

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, §911, 1.911-1)

Rev. Proc. 2006-28

SECTION 1. PURPOSE

.01 This revenue procedure provides information to any individual who failed to meet the eligibility requirements of § 911(d)(1) of the Internal Revenue Code because adverse conditions in a foreign country precluded the individual from meeting those requirements for taxable year 2005.

.02 This revenue procedure lists the country, for which the eligibility requirements of § 911(d)(1) are waived for taxable year 2005.

SECTION. 2 BACKGROUND

.01 Section 911(a) of the Code allows a “qualified individual,” as defined in § 911(d)(1), to exclude foreign earned income and housing cost amounts from gross income. Section 911(c)(3) of the Code allows a qualified individual to deduct housing

cost amounts from gross income.

.02 Section 911(d)(1) of the Code defines the term “qualified individual” as an individual whose tax home is in a foreign country and who is (A) a citizen of the United States and establishes to the satisfaction of the Secretary of the Treasury that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (B) a citizen or resident of the United States who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days.

.03 Section 911(d)(4) of the Code provides an exception to the eligibility requirements of § 911(d)(1). An individual will be treated as a qualified individual with respect to a period in which the individual was a bona fide resident of, or was present in, a foreign country, if the individual left the country during a period for which the Secretary of the Treasury, after consultation with the Secretary of State, determines that individuals were required to leave because of war, civil unrest, or similar adverse conditions that precluded the normal conduct of business. An individual must establish that but for those conditions the individual could reasonably have been expected to meet the eligibility requirements.

.04 For 2005, the Secretary of the Treasury, in consultation with the Secretary of State, has determined that war, civil unrest, or similar adverse conditions precluded the normal conduct of business in the following country beginning on the specified date:

Date of Departure

Country

On or after

Haiti

May 26, 2005

.05 Accordingly, for purposes of ' 911 of the Code, an individual who left Haiti on or after May 26, 2005, shall be treated as a qualified individual with respect to the period during which that individual was present in, or was a bona fide resident of, Haiti, if the individual establishes a reasonable expectation of meeting the requirements of ' 911(d) but for those conditions.

.06 To qualify for relief under ' 911(d)(4) of the Code, an individual must have established residency, or have been physically present, in the foreign country on or prior to the date that the Secretary of the Treasury determines that individuals were required to leave the foreign country. Individuals who establish residency, or are first physically present, in the foreign country after the date that the Secretary prescribes shall not be treated as qualified individuals under ' 911(d)(4) of the Code. Therefore, individuals who are first physically present or establish residency in Haiti after May 26, 2005, are not eligible to qualify for the exception provided in ' 911(d)(4) of the Code for taxable year 2005.

SECTION 3. INQUIRIES

A taxpayer who needs assistance on how to claim this exclusion, or on how to file an amended return, should contact a local IRS Office or, for a taxpayer residing or traveling outside the United States, the nearest overseas IRS office.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Kate Y. Hwa of the Office of Associate Chief Counsel (International). For further information regarding this revenue

procedure contact Kate Y. Hwa at (202) 622-3840 (not a toll free call).