

Where's My Tax Home?

Tax home: Generally, it is your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area (vicinity) in which your business or work is located. Treas. Reg. 301.7701(b)-2(c). Publication 463, pages 3, 4. Tax home is important when a taxpayer has earned compensation. It is used in determining allowable expenses and exclusions that may be taken against taxable income. (2018 N/A for employees)

Tax home is the same concept whether it relates to ordinary and necessary expenses while away-from-home on business, for carrying on a business (IRC 162(a) and (a)(2)) or the foreign earned income exclusion (IRC 911 (a)). We know this because IRC 911(d)(3) states: The term 'tax home' means, with respect to any individual, such individual's home for purposes of section 162(a)(2).

Tax home is also the same concept when an alien is claiming a closer connection to one or two foreign countries. To establish that closer connection, the alien's tax home must be maintained outside the U.S. for a full calendar year. (IRC 301.7701(b)-2(c)(2) (But see Student Exception.)

Tax home is not defined by statute. The IRS develops regulations to interpret and apply statutes such as IRC section 162(a)(2). Useful IRS Revenue Rulings are 73-529 and 93-86. Taxpayers appeal IRS rulings to the U.S. Tax Court. District/Circuit courts have weighed in with variant rulings. Facts and circumstances are important. IRS publications and articles synthesize how the IRS interprets them. The IRS is a good resource, but not always the final word.

Some key issues for readers of this book to consider are:

1. Is there a tax home, and if so, where is it? Is there one business? No regular place of business? Multiple businesses?
2. When might a tax home change location?
 - Did the person work first in one location and then work in another?
 - Was work in the new location anticipated to be short-term, or temporary?
 - Was it anticipated to be indefinite or long-term?
 - How do you distinguish between temporary and indefinite?

The rules in Publication 463 present the IRS and Tax Court definitions. Numerous court cases present findings on specific, individual situations.

Other factors important to readers of this book may include:

- Residency status: U.S. citizen or resident alien, and resident by green card or presence?
- Is the taxpayer, or the source of income, inside or outside the U.S.?, and
- Are there any treaty considerations?

Change of tax home: (following IRS Publication 463)

- If your assignment or job away from your main tax home is temporary, your tax home **does not** change. You may deduct qualifying away-from-home travel expenses.
- If your assignment or job is indefinite, that new location becomes your tax home. You cannot deduct living expenses at the new tax home as travel expenses. You might qualify to take moving or job hunting expenses
- Temporary: If, when you start work, there is a realistic expectation that the job or assignment will last, and it does last, one year or less, it is temporary, unless there are facts and circumstances that indicate otherwise. Your tax home **has not** changed.
- Indefinite (long-term): If the job is realistically expected to last more than one year, whether or not it does so, your tax home **did** change, until your expectation changed.

Some Examples for Tax Home and Changes

Non-citizen of the U.S. coming to the U.S.:

Many non-citizens coming to the U.S. on immigrant (green card) or non-immigrant visas, such as H1-b, or student or exchange visitor visas (F, J, M, Q), come with the intention of staying more than a year. Their tax home likely moved to their new location as soon as they arrived in the U.S.

The next questions for them are:

- do they have taxable U.S. income? (necessary for them to have a U.S. tax home)
- will they file on Form 1040NR? or 1040?

A **scholar** visiting for a single academic year likely does not change to a U.S. tax home. The scholar may have a job at home to which s/he will return after a temporary visit to the U.S. of less than one year. The scholar may have qualifying away-from-home business expenses. (2018 N/A)

A **student** may intend to be in the U.S. for more than one year but have no taxable U.S. source income. Maybe because they are nonresidents and have only foreign source income. Maybe they simply have no taxable income from any source. The no-income student does not have a U.S. tax home. If they take a paid summer job in another city, that city becomes the tax home. Living expenses there are not deductible *away-from-home* expenses even though they do not live in that city during the school year. U.S. Court of Appeals, Hantzis v. Commissioner, 1981 638 F.2^d 248

A or G visa holders (except A3 and G5) generally do not have a U.S. tax obligation on wages paid by their sponsor (if they are not local hire). They would not have a U.S. tax home unless they also had U.S. source income, such as rental or investment income.

Visitors who come and go and come and go

People who never seem to stay put may include temporary workers with H1-b visas, scholars, athletes, and performers. Facts and circumstances are the only way to assess the location of the tax home, if any, and whether the person has substantial presence for U.S. tax residency. Court cases are made of this!

Moving to Work in Another Country

U.S. Citizen or resident alien (green card): If a U.S. citizen or resident moves to another country and intends to work outside the U.S. for more than a year, their tax home would move when they do, just as for a move within the U.S. See discussion on Form 2555, later, for when this might allow a foreign earned income or housing exclusion.

Non-U.S. citizen

If someone not a U.S. citizen or green card holder but who had become a tax resident of the U.S. by substantial presence moves outside the U.S., they will continue to owe U.S. taxes on total worldwide income through December 31, unless they substantiate the end of their U.S. tax residency. They should attach a statement to their tax return that covers the information used in a residency termination statement and the information requested on Form 8840 to show a closer connection See earlier.

It is not otherwise relevant that their tax home has moved.

And, not being a U.S. citizen or resident alien (green card holder), they cannot use Form 2555 to exclude income from U.S. taxation.