



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

CHIEF COUNSEL

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CC:INTL:BR2  
GENIN-131172-02



Dear [REDACTED]:

This letter responds to your letter received by our office on June 5, 2002. The Philadelphia Campus sent you a letter dated April 26, 2002. The letter states that the IRS has disallowed your tax claim for the year [REDACTED] because your section 911 election on Form 2555 was untimely. The letter also states that you may request a Private Letter Ruling from the Office of the Associate Chief Counsel (International) asking for relief from the timely filed requirements. Hence, you sent a letter to the Office of the Associate Chief Counsel (International) requesting such relief.

Generally, consideration of the relief from the timely filed requirements for a section 911 election requires a private letter ruling request. Your request does not include the necessary information or the user fee required to issue a ruling. However, after a review of your letter, we are providing the following general information.

Section 911(a) of the Code allows qualified citizens or residents of the United States living abroad to elect to exclude from gross income the foreign earned income and housing cost amounts of such individuals. 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 the income tax return or with an amended return. 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

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(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

(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.

You made the section 911 election for year █████ in 2001, after the periods described in Treas. Reg. §§ 1.911-7(a)(2)(i)(A), (B), and (C). Accordingly, in your situation, Treas. Reg. § 1.911-7(a)(2)(i)(D) is the appropriate regulation that the Philadelphia Campus should use to determine whether you have made a valid section 911 election.

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)(1) 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).

You had no credits and no payments, as indicated on lines 43 and 58, respectively, of your █████ return. In addition, even if your foreign earned income for that year is excludable under section 911, it must be taken into account on line 7 of your federal income tax return. This means that even if your foreign earned income was excludable, you would still owe tax on the other income listed on lines 8a, 9, and 13 of your █████ return. Therefore, in your situation, your election must be examined in accordance with Treas. Reg. § 1.911-7(a)(2)(i)(D)(2).

In the event that you do not satisfy Treas. Reg. § 1.911-7(a)(2)(i)(D)(2), you may request relief through the private letter ruling process under Treas. Reg. § 301.9100-3 for an extension of time to make a late section 911 election. To request relief under Treas. Reg. § 301.9100-3, you must comply with the administrative procedures set forth in Rev. Proc. 2002-1, I.R.B. 1 (January 7, 2002) (attached). Generally, your ruling request must

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contain the following:

1. A complete statement of facts and other information
2. A statement of supporting authorities
3. A statement identifying information to be deleted from a copy of the letter ruling for public inspection
4. Penalties of perjury statement
5. User fee (see section 15 and Appendix A of Rev. Proc. 2002-1 for the fee schedule)

Furthermore, please review the criteria under Treas. Reg. § 301.9100-3 and provide evidence to establish that you acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Internal Revenue Service.

Please call \_\_\_\_\_ at (202) 622-3840 with any questions.

Sincerely,  
PHYLLIS E. MARCUS  
Chief, Branch 2  
Associate Chief Counsel  
(International)

Enclosures: Rev. Proc. 2002-1  
Treas. Reg. § 301.9100-3