

Internal Revenue Service

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Person to Contact:

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Legend

- A =
- B =
- Country X =
- C =
- D =
- E =
- F =

This is in response to a letter dated June 24, 1999, in which a ruling is requested to permit A and B to reelect the foreign earned income exclusion pursuant to section 911 of the Internal Revenue Code. Additional information was submitted in letters dated December 7, 1999, December 17, 1999, December 27, 1999, December 31, 1999, and March 9, 2000.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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Taxpayers, A and B, are husband and wife who are calendar year taxpayers on an accrual method. A is a United States citizen residing in Country X. A is employed by C, located in Country X, and B is a full-time housewife. Taxpayers elected to exclude their foreign earned income under section 911(a) of the Code for the taxable years 1995 and previously. Taxpayers, however, revoked the section 911 election for their 1996 and 1997 taxable years, claiming a U.S. foreign tax credit for the amount of foreign income taxes paid. Taxpayers represent that they have not taken foreign tax credits in 1996 and 1997, for foreign income taxes attributable to income excluded under section 911.

Taxpayers want to reelect the section 911 foreign earned income exclusion for 1999 and subsequent taxable years. The government of Country X has declared a tax holiday solely for calendar year 1999, for all resident taxpayers, both nationals and non-nationals of Country X. Taxpayers represent that prior to 1999, they were taxed at the marginal rate of F percent. As a result of the declared tax holiday, Taxpayers will not be paying any taxes in Country X for calendar year 1999. If the request to reelect is permitted, Taxpayers also represent that they will not revoke the section 911 election for the next five taxable years.

Section 911 of the Code permits certain taxpayers to elect to exclude from gross amount their foreign earned income, and housing cost amounts. The election applies to the taxable year for which it is made and for all subsequent taxable years, unless revoked by the taxpayer. Section 911(e)(2) provides that once revoked, the election may not be made again by the taxpayer until the sixth taxable year after the year in which the revocation was made.

However, section 1.911-7(b)(2) of the Income Tax Regulations provides that if an individual revokes an election under section 1.911-7(b)(1), and desires to reelect the same exclusion within the next five years, the individual must obtain permission by requesting a ruling. The Service may permit the taxpayer to reelect before the sixth year the foreign earned income exclusion after considering all of the facts and circumstances. Section 1.911-7(b)(2) provides that relevant facts and circumstances may include a period of United States residence, a move from one foreign country to another foreign country with differing tax rates, a substantial change in the tax laws of the foreign country of residence or physical presence, and a change of employer. After a review of the essential facts, it has been determined that the declaration of a tax holiday for 1999 by Country X is a substantial change in Country X's tax laws. In this instance, Taxpayers went from being taxed at the marginal rate of F percent to being taxed at 0 percent for calendar year 1999.

Accordingly, based solely on the information and representations set forth above, it is held that Taxpayers may reelect the section 911 exclusion for 1999 and subsequent taxable years.

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Except as expressly provided herein, no opinion is expressed as to whether Taxpayers otherwise satisfy the requirements of section 911 for excluding foreign earned income and, housing amounts from gross income.

A copy of this letter must be attached to Taxpayers' U.S. income tax return for the year in which Taxpayers obtained the ruling (whether or not Taxpayers are otherwise required to file a return).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/s/ Phyllis E. Marcus
Phyllis E. Marcus
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(International)