



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I International Practice Service Concept Unit

Shelf		Individual Outbound		
Volume	9	Jurisdiction to Tax – Outbound	UIL Code	N/A
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Unit Name	Tax Home for Purposes of IRC § 911
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General Overview

Tax Home for Purposes of IRC § 911

This unit discusses the factors to be considered in determining an individual's tax home for purposes of IRC § 911

The concept of "tax home" is important because in order to claim the foreign earned income exclusion, the foreign housing exclusion (for employees) or the foreign housing deduction (for self-employed individuals), an individual must have a tax home in a foreign country or countries.

 **CAUTION:** If an individual's tax home is still in the U.S., then it is not possible to claim any of the IRC § 911 tax exclusions/deductions even if the individual is considered a bona fide foreign resident of another country for that country's tax purposes.

In order to claim the foreign earned income exclusion, the foreign housing exclusion or the foreign housing deduction, the taxpayer must:

- Have foreign earned income,
- Have a tax home in a foreign country,
- Be a bona fide resident of a foreign country or meet the physical presence test in a foreign country or countries, and
- Make a valid election.

NOTE: The minimum time requirements applicable to bona fide residency or meeting the physical presence test can be waived, if the individual must leave a foreign country because of war, civil unrest, or similar adverse conditions in that country. Treasury Regulation § 1.911-2(f). The IRS annually publishes a list of the countries that qualify for the waiver in the Internal Revenue Bulletin.

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Detailed Explanation of the Concept

Tax Home for Purposes of IRC § 911

Analysis	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ An individual’s tax home is considered to be located at the individual’s regular or principal place of business. For purposes of IRC § 911, the term "tax home" has the same meaning which it has for purposes of IRC § 162(a)(2) (relating to travel expenses away from home). <ul style="list-style-type: none"> NOTE: An individual cannot have two tax homes at the same time. <i>Andrews v. Commissioner</i>, 931 F.2d 132 (1st Circuit, 1991). NOTE: If an individual does not have a regular or principal place of business, the individual’s tax home is at his or her place of abode in a real and substantial sense. IRC § 911(d)(3), Treasury Regulation § 1.911-2(b), and Revenue Ruling 93-86. ▪ An individual is not considered to have a tax home in a foreign country for any period in which the individual’s abode was in the United States. ▪ Abode is a subjective term, and is based on facts and circumstances. Generally, abode has been defined as an individual’s home, habitation, residence, domicile or place of dwelling. <i>Bujol v. Commissioner.</i>, T.C Memo 1987-230, affd. without published opinion 842 F.2d 328 (5th Cir. 1988). (NOTE: <i>Bujol</i> involved a taxpayer who spent fifty percent or less of the year in a foreign country or countries and did not meet the physical presence test or qualify as a bona fide resident of a foreign country.) 		

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Detailed Explanation of the Concept (cont'd)

Tax Home for Purposes of IRC § 911		
Analysis	Resources	6103 Protected Resources
<p> CAUTION: If an individual is temporarily present in the United States, this does not necessarily mean that the individual has an abode in the United States during that time. Treasury Regulation § 1.911-2(b).</p> <p> CAUTION: If an individual has a house in the United States, this does not necessarily mean the individual has an abode in the United States, even if the individual's family resides in that house. Treasury Regulation § 1.911-2(b).</p>		

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Examples of the Concept

Tax Home for Purposes of IRC § 911

Examples

- An oil rig worker who works in the territorial waters of a foreign country on a rotating 28-day on / 28-day off schedule and returns to the United States during off periods cannot claim the foreign earned income exclusion, nor the foreign housing exclusion (as an employee) or deduction (if self-employed). *Bujol v. Commissioner.*, T.C Memo 1987-230, affd. without published opinion 842 F.2d 328 (5th Cir. 1988); *Lemay v. Commissioner*, 837 F.2d 681 (5th Cir. 1988); *Abrams v. Commissioner*, T.C. Memo 1990-517; *Moudy v. Commissioner*, T.C. Memo 1989-216.
- A flight crew member who is based in a foreign country may or may not have a foreign tax home depending on the amount of time actually spent in a foreign country or countries. *Jones v. Commissioner*, 927 F.2d 849 (5th Cir. 1991), revg. 58 T.C.M. (CCH) 689; *Cobb v. Commr.* T.C. Memo 1991-376.
NOTE: Time spent in international airspace does not count as time spent in a foreign country. Treasury Regulation § 1.911-2(h).
- A professor at a United States educational institution who teaches in a foreign country for several months during his sabbatical still has a tax home in the United States, as that is his principal place of business. *Gelhar v. Commssioner*, T.C. Memo 1992-162.
- A government contractor who performs services in a foreign country, as well as in the United States, and maintains an abode in the United States may not claim a tax home in a foreign country. *Daly v. Commr.*, T.C. Memo 2013-147.

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Training and Additional Resources

Tax Home for Purposes of IRC § 911

Type of Resource	Description(s) and/or Instructions for Accessing	References
White Papers / Guidance	Memorandum issued by Associate Chief Counsel (International)	AM2009-003
Podcasts / Videos	FY 11 IIC CPE Session: 911 and FTC	
Bloomberg BNA	BNA Tax Management Portfolios – Foreign Income Series- Taxation of U.S. Persons' Foreign Income	918-2 nd Section 911 I.B (4) Tax Home

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Glossary of Terms and Acronyms

Acronym	Definition
IRC	Internal Revenue Code
IRS	Internal Revenue Service

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Index of Related Issues

Issue	Associated UIL(s)	References
Bona Fide Resident for Purposes of IRC § 911	9431.06	DCN:JTO/9431.06_xx(201x)
Definition of Foreign Earned Income for Purposes of IRC § 911	9431.06	DCN:JTO/9431.06_xx(201x)
Election to Exclude Foreign Earned Income Under IRC § 911	9431.06	DCN:JTO/9431.06_xx(201x)
Physical Presence Test for Purposes of Foreign Earned Income Exclusion	9431.06	DCN:JTO/9431.06_xx(201x)
Foreign Housing Deduction or Exclusion	9431.06-06	DCN:JTO/9431.06_xx(201x)