



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CHIEF COUNSEL

June 26, 2002

Number: **INFO 2002-0129**
Release Date: 9/30/2002
UIL: 911.00-00

CC:INTL:BR2
GENIN-129420-02



Dear [REDACTED]:

This is in reply to an undated Taxpayer Advocate Assistance Request asking us to provide information to you regarding your late filed section 911 elections for your 1998 and 1999 tax years.

For your information, 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 an income tax return or with an amended return. Treas. Reg. § 1.911-7(a)(1) provides, in part, that an election once made remains in effect for that year and all subsequent years unless revoked under paragraph (b) of this section.

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 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 -

(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

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(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.

Under Treas. Reg. § 1.911-7(a)(2)(i)(D)(1) and (2), the validity of a taxpayer's section 911 election on a Form 2555 with respect to a late filed income tax return depends, in part, on whether the taxpayer owes federal income tax after taking into account the exclusion. The phrase "owes no federal income tax" under Treas. Reg. § 1.911-7(a)(2)(i)(D) means a taxpayer's federal income tax liability after any payments, such as withholding tax, estimated tax, tax credits, and etc. have been applied to offset any federal income tax liability. Thus, if a taxpayer has a refund or no balance due, the taxpayer "owes no federal income tax" under Treas. Reg. § 1.911-7(a)(2)(i)(D)(1) and (2).

In addition, section 911(d)(6) provides a denial of double benefits and states that:

No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

Accordingly, the foreign tax credit is disallowed to the extent foreign taxes are allocable to income excluded under section 911.

The amount of disallowed foreign taxes is determined pursuant to Treas. Reg. § 1.911-6(c)(1) which states:

To determine the amount of disallowed foreign taxes, multiply the foreign tax imposed on foreign earned income (as defined in § 1.911-3(a)) received or accrued during the taxable year by a fraction, the numerator of which is amounts excluded under section 911(a) in such taxable year less deductible expenses properly allocated to such amounts (see paragraphs (a) and (b) of this section), and the denominator of which is foreign earned income (as defined in § 1.911-3(a)) received or accrued during the taxable year less deductible expenses properly allocated or apportioned thereto.

This letter provides general information only that we hope will be helpful in resolving the issues raised in your return. Pursuant to your power of attorney, a copy of

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this letter is being sent to your authorized representative. Please call at
(202) 622-3840 with any questions.

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