

Guidance on the Application of Section 911 to U.S. Individuals Working in Iraq

This notice clarifies the application of section 911 of the Internal Revenue Code (the "Code") to U.S. citizens and residents earning income in Iraq attributable to services performed by such individuals.

Section 911(a) of the Code allows a "qualified individual" to elect to exclude from gross income his or her "foreign earned income" (as defined in section 911(b)) and "housing cost amount" (as defined in section 911(c)). Section 911(d)(1) generally defines a "qualified individual" as a citizen or resident of the United States whose tax home is in a foreign country and who meets certain requirements of residence or presence in a foreign country.

Section 911(d)(8)(A) of the Code provides generally that if travel with respect to any foreign country (or any transaction in connection with such travel) is proscribed by certain regulations during any period, then: (1) foreign earned income does not include income from sources within that country attributable to services performed during that period; (2) housing expenses do not include any expenses allocable to such period for housing 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 (3) 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.

Section 911(d)(8)(B) of the Code provides that the regulations described in section 911(d)(8) are those promulgated pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1 *et seq.*, or the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701 *et seq.*, that include provisions generally prohibiting U.S. citizens and residents 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 such individual's activities are not in violation of the regulations described in section 911(d)(8)(B).

In 1991, Treasury's Office of Foreign Assets Control ("OFAC") issued the Iraqi Sanctions Regulations, 31 C.F.R. part 575. The Iraqi Sanctions Regulations were issued pursuant to IEEPA, among other authorities. Specifically, 31 C.F.R. sec. 575.207 provides that "[e]xcept as otherwise authorized, no U.S. person may engage in any transaction relating to travel by any U.S. citizen or permanent resident alien to Iraq, or to activities by any U.S. citizen or permanent resident alien within Iraq," with narrow exceptions. Following promulgation of the Iraqi Sanctions Regulations, the Service issued Rev. Rul. 92-63, 1992-2 C.B. 195, which lists Iraq as one of the countries subject to the limitations under section 911(d)(8) of the Code.

In recent months, OFAC has issued several specific and general licenses that authorize individuals to engage in transactions related to travel to Iraq or to activities within Iraq. Pursuant to the terms of the Iraqi Sanctions Regulations, individuals whose activities in Iraq are permitted by a specific or general license issued by OFAC are not in violation of the Iraqi Sanctions Regulations with respect to the activities permitted by the license. 31 C.F.R. sec. 575.501(c). Accordingly, under section 911(d)(8)(C) of the Code, the limitations of section 911(d)(8)(A) do not apply to such individuals with respect to such licensed activities. Such individuals are eligible for the exclusion under section 911 of the Code provided that they meet the other requirements of that section.

For further information on this Notice, contact Kate Hwa at (202) 622-3840 (not a toll free call).