

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
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Date:
March 02, 2021

TY:

Legend

Taxpayer =

Company A =

Company B =

Country X =

Country Y =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear :

This is in response to a letter dated August 8, 2020, requesting permission to reelect the foreign earned income exclusion under section 911 of the Internal Revenue Code (the Code) for Year 5.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement 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.

FACTS

Taxpayer is a U.S. citizen who lived and worked for Company A in Country X from Year 1 to Year 3. On his joint U.S. income tax returns filed with his wife for Year 1 through Year 2, Taxpayer claimed the foreign earned income exclusion under section 911(a) of the Code. Taxpayer returned to the United States in Year 3. For Year 3, Taxpayer decided it was more beneficial to receive a credit for the taxes paid to Country X than to elect the foreign earned income exclusion and housing cost amounts. Taxpayer lived and worked in the United States until Year 4. In Year 4, Taxpayer moved to Country Y and commenced a job with Company B. Taxpayer's income earned in Country Y is subject to a lower rate of tax than it was in Country X.

Ruling Requested

Taxpayer requests permission to reelect the foreign earned income exclusion pursuant to section 911 of the Code for Year 5 and subsequent taxable years.

LAW AND ANALYSIS

Section 911 of the Code permits certain taxpayers to elect to exclude from gross income their foreign earned income, and housing cost amounts. The election applies to the taxable year for which it is made and for all subsequent taxable years, unless revoked by the taxpayer. Section 911(e)(2) provides that once revoked, the election may not be made again by the taxpayer until the sixth taxable year after the year in which the revocation was made.

However, Treas. Reg. § 1.911-7(b)(2) provides that if an individual revokes the election to exclude foreign earned income under Treas. Reg. § 1.911-7(b)(1), and desires to reelect that same exclusion within the next five years, the individual must obtain permission by requesting a ruling. The Service may permit the taxpayer to reelect the foreign earned income exclusion before the sixth year after considering all of the facts and circumstances. Treas. Reg. § 1.911-7(b)(2) provides that relevant facts and circumstances may include a period of United States residence, a move from one foreign country to another foreign country with differing tax rates, a substantial change in the tax laws of the foreign country of residence or physical presence, and a change of employer.

Taxpayer effectively revoked the foreign earned income exclusion for Year 3 by claiming the foreign tax credit. See Rev. Rul. 90-77, 1990-2 C.B. 183. Taxpayer is seeking permission to reelect the exclusion for Year 5, which is within five years of Year 3. Taxpayer has represented that there was a period of U.S. residence in between his time spent working in Country X and Country Y; he changed employers; and the applicable foreign income tax rates differ between Country X and Country Y.

CONCLUSION

Accordingly, based solely on the information submitted and representations made, Taxpayer may reelect the section 911 foreign earned income exclusion for Year 5 and subsequent tax years within 60 days from the date of this ruling letter in accordance with the rules set forth in section 911 and the regulations thereunder.

Except as otherwise expressly provided herein, no opinion is expressed as to whether Taxpayer otherwise satisfies the requirements of section 911 and thus, is eligible to exclude his foreign earned income and housing cost amounts from gross income. In addition, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer files his return electronically, he may satisfy this requirement by attaching to his return a statement that provides the date and control number of the letter ruling.

Sincerely,

/s/ Kristine Crabtree

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
(International)

cc: