Internal Revenue Service

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
January 27, 1999

Legend

Taxpayer	=
X	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=

Dear :

This is in response to your letter dated October 2, 1998, requesting a ruling on behalf of Taxpayer regarding whether income derived from his rendering of personal services as an employee of X Corporation on Johnston Island during Year 4 may be excluded from his gross income under section 931(a) of the Internal Revenue Code of 1986 ("I.R.C.") ? The information submitted for consideration is substantially as set forth below.

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.

Taxpayer is an individual U.S. citizen who was employed during Year 4 by X Corporation, a civilian contractor performing U.S. government contracts on Johnston Island. Taxpayer states that he filed his income tax return (Form 1040) with the Internal Revenue Service for Year 4, without claiming the I.R.C. § 931 exclusion, and including in his gross income all wages he earned while working for Corporation X on Johnston

Island.   He states that he has applied for this ruling to determine if he is entitled to the benefits of the I.R.C. § 931 exclusion with the possibility of making a claim for refund of federal income taxes he paid for Year 4. Taxpayer states that the gross wages he earned while working on Johnston Island during year 4, is more than 80% of his total gross income from all sources for that year.   He has not provided information regarding the location of his employment or the amount of income he earned during Years 1 through 3.

Johnston Island is a 625 acre island, and it is the largest of several islands constituting the island group known as the “Johnston Atoll”, located approximately 700 nautical miles southwest of Hawaii. Johnston Island is an unincorporated territory of the United States.
It was designated as a Naval Defensive Sea Area and Airspace reservation on February 14, 1941 by Executive Order 8682. It is currently operated and maintained by Field Command, Defense Special Weapons Agency (DAWA), Kirkland Air Force Base, New Mexico. In the early 1970s, the military began moving chemical weapons from Okinawa to Johnston Island, and the island became a major storage facility for U.S. chemical weapons.

In the late 1980s, the U.S. Defense Department began construction of an incinerator facility to destroy the chemical weapons on the island. Testing of the facility began in 1990, with full-scale operations beginning in 1993. Taxpayer was employed by Corporation X in conjunction with the operation of the facility during Year 4. Years 1 through 4 are all calendar years subsequent to 1990.

LAW AND ANALYSIS:

I.R.C. § 931 provides in pertinent part as follows:

(a) General rule.-In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include -
(1) income derived from sources within any specified possession, and
(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession. ***

(c) Specified possession.-For purposes of this section, the term "specified possession" means Guam, American Samoa, and the Northern Mariana Islands.

I.R.C. § 931(a) states that the exclusion under that subsection is available only to "an individual who is a bona fide resident of a *specified possession."* [Emphasis added.] A "specified possession” is defined by I.R.C. § 931(c) as "Guam, American Samoa, and the Northern Mariana Islands."   Thus, the I.R.C. § 931 exclusion may not be claimed by Taxpayer, because Johnston Island is not a “specified possession” within the meaning of the statute.

Prior to the Tax Reform Act of 1986 (Pub. L. 99-514 , which enacted the Internal Revenue Code of 1986 (hereinafter “1986 Code”), I.R.C. § 931(a) of the Internal Revenue Code of 1954 (hereinafter “1954 Code”), provided an exclusion from U.S. gross income, for certain income of U.S. citizens engaged in a trade or business in a U.S. possession if such income was “derived from sources within a possession of the United States.”   The exclusion for possession source income that was available under section 931 of the 1954 Code was limited to individuals who could show that 80 percent or more of their gross income was derived from a U.S. possession for the three-year period immediately preceding the taxable year, and that 50 percent or more of their gross income was derived from a trade or business in such U.S. possession. Taxpayer has not provided information regarding Years 1 through 3 concerning the amount of income he earned or the location of his employment. This omission is somewhat academic because it is clear that the1954 Code provisions do not apply to Years 1-4.

Section 931 of the 1954 Code did not define the term “U.S. possession.” Treas. Reg. § 1.931-1, enacted under the 1954 Code, lists various possessions of the United States, including Johnston Island, that were considered to be “possessions of the United States “ for purposes of section 931 of the 1954 Code. The Tax Reform Act of 1986 generally amended the provisions of prior section 931, including the addition of a definition of the term “specified possession” in subsection (c). Since it is not included in this definition of “specified possession”, Johnston Island is no longer a possession for purposes of
I.R.C. § 931, regardless of the regulation issued under the 1954 Code.

Thus, neither the regulation nor the prior Code section is applicable to the time period when Taxpayer worked for X Corporation on Johnston Island. The effective date provisions of the Tax Reform Act of 1986, (Section 1277 of Pub. L. 99-514.) indicate that the amended section 931, under the 1986 Code is to apply to taxable years beginning after December 31, 1986. Thus, we conclude that Taxpayer is not entitled to claim the I.R.C. § 931 exclusion for Year 4, because Johnston Island is not a “specified possession” as defined in I.R.C. § 931(c).

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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.

Sincerely,

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W. EDWARD WILLIAMS
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel (International)