



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

OFFICE OF THE CHIEF COUNSEL

August 15, 2014

CC:INTL:B01
GENIN-116352-14

Number: **2014-0033**
Release Date: 9/26/2014

UIL: 7701.21-00, 877.00-00, 877A.00-00

Dear :

This letter responds to your request for information dated March 31, 2014.

U.S. income taxation of “green card” holders

Section 7701(b) of the Internal Revenue Code (the “Code”) sets forth rules for determining whether an individual who is not a citizen of the United States is classified as a resident of the United States for purposes of the Code. An alien individual is classified as a resident of the United States with respect to any calendar year if he or she (i) is a lawful permanent resident of the United States at any time during such calendar year (commonly referred to as the “green card test”), (ii) meets the substantial presence test in section 7701(b)(3), or (iii) makes the first-year election provided in section 7701(b)(4). Code § 7701(b)(1)(A). An individual who is neither a citizen of the United States nor a resident of the United States within the meaning of section 7701(b)(1)(A) is classified as a nonresident alien. Code § 7701(b)(1)(B).

Section 7701(b)(6) provides that an individual is a lawful permanent resident of the United States if he or she has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status has not been revoked (and has not been administratively or judicially determined to have been abandoned). Lawful permanent residents are colloquially referred to as “green card” holders.

Many green card holders may also be treated as residents of a foreign country—under that foreign country’s domestic law—with which the United States has an income tax treaty in force. Such an individual is a “dual resident taxpayer.” See Treas. Reg. § 301.7701(b)-7(a). Income tax treaties typically have tiebreaker rules that apply to determine the residence—for purposes of the treaty—of an individual who otherwise would be treated as a resident of both the United States and the other country. See,

e.g., Paragraph 3, Article 4 (Residence) of the U.S. Model Income Tax Convention (2006). If a green card holder would be treated as a resident of another country under a tiebreaker rule in an applicable income tax treaty for a taxable year, he or she may claim a treaty benefit as a nonresident alien for purposes of computing his or her U.S. income tax liability with respect to that portion of the taxable year he or she was considered to be a dual resident taxpayer. A dual resident green card holder may compute his or her U.S. income tax liability as if he or she were a nonresident alien by filing a Form 1040NR with a Form 8833 attached, as explained in Treas. Reg. § 301.7701(b)-7(b) and (c). See also “Effect of Tax Treaties” in Chapter 1 of IRS Publication 519 (U.S. Tax Guide for Aliens). If issues arise as to the proper interpretation or application of a treaty, the Competent Authorities may assist under the terms of the Mutual Agreement Procedure Article in the applicable treaty. See, e.g., Rev. Proc. 2006-54, 2006-2 C.B. 1035 (Nov. 17, 2006).

First year of U.S. residence—residency starting date

In determining the first year of U.S. residence of an individual, Treas. Reg. § 301.7701(b)-4(a) provides that an alien individual who was not a U.S. resident during the preceding calendar year, but who is a U.S. resident in the current year, will be treated as a U.S. resident on the alien’s “residency starting date.” In the case of a green card holder, the residency starting date generally is the first day during the calendar year in which the individual is physically present in the United States as a green card holder. If the individual meets the green card test for the current year but is not physically present in the United States during the current year, then the green card holder’s residency starting date will be the first day of the following calendar year. See Treas. Reg. § 301.7701(b)-4(e)(3). There is an alternative rule, however, for a green card holder who in the relevant year also satisfies the substantial presence test described in section 7701(b)(3). In that case, the residency starting date is the earlier of the first day the individual is physically present in the United States as a green card holder or the first day during the year that the individual is present for purposes of the substantial presence test. See Treas. Reg. § 301.7701(b)-4(a).

Special no-lapse residence rules

In addition, there are “no-lapse” residence rules under the regulations that may apply to determine whether an individual is taxable as a resident in the current year. See Treas. Reg. § 301.7701(b)-4(e). The rules depend on whether the individual was a U.S. resident during the preceding calendar year or is a U.S. resident in the following year. Specifically, Treas. Reg. § 301.7701(b)-4(e)(1) provides that an alien individual who was a U.S. resident during any part of the preceding calendar year and who is a U.S. resident for any part of the current year (whether under the substantial presence test or the green card test) will be considered to be taxable as a resident at the beginning of the current year. Similarly, an alien individual who is a U.S. resident for any part of the current year and who is also a U.S. resident for any part of the following year (regardless of whether the individual has a closer connection to a foreign country than

the United States during the current year and whether the individual is considered a resident under the substantial presence test or the green card test) will be taxable as a resident through the end of the current year. Treas. Reg. § 301.7701(b)-4(e)(2).

Termination of treatment as a green card holder

As noted above, section 7701(b)(6) provides that an individual is a lawful permanent resident (green card holder) if he or she has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status has not been revoked (and has not been administratively or judicially determined to have been abandoned). Under the green card test, an individual continues to be a resident for tax purposes until his or her lawful permanent resident status is rescinded or administratively or judicially determined to have been abandoned. Treas. Reg. § 301.7701(b)-1(b)(1). Resident status is considered to be rescinded if a final administrative or judicial order of exclusion or deportation is issued regarding the alien individual. Treas. Reg. § 301.7701(b)-1(b)(2). An administrative or judicial determination of abandonment may be initiated by the green card holder, the immigration authorities, or a consular officer. Treas. Reg. § 301.7701(b)-1(b)(3). If the green card holder initiates the determination, there are specific procedures described in Treas. Reg. § 301.7701(b)-1(b)(3) that he or she must follow; merely leaving the United States with no intention to return is not sufficient.

Section 7701(b)(6) was amended in 2008 to add new language that provides that an individual ceases to be treated as a green card holder if he or she commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment. The new language amending section 7701(b)(6) is effective for any individual whose expatriation date (as defined under section 877A(g)(3)) is on or after June 17, 2008.

Application of sections 877 and 877A to green card holders

Section 877 contains special rules that may apply to individuals who expatriated from the United States prior to June 17, 2008. The rules apply for a period of ten years following the year of expatriation. Prior to 1996, section 877 applied only to certain former U.S. citizens. Section 877 was expanded in 1996 to apply to “long-term residents” in addition to U.S. citizens.

Section 877(e)(2) provides that a long-term resident is an individual who had a green card in at least eight taxable years during the period of fifteen taxable years ending with the taxable year during which the individual ceased to be a green card holder. An individual is not treated as a green card holder for any taxable year if he or she is treated as a resident of a foreign country for the taxable year under the provisions of a

tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

An individual who ceased to be treated as a green card holder prior to February 6, 1995, was not subject to section 877 even if he or she would have been a long-term resident under the definition in section 877(e)(2). In addition, an individual who ceased to be treated as a green card holder after February 5, 1995, and before June 17, 2008, but was not a long-term resident was not subject to section 877.

Section 877A imposes an “exit tax” on certain individuals who cease to be treated as U.S. citizens or long-term residents on or after June 17, 2008.

Accordingly, to determine whether section 877 or section 877A may apply to a former green card holder, it is essential to establish when the former green card holder ceased to be treated as such and whether he or she was a long-term resident at that time.

Application of section 6039G

Section 6039G, which was enacted in 1996 (and originally designated as section 6039F), requires U.S. citizens and long-term residents who expatriate after February 5, 1995, to attach an information statement to their U.S. income tax return for the year of expatriation. An individual who ceased to be treated as a green card holder prior to February 6, 1995 was not subject to section 6039G even if he or she would have been a long-term resident under the definition in section 877(e). In addition, an individual who ceased to be treated as a green card holder after February 5, 1995, but was not a long-term resident at such time was not subject to section 6039G.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2014-1, §2.04, 2014-1 IRB 7 (Jan. 2, 2014). If you have any additional questions, please contact our office at

Sincerely,

Senior Technical Reviewer, Branch 1
(International)