

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-117202-04

Date:

May 11, 2006

TY:

LEGEND:

Taxpayer =

Country Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Company A =

Company B =

Accountant A =

Year 1 =

Year 2 =

Year 3 =

Dear :

This is in response to a letter received in this office on March 30, 2004, and subsequent correspondence, 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 1 taxable year.

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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 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.

Since Date 1, Taxpayer have been residing and working in Country Y. On Date 2, Taxpayer retired from the U.S. Army and began working for Company A and Company B for the six month period ending on Date 3. This was the first time Taxpayer had been a civilian employee while residing outside the United States. Taxpayer was informed by his employers that his income earned in Country Y was exempt from U.S. federal income taxation. Taxpayer's employers did not withhold any U.S. federal income tax. Taxpayer has represented that he was unaware of the requirements for making a valid section 911 election.

Taxpayer, while in the process of obtaining a divorce, failed to timely file his U.S. federal income tax returns for the Year 1 through Year 3 taxable years. The IRS sent Taxpayer a letter dated Date 4 stating that Taxpayer's Year 1 U.S. federal income tax return was delinquent. Taxpayer contacted Accountant A to assist him in the preparation of his Year 1 U.S. federal income tax return and it was received by the IRS on Date 5.

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 a timely filed income tax return;
- (C) With an original 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 -

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(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 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 Internal Revenue Service discovers that the taxpayer failed to elect the exclusion.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has 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, a 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 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 Internal Revenue Service;
- 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;

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- 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 Taxpayer an extension of time provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

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 1 taxable year and subsequent taxable years.

Taxpayer should attach a copy of this letter ruling to his federal income tax return for the relevant year.

This ruling is directed only to the taxpayer who requested it. I.R.C. section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Valerie Mark Lippe
Senior Technical Reviewer
Office of Associate Chief
Counsel (International)