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PRE-RESIDENCY TAX PLANNING FOR THE FOREIGN ENTERTAINER, ATHLETE, OR OTHER TALENT

Sheri Jeffrey†

I. INTRODUCTION

Pre-residency tax planning is one of the most important aspects of tax planning for a foreign entertainer, athlete, or other talent (collectively, "foreign entertainer") who will be rendering services in the United States for an extended, or even indefinite, period. Increasingly, foreign entertainers are present in the United States performing services for long periods of time. In certain cases, their careers eventually necessitate their permanent relocation to the United States. Often, these foreign entertainers inadvertently become statutory residents for tax purposes without their ever having been advised of the consequences of this status. Pre-residency tax planning is frequently overlooked to the possible detriment of the foreign entertainer.

A foreign entertainer who becomes a United States statutory resident potentially goes from being taxed in the United States only on his or her fixed, deferred and contingent compensation generated from performing services in the United States to being taxed in the United States on his or her *worldwide* income.¹ Additionally, the foreign entertainer who was initially not subject to United States estate and gift tax may potentially become subject to United States estate and gift tax on his or her worldwide asset portfolio.² The list of drastic consequences to the foreign entertainer may extend to taxing the foreign entertainer on his or her pro-rata share of the undistributed earnings of certain foreign corporations owned wholly or in part by the foreign entertainer.³ Moreover, the foreign entertainer may be subject to excise taxes on transfers of appreciated property to a foreign corporation, a foreign trust, or even a foreign partnership.⁴

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1. I.R.C. §§ 1 (1990), 871(a). All references to sections in this article are to sections of the Internal Revenue Code of 1986, as amended, and to the Treasury Regulations under the Code, unless otherwise indicated.

2. *Id.* at §§ 2001(a), 2101(a), 2511(a).

3. *Id.* at §§ 551(a), 951(a).

4. *Id.* at § 1491.

Given the increased complexity of production financing arrangements through super pre-sales and co-productions, a foreign individual producer who remains in the United States for the majority of a calendar year in connection with a film project could easily become inadvertently subject to a thirty-five percent excise tax. For example, assume that this foreign producer acquires the rights to another film project during the same calendar year and enters into a super pre-sale arrangement with a Japanese financier with respect to the second film project. Assume additionally that the foreign producer becomes a United States statutory resident during that calendar year. Under those circumstances, the foreign producer would be subject to a thirty-five percent excise tax on the fair market value of the rights sold on the day the super pre-sale agreement is executed.⁵

This article provides a brief summary of the circumstances in which a foreign entertainer will become a United States statutory resident and the resulting tax consequences. Its purpose is to enable professional advisors with foreign entertainer clients to determine more effectively whether or not a client is in jeopardy of becoming a United States statutory resident and to learn of the United States tax implications to the foreign entertainer of this status. Additionally, this article discusses various pre-residency income tax planning techniques in order to provide insight into many of the options available to the foreign entertainer in this area.

II. DETERMINATION OF WHETHER THE FOREIGN ENTERTAINER IS A UNITED STATES STATUTORY RESIDENT

A. *Time of Planning: Threshold Inquiries*

Frequently, United States tax advisors are asked to give tax advice to foreign entertainers who have been in the United States for the majority of a calendar year. Once a foreign entertainer becomes a United States statutory resident for federal income tax purposes, the potential for pre-residency tax planning is completely lost. Potentially, the starting date for the foreign entertainer's United States statutory residency is the first day that the foreign entertainer is present in the United States during the calendar year.⁶ Thus, it is absolutely critical that the pre-residency tax planning for the foreign entertainer commences *before* he or she enters the United States.

The nature and type of a pre-residency tax plan will vary depending

5. *Id.*

6. I.R.C. § 7701(b)(2)(A)(iii).

on the foreign entertainer's specific circumstances. For example, an actress moving temporarily from Australia to the United States pursuant to an agreement to perform services in connection with a television series for one season with an option to renew would be treated quite differently from a British director relocating to the United States on a permanent basis. Consideration of pre-residency tax planning is appropriate for both of these individuals; the specific plans, however, will differ dramatically.

As a threshold matter, the following issues must be reviewed with the foreign entertainer in order to begin analyzing his or her United States residency position:

- (1) How many days has the foreign entertainer been present in the United States during the two immediately preceding calendar years?
- (2) How many days will the foreign entertainer be present in the United States during the current calendar year (including days spent by virtue of any contractual commitments currently being negotiated and the future plans of the foreign entertainer)?
- (3) Does the foreign entertainer maintain, or is he or she considering applying for, a green card?
- (4) The foreign entertainer's United States and foreign contacts, including the location of any homes owned, rented, or otherwise available to the foreign entertainer; the other jurisdictions in which he or she has rendered services during the two immediately preceding calendar years; and the other jurisdictions in which he or she expects to render services during the current calendar year.
- (5) The tax rates and the foreign entertainer's home country tax status and position.

B. Test for United States Federal Income Tax Purposes

Pursuant to section 7701(b) of the Internal Revenue Code of 1986, as amended (the "Code"), a foreign entertainer will be treated as a United States statutory resident for federal income tax purposes for a calendar year if at any time during the calendar year, the entertainer is either a "lawful permanent resident" of the United States or satisfies the "substantial presence test."⁷ A foreign entertainer will qualify as a lawful permanent resident of the United States during any calendar year that

7. See I.R.C. § 7701(b).

he or she holds or applies for a green card.⁸

A foreign entertainer will meet the substantial presence test for a calendar year if:

- (1) the foreign entertainer is physically present in the United States for thirty-one days or more during the current calendar year; and
- (2) the sum of the days the foreign entertainer is physically present in the United States during the current calendar year, plus one-third of the number of days the foreign entertainer was physically present in the United States during the first preceding calendar year, plus one-sixth the number of days the foreign entertainer was physically present in the United States during the second preceding year, equals or exceeds 183 days.⁹

It should be noted that the substantial presence test is applied on a calendar year basis even if the foreign entertainer utilizes another tax year in his or her home country.¹⁰ In applying the substantial presence test, the foreign entertainer's entire presence in the United States is taken into consideration, including arrival and departure days.¹¹ Certain days, however, may be excluded from the calculation in very limited circumstances.¹² For example, a foreign individual's presence as a professional athlete temporarily in the United States to compete in a charitable sports event is excluded.¹³ Section 7701(b) of the Code outlines the other exclusions.

Additionally, a foreign entertainer will not meet the substantial presence test if he or she fulfills the requirements for an exception. The exception would require the foreign entertainer to establish:

- (1) that he or she was present in the United States for fewer than 183 days during the current calendar year; and
- (2) that he or she has a "closer connection" with a "tax home" in a foreign country.¹⁴

This exception often permits the foreign entertainer to avoid United States statutory residency status. This rule generally allows the foreign

8. I.R.C. § 7701(b)(3)(C).

9. *Id.* at § 7701(b)(3).

10. *Id.* at § 7701(b)(3)(A).

11. Prop. Treas. Reg. § 301.7701(b)-3(a).

12. I.R.C. §§ 7701(b)(2)(C), 7701(b)(5); Prop. Treas. Reg. § 301.7701(b)-3(a).

13. I.R.C. § 7701(b)(5)(A)(iv).

14. *Id.* at § 7701(b)(3)(B).

entertainer to be present in the United States for an average of 121 days each calendar year without becoming a statutory resident.

Sections 911(d)(3) and 162(a)(2) of the Code contain the definition of a "tax home."¹⁵ Treasury Regulation section 1.911-2(b) provides that an individual's tax home is considered to be located at his or her regular or principal (if more than one regular) place of business.¹⁶ If the individual has no regular or principal place of business because of the nature of the business, then the tax home is considered to be located at his or her regular place of abode "in a real and substantial sense."¹⁷ An individual is not considered to have a tax home in a foreign country for any period during which the individual's abode is in the United States.¹⁸ The individual's temporary presence in the United States "does not necessarily mean that the individual's abode is in the United States during that time."¹⁹ Neither does an individual's maintenance of a dwelling in the United States, "whether or not that dwelling is used by the individual's spouse and dependents," necessarily mean that the individual's abode is in the United States.²⁰

Additionally, Proposed Treasury Regulation section 301.7701(b)-2(c)(2) provides that the tax home maintained by the individual must be in existence for the entire current year.²¹ Further, the tax home must be located in the same foreign country with which the individual is claiming to have the closer connection.²²

Proposed Treasury Regulation section 301.7701(b)-2(d) lists some of the factors and circumstances to be considered in determining whether the foreign entertainer has a closer connection with the tax home or with the United States.²³ The following list sets forth some of the facts and circumstances to be considered:

- (1) The location of the individual's permanent home;
- (2) The location of the individual's family;
- (3) The location of personal belongings, such as automobiles, furniture, clothing and jewelry owned by the individual and his or her family;
- (4) The location of social, political, cultural or religious organi-

15. I.R.C. §§ 162(a)(2), 911(d)(3).

16. Treas. Reg. § 1.911-2(b).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Prop. Treas. Reg. § 301.7701(b)-2(c)(2).

22. I.R.C. § 7701(b)(3)(B)(ii).

23. Prop. Treas. Reg. § 301.7701(b)-2(d).

zations with which the individual has a current relationship;

- (5) The location of the individual's personal bank accounts;
- (6) The type of driver's license held by the individual;
- (7) The country of residence designated by the individual on forms and documents;
- (8) The types of official forms and documents filed by the individual; and
- (9) The location of the jurisdiction in which the individual votes.²⁴

The proposed regulations require the individual qualifying for this exception to file a statement meeting the requirements outlined in the proposed regulations. The statement must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255, prior to the due date of an income tax return for the calendar year for which the statement applies.²⁵

C. Test for California and Other State Income Tax Purposes

In general, the residency test for purposes of California law evaluates whether the foreign entertainer is either:

- (1) in California for other than a temporary or transitory purpose; or
- (2) is domiciled (discussed below) in California and is outside California for a temporary or transitory purpose.²⁶

Other states follow similar definitions. As with federal residency, state residency determines whether the foreign entertainer is obligated to pay state income taxes on his or her worldwide income.²⁷ Generally, if the foreign entertainer is in California six months or less during the year and maintains a permanent home outside the state, he or she will not be considered a California resident.²⁸ A presumption exists that a stay in California aggregating more than nine months in a calendar year causes the foreign entertainer to be deemed a California resident.²⁹

24. *Id.*

25. Prop. Treas. Reg. § 301.7701(b)-8.

26. CAL. REV. & TAX. CODE § 17014(a)(1) and (2) (West 1983).

27. See CAL. REV. & TAX. CODE § 17041 (West 1992).

28. CAL. REV. & TAX. CODE § 17014 (West 1983).

29. CAL. REV. & TAX. CODE § 17016 (West 1983).

D. Treaty Impact on United States Statutory Residency Determination of the Foreign Entertainer

Section 7701(b) of the Code does not override United States income tax treaties.³⁰ Many United States income tax treaties contain provisions for determining the foreign entertainer's residency where he or she is a resident under both section 7701(b) and the internal laws of the home country.³¹ These rules are called "tie-breaker" provisions.³² Common tie-breaker provisions consider the following factors in the order listed to determine residency:

- (1) the country where the foreign entertainer maintains his or her permanent home;
- (2) if the foreign entertainer does not maintain a permanent home, then the place of habitual abode; and
- (3) if the foreign entertainer's residency cannot be determined under (1) or (2) above, then the country where the foreign entertainer has the closer personal and economic connections.³³

Consequently, if a tie-breaker provision classifies the foreign entertainer as a resident of a foreign country, he or she still must consider several pre-residency issues. This is because the foreign entertainer is a nonresident of the United States under section 7701(b) only for purposes of applying the treaty provisions.³⁴ The determination under section 7701(b) applies for all other purposes of the Code, such as determining whether a foreign corporation is a controlled foreign corporation.³⁵

Often, the incorrect assumption is made that if a foreign entertainer is a resident of a foreign country under a tie-breaker provision, then no pre-residency planning is required. This assumption is absolutely not true. It is still important to review the foreign entertainer's residency planning before he or she becomes a United States statutory resident because the foreign entertainer is still regarded as a United States statutory resident for all purposes of the Code, except for those items covered by the applicable income tax treaty.

E. Test for United States Estate and Gift Tax Purposes

The definition of a United States statutory resident alien discussed

30. Prop. Treas. Reg. § 301.7701(b)-7(a).

31. See, e.g., Article 4 of the U.S.-Austl. Income Tax Treaty (May 14, 1953).

32. *Id.*

33. *Id.*

34. Prop. Treas. Reg. § 301.7701(b)-7(a).

35. *Id.*

above for federal income tax purposes does not apply for United States estate and gift tax purposes. For United States estate and gift tax purposes, residence refers to domicile.³⁶ Generally, the domicile of the foreign entertainer is the jurisdiction in which he or she was born.³⁷ A change of domicile is deemed to occur where the foreign entertainer is physically present in a new jurisdiction, intends to make that place his or her home, and has no present intention of leaving.³⁸

The scope of this article focuses on income tax planning for the foreign entertainer rather than on United States estate and gift tax planning. For this reason, estate and gift tax planning is discussed only briefly here. Additional, more complicated planning is required if the foreign entertainer plans to become a United States resident for estate and gift tax purposes. It may be advisable for foreign entertainers who establish residency for estate and gift tax purposes to make investments in United States property through a foreign corporation in order to avoid estate tax on the property. This path should not be pursued, however, without carefully considering the implications of the branch profits tax, which could potentially subject a foreign corporation to an additional thirty percent tax in the United States beyond the regular corporate income tax.³⁹

Additionally, it should be noted that a United States statutory resident who is a foreign treaty resident will be required to file a United States tax return.⁴⁰ In this event, the foreign entertainer is required to file a Form 1040NR with a Form 1040 as an attachment, outlining his or her tax liability as a United States statutory resident without regard to any treaty benefits.⁴¹

III. UNITED STATES TAX CONSEQUENCES TO FOREIGN ENTERTAINER IF UNITED STATES STATUTORY RESIDENT

It is very important to review the issue of residency for the foreign entertainer. Once the foreign entertainer becomes a United States statutory resident, his or her entire worldwide income, including worldwide capital gains calculated by reference to the foreign entertainer's original cost basis, will be subject to United States income tax (both federal and

36. Treas. Reg. § 20.0-1(b)(1).

37. *Id.*

38. *Id.*

39. See Schuyler M. Moore & Sheri Jeffrey, *Taxation of Foreign Investment in the United States Through a U.S. or Foreign Corporation*, J. CORP. TAX'N 231, 242 (Autumn 1989).

40. Prop. Treas. Reg. § 301.7701(b)-7(b).

41. *Id.*

state) at the regular graduated rates.⁴² The only exception is if the foreign entertainer is a non-United States treaty resident and an income tax treaty applies to provide relief from the United States income tax. Even with this exception, however, the treaty provisions do not extend to remove the foreign entertainer from all taxes, such as state and excise taxes.⁴³

Estimated United States tax payments will be required of the foreign entertainer.⁴⁴ However, he or she will receive a foreign tax credit for foreign taxes paid on his or her foreign source.⁴⁵ Earnings of any foreign corporation owned by the foreign entertainer may subject him or her to United States tax, even if the earnings of the foreign corporation are not distributed.⁴⁶ Moreover, transfers of appreciated property to a foreign corporation, a foreign trust, or a foreign partnership by the foreign entertainer will be subject to the thirty-five percent excise tax discussed above.⁴⁷ Additionally, United States estate and gift taxes may potentially apply to the foreign entertainer who has become a United States statutory resident.⁴⁸

These tax consequences should be contrasted briefly with the United States tax implications to a foreign entertainer who does not become a statutory resident. Generally, a non-statutory resident foreign entertainer is not subject to United States tax on foreign source income except under very limited circumstances.⁴⁹ However, the foreign entertainer is subject to United States tax at the regular rates on any income that is effectively connected with the conduct of a United States trade or business. Typically, this income includes income generated by the foreign entertainer's performing services in the United States.⁵⁰ Additionally, a non-statutory resident foreign entertainer is subject to a thirty percent United States federal withholding tax and seven percent California state withholding tax (if the services are rendered in California) on "FDAPI income."⁵¹ FDAPI income includes royalties for use of the foreign entertainer's name and likeness in the United States.⁵² The thirty percent United States federal withholding tax may be reduced or eliminated en-

42. I.R.C. § 1.

43. See, e.g., Article 2(1)(a) of the U.S.-Austl. Income Tax Treaty (May 14, 1953).

44. I.R.C. § 6654(a).

45. I.R.C. § 901(a).

46. I.R.C. §§ 551(a), 951.

47. I.R.C. § 1491.

48. I.R.C. § 2001(a), 2511(a).

49. I.R.C. § 871(a).

50. I.R.C. § 872(a).

51. I.R.C. § 871; CAL. REV. & TAX. CODE § 17041 (West 1983).

52. See I.R.C. § 871(a).

tirely by an income tax treaty provision.⁵³ Under these circumstances, a foreign entertainer would be subject only to United States estate and gift tax on United States property.⁵⁴

IV. PRE-RESIDENCY TAX PLANNING POSSIBILITIES

It is important to review carefully the foreign entertainer's position regarding United States residency each time the foreign entertainer is to perform services in the United States. This is not to say, however, that the planning possibilities discussed below will be appropriate for every foreign entertainer. In fact, it may be advisable in certain circumstances for a foreign entertainer not to implement any pre-residency tax plan. Any pre-residency plan for the foreign entertainer will depend upon the foreign entertainer's business objectives and personal circumstances.

A. Selecting a Tax Year

If the foreign entertainer has never filed any United States tax returns, he or she may elect a fiscal year for United States tax purposes. Under section 7701(b)(9) of the Code, the foreign entertainer will be deemed to have a calendar year if he or she has not otherwise established another tax year.⁵⁵ To the extent that the foreign entertainer maintains an annual accounting period other than a calendar year (such as April 5 in the United Kingdom or June 30 in Australia), and the foreign entertainer's books and records are actually maintained in accordance with such year, that year may be utilized for United States tax purposes.⁵⁶

If properly structured, this election can benefit the foreign entertainer by deferring income for an entire year. In selecting the foreign entertainer's tax year for United States tax purposes, consideration must be given to adequately establishing the tax year and maintaining the foreign entertainer's books and records in proper order. Additionally, the administrative inconveniences of establishing a non-calendar tax year must be reviewed with the foreign entertainer.

B. Divesting Assets

Another planning possibility a foreign entertainer may consider is divesting or otherwise transferring assets out of his or her asset portfolio prior to becoming a United States statutory resident. Depending upon

53. See, e.g., Article 12 of the U.S.-Austl. Income Tax Treaty (May 14, 1953).

54. I.R.C. § 2101(a).

55. I.R.C. § 7701(b)(9).

56. Rev. Rul. 68-125, 1968-1 C.B. 189.

the foreign entertainer's business and personal objectives, this possibility may require, for United States tax purposes, the foreign entertainer to divest or transfer the relevant assets on an irrevocable basis. For example, prior to becoming a United States statutory resident, the foreign entertainer may transfer assets to another family member who will not become a United States statutory resident. Under these circumstances, however, the foreign entertainer's only prohibition against the family member's distribution of the actual assets or income therefrom is moral obligation. The foreign entertainer has no legal recourse against the family member for the recovery of any accumulated income or the actual assets. This plan is ill-advised for any foreign entertainer who does not have significant assets besides those to be transferred to the family member.

Instead of making an outright transfer to a family member, a foreign entertainer may wish to establish a foreign trust. A foreign trust may be irrevocable depending on whether the foreign entertainer is seeking to minimize his or her United States income tax exposure, United States gift and estate tax exposure or United States probate exposure, etc. The kind of trust most often considered is structured so that the foreign entertainer is not considered the grantor of any part of the trust under grantor trust rules for United States tax purposes. In this manner, the foreign entertainer may be able to avoid United States income tax on the income generated by the assets.⁵⁷ Additionally, neither United States income tax nor gift tax is imposed under those circumstances on income distributed to the foreign entertainer.⁵⁸ As with the transfer of assets, a foreign trust structure should be considered only for a foreign entertainer who has substantial assets beyond those intended to form the trust corpus.

It is important in evaluating these asset-divestiture structures for the foreign entertainer's foreign tax advisor to review the tax position in the foreign entertainer's home country.

C. Decontrolling, Domesticating, or Liquidating Controlled Foreign Corporations, Foreign Personal Holding Companies, and Passive Foreign Investment Companies

Consideration should be given to decontrolling, domesticating, or liquidating any foreign corporation owned or controlled by the foreign entertainer. These planning possibilities include reducing the stock ownership of the foreign entertainer, shifting the jurisdiction of the corpora-

57. I.R.C. § 871(a).

58. I.R.C. §§ 871(a), 2511(a).

tion to the United States through a liquidation of the corporation, and withdrawing corporate assets. This would avoid, or at least minimize, adverse consequences arising from ownership of a foreign corporation that is classified as a controlled foreign corporation, a foreign personal holding company, or a passive foreign investment company. A foreign loan-out corporation that does not hold intangible assets of a foreign entertainer who will likely become a United States statutory resident should probably be liquidated, with the income distributed to the foreign entertainer prior to the foreign entertainer's becoming a United States statutory resident. It may not be advisable to liquidate other foreign corporations wholly owned by the foreign entertainer that hold intangible and other assets, in which case consideration may be given to reducing the foreign entertainer's stock ownership.

D. Step-Up in Basis

With respect to the assets to be retained by the foreign entertainer, it may be advisable to obtain a step-up in basis before the foreign entertainer becomes a United States statutory resident. A step-up in basis is an increase in the taxpayer's cost from the historic purchase price to the current fair market value of the property. The foreign entertainer's basis is the amount that will be used in calculating any gain or loss on the disposition of the assets for United States tax purposes. If the assets have appreciated significantly from the foreign entertainer's original cost, then the step-up may be very advantageous in reducing the foreign entertainer's United States tax exposure on a subsequent disposition of the assets after the foreign entertainer has established United States statutory residency. One obvious way for the foreign entertainer to achieve the step-up is to sell and repurchase the assets or to purchase other assets. If the foreign entertainer wishes to repurchase his or her assets, care must be taken in structuring the repurchase some time after the initial sale in order for the sale to be respected for United States tax purposes. Additionally, the foreign entertainer's foreign tax advisor will need to review any home country tax cost to the foreign entertainer.

E. Accelerating Income and Deferring Deductions

It may be desirable to accelerate income and capital gains before the foreign entertainer becomes a United States statutory resident. These types of transactions require close coordination with the foreign entertainer's foreign tax advisor in order to make sure that the foreign entertainer will not be subject to tax or other adverse tax consequences in his or her home country. In fact, it may be necessary for the foreign enter-

tainer to establish residency in another country prior to entering the United States in order to avoid income taxation in the foreign entertainer's home country.

If the foreign entertainer is, or expects to be, liable for expenses that constitute allowable deductions for United States tax purposes, it may be desirable to defer payment of those expenses until he or she is in the United States earning gross income that can be applied toward these deductions. As with income and capital gains accelerations, this type of planning should be implemented in close conjunction with the foreign entertainer's foreign tax advisor.

F. Foreign Tax Credit or Deduction for Foreign Taxes

Care must be taken to avoid accumulated excess foreign tax credits for the foreign entertainer. If the foreign entertainer has become a United States statutory resident and a treaty resident, he or she will be entitled to a dollar-for-dollar credit for foreign income taxes paid and, in certain cases, accrued.⁵⁹ The credit is subject to a limitation, however.⁶⁰ The calculation of the limitation is inordinately complex and beyond the scope of this article. The point here is that, as part of the pre-residency planning for the foreign entertainer, consideration should be given to whether it is going to be more advantageous for the foreign entertainer to take a credit subject to the limitation or a deduction for the foreign taxes paid.

Usually, it will be more advantageous for the foreign entertainer to claim a credit. However, a determination of the foreign entertainer's expected foreign-source income will be required. If only a small amount of foreign-source income is expected, a deduction for the foreign taxes may be preferable to a credit because of the limitation on the use of foreign tax credits.

G. Disposal of Foreign Residence

It may be advisable for the foreign entertainer to sell his or her foreign residence prior to coming to the United States. In this manner, United States tax can be avoided on the profit.⁶¹ Additionally, since recognition of the gain has occurred, the foreign entertainer may be able to receive a step-up in basis on any subsequently purchased United States residence.

59. I.R.C. § 901(a).

60. I.R.C. § 904(a).

61. I.R.C. § 871(a).

H. Third-Country Possibilities

As part of their pre-residency tax plan, some foreign entertainers establish residency in a low-tax jurisdiction prior to coming to the United States to minimize their home-country taxation. Typically, the foreign entertainer's foreign tax advisor handles this type of plan. However, the United States tax advisor reviews the plan as it can have a favorable impact on the timing of the start date of the foreign entertainer's United States statutory residency.

V. CONCLUSION

Professional advisors of foreign entertainers should routinely insist that their foreign entertainer clients monitor their schedules, including maintenance of calendars of their jurisdictional whereabouts and future plans, in light of their United States residency potential. To the extent that it appears that a foreign entertainer will be present in the United States for an extended period, more detailed consideration should be given to the foreign entertainer's United States residency position and any potential pre-residency tax planning issues.