



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

OFFICE OF  
CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This letter responds to your request for information dated March 02, 2005, to Senator Richard Shelby. Senator Shelby asked us to respond to you directly. This letter also confirms our recent telephone conversation with you. You asked why independent contractors working in Iraq, prior to October 2004, do not qualify for the "ex-pat" exemption under section 911 of the Internal Revenue Code (Code). To the contrary, as we advised you in our telephone conversation, an independent contractor of the U.S. government in Iraq is eligible for section 911 benefits for the period prior to October 2004, provided that the individual makes a valid section 911 election and the other requirements of section 911 of the Code are met.

Specifically, section 911 of the Code allows a U.S. citizen and certain U.S. residents to exclude foreign earned income and housing cost amounts from gross income if he or she:

- Has a tax home in a foreign country, and
- Is a bona fide resident of a foreign country, or
- Is present in a foreign country for 330 full days during any 12 consecutive month period.

Currently, the amount excludible under section 911 is limited to \$80,000.

However, the law (section 911 (d)(8)(A) of the Code) provides that if travel to any foreign country (or any transaction in connection with such travel) is prohibited by certain regulations during any period, then:

- Foreign earned income does not include income from sources within that country attributable to services performed during that period,

- Housing expenses do not include any expenses allocable to such period for housing in that country while the taxpayer is present in that country, or for housing of the taxpayer's spouse or dependents in another country while the taxpayer is present in that country, and
- An individual is not treated as a bona fide resident of, or as present in, a foreign country for any day during which the individual was present in that country.

The regulations described in section 911(d)(8)(B) of the Code are those adopted under the Trading With the Enemy Act, 50 U.S.C. App. 1 *et seq.*, or the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and that include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country. Section 911(d)(8)(C), however, provides that the limitations of section 911(d)(8)(A) do not apply to any individual during any period in which the individual's activities do not violate the regulations described in section 911(d)(8)(B).

Iraq is one of three countries identified in Rev. Rul. 92-63, 1992-2 C.B. 195, as being subject to the regulations described in section 911(d)(8)(B) of the Code. However, in 2003, we issued Notice 2003-52, 2003-2 C.B. 296, which states that individuals whose activities in Iraq are permitted by a specific or general license issued by the U.S. Treasury's Office of Foreign Assets Control are not subject to the limitation of section 911(d)(8) because those activities no longer violate the Iraqi sanctions regulations. Further, on July 29, 2004, the President issued Executive Order 13350, which effectively lifted the sanctions against Iraq effective July 30, 2004, and thus, removed the limitation of section 911(d)(8).

This letter provides general information, which we hope is helpful. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2005-1, §2.04, 2005-1 IRB 7. If you have any additional questions, please contact

, at (202) 622-3840.

Sincerely,

Phyllis E. Marcus  
Branch Chief  
Office of the Associate Chief Counsel (INTL)