

TAX AND LEGAL IMPLICATIONS OF BUSINESS VISAS

I. INTRODUCTION

The U.S.A. offers business visas for foreign persons doing business or investing in the United States. However, it is important to understand the legal and tax implications of the different types of visa. Some visas may make you a tax resident of the U.S.A. with all the legal and tax implications of a U.S.A. resident, including taxation, reporting and disclosure obligations. Other visas may allow you to work and live in the U.S.A. without becoming a tax resident if you meet certain requirements. The U.S.A. has tax treaties with many countries which may reduce the tax implications and obligations of persons from such countries if the treaty is properly invoked and elected. A tax attorney can help you determine and plan for your business and visas in the U.S.A.

II. PROFESSIONAL VISA: TN

Employers of U.S.A. businesses may request, by extending a job offer, that Mexican and Canadian Citizens be given permission work in the U.S.A. so long as they are coming to work for the purpose of providing professional services to the U.S.A. business. The foreign person must have, at a minimum, a bachelor's degree and their degree or professional license must be found in United States-Mexico-Canada Agreement (USMCA). A person who is admitted to the United States via a TN visa enters for the purpose of providing professional services to a U.S.A. employer and must continue to work for that employer to maintain legal

status.

III. BUSINESS VISA: L-1

The business visa (L-1), allows a Foreign company to establish a representative company and to transfer an executive, to such subsidiary or branch in the United States. The executive must have been employed at least a year in the foreign company and have managerial experience or specialized knowledge of the foreign company. The executive is limited to work only in the company that sponsors the visa. The executive is allowed to bring his/her spouse minor children under 21 years. Only the spouse is allowed to request a permit to work in U.S.A. while the children can only be students.

IV. ENTREPRENEURS VISA: E-1

The visa for entrepreneurs (E-1) allows companies with substantial activities in the United States, to send its executives or managers to supervise or to control its business operations in the United States. In order to qualify for an E-1 visa, the foreign company or its affiliates must establish that:

- (1) more than 50% of the business or commerce is between the United States and the foreign country; and
- (2) the executive, manager and shareholders of the foreign company must be resident of a country that has an agreement or treaty of commerce with the United States.

V. INVESTORS: VISA E-2

The foreign investor who makes a substantial investment in a business in the United States could obtain a visa for their executives, managers or him/herself. The visa allows the executive to enter or to leave the United States without limitation, or to remain continuously in the country. An E-2 Visa is limited to persons who are citizens of countries who have a commercial treaty with the United States. The executive is limited to work solely for the petitioning employer. The executive is allowed to bring his family, however, they are not allowed to work for a U.S.A. employer. However the wife can request a work permit, it is the same as with the L-1.

VI. CONCLUSION

Immigration Laws of the United States facilitates investments, business and commerce between the United States and certain foreign countries. Nevertheless, it is important to carefully analyze the legal and tax implications of the visa to avoid unintended consequences. Important to note that not all visas make you a tax resident, with proper planning and care.

We are Attorneys and Tax Advisors, we strive to provide our clients the highest quality of legal and tax representation in the complex area of tax law.

This alert has provided only general information and specific factual scenarios may change any conclusions that would apply.

We strongly recommend you consult your attorney or tax and investment adviser regarding your particular case. Should you need additional information it will be our pleasure to assist you.

Sincerely,

Ruben Flores, Attorney & CPA