



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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MEMORANDUM FOR Henry Murphy, Manager
Collection Branch, Section 1
ASFR Unit

FROM: Phyllis E. Marcus, Branch Chief
CC:INTL:Br.2

SUBJECT: Accepting a prior Form 2555 filed in 1988 as it would affect
the section 911 election on Form 2555 for a subsequent year

This memorandum responds to your brief e-mail dated September 12, 2001, requesting clarification of accepting a taxpayer's prior Form 2555 filed for tax year 1988 as it would affect his section 911 election for 1997. In your case, the taxpayer made a section 911 election on Form 2555 for tax year 1988. It is unclear whether that election was timely filed under Treas. Reg. §1.911-7. However, since the Philadelphia Service Center did not issue an automated substitute for return ("ASFR") prior to taxpayer's filing of his 1988 tax return, the Service Center accepted taxpayer's Form 2555, *i.e.* taxpayer made a valid section 911 election. Subsequently, the same taxpayer filed his 1997 tax return with Form 2555 attached, after the due date of the return. However, prior to his filing of this return, the Philadelphia Service Center had issued an ASFR to the taxpayer. Because the Service Center discovered that taxpayer failed to elect the exclusion and he owed federal income tax after taking into account the section 911 exclusion, the Service Center denied his claim for the section 911 exclusion pursuant to Treas. Reg. §1.911-7(a)(2)(D)(2). It is unclear whether taxpayer continued to work outside the United States between 1988 and 1997. You are requesting clarification about whether the taxpayer's section 911 election made in 1988 is valid for all subsequent years, including 1997, making irrelevant the fact that the section 911 election for 1997 was untimely.

Based on the facts that you provided, we cannot make a determination concerning the validity of the 1988 section 911 election as it pertains to the 1997 tax year. Cases of this nature always involve an examination of all facts and circumstances. However, we are providing the following general information on the section 911 election and recommend that you make further factual development.

Section 911(a) of the Code allows a “qualified individual,” as defined in section 911(d)(1), to exclude foreign earned income and housing cost amounts from gross income. Section 911(e)(1) provides that the election applies to the taxable year for which made and to all subsequent taxable years, unless revoked by the taxpayer. In addition, the legislative history of section 911 supports the position that the section 911 election is a one-time election.

“If a taxpayer who elects to exclude foreign earned income becomes a resident of the United States and then, a number of years later, moves abroad again, the election remains in effect. Accordingly, that individual would not have to reelect the exclusion for that later year.”
S. REP. NO. 97-176, at 203 (1981).

The regulations thereunder provide that such an election must be made on a Form 2555 filed with an income tax return or with an amended return. Treas. Reg. § 1.911-7(a)(1). Thus, the section 911 election to exclude foreign earned income is a one-time election that is effective for the taxable year for which it is made and remains in effect for all subsequent taxable years, unless revoked by the taxpayer.

Treas. Reg. §1.911-7(b) sets forth a procedure for revoking a section 911 election. An election may be revoked by filing a statement with the income tax return or amended income tax return for the taxable year for which the revocation is to take effect. The revocation is effective for that year and all subsequent years. Although the regulations under section 911 of the Code prescribe a method by which a taxpayer may revoke an election to exclude foreign earned income, they do not purport to provide the exclusive method for revoking such an election. For example, an election may also be revoked by claiming a foreign tax credit for foreign taxes paid on foreign earned income. See, Rev. Rul. 90-77, 1990-2 C.B. 183 (September 10, 1990). From your e-mail, we are unable to determine whether the taxpayer made any valid revocation of his prior section 911 exclusion during the years between 1988 and 1997.

Also, in your case, it is possible that the taxpayer lost his status as a “qualified individual” for tax year 1997 under section 911(d) by returning to the United States. Under section 911(d)(1) of the Code the term “qualified individual” is an individual whose tax home is in a foreign country and who is

(A) a citizen of the United States and establishes to the satisfaction of the Secretary of the Treasury that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or

(B) a citizen or resident of the United States who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days.

While returning to the United States for work or vacation does not automatically revoke a taxpayer's section 911 election, it is possible for the taxpayer to fail the "bona fide residency" and the "physical presence" requirements. For example, if a taxpayer had been employed in FC from September, 1988 to April, 1989, when he returned to the United States. In May, 1989, he went back to FC, where he worked for the rest of the year. He was not a bona fide resident of a foreign country for the entire tax year of 1989.

If you have any questions, please call Kate Y. Hwa at (202) 622-3840.

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