

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2021-25, page 1118.

This notice provides guidance regarding the temporary 100-percent deduction for expenses that are paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. In particular, the notice explains when the temporary 100-percent deduction applies and when the 50-percent limitation continues to apply for purposes of § 274 of the Internal Revenue Code, as amended by § 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).

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Rev. Proc. 2021-21, page 1118.

Generally, U.S. citizens or resident aliens living and working abroad are taxed on their worldwide income. However, if their tax home is in a foreign country and they meet either the bona fide residence test or the physical presence test, they can choose to exclude from their income a limited amount of their foreign earned income (\$107,600 for 2020). Both the bona fide residence test and the physical presence test contain minimum time requirements. Revenue Procedure 2021-21 provides a waiver under section 911(d)(4) for the time requirements for individuals electing to exclude their foreign earned income who must leave a foreign country because of war, civil unrest, or similar adverse conditions in that country. Rev. Proc. 2021-21 adds Iraq to the list of waiver country for tax year 2020 for which the minimum time requirements are waived.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

Temporary 100-Percent Deduction for Business Meal Expenses

Notice 2021-25

I. PURPOSE

This notice provides guidance regarding the temporary 100-percent deduction for expenses that are paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. In particular, the notice explains when the temporary 100-percent deduction applies and when the 50-percent limitation continues to apply for purposes of § 274 of the Internal Revenue Code (Code), as amended by § 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).

II. BACKGROUND

Section 274 generally limits or disallows deductions for certain meal and entertainment expenses that otherwise would be allowable under chapter 1 of the Code (chapter 1). Section 274(a)(1) generally disallows deductions for expenses for entertainment, amusement, or recreation. Section 1.274-11 of the Income Tax Regulations provides that the disallowance under section 274(a)(1) does not apply to food or beverages provided at an entertainment activity if the food or beverages are separately purchased from the entertainment activity or the cost of the food or beverages is separately stated from the cost of the entertainment in an invoice, bill, or receipt. *See* § 1.274-11(b)(1)(ii).

Section 274(k) generally provides that no deduction is allowed under chapter 1 for the expense of any food or beverage unless: (1) such expense is not lavish or extravagant under the circumstances; and (2) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages. Section 274 provides additional rules that may apply to

the deduction of food or beverage expenses, depending on the circumstances.

Section 274(n)(1) provides that a deduction for any expense for food or beverages generally is limited to 50 percent of the amount otherwise deductible under chapter 1. Section 274(n)(2) provides exceptions to the 50-percent limitation of deductions for food or beverage expenses. Section 210(a) of the Act added § 274(n)(2)(D) to the Code, which provides a temporary exception to the 50-percent limitation for expenses for food or beverages provided by a restaurant. Section 274(n)(2)(D) applies to amounts paid or incurred after December 31, 2020, and before January 1, 2023. To provide certainty to taxpayers in determining whether § 274(n)(2)(D) applies, this notice explains when the temporary 100-percent deduction applies and when the 50-percent limitation continues to apply.

III. APPLICATION OF § 274(n)(2)(D)

Pursuant to § 274(n)(2)(D), the 50-percent limitation of § 274(n)(1) does not apply to the amount of any deduction otherwise allowable to a taxpayer under chapter 1 for any expense paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. For this purpose, the term “restaurant” means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business’s premises. However, a restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk. The 50-percent limitation of § 274(n)(1) continues to apply to the amount of any deduction otherwise allowable to the taxpayer under chapter 1 for any expense paid or incurred for food or beverages acquired from such a business (unless another exception in § 274(n)(2) applies to such expense).

In addition, an employer may not treat as a restaurant for purposes of § 274(n)(2)(D), (1) any eating facility located on

the business premises of the employer and used in furnishing meals excluded from an employee’s gross income under § 119, or (2) any employer-operated eating facility treated as a de minimis fringe under § 132(e)(2), even if such eating facility is operated by a third party under contract with the employer as described in § 1.132-7(a)(3).

IV. EFFECTIVE DATE

This notice is effective for amounts paid or incurred after December 31, 2020, and before January 1, 2023.

V. DRAFTING INFORMATION

The principal author of this notice is Deena Devereux of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Devereux at (202) 317-4602 or Patrick Clinton at (202) 317-4651 (not toll-free numbers).

26 CFR 1.911-2: Qualified Individuals (Also: Part I, §§911; 1.911-2.)

Rev. Proc. 2021-21

SECTION 1. PURPOSE

This revenue procedure provides information to any individual who failed to meet the eligibility requirements of section 911(d)(1) of the Internal Revenue Code (Code) for 2020 because adverse conditions in a foreign country precluded the individual from meeting those requirements.

SECTION 2. BACKGROUND

.01 Section 911 allows a “qualified individual,” as defined in section 911(d)(1), to elect to exclude from gross income the foreign earned income and to exclude or deduct the housing cost amount of such individual.

.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 In addition, section 911(d)(4) of the Code provides that 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 The Internal Revenue Service previously has listed countries for which the eligibility requirements of section 911(d)(1) of the Code are waived under section 911(d)(4) because of adverse conditions in those countries. See Rev. Proc. 2020-14, 2020-16 I.R.B. 661. In addition to this revenue procedure, for 2020, the Secretary of the Treasury, in consultation with the Secretary of State, determined that the global health emergency caused by the

COVID-19 virus is an adverse condition that precludes the normal conduct of business, and certain relief was provided, as described in Rev. Proc. 2020-27, 2020-20 I.R.B. 803.

SECTION 3. APPLICATION

.01 For 2020, 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:

<i>Country</i>	<i>Date of Departure On or After</i>
Iraq	March 25, 2020

For example, for purposes of section 911 of the Code, an individual who left Iraq on or after March 25, 2020, will 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, Iraq if the individual establishes a reasonable expectation that he or she would have met the requirements of section 911(d) but for those conditions.

.02 To qualify for relief under section 911(d)(4) of the Code, an individual must have established residency, or have been physically present, in the foreign country on or before the date that the Secretary of the Treasury determines that individuals were required to leave the foreign country. For example, individuals who were first

physically present or established residency in Iraq after March 25, 2020, are not eligible to qualify for the exception provided in section 911(d)(4) of the Code for 2020.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Previously issued revenue procedures under section 911(d)(4) remain in full force and effect. However, Rev. Proc. 2020-14, 2020-16 I.R.B. 661, and Rev. Proc. 2020-2027, 2020-20 I.R.B. 803, are supplemented.

SECTION 5. INQUIRIES

A taxpayer who needs assistance on how to claim this exclusion, or on how to file an amended return, should consult the section under the heading **Foreign Earned Income Exclusion** at <https://www.irs.gov/individuals/international-taxpayers/us-citizens-and-resident-aliens-abroad>; consult the section under the heading **How to Get Tax Help** at the same web address; or contact a local IRS office.

SECTION 6. 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 Ms. Hwa on (202) 317-5001 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2021-17

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020-27 through 2020-52 is in Internal Revenue Bulletin 2020-52, dated December 27, 2020.

Internal Revenue Service

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.