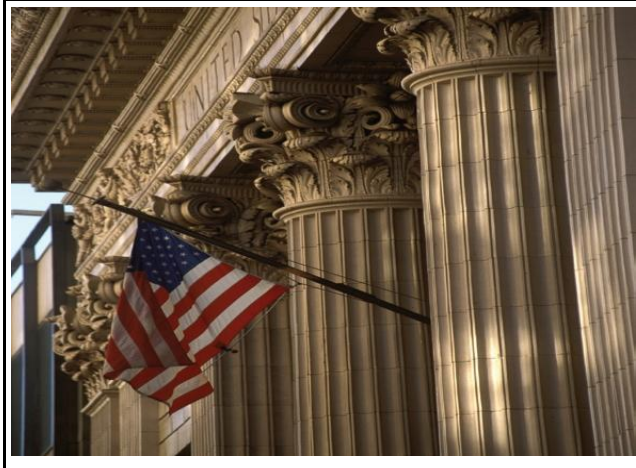


Immigration Planning - Determination of Tax Residency Status

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Cuevas, Garcia & Torres, P.A.

 VANTAGE PROPERTY TITLE COMPANY

Andrew Cuevas, Esq. - President
e-mail: acuevas@cuevaslaw.com

Offices in Miami and Orlando

Tel: (305) 461-9500

Fax: (305) 448-7300

Mr. Andrew Cuevas, Esq., is the President of Cuevas, Garcia & Torres, P.A., and Vantage Property Title Company. Cuevas, Garcia & Torres, P.A., provides legal services in the areas of Community Association Law, Corporate Law, Real Estate law, and Business Immigration, including title insurance services through Vantage Property Title Company. If you have any questions regarding this article or any other questions, you may contact Mr. Cuevas at (305) 461-9500 or via e-mail at acuevas@cuevaslaw.com. If you are interested in reading previous newsletters, please visit www.cuevaslaw.com, select the icon for **Newsletters**, and then choose the area of law you are interested in.

Different rules apply for federal income tax purposes, federal estate, and gift tax purposes to determine whether an alien is considered a resident or nonresident in the United States. An alien individual would be deemed to be a U.S. resident for income tax purposes when lawful permanent residence (Green Card status) has been acquired pursuant to the Immigration and Nationality Act (“INA”), or falls within the terms of *substantial presence*. If neither of these tests is met, the alien is deemed to be a nonresident alien for purposes of U.S. income taxation

Lawful Permanent Residence Test

If an alien individual has been granted the status of lawful permanent resident under the INA, is physically present in the U.S. even one day in a calendar year following the receipt of such status, and the same has not been surrendered, revoked nor administratively or judicially determined to have been lost or abandoned, then such individual is treated as a resident alien of the United States for the full calendar year. For Green Card holders, income tax residency is totally divorced from the length of physical presence in the United States.

Substantial Presence Test

This is a numerical test satisfied if an alien is physically present in the United States for a certain number of days either in a current calendar year or over a three year sequence, as follows:

- 1) If the alien is physically present in the U.S. for 183 days or more during the calendar year; or

- 2) If the sum of the days: (a) the alien is physically present in the United States during the current calendar year; plus (b) one-third the number of days the alien is physically present in the United States during the preceding calendar year; plus (c) one-sixth the number of days the alien is physically present in the United States during the second preceding calendar year, equals or exceeds 183 days.

There are however certain aliens that are treated as not being present in the United States on any day if they fall into one of the following categories:

- a) Foreign government related individuals
- b) Teachers and trainees
- c) Students
- d) Professional Athletes present for charitable sports events

There are also exceptions to calculating days present for purposes of the substantial presence calculation as follows:

- a) Individuals with medical condition
- b) Commuters from Canada and Mexico
- c) Days in transit
- d) The 31-day exception
- e) The closer connection (Tax Home) exception

Federal Estate Taxation of Foreigners

Once it is determined that the alien is a nondomiciliary of the U.S., it must be determined what assets will be included in the nonresident's gross estate and be taxable for federal estate tax purposes. The taxable gross estate of the foreign decedent is then reduced by certain permitted deductions. The federal estate tax imposed on the non-domiciliary's net taxable estate is calculated according to the same tax rate schedule applicable to U.S. citizens and residents, but the nondomiciliary receives a substantially smaller federal estate tax credit against the resulting liability (i.e., \$60,000 of exemption for the nondomiciliary versus an exemption of \$5.49 million available to a U.S. citizen or resident in 2017).

Property in the United States

The taxable estate of a foreign domiciliary includes only the foreign decedent's property that is situated in the United States. There are several rules for determining location of property. The federal taxable estate would generally be determined according to the regular federal estate tax rules applicable to U.S. citizens and residents, other than for property located outside the United States. There are also certain allowable deductions of the administration of an estate that will reduce the taxable estate amount. Charitable deductions declared as part of a last will and testament to charitable corporations are deductible in full.

There are numerous other deductions and considerations for determining the taxable base for estate tax purposes, such as pre-existing debt, allowable transfers to spouses, generation skipping tax, and the impact of estate tax treaties held with foreign countries. Foreign persons wanting to conduct business or reside in the United States should consider this and other issues.

Opposite to popular belief, in many instances the reality is that taxes in the United States are much less than taxes in many foreign nations, with the difference being that counter to what might be the norm in other locations, it is very difficult to avoid taxes owed in the United States due to the systems established to ensure compliance. We do recommend that contracting with experienced accounting and tax professionals is an essential step for overall immigration planning.

This article is solely a partial explanation of all the issues related to the topic of this newsletter, and is not to be considered legal advice. Persons interested in obtaining more information on tax planning should consult with their legal counsel to obtain explanations of all issues addressed herein.