

Surrendering Your Green Card—Understanding USCIS Form I-407: *Record of Abandonment of Lawful Permanent Resident Status*

I. Introduction

The U.S. has a large immigration population, and a steady number of foreign nationals obtain lawful permanent resident status each year. Based on the Annual Flow Report of Lawful Permanent Residents issued by the Department of Homeland Security (“DHS”), 1,127,167 persons obtained lawful permanent resident status in 2017.¹ Approximately 1 million individuals each year obtained lawful permanent residency in the past decade.² However, a significant number of permanent residents also renounce their U.S. residency, for various reasons, by filing the U.S. Citizenship and Immigration Services Form I-407 *Record of Abandonment of Lawful Permanent Resident Status* (“Form I-407”). In the first half of 2019, 7,975 Form I-407 filings have been processed.³ Lawful permanent residents who file Form I-407 need to be aware that there might be tax implications in renouncing their U.S. residency. The goal of this article is to explore the tax obligations of a lawful permanent residents who voluntarily abandon their U.S. residency by filing Form I-407.

II. Green Card Holders are Lawful Permanent Residents

Under 8 U.S.C. § 1101(a)(20), a lawful permanent resident (“LPR”) is defined as a lawfully admitted person for permanent residence in the U.S.⁴ To become an LPR means that an individual has been lawfully allowed the privilege of residing permanently in the U.S. under immigration laws, unless such resident status is rescinded or judicially determined to be abandoned.⁵ The DHS further explains that an LPR, also known as “Green Card” holders, may accept job offers without special restrictions, own property, receive financial assistance at public universities and colleges, and join the U.S. military forces.⁶ For federal tax purposes, the Internal Revenue Code considers an LPR a resident alien subject to U.S. tax obligations.⁷

III. Green Card Holders Abandoning U.S. Residency Must File Form I-407

If an LPR wishes to voluntarily abandon his or her U.S. residency, such LPR needs to file Form I-407.⁸ Filing Form I-407 means that the LPR waives his/her right to a hearing before an immigration judge regarding his/her abandonment of LPR status. Individuals admitted into the U.S. as non-immigrants or paroled into the U.S. after abandoning a prior LPR status and now wish to record that prior abandonment may also file Form I-407. If a parent abandons LPR status by filing Form I-407, the minor children within such parents' custody will be deemed as abandoning their LPR status. The DHS officials and U.S. Department of State ("DOS") consular officers may use the USCIS Form I-407 to record facts of individuals abandoning their LPR status.⁹

Form I-407 requires an Alien Registration Number (shown on an LPR's Permanent Resident Card, also known as the Green Card). An LPR must complete Part 1 of the Form and include all pages at submission. If a parent, custodial parent, or legal guardian is submitting the Form on behalf of a minor child within his or her custody or an incapacitated adult, the applicant must additionally fill out questions 14.a.-14.c. of Part 1 of the Form. If an interpreter assisted in filing the Form or at a relevant interview, the interpreter's information and signature must be provided in Part 2 of the Form. Part 3 of the Form is for government officials only.¹⁰

According to June 17, 2019 USCIS news, the USCIS will no longer accept Form I-407 at international field offices by mail or in person, starting from July 1, 2019.¹¹ The USCIS will only accept Form I-407 mailed to the address below, where receipt to completion will be processed within 60 days, excluding mailing time to or from outside of the U.S.

USCIS Eastern Forms Centre
Attn: I-407 unit
124 Leroy Road
PO Box 567
Williston, VT 05495

As the address provided by the USCIS is a post office box, LPRs should know courier services such as FedEx and UPS will not be available to send Form I-407 to this address.¹²

IV. Green Card Holders Abandoning U.S. Residency Must File Internal Revenue Service (IRS) Forms 1040C, File Any Delinquent Tax Returns and Pay Any Outstanding Tax Liabilities, Including Any Tax Shown on Form 1040-C.

A Green Card holder abandoning his or her U.S. residency must apply for the certificate required by IRC §6851(d) and Treas. Reg. § 1.6851-2 (sometimes the "sailing permit").

IRC §6851(d) provides no alien, subject to exceptions by regulations, "shall depart from the United States unless he first procures from the Secretary a certificate that he has complied with all the obligations imposed upon him by the income tax laws."

Treas. Reg. § 1.6851-2—*Certificates of compliance with income tax laws by departing aliens*, provides:

no such alien, whether resident or nonresident, may depart from the United States unless he first procures a certificate that he has complied with all of the obligations imposed upon him by the income tax laws. In order to procure such a certificate, an alien who intends to depart from the United States

- (i) must file with the district director for the internal revenue district in which he is located the statements or returns required by paragraph (b) of this section to be filed before obtaining such certificate,
- (ii) must appear before such district director if the district director deems it necessary, and
- (iii) must pay any taxes required under paragraph (b) of this section to be paid before obtaining the certificate. Either such certificate of compliance, properly executed, or evidence that the alien is excepted under subparagraph (2) of this paragraph from obtaining the certificate must be presented at the point of departure. **An alien who presents himself at the point of departure without a certificate of compliance, or evidence establishing that such a certificate is not required, will be subject at such departure point to examination by an internal revenue officer or employee and to the completion of returns and statements and payment of taxes as required by paragraph (b) of this section.** (emphasis added)

See also IRM 5.21.3.4 (01-07-2016) (Customs Order or Prevent Departure Order) (A Customs Order can prevent a non-U.S. Citizen from exiting the United States, pending the resolution of a collection matter.)¹³

Obtaining a sailing permit requires the filing a Form 1040-C-*U.S. Departing Alien Income Tax Return*, or Form 2063-*U.S. Departing Alien Income Tax Statement*. The instructions to Form 1040-C ask that an LPR not apply for a sailing permit earlier than 30 days before his or her departure date. The IRS advises that Green Card holders obtain their sailing permit at least two weeks before the scheduled departure date.

The IRS Form 1040-C reports the income the taxpayer received and expects to receive during the tax year. Prior to the departure date, the LPR requesting a sailing permit must bring the IRS Form 1040-C and the following records to the IRS office considering the application:

- 1) Copies of U.S. income tax returns filed for the past 2 years and receipts for taxes paid on those returns;
- 2) Receipts, bank records, cancelled checks, and other documents that support deductions, business expenses, and exemptions claimed on the returns;

3) Employer statements showing wages paid and taxes withheld from January 1 of the current year to date of departure, if the alien was an employee; and

4) A profit-and-loss statement prepared for the period from January 1 of the current year to the date of departure, if the alien was self-employed.

Before being issued a sailing permit, LPRs filing Form 1040-C must file any delinquent tax returns and pay any outstanding tax liabilities, including any amount shown as due on Form 1040-C.

The LPR should be aware that 26 CFR § 1.6851-2(b) (4) provides that the Form 1040-C is not a replacement for the Form 1040 or Form 1040NR. If the LPR is required to file an income tax return, then the taxpayer needs to file a Form 1040 by the due date even though the Form 1040-C has been filed. The LPR takes the tax paid with the Form 1040-C as a credit against the tax liability calculated on the taxpayer's annual individual income tax return.

Departing Green Card holders with no taxable income can file IRS Form 2063, *U.S. Departing Alien Income Tax Statement* instead of Form 1040-C. Similar to the Form 1040-C procedure, Green Card holders aliens filing Form 2063 must file any delinquent tax returns and pay any outstanding tax liabilities holders before the IRS will issue a sailing permit.

The payment of taxes on a Form 1040-C is separate from the expatriation tax for LTRs. Green Cardholders with no definite plans to return to the U.S. must also file IRS Form 8854, *Expatriation Information Statement*.

V. Expatriation Tax and IRS Form 8854

When an LPR wishes to abandon his/her U.S. residency by filing Form I-407 (i.e., ‘expatriates’), the LPR may be liable for an expatriation or exit tax. Not all LPRs are subject to the expatriation tax when abandoning their U.S. residency. Rather, the expatriation tax provisions apply to an LPR who qualifies as a long-term resident (“LTR”).¹⁴ For federal tax purposes, an LTR is an individual who was an LPR for at least eight taxable years during the period of the last 15 taxable years ending with the taxable year when that individual ceases to be an LPR.¹⁵ An individual will not be considered an LPR for the period where he or she was treated as a resident of a foreign country under a tax treaty and did not waive the benefits of such treaty.¹⁶ For the purpose of expatriation tax, an LTR who ceases to be an LPR is treated as if a citizen who renounced U.S. citizenship.¹⁷ If such LTR meets the standard described below (‘Covered Expatriates’), he/she becomes subject to the expatriation tax and must file Form 8854 *Initial and Annual Expatriation Statement with the IRS*.¹⁸

Covered Expatriates

LTRs seeking to abandon their LTR status are subject to income tax under the Heroes Earnings Assistance and Relief Tax Act (HEART) Act. Such income tax will apply if:

(1) the average annual net income tax of an individual for the period of five taxable years ending before the date of the loss of United States citizenship (or LTR status) is greater than \$124,000 (adjusted for inflation under 877 A(a)(3)(B) ¹⁹;

(2) the net worth of the individual as of such date is \$2,000,000 or more; **OR**

(3) such individual fails to certify under penalty of perjury that he has met the requirements of U.S. tax law for the five preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.²⁰

An expatriate who meets one of the above conditions is considered a “Covered Expatriate” and becomes subject to the expatriation tax under IRC §§877 and 877 A.

The expatriation date is “the date an individual relinquishes United States citizenship, or in the case of a long-term resident of the United States, the date on which the individual ceases to be a LPR of the United States.”²¹ If an individual was an LTR, he/she terminated his/her lawful permanent residency on the earliest of the following dates:

- 1) The date the individual voluntarily abandoned his/her LPR status by filing Form I-407 with a U.S. consular or immigration officer;
- 2) The date the individual became subject to a final administrative order that he/she abandoned his/her LPR status (or, if such order has been appealed, the date of a final judicial order issued in connection with such administrative order);
- 3) The date the individual became subject to a final administrative or judicial order for his/her removal from the United States under the Immigration and Nationality Act; or,
- 4) If the individual was a dual resident of the United States and a country with which the United States has an income tax treaty, the date he/she commenced to be treated as a resident of that country and determined that, for purposes of the treaty, he/she is a resident of the treaty country and gave notice to the Secretary of such treatment on a Form 8833 attached to a timely filed income tax return.²²

Expatriation Tax

Once an individual has been determined as a Covered Expatriate, the expatriation tax applies to all net unrealized gains on the individual’s worldwide assets on a mark-to-market basis – that is, all property (subject to a few exceptions) of a Covered Expatriate is deemed sold for its fair market value on the day before the expatriation date, and any gains from such deemed sales are subject to income tax.²³ Any net gains can be reduced by the exclusion amount under IRC §

877 A(a)(3), which is to be adjusted for inflation, although such exclusion amount is allocated pro rata among all of the assets included in the exit tax base.²⁴ Losses from deemed sales are taken into account for the taxable year of the deemed sale, except that the wash sale rules under IRC §1091 do not apply.²⁵

For more detailed discussion on the expatriation tax, please see our accompanying article, “IRS Form 8854—*Initial and Annual Expatriation Information Statement: Renouncing U.S. Citizenship, Expatriation Tax, and IRS Relief Procedure*”.

VI. Tax Implications of Not Filing I-407

An LPR continues to be treated as an LPR unless such status has been revoked or administratively or judicially determined to have been abandoned.²⁶ An LPR ceases to be treated as an LPR if such LPR commences to be treated as a resident of a foreign country, does not waive the benefits of a treaty applicable to residents of such foreign country, and notifies the Secretary of the commencement of such treatment.²⁷ *Therefore, if I-407 is not filed, an LPR maintains its status and continues to be subject to U.S. taxation and filing obligations*, unless such status has otherwise been revoked or abandoned (e.g., removal proceeding). Accordingly, an LPR who did not file I-407 still must file U.S. tax returns and pay U.S. income tax on his/her worldwide income and U.S. estate tax on his/her worldwide assets, even if he/she lives outside the U.S. This could lead to a double taxation, although applicable tax treaty can alleviate such risk. In sum, simply leaving the U.S. and residing in a foreign country without filing I-407 does not end U.S. tax obligations.

VII. Conclusion

If an LPR is resolved to voluntarily abandon his/her permanent residency by filing Form I-407, the process is relatively routine as outlined above. However, filing Form I-407 does not eliminate all tax obligations of the LPR as a U.S. taxpayer. LPRs abandoning U.S. residency must file IRS Forms 1040C, file any delinquent tax returns and pay any outstanding tax liabilities, including any tax shown on Form 1040-C. LPRs who are considered an LTR are also subject to the expatriation tax under IRC §§877 and 877 A when they abandon their LPR status. Therefore, an LPR must carefully evaluate the tax implication of filing Form I-407.²⁸

¹ Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report, Lawful Permanent Residents* (August 2018),

https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf.

² Department of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics* (July 2019), https://www.dhs.gov/sites/default/files/publications/yearbook_immigration_statistics_2017_0.pdf.

³ USCIS, Form I-407 Record of Abandonment of Lawful Permanent Resident Status (Fiscal Year 2019, 2nd Quarter, Jan. 1-Mar. 31, 2019),

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static_files/IO_I-407_Performance_Data_fy2019_qtr2.pdf;

USCIS, Form I-407 Record of Abandonment of Lawful Permanent Resident Status (Fiscal Year 2019, 3rd Quarter, Apr. 1-Jun. 31, 2019),

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/IO_I-407_Performance_Data_fy2019_qtr3.pdf.

⁴ 8 U.S.C. § 1101(a)(20).

⁵ Treas. Reg. § 301.7701(b)-1(b).

⁶ Department of Homeland Security, Lawful Permanent Residents (LPR) (June 5, 2019),

<https://www.dhs.gov/immigration-statistics/lawful-permanent-residents>.

⁷ IRC § 7701(b)(A)(i); IRS. Pub. 519, U.S. Tax Guide for Aliens (2018) at 1-2.

⁸ USCIS Instructions for Record of Abandonment of Lawful Permanent Resident Status, Form I-407 (May 16, 2019), available at <https://www.uscis.gov/i-407>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ USCIS News, USCIS Will No Longer Accept I-407 at International Field Offices (June 17, 2019),

<https://www.uscis.gov/news/alerts/uscis-will-no-longer-accept-i-407-international-field-offices>.

¹² Michelle S. Velasco, USCIS International Offices to No Longer Accept Form I-407 Starting July 1, 2019

(June 21, 2019) *The National Law Review*, <https://www.natlawreview.com/article/uscis-international-offices-to-no-longer-accept-form-i-407-starting-july-1-2019>.

¹³ Although the IRS does not frequently enforce the sailing permit rules, it could at any moment. And, as Americans abroad may already know, those who are found to be noncompliant can have their passports revoked if they meet certain penalty thresholds.

¹⁴ IRS Pub. 519, U.S. Tax Guide for Aliens (2019), at 22.

¹⁵ IRC § 877(e).

¹⁶ *Id.*

¹⁷ IRC 877(e)(1).

¹⁸ *Id.*

¹⁹ For expatriation on or after June 17, 2008, the amount is \$139,000 for 2008, \$145,000 for 2009, \$145,000 for 2010, \$147,000 for 2011, \$151,000 for 2012, \$155,000 for 2013, \$157,000 for 2014, \$160,000 for 2015, \$161,000 for 2016, \$162,000 for 2017, \$165,000 for 2018, and \$168,000 for 2019. 2019 Instruction for Form 8854, available at <https://www.irs.gov/pub/irs-dft/i8854--dft.pdf>.

²⁰ IRC § 877(a)(2).

²¹ IRC § 877 A(g)(3).

²² 2019 Instruction for Form 8854 Initial and Annual Expatriation Statement.

²³ IRC § 877 A(a); *see also*, Notice 2009-85.

²⁴ Notice 2009-85, § 3(B).

²⁵ *Id.*

²⁶ IRC § 7701(b)(6).

²⁷ *Id.*

²⁸ If it is determined that an expatriate renounced his/her citizenship for tax avoidance purpose, his/her reentry to the U.S. may be denied. 8 U.S.C. § 1182(a)(10).