

LB&I Concept Unit Knowledge Base – International

Library Level	Number	Title
Shelf		Individual Outbound
Book	9	Jurisdiction to Tax (Individual Outbound)
Chapter	6	Credits / Exclusions / Special Treatments
Section	5	Foreign Earned Income Exclusion

Unit Name	Tax Home for Purposes of IRC Section 911	
Primary UIL Code	9431.02-05	Foreign Earned Income Exclusion (IRC 911) - Tax Home / Abode

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General Overview

Tax Home for Purposes of IRC Section 911

NOTE: This Unit supersedes the 12/15/14 Unit with the same title.

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 United States, then that individual is not eligible to claim the IRC 911 tax exclusions/deductions even if he or she meets the bona fide residence or physical presence test and has foreign earned income.

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,
- Be a qualifying individual, and
- Make a valid election.

A qualifying individual is one who has a tax home in a foreign country (or countries) and is:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

NOTE: The minimum time requirements for the bona fide residence or physical presence in a foreign country or countries may be waived, if the individual must leave a foreign country because of war, civil unrest, or similar adverse conditions in that country. Treas. Reg. 1.911-2(f). The IRS annually publishes a list of the countries that qualify for the waiver in the Internal Revenue Bulletin.

Detailed Explanation of the Concept

Tax Home for Purposes of IRC Section 911

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.

Analysis	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). <p>NOTE: An individual cannot have two tax homes at the same time.</p> <p>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.</p> <ul style="list-style-type: none"> ▪ 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. For tax years beginning after December 31, 2017, an individual is not considered to have a tax home in a foreign country for any period during which the individual's abode is in the United States, unless that individual is performing services in support of the Armed Forces of the United States in a designated combat zone. See http://www.irs.gov/uac/Combat-Zones for a list of such designated areas. ▪ For purposes of IRC 911, whether an individual's abode is in the United States is determined by contrasting the individual's familial, economic, and personal ties to the United States with his or her ties to the foreign country in which he or she claims to have a tax home. 	<ul style="list-style-type: none"> ▪ <i>Andrews v. Commissioner</i> - 931 F.2d 132 (1st Cir., 1991) ▪ IRC 911(d)(3) ▪ Treas. Reg. 1.911-2(b) ▪ Rev. Rul. 93-86 ▪ <i>Bujol v. Commissioner</i> - T.C. Memo 1987-230 ▪ <i>Harrington v. Commissioner</i> - 93 T.C. 297 (1989) ▪ IRS.gov - <i>Combat Zones Approved for Tax Benefits</i> ▪ <i>Daly v. Commissioner</i> - T.C. Memo 2013-147

Detailed Explanation of the Concept (cont'd)

Tax Home for Purposes of IRC Section 911

Analysis

- An individual is more likely to have a U.S. abode if his or her ties to the foreign country are limited or transitory.



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.

Resources

Examples of the Concept

Tax Home for Purposes of IRC Section 911

Examples



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.

- 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; *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); *Cobb v. Commissioner* - T.C. Memo 1991-376.

NOTE: Time spent in international airspace does not count as time spent in a foreign country. Treas. Reg. 1.911-2(h).

- A professor at a U.S. 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. Commissioner* - T.C. Memo 1992-162.

Index of Referenced Resources

Tax Home for Purposes of IRC Section 911

IRC 162

IRC 911

Treas. Reg. 1.911-2

Rev. Rul. 93-86

Abrams v. Commissioner - T.C. Memo 1990-517

Andrews v. Commissioner - 931 F.2d 132 (1st Cir., 1991)

Bujol v. Commissioner - T.C. Memo 1987-230

Cobb v. Commissioner - T.C. Memo 1991-376

Daly v. Commissioner - T.C. Memo 2013-147

Gelhar v. Commissioner - T.C. Memo 1992-162

Harrington v. Commissioner - 93 T.C. 297 (1989)

Jones v. Commissioner - 927 F.2d 849 (5th Cir., 1991)

Lemay v. Commissioner - 837 F.2d 681 (5th Cir., 1988)

Moudy v. Commissioner - T.C. Memo 1989-216

IRS.gov - *Combat Zones Approved for Tax Benefits*

Training and Additional Resources

Tax Home for Purposes of IRC Section 911	
Type of Resource	Description(s)
Saba Meeting Sessions	▪ <i>911 and FTC</i> - 2011 CPE Centra
White Papers / Guidance	▪ IRS AM 2009003 - GLAM - Application of Foreign Earned Income Exclusion and the Combat Zone Exclusion to Civilian Contractors Working in Combat Zones
Databases / Research Tools	▪ <i>BNA Tax Management Int'l Portfolio</i> 918-2 nd Sec. 911

Glossary of Terms and Acronyms

Term/Acronym	Definition
BNA	Bureau of National Affairs
CPE	Continuing Professional Education
FTC	Foreign Tax Credit
GLAM	General Legal Advice Memorandum
IRC	Internal Revenue Code

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
9431.02-09	<i>Bona Fide Residence Test for Purposes of Qualifying for IRC 911 Tax Benefits</i>	JTO/P/09_06_05-05 (formerly JTO/9431.06_14(2015))
9431.02-10	<i>Physical Presence Test for Purposes of Qualifying for IRC 911 Tax Benefits</i>	JTO/P/09_06_05-06 (formerly JTO/9431.06_15(2016))
9431.02-08	<i>IRC 911 Election and Revocation</i>	JTO/C/09_06_05-02 (formerly JTO/CU/C_09.6.5_08(2014))
9431.02-06	<i>Calculating Foreign Earned Income Exclusion - Employee</i>	JTO/P/09_06_05-03 (formerly JTO/9431.06_12(2015))
9431.02-06	<i>Calculating Foreign Earned Income Exclusion - Self-Employed Individual</i>	JTO/P/09_06_05-04 (formerly JTO/9431.06_13(2015))
9431.02-06	<i>Calculating Foreign Earned Income Exclusion - Partner in a Partnership With Foreign Earned Income</i>	JTO/P/09_06_05-07 (formerly JTO/9431.06_19(2016))
9431.02-12	<i>Foreign Housing Exclusion IRC Section 911</i>	JTO/P/09_06_06-01 (formerly JTO/9431.06_16(2016))
9431.02-13	<i>Foreign Housing Deduction IRC Section 911</i>	JTO/P/09_06_06-02 (formerly JTO/9431.06_17(2016))