Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
PLR-112985-97
Date:
January 29, 1999

Tax Year:

A =

Date B =

Date C =

Date D =

Year E =

Year F =

Year G =

Year H =

Country I =

Dear

This is in response to a letter dated July 2, 1997, submitted by your authorized representative requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that your loss of long-term residence status did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. Additional information was submitted in letters dated October 7, 14, and November 3, and 14, 1997. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements 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.

A, a former long-term resident of the United States within the meaning of section 877(e), relinquished his U.S. lawful permanent resident status ("expatriated") on Date B by returning his green card to the U.S. consulate in Country I. On the same day he registered as a permanent resident of Country I. On the date of A's expatriation, his net worth exceeded $500,000 and his average annual tax liability for the five-year period prior to expatriation exceeded $100,000.

A's parents were born in Country I. A was born on Date C and attended elementary school, middle school, high school and college in Country I. A served for twelve years in the Country I army. A was hired by an American company in Year E, a time when the United States was experiencing a shortage of scientists with Ph.D. degrees and was actively recruiting abroad. A obtained a green card, rather than U.S. citizenship. A retired in Year G and on Date B, he repatriated to Country I, the country where family members of his generation and his closest friends are. A's wife is, and has been since birth, a citizen of Country I.

During the five years preceding expatriation A maintained a home in the United States where he lived for most of the year. A's wife (who expatriated on Date D, approximately six and one half months before A), has for many years had business and other interests in Country I that necessitated her spending increasing amounts of time in that country. A and his wife eventually expect to dispose of their home in the United States, but for the time being are maintaining it as a vacation residence. During the five years preceding expatriation, A and his wife also maintained a residence in Country I, where they lived for several months each year. From Year F through Year H, A and his wife maintained an apartment there. Since Year H, they have resided in the house in which A's wife was born and which she inherited from her parents.

A does not hold an interest in any partnership. A is not considered to own any trust under section 671 through 679 of the Code; nor does A have any beneficial interest in any trust. On the date that he expatriated, A's assets consisted of cash, marketable securities (with minimal appreciation), individual retirement accounts, U.S. pension, U.S. real estate, and unappreciated personal property located in the United States. A's gross assets have a fair market value of less than $10,000,000.

A's current assets are representative of the assets he owned for the period that began five years prior to the date on which he expatriated and ending on the date that this ruling request was submitted. A does not expect any significant changes to his balance sheet during the 10-year period following his expatriation. A's average annual net U.S. income tax for the five taxable years prior to his expatriation was less than $100,000.

Country I taxation of income and gains will not be significantly different than if A had continued to be a U.S. resident. Although the inheritance tax eventually payable upon his death in Country I may be less than the U.S. tax that would have applied if A had

retained his U.S. residency, depending on the ultimate identity of his heirs and the size of his estate, any death tax savings depends on a number of variables and are highly speculative. A has no Country I real estate and Country I imposes a wealth tax on securities and other assets. In addition, A's U.S. assets will continue to be subject to U.S. income and estate tax under the normal rules applicable to nonresident aliens.

Section 877 generally provides that a citizen who loses U.S. citizenship or a U.S. long-term resident who ceases to be taxed as a lawful permanent resident (individuals who "expatriate") within the 10-year period immediately preceding the close of the taxable year will be taxed on U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Sections 2107 and 2501(a)(3) provide special estate and gift tax regimes, respectively, for individuals who expatriate with a principal purpose to avoid U.S. taxes.

A former citizen or former long term-resident will be treated as having expatriated with a principal purpose to avoid U.S. taxes for purposes of sections 877, 2107 and 2501(a)(3) if the individual's average income tax liability or the individual's net worth on the date of expatriation exceed certain thresholds. See sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B).

A former U.S. citizen whose net worth or average tax liability exceeds these thresholds, however, will not be presumed to have a principal purpose of tax avoidance if that person is described within certain statutory categories and submits a request for a ruling within one year of the date of loss of U.S. citizenship or long-term residency for the Secretary's determination as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes. See sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C). The rule also applies to an individual subject to new section 877 who expatriated after February 5, 1994, but on or before July 8, 1996, and who submitted a ruling request by July 8, 1997, pursuant to Notice 97-19, 1997-1 C.B. 394. See also section 877(e)(1).

Under Notice 97-19, as modified by Notice 98-34, 1998-27 I.R.B. 30, a former long-term resident whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance if that former resident is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes.

Notice 97-19, as modified by Notice 98-34, requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes.

A is eligible to request a ruling pursuant to Notice 97-19, because he is

described in two categories of individuals eligible to submit ruling requests prior to the issuance of Notice 98-34. First, on the date of A's expatriation, A was, and continues to be, a citizen and resident fully liable to income tax in Country I, the country where A was born. Second, A is also eligible to submit a request because his parents were born in Country I.

A submitted substantially all the information required by Notice 97-19, as modified by Notice 98-34, including any additional information requested by the Service after review of the submission.

Accordingly, based solely on the information submitted and the representations made, it is held that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 97-19, as modified by Notice 98-34, and therefore, A will not be presumed to have expatriated with a principal purpose of tax avoidance. It is further held that A will not be treated under section 877(a)(1) as having as one of his principal purposes for expatriating the avoidance of U.S. taxes because the information submitted clearly establishes the lack of such a principal purpose to avoid tax under subtitle A or B of the Code.

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. In addition, no opinion is expressed as to A's U.S. tax liability for taxable periods prior to his loss of permanent resident status or for taxable periods after his loss of permanent resident status under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

Allen Goldstein
Reviewer
Office of the Associate Chief
Counsel (International)

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