Three Year Residency Requirement For Year of Move To/From Puerto Rico

Bona Fide Resident General Rules

To qualify as a bona fide resident of Puerto Rico, an individual generally must meet a presence test, a tax home test, and a closer connection test.

The presence test generally requires that the individual be present in Puerto Rico for at least 183 days during the year.[1] The tax home test generally requires that the individual not have a tax home outside Puerto Rico during **any part** of the taxable year.[2] The closer connection test generally requires that the individual not have a closer connection to the United States or a foreign country than to Puerto Rico during **any part** of the taxable year.[3]

In the year an individual moves to Puerto Rico, the individual cannot be treated as a bona fide resident of Puerto Rico under these general rules. This is because for part of the year the individual did not have a tax home in Puerto Rico and for part of the year the individual did not have a closer connection to Puerto Rico.

Thus, under these general rules, even if an individual who moved to Puerto Rico in January 2021 and spent more than 330 days in Puerto Rico in 2021 would not be treated as a bona fide resident of Puerto Rico for 2021.

Special Rule for Year of Move To Puerto Rico

Treas. Reg. §1.937-1(f)(1) provides a special rule for the year an individual moves to Puerto Rico. This special rule waives the requirement that the individual meet the tax home test and the closer connection test for the entire year. However, three requirements must be met to qualify for this special rule.

First, the individual must not have been a bona fide resident of Puerto Rico for the 3 taxable years preceding the year of the move to Puerto Rico.[4] Second, the individual must meet the tax home requirement and the closer connection requirement for the last 183 days of the taxable

1 Treas. Reg. §1.937-1(c). All section references are to the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder.
2 Treas. Reg. §1.937-1(d)(1).
3 Treas. Reg. §1.937-1(e)(1).
4 Treas. Reg. §1.937-1(f)(1)(i).

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year of the change of residence.[5] And third, the individual must be a bona fide resident of Puerto Rico "[f]or each of the 3 taxable years immediately following" the year of the move to Puerto Rico.[6]

Example:

> Rich is a US citizen. Rich moved to Puerto Rico in May of 2021. Rich spent more than 183 days in Puerto Rico in 2021. Rich was not a bona fide resident of Puerto Rico for any of the 3 taxable years immediately preceding 2021. Rich met the tax home requirement and the closer connection requirement for the last 183 days of 2021.
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> As long as Rich is a bona fide resident of Puerto Rico for each of the 3 taxable years immediately following 2021, then Rich can be treated as a bona fide resident of Puerto Rico for 2021.

If Rich is a bona fide resident of Puerto Rico for 2022-2024 and the ceases to be a bona fide resident of Puerto Rico in 2025, then he should be treated as a bona fide resident of Puerto Rico for 2021.

However, if Rich were to return to the U.S. in 2024 (instead of 2025), a question arises as to whether he would be treated as a bona fide resident of Puerto Rico for each of the 3 taxable years immediately following 2021.

Special Rule for Year of Move From Puerto Rico

Not only are there special rules for the year of the move to Puerto Rico, but there are also special rules for the year of the move from Puerto Rico.[7] Generally, an individual is a bona fide resident of Puerto Rico for part of the year of the move, if certain requirements are met.[8]

If Rich moves back to the U.S. in 2024, he may be a bona fide resident of Puerto Rico for part of 2024.

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5 Treas. Reg. §1.937-1(f)(1)(ii).
6 Treas. Reg. §1.937-1(f)(1)(iii).
7 Treas. Reg. §1.937-1(f)(2)(ii).
8 *Id.*

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If Rich is a bona fide resident of Puerto Rico for part of 2024, has he been a bona fide resident of Puerto Rico "[f]or each of the 3 taxable years immediately following" 2021?

One way to restate the question more narrowly would be:

> Was Rich a bona fide resident of Puerto Rico for the taxable year 2024?

A reference to "the" taxable year would seem to imply the "full" taxable year.[9] Under this reading, Rich would need to remain a bona fide resident of Puerto Rico until 2025 in order to be treated as a bona fide resident of Puerto Rico for 2021.

There may be an argument that Rich would meet the 3-year requirement even if he ceases to be a bona fide resident of Puerto Rico in 2024. If Rich is a bona fide resident of Puerto Rico for [part of] the 2024 taxable year, then it is arguable that he is a bona fide resident of Puerto Rico for "the" 2024 taxable year. Treas. Reg. §1.937-1(f)(1)(iii) does not specify the "full" taxable year. Instead, the regulation merely refers to "the 3 taxable years". The failure of the regulation to specify full taxable years may leave an opening for Rich to argue that he only needs to be a bona fide resident of Puerto Rico for part of 2024.

However, because the law in this area is not clear, we would highly recommend that Rich remain a bona fide resident of Puerto Rico throughout the entire 2024 year, and not terminate his status as a bona fide resident of Puerto Rico until some time in 2025.

About Tom Duffy, C.P.A., P.A. & P.C.

Tom Duffy C.P.A., P.A. & P.C. is a Greater Chicago-based firm that specializes in international taxation with a particular focus on U.S. possessions. In addition, the firm is one of the few CPA firms in the country that specializes in representing residents of Puerto Rico during IRS examinations, specifically those taxpayers granted tax incentives under Puerto Rico's Act 60 (formerly Act 20/22).

Our foreign clients rely on our knowledge and expertise in complying with their U.S. tax obligations. Tom Duffy has over fifteen years of experience in international tax planning and associated U.S. tax return preparation. The firm services clients in the United States, its possessions, and throughout the world. Tom Duffy is a member in good standing with the American Institute of CPAs and the Puerto Rico Society of CPAs. He is licensed to practice in Florida, Illinois, and Puerto Rico.

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[9] Treas. Reg. §1.937-1(f)(1)(iii) refers to "the * * * taxable years".

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