

From: "jeffrey E." <jeevacation@gmail.com>
To: Richard Kahn <[REDACTED]>
Subject: Re: EDC Memorandum - EAK
Date: Sat, 26 Nov 2016 05:50:52 +0000

that wasnt my question. I am aware . of erika memo. question was is there a money difference

On Fri, Nov 25, 2016 at 8:36 PM, Richard Kahn <[REDACTED]> wrote:
i believe that you will still qualify under 3 year average test per Erika memo attached:

Physical Presence Test

For taxable years ending after January 31, 2006, Treasury Regulation § 1.937-1(c), as amended on November 14, 2006, provides that a U.S. citizen or resident alien satisfies the physical presence test if he or she meets one of five alternative tests:

- **183-Day Test:** First, an individual can satisfy the strict 183-day rule codified in Code section 937, that is, spend at least 183 days a year in a possession including days of travel to and from a possession as long as part of the day of travel is spent in a possession.
- **Three-Year Average Test:** Second, an individual can satisfy the physical presence test by being present in a possession for at least 549 days during a three-year period consisting of the current taxable year and the two immediately preceding taxable years, provided that the individual is also present in the possession for at least 60 days during each taxable year of the three-year period. In other words, this alternative to the physical presence test requires an individual to be present in a possession for a simple nonweighted three-year average of 183 days per year so long as a minimum of 60 days of presence is met in each of those three years.
- **No More Than 90 Day Test:** Third, an individual can satisfy the physical presence test by spending no more than 90 days in the United States each year.
- **More Time in a Possession and Earned Income Not Exceeding \$3,000 Test:** Fourth, an individual can satisfy the physical presence test by spending more days in a possession than in the United States and having earned income^[1] in the United States not exceeding \$3,000.
- **No Significant Connection to the United States Test:** Fifth, an individual can satisfy the physical presence test by having no significant connection to the United States. However, this exception may not encompass any individual who has full-time access to any residence in the United States even if the residence has never been the individual's tax home, such as a vacation home.

[1] U.S. earned income is defined in the regulations by reference to Treasury Regulation § 1.911-3(b), which deals with the foreign earned income exclusion for citizens or residents of the United States living abroad. Under this section "earned income" is composed of wages, salaries, professional fees and other amounts received as compensation for personal services actually rendered. Professional fees constitute earned income even if the individual employs assistants to perform part or all of the services, provided that the clients are those of the individual and look to the individual as the person responsible for the services rendered. "Earned income" does not include a distribution of earnings and profits by a corporation. Earned income, however, may include wages paid by a possession entity that are paid to an employee for business travel in the United States.

i will review test with erika and economic with jeanne..

Richard Kahn
HBRK Associates Inc.
575 Lexington Avenue, 4th Floor
New York, NY 10022



Begin forwarded message:

From: "Jeanne" <[REDACTED]>
Subject: EDC Memorandum - EAK
Date: September 30, 2015 at 4:15:41 PM EDT
To: <[REDACTED]>, "Alan Dlugash" <[REDACTED]>
Cc: <[REDACTED]>

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please note

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