

Death and Taxes —

A monthly column on tax issues and estate planning

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Tax Home, Sweet Tax Home – The Third Prong for USVI Residency

A “bona fide resident” of the U.S. Virgin Islands (USVI) must file his or her income tax return with and pay all taxes due to the Virgin Islands Bureau of Internal Revenue (BIR). Persons who are not bona fide residents of the USVI but have USVI income, must file their Form 1040 with the Internal Revenue Service (IRS) and the BIR and allocate taxes between the two.

The American Jobs Creation Act of 2004 and subsequent Treasury regulations changed the definition of “bona fide resident” for income tax filing purposes from a “facts and circumstances” test to a three-part determination. USVI “bona fide residents” must now meet a tax home test – as well as physical presence and closer connection tests – instead of the “facts and circumstances” test that was the law before 2005. The January and February columns of *Death and Taxes* discussed, respectively, the physical presence and closer connection test requirements.

The tax home test requires that a taxpayer’s “tax home” be in the USVI. Home may be where the heart is, but an individual’s tax home is generally considered to be located at his or her regular place of business. If an individual has more than one place of business, then the tax home is the principal place of business. Where a taxpayer works regularly in two or more areas, the time spent performing duties in each area, the degree of the business activities in each area, and the relative financial returns from each area determine tax home. For example, if a person has homes and businesses in the USVI and in Florida, but spends more time work-

ing there, and makes more money from that business, then the person would probably have a Florida tax home even if the person spent more than 183 days in the USVI and otherwise had a closer connection to the USVI. Consequently, the person would not be considered a USVI “bona fide resident” for that year.

For retirees or persons without a regular or principal place of business, the tax home is their regular abode. The IRS examines several factors in determining an “abode” including whether living expenses are duplicated when the taxpayer’s business requires travel away, and whether the taxpayer has a family member at the abode and uses it frequently for lodging. Simply put, if a taxpayer’s travels from his or her home require hotel stays, rental cars, restaurant meals, and so forth, that supports the determination that the home is the “abode.”

Treasury Regulations issued in April 2005, and January 2006, created special rules for determining the tax home of seafarers, students, and USVI government officials. A seafarer won’t have a tax home outside the USVI solely by reason of employment on a ship that is predominantly used in local and international waters. A ship is predominantly used in local or international waters if the total time it is so used exceeds the total time it is used in the territorial waters of the United States, another possession, and any foreign country (including the British Virgin Islands).

A student generally doesn’t have a tax home outside the USVI for any day when the student is in the United States as a student. A USVI govern-



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ment official doesn’t have a tax home outside the USVI for any day so spent serving the USVI.

An individual moving to the USVI can satisfy the tax home test if he or she doesn’t have a tax home outside the USVI during the last 183 days of the year. This “partial year” test only applies, however, if the individual hasn’t been a USVI bona fide resident during the three years before moving to the USVI and if the individual is a bona fide resident for the three years after the move year. Otherwise, the individual can’t have a tax home outside the USVI for even one day of the year and meet the tax home test.

Thus, a person whose tax home is in the USVI for the last 183 days of a year and who is otherwise a bona fide USVI resident could file as a USVI resident. If the person moves away within the next three years though, the taxpayer must file an amended return with the BIR and a return with the IRS consistent with non-residency in the USVI for that year.

The information provided in this column is not legal advice and readers should consult with their professional advisors to determine how this information may apply to their specific circumstances.

Suggestions for future columns should be sent to: AskJorie@TradewindsHouseandHome.com.

“In this world nothing can be said to be certain, except death and taxes.” Benjamin Franklin, 1789.