

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br1-PLR-115447-97

Date:

February 8, 1999

TY: 1996

A =

Country B =

Date C =

Dear . :

This is in response to your letter dated July 14, 1997, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that your loss of U.S. citizenship did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements 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.

A became a citizen of the United States as a result of his birth to U.S. parents. A resided in the United States for nearly 30 years before moving to Country B. A has lived and worked in Country B since 1986. A became a permanent resident of Country B in 1987 and he has filed tax returns as a Country B resident since that time. A became a citizen of Country B in 1993. A's wife and two children are also citizens of Country B, and live in Country B on a full time basis. A's only residence is in Country B.

A was present in the United States for 33 days in 1996 and for 31 days in 1991. A was present in the United States for 15 days over the four year period from 1992-1995. A has no intention of returning to the United States.

PLR-115447-97

A renounced his U.S. citizenship on Date C. On the date of expatriation, A's net worth exceeded \$500,000. However, the total fair market value of his gross assets did not exceed \$1,000,000. A's principal assets consist of his Country B residence and U.S. marketable securities. Country B taxes income and capital gains at a rate that is significantly higher than the comparable U.S. rates. A's Country B tax liability is significantly greater than his U.S. tax liability.

Section 877, as amended by the Health Insurance Portability and Accountability Act of 1996, generally provides that a U.S. citizen who loses citizenship or a long-term resident who ceases to be taxed as a resident of the United States within the 10-year period immediately preceding the close of the taxable year will be taxed on all of his or her U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code.

Section 2107 generally provides that U.S. estate tax will be imposed on the transfer of the taxable estate of every nonresident decedent if the individual lost U.S. citizenship within the 10-year period ending on the date of death, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes.

Section 2501(a)(1) generally provides that a tax will be imposed for each calendar year on the transfer of property made by gift during such year by any individual, resident or nonresident. Section 2501(a)(3) provides that section 2501(a)(1) will not apply to the transfer of intangible property made by a nonresident not a citizen of the United States. However, section 2501(a)(3)(A) provides that this exception does not apply in the case of a donor who lost U.S. citizenship within the 10-year period ending on the date of the transfer, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes.

For purposes of applying the foregoing provisions, a former citizen is considered to have lost U.S. citizenship with a principal purpose to avoid U.S. taxes if (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation is greater than \$100,000, or (ii) the individual's net worth on the date of expatriation is \$500,000 or more (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code.

However, a former citizen will not be considered to have lost U.S. citizenship with a principal purpose to avoid U.S. taxes as a result of the individual's tax liability or net worth if he or she qualifies for an exception under section 877(c). To qualify for an exception, a former citizen must be described in certain statutory categories and submit a ruling request, within one year of the date of expatriation, for a determination by the Secretary as to whether the individual's expatriation had for one of its principal

PLR-115447-97

purposes the avoidance of U.S. taxes. Section 877(c)(1) of the Code. See also sections 2107(a)(2)(B) and 2501(a)(3)(C) of the Code.

Under Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, 1998-27 I.R.B. 30, a former citizen whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance if that former citizen is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes. One of the categories of individuals entitled to request a ruling is an individual that was present in the United States for no more than 30 days during each year of the 10-year period ending on the date of expatriation. Notice 97-19 also provides that former U.S. citizens who narrowly fail to satisfy the criteria of an enumerated category may also submit ruling requests.

A was present in the United States for 33 days in 1996 and for 31 days in 1991. A is eligible to request a ruling under section 877 because he narrowly fails to satisfy the criteria of the category that requires that he was present in the United States for no more than 30 days during each year of the 10-year period ending on the date of expatriation. See Example 3, Section IV, Notice 97-19.

Notice 97-19, as modified by Notice 98-34, requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes.

A submitted all the information required by Notice 97-19, as modified by Notice 98-34, including any additional information requested by the Service after review of the submission.

Accordingly, based solely on the information submitted and the representations made, it is held that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 98-34, and therefore, A will not be presumed to have expatriated with a principal purpose of tax avoidance.

However, because the information submitted does not clearly establish the existence or lack of a principal purpose to avoid taxes under subtitle A or B of the Code, no opinion is expressed as to whether A's expatriation had for one of its principal purposes the avoidance of such taxes. While this ruling rebuts the presumption of tax avoidance under section 877(a)(2), it is not conclusive as to whether A subsequently may be found to have a principal purpose of tax avoidance under sections 877(a)(1), 2107(a)(1), and 2501(a)(3)(A) based on all the facts and circumstances. See section 877(c)(1). 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. In addition, no opinion is expressed as to A's U.S. tax liability for the taxable years prior to expatriation or his U.S. tax liability for periods after his loss

PLR-115447-97

of citizenship under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Allen Goldstein
Reviewer
Office of Associate Chief Counsel
(International)