



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR

FROM: Joan M. Thomsen
Assistant to the Branch Chief CC:INTL:BR3

SUBJECT: Commuter Green Cards

This Service Center Advice responds to your memorandum dated May 27, 1999.

ISSUE:

What is the U.S. tax status of green cardholders who commute to work in the United States, but reside in Canada or Mexico ("commuter" green cardholders).

CONCLUSION:

A "commuter" green cardholder will be considered a U.S. resident for income tax purposes until such time that their lawful permanent resident status has been revoked, or administratively or judicially determined to have been abandoned.

FACTS:

The Service Center became aware of and has requested clarification with regard to a statement contained in an Immigration and Nationalization Service Examination Handbook (INS Handbook) that suggests the Internal Revenue Service (IRS) treats "commuter" green cardholders differently from "other" green cardholders. An excerpt provided by the Service Center from the INS Handbook states that "commuter" green cardholders are treated as nonresident aliens for U.S. tax purposes notwithstanding "that the alien has not made application for or claimed such classification, has not abandoned immigration status as an alien lawfully

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admitted for permanent residence, and is still a lawful permanent resident alien under the immigration laws.” Our Office was unable to locate a copy of the INS Handbook to verify the statements. We have been informed by the INS that the INS Handbook is no longer used.

LAW AND ANALYSIS:

Permanent resident status for immigration purposes is represented by the receipt of an Alien Registration Receipt Card (INS Form I-551), commonly referred to as the green card. The identical Form I-551 is issued to both “commuter” green cardholders and “other” green cardholders. “Commuter” green cardholders are distinguished from “other” green cardholders by the fact that they reside in Canada or Mexico, as opposed to the United States, and their resident status may be adjusted by the INS should they be absent from the United States for a period greater than six months as opposed to one year in the case of “ordinary” green cardholders.¹ The INS considers all green cardholders to be lawful permanent resident aliens under U.S. immigration laws.

Under section 7701(b) of the Internal Revenue Code, an alien individual is considered a U.S. resident for income tax purposes if the individual is either a “lawful permanent resident” of the United States (the green card test) or meets the “substantial presence test.” Section 7701(b)(6) of the Code provides that an individual is considered a “lawful permanent resident” if (1) the individual has the status of having been lawfully accorded the privilege, under U.S. immigration laws, of residing permanently in the United States as an immigrant and (2) such status has not been revoked and has not been administratively or judicially determined to have been abandoned.

A “commuter” green cardholder (like any “other” green cardholder) is considered a lawful permanent resident of the United States under U.S. immigration laws. Therefore, the “commuter” green cardholder will be considered a U.S. resident for income tax purposes until such time that their status has been revoked, or administratively or judicially determined to have been abandoned. Accordingly, the

¹ Although a presumption of abandonment of residency status attaches if a green cardholder has been absent from the United States for six months or one year, the INS may not adjust the alien’s permanent resident status until certain administrative procedures, including an exclusion hearing, have been followed. However, where the cardholder voluntarily abandons their resident status by filing an Application for Abandonment (INS Form I-407), no administrative procedures are required to be followed to adjust the alien’s status. Further, “commuter” green cardholders are not eligible for naturalization. A prerequisite requirement to naturalization is residency within the United States for a period of 3 - 5 years.

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statement in the INS Handbook concerning the tax status of “commuter” green cardholders is erroneous.

The legislative history to section 7701(b) makes it clear that Congress intended a green cardholder to remain a U.S. resident for tax purposes even if the INS no longer recognizes the validity of the green card because of the cardholder’s absence from the United States for a certain period of time (i.e., presumption of abandonment).² Therefore, a “commuter” green cardholder will be taxed as a U.S. resident until such person voluntarily abandons their resident status or until the INS has concluded its administrative procedures to adjust the green cardholder’s resident status.

If you have any further questions, please call (202) 622-3850.

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² “[A]n alien who comes to the United States so infrequently, that, on scrutiny, he or she is no longer legally entitled to permanent resident status, but who has not officially lost or abandoned that status, will be a resident for tax purposes. The purpose of this requirement is to prevent aliens from attempting to retain an apparent right to enter or remain the in United States while attempting to avoid the tax responsibility that accompanies that right.” General Explanation of the Deficit Reduction Act of 1984, 98th Cong., 2d Sess. (1984).