INTERNAL REVENUE SERVICE

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Mr. [redacted]
Office of U.N. System Administration
Bureau of International Organization Affairs
U.S. Department of State, room [redacted]
Washington, D.C. 20520

Dear Mr. [redacted]:

This letter responds to your inquiry of August 21, 2001, asking about the taxability of various types of income earned by U.S. citizens and permanent residents who work for international organizations. This letter is an "information letter" as defined in section 2.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 8. An information letter is advisory only and has no binding effect on the Internal Revenue Service. Section 2.04 of Rev. Proc. 2001-1.

As we understand the facts, this inquiry is pursuant to negotiations between the U.S. Department of State and various international organizations regarding types of income to be earned by American citizens and permanent residents. You seek an understanding of how various types of income are taxed and will use the information to explain to the concerned international organizations the position the U.S. Department of State will take vis-a-vis a particular income. The types of income at issue include salaries, various types of allowances, grants and subsidies, and reimbursements of certain costs.

Section 1 of the Internal Revenue Code generally imposes a tax on individuals determined as a percentage of "taxable income."

Section 63(a) generally defines taxable income as "gross income" minus allowed deductions (other than the standard deduction). In the case of individuals who do not elect to itemize their deductions for the taxable year, the term "taxable income" means "adjusted gross income" minus the standard deduction and the deduction for personal exemptions provided in § 151. Section 63(b).

Section 62(a) provides the term "adjusted gross income" means, in the case of an individual, gross income less certain deductions. Section 61(a) generally defines "gross income" as all income from whatever source derived. Section 61(a) also provides a list of types of income that constitute gross income. Section 1.61-1(a) of the Income Tax Regulations defines gross income to include income realized in any form, whether in money, property, or services, unless excluded by another provision of law. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash. Gross income is not limited to the types of income listed in
§ 61(a).

U.S. CITIZEN EMPLOYEES

If the employees of international organizations are U.S. citizens or U.S. residents, compensation for services is generally included in their gross income. Section 61(a)(1). Section 1.61-2(a)(1) provides a list of examples of compensation for services, including wages, salaries, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, fringe benefits, tips, bonuses, termination or severance pay, rewards, jury fees, retirement pay of employees, pensions, and retirement allowances. The includibility of the various types of income for U.S. citizens and residents also depends upon whether the various types of income are specifically excluded from gross income under a statutory exclusion provision.

EXCLUSION BY QUALIFIED INDIVIDUALS OF FOREIGN EARNED INCOME

Section 911(a)(1) provides qualified individuals may elect to exclude from their gross income and exempt from U.S. tax their foreign earned income. The § 911(a)(1) exclusion is limited by § 1.911-6(a), which prohibits other exclusions from gross income, deductions, and credits to the extent the exclusion, deduction, or credit is properly allocable to or chargeable against amounts excluded from gross income under § 911(a)(a). Section 1.911-6(a). Thus, moving expenses, for example, cannot be both excluded from gross income under § 911(a)(1) and deducted under § 217. Section 1.911-6(b). *See also* Rev. Rul. 75-84, 1975-1 C.B. 236; Rev. Rul. 75-85, 1975-1 C.B. 239.

A "qualified individual" is an individual whose tax home is in a foreign country and who is a U.S. citizen who establishes a bona fide residency for an uninterrupted period of an entire taxable year; or a U.S. citizen or resident who, during any period of 12 consecutive months is present in a foreign country or countries during at least 330 full days in those months.

"Foreign earned income" is the amount received by a qualified individual from sources within a foreign country that constitutes earned income attributable to services performed by that individual during the period for which that individual is in the foreign country. Section 911(b)(1). Foreign earned income includes wages, salaries, professional fees, bonuses, and other amounts received as compensation for personal services actually rendered. Sections 1.911-3(b)(1), (e)(4), and (e)(5). Such compensation is considered to derive from "sources within a foreign country" if it is attributable to services performed by an individual in a foreign country or countries. Section 1.911-3(a). Foreign earned income does not include any meals or lodging provided by employers in kind which qualifies under § 119 as a "camp in a foreign country" as described below. Foreign earned income also does not include any amount received as a pension or annuity, any amount paid by an employer which is the U.S. government, nor any amount received by beneficiaries of nonexempt trusts or nonqualified annuities under §§ 402(b) and 403(c). Section 1.911-3(c). If an individual working at an international organization is an employee of the U.S. government, then the § 911(a) exclusion is not available. Provided the U.S. citizen or resident employees of international organizations can meet the "qualified individual" requirements of § 911(d), the types of income paid by their international organization employers generally qualify as "foreign earned income" that is excludable under § 911(a).

The amount of foreign earned income the U.S. citizen or U.S. resident employees of international organizations may exclude per year is limited to amounts listed in
§ 911(b)(2)(D)(i). In case of employees who are qualified individuals for periods of less than a year, the exclusion amount listed in § 911(b)(2)(D)(i) is multiplied by the number of qualifying days in the taxable year over the number of days in the taxable year. Section 1.911-3(d)(2)(1).

EXCLUSION BY QUALIFIED INDIVIDUALS OF CERTAIN HOUSING COSTS

Section 911(a)(2) also provides that "qualified individuals" may elect to exclude from their gross income and exempt from U.S. tax their housing cost amount. "Housing cost amount" is an amount derived from a complex formula described below based on housing expenses.

Housing expenses include both cash allowances and housing provided in-kind by the employer. If, however, in-kind housing provided by the employer constitutes a "camp in a foreign country" described in § 1.119-1(c)(2), then this sort of in-kind housing is not included in the definition of either foreign earned income or the housing cost amount. Sections 1.911-3(c) and 1.119-4(b)(2)(vii). Thus, U.S. citizen and U.S. resident

employees of international organizations who are provided housing constituting a "camp in a foreign country" described in § 1.119-1(c)(2) must deduct their housing cost amount under the rules of § 119, not under § 911(a)(2).[1]

In addition to cash allowances and housing provided in-kind by the employer, housing expenses also include rent, utilities, insurance, occupancy taxes, furniture rental, household repairs, and parking paid beyond or in the absence of allowances and housing provided by the employer. Section 1.911-4(b)(1). Housing expenses do not include the cost of house purchase, furniture purchase, domestic labor, mortgage, interest, taxes, depreciation, the expenses of more than one foreign household, expenses excluded from gross income under § 119, expenses excluded as deductible moving expenses under
§ 217, or the cost of a pay television subscription. Section 1.911-4(b)(2).

As with foreign earned income, the housing cost amount U.S. citizen and resident employees of international organizations may exclude per year is limited. The excludable housing cost amount is the amount equal to the excess of the housing expenses of an individual, his spouse and dependants residing with him for a taxable

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[1] Section 119 provides the value of any meals or lodging furnished to an employee, his spouse, and his dependants by his employer for the convenience of the employer shall be excluded from the employee's gross income if, in the case of meals, the meals are furnished on the business premises of the employer, or, in the case of lodging, the employee is required to accept the lodging on the business premises of his employer as a condition of his employment. Section 1.119-1(b) of the Income Tax Regulations specifies the employee will be regarded as required to accept the lodging as a condition of his employment if the employee is required to be available for duty at all times or if the employee could not perform the services required of him unless he is furnished such lodging. Cash allowances for meals or lodging received by an employee are not excludable under § 119. Section 1.119-1(e).

The lodging will be regarded to be on the business premises of the employer if it is a "camp in a foreign country." Section 1.119-1(c)(2). Camps in foreign countries possess the following characteristics: They are provided because the place where the employee renders his services is in a remote area where housing is not available; they are located as near as practicable to the place where the employee renders his services; and they are furnished in a common area or enclave which is not available to the general public and which normally accommodates 10 or more employees. Section 1.119-1(d). Some U.S. citizen and U.S. resident employees of international organizations may be required to accept housing in kind provided by their international organization employers that meets the characteristics of camps described in § 1.119-1(d).

year reduced by an amount equal to the product of 16 percent of the salary of a GS-14 U.S. government employee multiplied by the number of qualifying days of such taxable year within which he was in the foreign country. Sections 911(c)(1) and 1.911-4(a) and (c). For example, if a U.S. citizen employee of an international organization receives a salary of $80,000 per year and housing provided by the international organization with a fair rental value of $15,000 per year and pays $10,000 per year in additional housing expenses, then his gross income is $95,000. His housing expenses of $25,000 are the sum of the $15,000 fair rental value of his employer-provided house and the $10,000 per year in additional housing expenses. His housing expenses are reduced by an amount equal to 16 percent of the salary of a GS-14 U.S. government employee multiplied by the number of days of such taxable year within which he was in the foreign country over 365. If the salary of a GS-14 employee is $39,689 and he was a "qualified individual" for the entire year, this amount is $6,350. Subtracting $6,350 from $25,000 produces the excludable housing cost amount, $18,650 in this case.

$15,000	$39,689	$6,350	$25,000
+$10,000	*16%	*365/365	-$6,350
$25,000	$6,350	$6,350	$18,650

PERMANENT RESIDENT EMPLOYEES

Section 893(a)(1) provides, in part, that wages, fees, or salaries of any employee of an international organization (as defined in §7701(a)(18)) received as compensation for official services to such international organization shall not be included in gross income and shall be exempt from taxation if the employee is not a citizen of the United States. Income received by an alien employee of an international organization from sources other than his official compensation (such as personal business or investment income) does not qualify for exclusion from gross income and exemption from tax under § 893. Unless specifically exempted under another provision of the Internal Revenue Code, such income is generally includible in the employee’s gross income and will be subject to U.S. tax.

The § 893 exclusion from gross income and tax exemption does not apply, however, to lawful permanent resident (green card holder) employees of international organizations who have executed and filed the waiver under § 247(b) of the Immigration and Nationality Act (INA) in order to retain their immigrant (i.e., lawful permanent resident) status. Section 1.893-1(b)(4); Title 8 U.S.C. § 1257(b). After the date of filing the waiver, a green card holder employee is no longer entitled to the § 893 tax exemption with respect to compensation he received from the international organization. The legislative history to § 247 of the INA indicates that Congress was concerned that green card holders (who are eligible for U.S. citizenship) should not be entitled to privileges, exemptions and immunities resulting from their occupational status (including exemption from tax on their

salaries) that would not be equally available to U.S. citizens similarly situated. *H. Rept. No. 1365,* 82d Cong., 2d Sess. 63-64 (1952); *S. Rept. 1137,* 82d Cong., 2d Sess. 26 (1952).

We hope this general information is helpful. For more specific guidance, a taxpayer may request a private letter ruling from the national office of the Internal Revenue Service. Please refer to Rev. Proc. 2001-1, 2001-1 I.R.B. 1, for procedures for requesting a private letter ruling. If we can be of further assistance to you regarding this matter, please contact of the Income Tax and Accounting Division at .

Sincerely,

PAUL M. RITENOUR
Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax and Accounting)