(b)(7)</li> <li>▪ Pub. 570</li> <li>▪ IRM 21.8.1.4.2.1(3) – <i>Residency Rules</i></li> </ul>	

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

When determining if an individual meets one of the five conditions of the presence test, an examiner must usually also determine the number of days the individual was physically present in the United States.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The individual leaves, or is unable to return to, the relevant territory during                             <ul style="list-style-type: none"> <li>– A 14-day period during which a major disaster occurs in the relevant territory for which a FEMA notice or a Presidential declaration of a major disaster is issued in the Federal Register; or</li> <li>– A period during which there is a mandatory evacuation for the area within the relevant territory in which the individual's place of abode is located</li> </ul> </li> <li>▪ When the individual is in transit between two locations outside the United States and is in the United States for less than 24 hours</li> </ul>		

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

In determining the number of days the individual was physically present in the United States, certain days are not counted including days temporarily present in the United States as an athlete competing in a charitable sports event, as a student, or as an elected representative.

Considerations	Resources	6103 Protected Resources
<p>(Continued)</p> <ul style="list-style-type: none"> <li>▪ As a professional athlete to compete in a charitable sports event. <b>NOTE:</b> days that are spent in the United States to practice for the event, perform promotional or other activities in connection with the event, or to travel between events are included as days of presence in the United States</li> <li>▪ On a temporary basis as a student</li> <li>▪ As an elected representative of the relevant territory, or serving full time as an elected or appointed official or employee of the relevant territory's government (or a political subdivision thereof) and serving the relevant territory in that role</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 301.7701(b)-3(b)(5)</li> <li>▪ Treas. Reg. 301.7701(b)-3(b)(4)</li> <li>▪ Treas. Reg. 1.937-1(c)(3)(ii)(E)</li> <li>▪ IRM 21.8.1.4.2.1(3) - <i>Residency Rules</i></li> </ul>	

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

When determining if an individual meets one of the five conditions of the presence test, an examiner must usually determine the number of days the individual was physically present or considered present in the relevant territory.

Considerations	Resources	6103 Protected Resources
<p>To determine days of presence <b>in the relevant territory, include</b> the days:</p> <ul style="list-style-type: none"> <li>▪ The individual is physically present in the relevant territory at any time during the day</li> <li>▪ The individual is outside the relevant territory to receive qualifying medical care or to accompany, on a full time basis, a parent, spouse, or child who is receiving qualifying medical care</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.937-1(c)(3)(i)(A)-(C)</li> <li>▪ Pub. 570</li> <li>▪ IRM 21.8.1.4.2.1(3) – <i>Residency Rules</i></li> </ul>	

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

When determining if an individual meets one of the five conditions of the presence test, an examiner must usually determine the number of days the individual was physically present or considered present in the relevant territory.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The individual is outside the relevant territory because he or she leaves, or is unable to return to, the relevant territory during                             <ul style="list-style-type: none"> <li>– A 14-day period during which a major disaster occurs in the relevant territory for which a FEMA notice or a Presidential declaration of a major disaster is issued in the Federal Register; or</li> <li>– A period during which there is a mandatory evacuation for the area within the relevant territory in which the individual's place of abode is located</li> </ul> </li> </ul>		

# Step 1: Presence Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 1 Presence Test

Rule for determining the individual's presence on a day when he or she is present in both the United States and the relevant territory.

Considerations	Resources	6103 Protected Resources
<p>If an individual is present in more than one geographic location on the same day:</p> <ul style="list-style-type: none"> <li>▪ If the individual is present in both the relevant territory and the United States, the day is counted as a day of presence in the territory</li> <li>▪ If the individual is present in two territories, the day is counted as a day of presence in the territory where the individual's tax home is located</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.937-1(c)(3)(iii)</li> </ul>	

# Step 2: Tax Home Test

## U.S. Territories – Determining Bona Fide Residency Status

### Step 2 Tax Home Test

An individual will meet the tax home test if he or she did not have a tax home outside the specific territory during any part of the tax year. See IRC 937(a)(2) and Treas. Reg. 1.937-1(d).

Considerations	Resources	6103 Protected Resources
<p><b>Determination of Tax Home - General Rule:</b></p> <ul style="list-style-type: none"> <li>▪ An individual's tax home is determined under the principles of IRC 911(d)(3)</li> <li>▪ An individual's tax home is generally his or her regular or principal (if more than one regular) place of business</li> <li>▪ If an individual does not have a regular or principal place of business or the individual is not engaged in carrying on any trade or business within the meaning of IRC 162(a), his or her tax home is his or her regular place of abode in a real and substantial sense</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 937(a)(2)</li> <li>▪ IRC 911(d)(3)</li> <li>▪ Treas. Reg. 1.937-1(d)</li> <li>▪ IRC 162(a)(2)</li> </ul>	

## Step 2: Tax Home Test (cont'd)

### U.S. Territories – Determining Bona Fide Residency Status

#### Step 2 Tax Home Test

An individual will meet the tax home test if he or she did not have a tax home outside the specific territory during any part of the tax year. See IRC 937(a)(2) and Treas. Reg. 1.937-1(d).

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"><li>▪ If the individual does not fit either of the above, he or she is considered an itinerant, and the individual's tax home is wherever the individual works.</li></ul>		

## Step 2: Tax Home Test (cont'd)

### U.S. Territories – Determining Bona Fide Residency Status

#### Step 2 Tax Home Test

There are exceptions relating to tax home under specific circumstances.

Considerations	Resources	6103 Protected Resources
<p><b>Exceptions Relating to Tax Home Test:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Students:</b> Disregard days temporarily in the United States as a student</li> <li>▪ <b>Government Officials:</b> Disregard days in the United States serving as an elected representative of the relevant territory, or serving full time as an elected or appointed official or employee of the government of the territory or any of its political subdivisions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.937-1(d)(2)(iii)</li> <li>▪ Treas. Reg. 1.937-1(d)(2)(iii)</li> <li>▪ Treas. Reg. 1.937-1(d)(2)(ii)</li> </ul>	

## Step 2: Tax Home Test (cont'd)

### U.S. Territories – Determining Bona Fide Residency Status

#### Step 2 Tax Home Test

There are exceptions relating to tax home under specific circumstances.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ <b>Seafarers:</b> An individual is not considered to have a tax home outside the relevant territory solely because the individual is employed on ships or other seafaring vessels used predominantly in local waters (within three miles of the relevant territory) or international waters. A vessel is considered predominantly used in those waters if that amount of time exceeds the aggregate amount of time in territorial waters of the United States, another U.S. territory, and any foreign country</li> <li>▪ <b>Year of Move:</b> An individual who would not otherwise meet the tax home test may meet it in the year of a move to and from a U.S. territory, as discussed later in this unit in the section titled <i>Exceptions</i>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.937-1(d)(2)(i)</li> </ul>	

# Step 3: Closer Connection Test

## U.S. Territories – Determining Bona Fide Residency Status

### Step 3 Closer Connection Test

The final requirement that a taxpayer must meet in order to qualify as a bona fide resident of a territory is that the taxpayer must not have a “closer connection” to the United States or a foreign country than to the relevant territory during any part of the taxable year. See IRC 937(a)(2).

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ Whether a person has a “closer connection” to the United States or a foreign country is determined under the principles of IRC 7701(b)(3)(B)(ii) and Treas. Reg. 301.7701(b)-2(d)</li> <li>▪ The person’s connections to the territory are compared to the aggregate of the person’s connections with the United States and foreign countries</li> <li>▪ An individual must satisfy the closer connection test for the entire taxable year, except in the year of move to and from a territory (discussed later)</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 937(a)(2)</li> <li>▪ Treas. Reg. 1.937-1(e)(1) and (2)</li> <li>▪ TD 9248 - <i>Explanation of Provisions and Summary of Comments, Section III, Closer Connection Test</i></li> </ul>	

# Step 3: Closer Connection Test (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Step 3 Closer Connection Test

A person will be considered to have a closer connection to the United States or a foreign country than to the territory if the individual has maintained more significant contacts with the United States or the foreign country. Whether the individual has maintained more significant contacts is determined under a facts-and-circumstances test. See Treas. Reg. 301.7701(b)-2(d).

Considerations	Resources	6103 Protected Resources
<p>The following is a nonexclusive list of factors to be taken into consideration:</p> <ul style="list-style-type: none"> <li>▪ The location of the individual's permanent home (whether a house, apartment, or furnished room; whether owned or rented; and whether available at all times, continuously, but not solely for stays of short duration)</li> <li>▪ The location of the individual's family. This is often a very important factor, but it may not always be. The test can be satisfied even if the individual's spouse resides in the United States or a foreign country</li> <li>▪ The location of the individual's personal belongings, such as automobiles, furniture, clothing, and jewelry owned by the individual and his or her family</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 301.7701(b)-2(d)</li> <li>▪ TD 9248 - <i>Explanation of Provisions and Summary of Comments, Section III, Closer Connection Test</i></li> </ul>	

## Step 3: Closer Connection Test (cont'd)

### U.S. Territories – Determining Bona Fide Residency Status

#### Step 3 Closer Connection Test

A person will be considered to have a closer connection to the United States or a foreign country than to the territory if the individual has maintained more significant contacts with the United States or the foreign country. Whether the individual has maintained more significant contacts is determined under a facts-and-circumstances test. See Treas. Reg. 301.7701(b)-2(d).

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"><li>▪ The location of social, political, cultural, or religious organizations with which the individual has a current relationship</li><li>▪ The location where the individual conducts his or her routine personal banking activities</li></ul>		

## Step 3: Closer Connection Test (cont'd)

### U.S. Territories – Determining Bona Fide Residency Status

#### Step 3 Closer Connection Test

All of these factors must be considered in determining an individual's closer connection. The very nature of the test does not allow for weighting of factors, and the rules do not allow for counting a majority of factors to determine closer connection. This list of factors is a nonexclusive list. Other relevant factors should also be considered, including whether the individual was born and raised in the territory

Considerations	Resources	6103 Protected Resources
<p>(Continued) The following is a nonexclusive list of factors to be taken into consideration:</p> <ul style="list-style-type: none"> <li>▪ The location where the individual conducts business activities (other than those that constitute the individual's tax home),</li> <li>▪ The location of the jurisdiction in which the individual holds a driver's license,</li> <li>▪ The location of the jurisdiction in which the individual votes,</li> <li>▪ The location of residence designated by the individual on forms and documents,</li> <li>▪ The types of official forms and documents filed by the individual.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 301.7701(b)-2(d)</li> <li>▪ TD 9248 - <i>Explanation of Provisions and Summary of Comments, Section III, Closer Connection Test</i></li> </ul>	

# Exceptions

## U.S. Territories – Determining Bona Fide Residency Status

### Description

**U.S. Servicemembers:** Members of the U.S. Armed forces who qualify as bona fide residents of a territory in an earlier tax year will remain bona fide residents of that territory for tax purposes if they are absent from that territory in compliance with military orders. Similarly, servicemembers who do not qualify as bona fide residents of a territory in a prior taxable year are not considered to be bona fide residents of that territory if they are present there solely in compliance with military orders.

- The servicemember is deemed to satisfy the presence test, the tax home test, and the closer connection test with respect to the territory he was a bona fide resident of in an earlier tax year. See Treas. Reg. 1.937-1(b)(2).
- “Armed Forces” means all regular and reserve components of the uniformed services that are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. It also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces. See Treas. Reg. 1.937-1(b)(2) and IRC 7701(a)(15).

### Examples:

1. A servicemember who, before entering the U.S. Army, was an Alabama resident and is now is stationed in Guam on military orders continues to be treated as an Alabama resident for income tax purposes and so would not be considered a bona fide resident of Guam.
2. A servicemember from Puerto Rico who is now stationed in Maryland on military orders continues to be treated as a bona fide resident of Puerto Rico for income tax purposes.

References: Servicemembers Civil Relief Act, (SCRA) 50 U.S.C. App. Section 501 et seq. , SCRA. 50 U.S.C. App. Section 571(a)(1) and Section 511(6) and Treas. Reg. 1.937-1(b)(2).

# Exceptions (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Description

**Military Spouses and the Military Spouses Residency Relief Act (MSRRA)**: Spouses of members of the U.S. Armed forces who qualify as bona fide residents of a territory in an earlier tax year can choose to remain bona fide residents of that territory for tax purposes if they accompany the servicemember spouse outside that territory solely in compliance with military orders of the servicemember. Similarly, civilian spouses of U.S. servicemembers who do not qualify as bona fide residents of a territory in a prior taxable year are not considered to be bona fide residents of that territory if the civilian spouse is present there solely in compliance with military orders of the servicemember.

- Before relocating, the civilian spouse and servicemember must have the same tax residence.
- This relief was enacted as part of MSRRA, which was signed into law November 11, 2009, and amends the Servicemembers Civil Relief Act.
- MSRRA was enacted to provide a civilian spouse with rights similar to those afforded to the servicemember when the civilian spouse accompanies the servicemember serving at a duty station on military orders within one of the 50 states, the District of Columbia, or a U.S. territory.
- MSRRA relief applies to 2009 and subsequent taxable years.

References: Servicemembers Civil Relief Act, (SCRA) 50 U.S.C. App. Section 501 et seq. and SCRA. 50 U.S.C. App. Section 571(a)(2) and Section 511(6).

# Exceptions (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Description

There are special rules regarding the “tax home” and “closer connection” tests for the year an individual moves to a U.S. territory. See Treas. Reg. 1.937-1(f)(1).

Individuals will be deemed to satisfy the tax home and closer connection tests in the year of move to a U.S. territory if they meet **all** of the following:

- The individual was not a bona fide resident of the territory in any of the three tax years immediately preceding the year of the move,
- The individual does not have tax home outside the territory, or a closer connection to the United States or a foreign country than to the territory, for any of the last 183 days of the year of move **and**
- The individual is bona fide resident of the territory for the three tax years immediately following the year of move.

# Exceptions (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Description

There are special rules regarding the “tax home” and “closer connection” tests for the year an individual moves **from American Samoa, the CNMI, Guam, or the USVI**. See Treas. Reg. 1.937-1(f)(2)(i). There are also special rules regarding the “tax home,” “closer connection,” and “presence” tests for the year an individual moves **from Puerto Rico**. See Treas. Reg. 1.937-1(f)(2)(ii).

#### **Year of move from American Samoa, CNMI, Guam or the USVI**

- An individual will be deemed to satisfy the tax home and closer connection tests for the year of move from American Samoa, the CNMI, Guam, or the USVI if he or she meets all of the following:
  - He or she was a bona fide resident of the relevant territory for each of the 3 tax years immediately preceding the year of move,
  - He or she does not have tax home outside the territory, or a closer connection to the United States or a foreign country than to the territory, during any of the first 183 days of the year of move and
  - He or she is not a bona fide resident of the territory for the 3 tax years immediately following the year of move.

#### **Year of move from Puerto Rico**

- Even if an individual does not satisfy the presence, tax home, or closer connection tests in the year of move from Puerto Rico, he or she will still be deemed a bona fide resident of Puerto Rico for that part of the tax year if he or she:
  - Is a U.S. citizen,
  - Was a bona fide resident of Puerto Rico for the 2 years immediately preceding the year of the move,
  - Ceases to be a bona fide resident of Puerto Rico during the year of move,
  - Ceases to have a tax home in Puerto Rico during the year of move and
  - Has a closer connection to Puerto Rico than to the United States or a foreign country throughout the part of the tax year preceding the date on which her or she ceases to have a tax home in Puerto Rico.

# Definitions

## U.S. Territories – Determining Bona Fide Residency Status

### Description

**Bona Fide Resident:** A tax status of an individual in relation to a U.S. territory under which the individual will be considered a bona fide resident if he or she satisfies a presence, tax home, and closer connection test, as provided under IRC 937 and the regulations thereunder.

**Charitable Sports Event:** A sporting event organized for the primary purpose of benefitting an IRC 501(c)(3) organization that is exempt from tax pursuant to IRC 501(a), provided all net proceeds from the event are donated to such organization and substantially all of the work involved in putting on the event is performed by volunteer workers. See IRC 274(l)(1)(B).

**Closer Connection:** The aggregate of a person's connections to a U.S. territory, the United States, or a foreign country determined under a facts-and-circumstances test, as provided in Treas. Reg. 301.7701(b)-2(d). The "closer connection" test is one of three tests an individual must satisfy to be deemed a bona fide resident of a U.S. territory for tax purposes.

**Military Spouses Residency Relief Act or MSRRA:** The Military Spouses Residency Relief Act or MSRRA is a federal law (not in the Internal Revenue Code) that was enacted in 2009 to provide military spouses with some of the same protections afforded their servicemember spouse under the Servicemembers Civil Relief Act. For tax purposes, MSRRA allows military spouses to have the same tax residency as their servicemember spouse.

**Qualifying Medical Treatment:** Medical treatment provided by a physician or under a physician's supervision for an illness, injury, impairment, or physical or mental condition involving a period of inpatient care in a hospital or hospice, as well as any period immediately prior or subsequent to the inpatient care that is medically necessary, or any period during which inpatient care is received in a residential medical care facility for medically necessary rehabilitation services. See Treas. Reg. 1.937-1(c)(4).

# Definitions (cont'd)

## U.S. Territories – Determining Bona Fide Residency Status

### Description

**Servicemembers Civil Relief Act (SCRA):** The Servicemembers Civil Relief Act is a federal law, not part of the IRC, that provides protections for military members as they enter active duty. One of the protections is that it allows servicemembers to retain their tax residences despite moves due to military orders.

**Student:** An individual, and his or her immediate family, who is admitted to the United States as a non-immigrant pursuant to Immigration and Nationality Act §§ 101(a)(15)(F) or (M), 101(a)(15)(J), or 101(a)(15)(Q), and who substantially complies with the requirements of being admitted. See Treas. Reg. 301.7701(b)-3(b)(4).

**Tax Home:** The individual's main place of business, employment, or post of duty, regardless of his or her family home. The "tax home" test is one of three tests an individual must satisfy to be deemed a bona fide resident of a U.S. territory for tax purposes.

**U.S. Territories:** American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. See IRC 937(a); see also IRM 3.22.3.6(1). NOTE: these geographical areas are referred to as possessions in the Internal Revenue Code, including in IRC 937 and the Treasury Regulations promulgated thereunder.

**United States:** The 50 States and the District of Columbia, but generally not the U.S. territories. See Treas. Reg. 1.937-1(a)(2)(ii).

# Examples of the Process

## U.S. Territories – Determining Bona Fide Residency Status

### Description

- (1) P, a U.S. citizen, is a permanent employee of a hotel in Guam but works only during the tourist season. For the rest of the year, she lives with her husband and children in the Commonwealth of the Northern Mariana Islands, where she does not work. P's personal belongings are located in the CNMI, she is registered to vote in and holds a driver's license in the CNMI, and she lists her permanent address as in the CNMI. P satisfies the presence test as to Guam and the CNMI. P has a tax home in Guam because that is where her regular place of business is located. P satisfies the closer connection test with Guam and the CNMI because she does not have a closer connection to the United States or to any foreign country. P is considered a bona fide resident of Guam. (Treas. Reg. 1.937-1(g), Example 6).
- (2) T, a U.S. citizen, moves to the USVI in a prior taxable year to start an investment consulting and venture capital business. His wife and children remain in Florida so the children can finish high school. T travels back regularly to Florida to visit his family, engage in business activities, and take vacations. He has an apartment in the USVI available full-time, and he is a member of the USVI chamber of commerce. He remains a joint owner on the residence in Florida where his wife and children reside, has cars and personal belongings in both Florida and the USVI, receives mail in Florida, conducts his banking in Florida, holds a Florida driver's license, is registered to vote in Florida, and has current relationships with social, political, cultural, and religious organizations in Florida. Based on the totality of the facts and circumstances, T is not a bona fide resident of the USVI because he has a closer connection to the United States than to the USVI. (Treas. Reg. 1.937-1(g), Example 7).

Note: See Treas. Reg. 1.937-1(g) for additional examples on how to determine bona fide residency status.

# Training and Additional Resources

<b>U.S. Territories – Determining Bona Fide Residency Status</b>		
<b>Type of Resource</b>	<b>Description(s) and/or Instructions for Accessing</b>	<b>References</b>
Podcasts / Videos	<ul style="list-style-type: none"><li>▪ FY 11 CPE – International Individual Compliance, Jurisdiction to Tax &amp; International Basics</li></ul>	

# Glossary of Terms and Acronyms

Acronym	Definition
BFR	Bona Fide Resident
CNMI	Commonwealth of Northern Mariana Islands
IRC	Internal Revenue Code
MSSRA	Military Spouses Residency Relief Act
PR	Puerto Rico
SCRA	Servicemembers Civil Relief Act
USVI	U.S. Virgin Islands

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