Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201023051**
Release Date: 6/11/2010

Index Number: 911.11-03

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-146865-09

Date:
February 4, 2010

TY:

Legend

Taxpayer =

Country A =
Country B =

Dear :

This is in response to a letter received in this office on October 26, 2009, in which a ruling is requested to permit Taxpayer to reelect the foreign earned income exclusion under section 911 of the Internal Revenue Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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.

Taxpayer was employed in a job based in Country A for tax years 1999 through 2006 and elected to exclude his foreign earned income under section 911(a) of the Code during those years. In 2007, Taxpayer accepted an offer of employment in Country B, which was anticipated to be a long-term employment position. Taxpayer left his job in Country A and moved from Country A to Country B. In 2007, Taxpayer retained a tax advisor in Country B to prepare his Country B taxes and the supporting information necessary for filing in the United States. Following the advice of this tax advisor, Taxpayer did not elect to exclude his foreign earned income under section 911(a) of the Code in 2007, and instead claimed the foreign tax credit.

In January 2008, Taxpayer left his job in Country B. He returned to Country A in 2008 to resume his former job on a reduced basis. Taxpayer has remained in Country A since January 2008 and plans to live there for the foreseeable future. Taxpayer requests permission to reelect the foreign earned income exclusion pursuant to section 911 of the Code for 2008 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. Under Treas. Reg. § 1.911-7(a)(1), 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 does not, however, 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.

Treas. Reg. § 1.911-7(b)(2) provides 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 the foreign earned income exclusion before the sixth year after considering any facts and circumstances that may be relevant to the determination. 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 effectively revoked the foreign earned income exclusion for 2007 by claiming the foreign tax credit. Taxpayer desires to reelect the exclusion for 2008, which is within five years of 2007. Hence, Taxpayer is requesting permission to reelect the foreign earned income exclusion. Taxpayer has represented that he experienced a change of employer when he moved from Country B to Country A in 2008. Also, he has represented that the tax rates and tax structures differ between Country B and Country A.

Accordingly, based solely on the information and representations set forth above, it is held that Taxpayer may reelect the section 911 exclusion for 2008 and subsequent taxable years.

Except as otherwise 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. Except as expressly

provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This private letter 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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