



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
December 26, 2002

Number: **INFO 2003-0018**
Release Date: 3/31/2003
U.I.L: 911.01-00

CC:INTL:BR2: [REDACTED]
[REDACTED]
GENIN-152781-02

[REDACTED]

Dear [REDACTED]:

This letter responds to your letter received by our office on September 26, 2002, requesting a ruling regarding your tax status as a bona fide resident of a foreign country for purposes of section 911. You represent that you have lived in Nigeria since May, 2000, but return to the United States every five months. Your request does not include the necessary information or the user fee required to issue a ruling. However, after a review of your letter, we are providing the following general information.

Section 911(a) of the Code allows qualified individuals to elect to exclude from gross income certain amounts of the foreign earned income and housing cost amounts of such individuals. Treas. Reg. § 1.911-7(a) sets forth the procedural rules for making a valid section 911 election. The election must be made on Form 2555 or on a comparable form, and must be filed with the income tax return or with an amended return.

Section 911(d)(1)(A) defines a qualified individual as one whose tax home is in a foreign country and who is a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes the entire taxable year.

Section 911(d)(1)(B) also defines a qualified individual as one whose tax home is in a foreign country and who is a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

Treas. Reg. § 1.911-2(c) provides that whether an individual is a bona fide resident of a foreign country shall be determined by applying, to the extent practical, the principles of section 871 and the regulations thereunder, relating to the determination of the residence of aliens. Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business. An individual with

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earned income from sources within a foreign country is not a bona fide resident of that country if:

(1) The individual claims to be a nonresident of that foreign country in a statement submitted to the authorities of that country, and

(2) The earned income of the individual is not subject, by reason of nonresidency in the foreign country, to the income tax of that country.

If an individual has submitted a statement of nonresidence to the authorities of a foreign country the accuracy of which has not been resolved as of any date when a determination of the individual's bona fide residence is being made, then the individual will not be considered a bona fide resident of the country as of that date.

In applying the principles of section 871 and the regulations thereunder to determine bona fide residence in a foreign country, an individual actually present in a foreign country or countries who is not a mere transient or sojourner is a resident of the foreign country or countries for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him as a transient. If he lives in the foreign country or countries and has no definite intention as to his stay, he is a resident. One who comes to the foreign country or countries for a definite purpose which in its nature may be promptly accomplished is a transient; but, if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the individual makes his home temporarily in the foreign country or countries, he becomes a resident, though it may be his intention at all times to return to his domicile in the United States when the purpose for which he came has been consummated or abandoned. An individual whose stay in a foreign country or countries is limited to a definite period by the immigration laws is not a resident of the foreign country or countries within the meaning of this section, in the absence of exceptional circumstances. See Treas. Reg. § 1.871-2(b).

In the event that you still wish to request relief through the private letter ruling process, you must comply with the administrative procedures set forth in Rev. Proc. 2002-1, I.R.B. 1 (January 7, 2002) (attached). Generally, your ruling request must contain the following:

1. A complete statement of facts and other information
2. A statement of supporting authorities
3. A statement identifying information to be deleted from a copy of the letter ruling for public inspection

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4. Penalties of perjury statement
5. User fee (see section 15 and Appendix A of Rev. Proc. 2002-1 for the fee schedule)

Please call [REDACTED] at (202) [REDACTED] with any questions.

Sincerely,

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

Enclosure: Rev. Proc. 2002-1