Legal Expert Systems in the Classroom

Crush the Mush
Legal Knowledge Design Example 2

Tax Residency Advisor

The fundamental skill of a legal knowledge architect is to be able to crush the mush (or contere mixtum, if you prefer the Latin.) That is, you need to be able to look typical legal text and distill it down to essential elements that you can work with to design a legal expert system.
Tax Residency Advisor

The Mush

IRS Tax Topic 851 - Resident and Nonresident Aliens

Since residents and nonresident aliens are taxed differently, it is important to determine the person’s status. A person is considered a nonresident alien for any period that the person is neither a U.S. citizen nor resident alien. A person is considered a resident alien if the person meets one of the following two tests for the calendar year:

The first test is the "green card test." If at any time during the calendar year the person was a lawful permanent resident of the United States according to the immigration laws, and this status has not been rescinded or administratively or judicially determined to have been abandoned, the person is considered to have met the green card test.

The second test is the "substantial presence test." To meet the substantial presence test, the person must have been physically present in the United States on at least: (1) 31 days during the current year, and (2) 183 days during the 3-year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement, count: (A) All of the days the person was present in the current year, and (B) One-third of the days the person was present in the first year before the current year, and (C) One-sixth of the days you the person was present in the second year before the current year.

Important: Even if the person meets the substantial presence test, the person can be treated as a nonresident alien if the person is present the United States for fewer than 183 days during the current calendar year, maintains a tax home in a foreign country during the year, and has a closer connection to that country than to the United States.
The Mush Crushed

Conclusions & Rules

Final Determination
- Person is US Citizen so this analysis is not applicable (session ends early)
- Person is Resident Alien
- Person is Nonresident Alien

Rule: If person is US citizen, set that value. Otherwise, set value based on how RA/NRA conclusions are set.

Reason for Being Resident Alien (RA)
- RA Reason 1: Lawful permanent US resident during tax year
- RA Reason 2: Present for at least 183 qualified days in 3 years including at least 31 days in tax year
- RA Reason 3: Present enough in 3 years; not 183 days in tax year BUT has no other tax nexus

Rule: Not applicable because person is not a Resident Alien

Reason for Being Nonresident Alien (NRA)
- NRA Reason 1: Had no green card in tax year AND not present for 31 days in tax year
- NRA Reason 2: Had no green card in tax year AND not sufficiently present in 3 years
- NRA Reason 3: Sufficiently present in 3 years BUT not present for 183 days in tax year and maintain a tax home in a foreign country, AND have a closer connection to that country

Rule: Not applicable because person is not a Nonresident Alien

Qualified Presence Days 1 Year Before Tax Year - Number
Rule: Days Present in Year Before Tax Year / 3

Qualified Presence Days 2 Years Before Tax Year - Number
Rule: Days Present in Year 2 Year Before Tax Year / 6

Total Qualified Presence Days Total in 3 Years - Number
Rule: Total of Qualified Presence Days for 2 Years Plus all Days Present in Tax Year
Facts that System May Need to Use Rules

Is the person a US citizen?
Yes/No

Did the person have a US-issued green card at any time during the tax year?
Yes/No

How many days was the person physically present in the US during the tax year?
#
You indicated that the person was physically present in the US in the tax year for 125 days.

How many days was the person in the US during the year before the tax year?
#

How many days was the person in the US during the year two years before the tax year?
#

Does the person have a tax home in foreign country and is the person able to show that he or she has a stronger set of connections to that country than to the US?
Yes/No
Output Text to Display at End of Session

If Final Determination is US CITIZEN

Note: This Interactive Decision Tool is designed to help practitioners determine whether a non-citizen is a resident alien or nonresident alien for US tax purposes. You indicated that the person is a US citizen, so this Interactive Decision Tool is not applicable in your case. For guidance on taxation of US citizens living abroad, click here.

If Final Determination is RESIDENT ALIEN

If Resident Alien for Reason 1

Conclusion: You indicated that the person was a US green card holder during the tax year, which means that the person was a lawful permanent US resident during the tax year. Accordingly, the person is considered to be a RESIDENT ALIEN for US tax purposes. IRC 861

If Resident Alien for Reason 2

Conclusion: The person is a RESIDENT ALIEN under because he or she was physically present in the US on at least 183 days the tax year (x in this case). IRC 861

If Resident Alien for Reason 3

Conclusion: The person is considered to be a RESIDENT ALIEN because he or she has been sufficiently present in the US over the past 3 years and does not have a tax home and connections to another country. Application of Law in this Case: Under IRC 861, a person is ordinarily considered a resident alien if he or she was physically present in the US on at least 183 days during the last 3 years, counting ALL days in the last year (X in this case), 1/3 of the days in the year before the tax year (1/3 of is X in this case), and 1/6 of the days in the year before that (1/6 of is X in this case). Using this formula, the total number of "qualified days of presence" over three years is X, which is at least 183. Note Also: In this case, the person was present in the US FEWER than 183 days in the tax year. Therefore, we had to consider whether or not the person has a tax home in, and a close connection to, another country. You indicated that the person has neither of these, so the person is a resident alien under IRC 861.

If Ultimate Conclusion is NONRESIDENT ALIEN

If Nonresident Alien for Reason 1

Conclusion: The person is a NONRESIDENT ALIEN because he or she is noncitizen who did not have a green card in the tax year and was not present in the US for at least 31 days in the tax year. IRC 861

If Nonresident Alien for Reason 2

Conclusion: The person is a NONRESIDENT ALIEN because he or she is noncitizen who did not have a green card in the tax year and was not sufficiently present in the US over the last three years. IRC 861

Application of Law in this Case: Under IRC 861, a person is considered a resident alien if he or she was physically present in the US on at least 183 days during the last 3 years, counting ALL days in the last year (X in this case), 1/3 of the days in the year before the tax year (1/3 of is X in this case), and 1/6 of the days in the year before that (1/6 of is X). Using this formula, the total number of "qualified days of presence" over three years is , which is not more than 183, so the person is a nonresident alien.

If Nonresident Alien for Reason 3

Conclusion: The person is a NONRESIDENT ALIEN because he or she was not present in the US for at least 183 days during the tax year and can show that he or she has a tax home in, and strong connections to, a foreign country. IRC 861

Application of Law in this Case: Under IRC 861, a person is ordinarily considered a resident alien if he or she was physically present in the US on at least 183 days during the last 3 years, counting ALL days in the last year (X in this case), 1/3 of the days in the year before the tax year (in this case 1/3 of is X), and 1/6 of the days in the year before that (in this case 1/6 of is X). Using this formula, the total number of "qualified days of presence" over three years is , which is more than 183. HOWEVER, in cases like this one, where the person was not present in the US for 183 days in the tax year, and the person can show that he or she has a tax home in, and strong connections to, a foreign country, then the person is deemed to be a nonresident alien despite any significant presence in the US over the three-year period.