Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200346015**
Release Date: 11/14/2003
Index Number: 911.11-03

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL-BR02-PLR-104575-03
Date:
August 13, 2003

In Re:

Taxpayer A =

Taxpayer B =

C =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Country X =
Country Y =

X =
Accountant 1 =
Accountant 2 =
Accountant 3 =

Dear :

This is in response to a letter dated January 9, 2003, in which a ruling is requested to permit Taxpayer A and Taxpayer B (hereinafter collectively referred to as the "Taxpayers") to reelect the foreign earned income exclusion pursuant to section 911 of the Internal Revenue Code (the "Code"). Additional information was submitted in a letter dated March 3, 2003.

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.

Taxpayers are husband and wife. Taxpayer A is a U.S. citizen, and was employed by C, a U.S. corporation during the year at issue. Taxpayer A resided in Country X from March 9, 1999 to May 3, 1999 while Taxpayer B remained in the U.S. On May 4, 1999, Taxpayers moved to Country Y. Taxpayers filed a timely income tax return for tax year 1999, electing the exclusion from income under section 911. That return was prepared by Accountant 1 of accounting firm X.

While preparing their income tax return for tax year 2000, Taxpayers became aware that Accountant 1 did not properly include certain deductions (moving expenses) on their income tax return for the 1999 tax year. In April 2001, Taxpayers met with accounting firm X to discuss the deductions that were omitted from their 1999 income tax return. At that time, Accountant 1 was no longer working for accounting firm X. Thus, Accountant 2 was assigned to Taxpayers to prepare an amended income tax return for tax year 1999 to claim a deduction for the moving expenses. In preparing the amended income tax return for the 1999 tax year, Accountant 2 advised the Taxpayers that they should claim a foreign tax credit for their foreign earned income, rather than claim the exclusion under section 911. In a statement signed under penalties of perjury, Accountant 2 admitted that he did not explain to Taxpayers the consequences of claiming the foreign tax credit and revoking the section 911 election for the 1999 tax year, "which would preclude [Taxpayers] from using this exclusion for a five year period." Unaware of these consequences, Taxpayers signed the 1999 amended income tax return claiming the foreign tax credit and filed it.

Taxpayers decided that Accountant 2 did not have the expertise on foreign tax issues and sought the assistance of Accountant 3 to prepare their 2000 income tax return. Pursuant to the advise of Accountant 3, Taxpayers want to reelect the section 911 foreign earned income exclusion for the 1999 tax year.

Section 911 of the Code permits certain taxpayers to elect to exclude from gross income their foreign earned income and housing cost amounts. Section 911(e)(1) provides that 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 except with the consent of the Secretary, once revoked, the election may not be made again by the taxpayer before the sixth taxable year after the taxable year in which the revocation was made.

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 may obtain permission by requesting a ruling. The Service may permit the taxpayer to reelect the foreign earned income exclusion before the sixth year after considering all of the facts and circumstances. Here, Taxpayers sought the assistance of a tax professional and that

tax professional failed to properly inform Taxpayers of the consequences for claiming the foreign tax credit, in lieu of the exclusion under section 911.

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

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 cost 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 a 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.

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PHYLLIS E. MARCUS
Chief, Branch 2
Associate Chief Counsel
(International)