Internal Revenue Service

Department of the Treasury

Index Number: 877.01-00

Washington, D.C. 20224

Number: **199917042**
Date Release: 4/30/1999

Refer Reply To:
PLR-112986-97
Date:
January 29, 1999

Tax year:

A =

Date B =

Date C =

Year 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 resident 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 her U.S. lawful permanent resident status ("expatriated") on Date C in by returning her green card to a U.S. consulate in Country I. On the same day she registered as a resident of Country I. On the date of A's expatriation, her net worth exceeded $500,000 and her 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 in Year D and attended grade school, high school and college in Country I. After finishing college, A married a citizen of Country I and the couple lived and worked in Country I for the next five years. During that period the couples' two children were born. A's husband was hired by an American company in Year E and the family moved to the United States thinking that they would stay a short time. However, A's husband made his career with that company. A obtained a green card, rather than U.S. citizenship, because she expected to return to Country I to live.

In Year F, A inherited real estate and a business located in Country I from her parents. She ran the business with the help of her husband for 11 years and sold it in Year G. A spent about four months a year in Country I managing the real estate until Year H. By that time her children were on their own and the Country I real estate required more of her time. She went to live in Country I permanently (repatriated) on Date B. A's husband repatriated approximately six and one half months after A.

A and her husband expect to dispose entirely of their U.S. home, but are maintaining it as a vacation home for a while. They had an apartment in Country I for the five years preceding expatriation from the United States and currently live in her family home in Country I. However, A's permanent home and tax home (within the meaning of section 911(d)(3) of the Code) were in the United States during the five years prior to her expatriation.

While she was a resident of the United States A never earned any U.S. wages. A paid U.S. tax on any wages and other income from Country I. By repatriating to her native country, A did not export any assets earned in the United States. All of A's U.S. investments are derived from Country I-source funds received by gift or inheritance from her family in Country I (or from the sale of assets so inherited). 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 Date B, A's assets consisted of cash, marketable securities (without net appreciation), individual retirement accounts, U.S. real estate, Country I real estate, and unappreciated personal property located in the United states and in Country I. A's

gross assets have a fair market value of less than $10,000,000.

In Year G, A sold her stock in a Country I company, along with certain unincorporated Country I business assets, and certain Country I real estate used in a trade or business, all of which she had inherited from her parents in Year F. That sale was reported on the U.S. income tax return (Form 1040) that she and her husband filed jointly for Year G. The gain recognized thereon was taxed in the United States. The net sale proceeds were invested in other assets that are reflected on A's balance sheet.

Otherwise, A's current assets are representative of the assets she owned for the period that began five years prior to the date on which she expatriated and ending on the date that this ruling request was submitted. A does not expect any significant changes to her balance sheet during the 10-year period following her expatriation. Country I taxation of her income and gains will not be significantly different than her U.S. taxation of income and gains if she had continued to be a U.S. resident. Although the inheritance tax eventually payable upon her death with respect to A's Country I real estate may be less than the U.S. tax that would have applied to that real estate if she had retained her U.S. residency, depending on the ultimate identity of her heirs and the size of her estate, any death tax savings depends on a number of variables and are highly speculative. 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 1 0-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 exceeds certain thresholds. See sections 877(a)(2), 2107(a)(2)(A) and 2501 (a)(3)(B).

A former U.S. citizen or long-term resident 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 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 she 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 her parents were born in Country I.

A submitted 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 treated under section 877(a)(1) as having as one of her principal purposes for expatriating the avoidance of U.S. taxes because the information submitted clearly established the lack of a principal purpose to avoid U.S. taxes 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 particular, no opinion is expressed as to A's U.S. tax liability for taxable periods prior to her loss of permanent resident status or to tax periods after her 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). A copy of this letter must also be attached to any other income tax return to which it is relevant.

This ruling is directed only to the taxpayer 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 representative.

Sincerely yours,

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

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