

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B02  
PLR-143936-13

Date:  
April 21, 2014

TY:

Legend

Taxpayer =

Year 1 =

Year 4 =

Country A =

Country B =

Company =

Dear :

This is in response to a letter received in this office on August 26, 2013, and subsequent correspondence, submitted on your behalf by your authorized representative, requesting an extension of time under Treas. Reg. §301.9100-3 to elect the provisions of section 911 of the Internal Revenue Code (“Code”) for Taxpayer’s Year 4 taxable year.

The ruling contained in this letter is based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by the Taxpayer. 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. The information submitted in the request is substantially as set forth below.

## FACTS

Taxpayer lived in Country A and Country B from Year 1 to Year 4. Taxpayer was employed by Company in Country A and Country B from Year 1 through Year 4.

Taxpayer did not timely file an election under the provisions of section 911 for his Year 4 taxable year. Taxpayer has represented he was unaware of the requirements for making a valid section 911 election. Taxpayer has submitted an affidavit, signed under penalties of perjury, describing how, given the taxpayer's lack of experience and the complexity of his Year 4 return, Taxpayer was unaware of the necessity for the election, which led to Taxpayer's failure to make the election in Year 4.

## RULING REQUESTED

Taxpayer requests the consent of the Commissioner to grant an extension of time under Treas. Reg. §301.9100-3 to elect the provisions of section 911 for Taxpayer's Year 4 taxable year.

## LAW

Section 911(a) of the Code allows qualified citizens and residents of the United States living abroad to elect to exclude from gross income 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. With respect to the timing of the election, Treas. Reg. §1.911-7(a)(2)(i) provides that a valid section 911 election must be made:

- (A) With an income tax return that is timely filed (including any extensions of time to file);
- (B) With a later return filed within the period prescribed in section 6511(a) amending the foregoing timely filed income tax return;
- (C) With an original income tax return filed within one year after the due date of the return (determined without regard to any extension of time to file); or
- (D) With an income tax return filed after the period described in paragraphs (a)(2)(i)(A), (B), or (C) of this section provided –
  - (1) The taxpayer owes no federal income tax after taking into account the exclusion and files Form 1040 with Form 2555 or a comparable form attached either before or after the Internal Revenue Service ("IRS") discovers that the taxpayer failed to elect the exclusion; or
  - (2) The taxpayer owes federal income tax after taking into account the exclusion and files Form 1040 with Form 2555 or a comparable form attached before the IRS discovers that the taxpayer failed to elect the exclusion.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of the relief will not prejudice the interests of the government.

Treas. Reg. §301.9100-3(b)(1) provides that, except as provided in paragraph (b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- i. Requests relief under this section before the failure to make the regulatory election is discovered by the IRS;
- ii. Failed to make the election because of intervening events beyond the taxpayer's control;
- iii. Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- iv. Reasonably relied on the written advice of the IRS; or
- v. Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, Treas. Reg. §1.911-7(a) fixes the time to make the election under section 911. Therefore, the Commissioner has discretionary authority under Treas. Reg. §301.9100-1(c) to grant a taxpayer an extension of time provided that taxpayer satisfies the standards set forth under Treas. Reg. §301.9100-3(a).

## CONCLUSION

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 60 days from the date of this ruling letter to elect the foreign earned income exclusion for Taxpayer's Year 4 taxable year.

Taxpayer should attach a copy of this letter ruling to Taxpayer's federal income tax return for the relevant years.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling 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 faxed to your authorized representative.

Sincerely,

Jeffery G. Mitchell  
Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(International)