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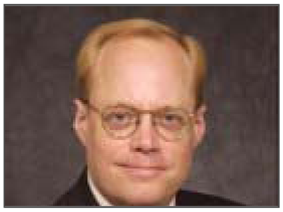

Robert W. Wood
THE TAX LAWYER

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High Cost To Go Green: Giving Up A Green Card

(Photo credit: Wikipedia)

Giving up a Green Card can cost Greenbacks. For many, it's an unpleasant surprise. As U.S. continues its war on offshore tax evasion, many expatriates feel caught in the crossfire. See Americans Are Undesirable As FATCA Closes More Doors. FATCA, the dreaded Foreign Account Tax Compliance Act, has made Americans undesirable. See FATCA Makes Banks Shut Out Americans.

U.S. citizens and permanent residents are required to report their worldwide income on their tax returns. They have to report foreign accounts on annual FBARs, too. See Undisclosed Foreign Bank Accounts? They're Even More Explosive Now. If you have a Green Card, you're a permanent resident and face the full panoply of tax and disclosure obligations.

Can U.S. citizens and permanent residents give up their citizenship or Green Card? Yes, but there may be a tax cost. Whether U.S. citizens must pay an exit tax when leaving depends on their assets. But must those who give up a Green Card pay too?

In some cases, yes. A long-term resident is a non-U.S. citizen who is a lawful permanent resident of the U.S. for at least eight years during the

15-year period before their residency ends. A “lawful permanent resident” means a Green Card holder.

However, you are not a “lawful permanent resident” under this rule for any year in which you are treated as a resident of a foreign country under a tax treaty, as long as you don’t waive the treaty benefits applicable to that country’s residents. Caution: holding a Green Card for even one day during a year taints the entire year.

The exit tax doesn’t apply to every U.S. citizen or every long-term resident who leaves. If you are a U.S. citizen or long-term resident who expatriated on or after June 17, 2008, the tax law treats you as having sold all of your worldwide property for its fair market value the day before you leave. The gain is subject to U.S. tax at the capital gains rate.

The exit tax has some special rules, including exempting some people born with dual citizenship (but they must still file an IRS Form 8854). More generally, you can escape the exit tax if you have less than $651,000 of income from the deemed sale of your assets. However, if your gain is more than this, the $651,000 must be allocated to each item of property which can be a complicated process requiring appraisals.

If you are facing this situation, get some sound professional advice. In some cases planning can materially reduce or even eliminate the exit tax.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.