

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br2-PLR-102206-02

Date:

April 17, 2002

Legend

Taxpayer =
A =
B =
Country X =
Country Y =

Dear :

This is in response to a letter dated December 31, 2001, in which a ruling is requested to permit Taxpayer to reelect the foreign earned income exclusion pursuant to section 911 of the Internal Revenue Code. Additional information was received on March 15, 2002.

The ruling contained in this letter is based on 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 a ruling, it is subject to verification on examination.

Taxpayer is a U.S. citizen who lived in Country X from June 1996 to August 1999, and worked as a research scientist for A, a Country X university. Taxpayer elected to exclude his foreign earned income under section 911(a) of the Code for taxable years 1996 to 1999. In August 1999, Taxpayer returned to the United States with no intentions of returning to Country X. It was Taxpayer's understanding that if he did not have any foreign earned income within the meaning of section 911(b) of the Code, he had to affirmatively revoke his foreign earned income exclusion. As a result, Taxpayer revoked his section 911 election effective for the 2000 taxable year by sending a letter

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dated May 27, 2001, to the Internal Revenue Service, Philadelphia, PA 19255.

Taxpayer was unemployed from September 1999 to November 1999. Subsequently, Taxpayer engaged in non-contractual employment with a U.S. corporation until January 2001. Since then, Taxpayer has been employed by B, a Country Y university, as a faculty member, and residing in Country Y. Taxpayer wants to reelect the foreign earned income exclusion pursuant to section 911 of the Code for taxable year 2001 and subsequent taxable years.

Section 911 of the Code permits certain taxpayers to elect to exclude from gross income 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. Treas. Reg. § 1.911-7(b)(1) prescribes a method by which a taxpayer may revoke an election to exclude foreign earned income, *i.e.* filing a statement revoking any previously made elections. It, however, does not purport to provide the exclusive method for revoking such an election. 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.

Section 1.911-7(b)(2) of the Income Tax Regulations provide that if an individual revokes an election under Treas. Reg. § 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. Treas. Reg. § 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 tax laws of the foreign country of residence or physical presence, and a change of employer.

Taxpayer revoked the foreign earned income exclusion for taxable year 2000 and desires to reelect the exclusion for taxable year 2001, which is within five years of taxable year 2000. Hence, Taxpayer is requesting permission to reelect the foreign earned income exclusion. After review of the essential facts, it has been determined that there was a period of United States residence and Taxpayer revoked his election for that year.

Accordingly, based solely on the information and representations set forth above, it is held that Taxpayer may reelect the section 911 exclusion for 2001 and subsequent taxable years.

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

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A copy of this letter must be attached to Taxpayer's U.S. income tax return for the year for which Taxpayer obtained the ruling.

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,

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