

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-112275-02
Date:
February 12, 2003

LEGEND

Taxpayer =

Tax Years at Issue =

Individual A =

Dear :

This replies to your letter dated December 28, 2001, requesting that Taxpayer be granted an extension of time under Treas. Reg. § 301.9100-3 to elect the foreign earned income exclusion for the tax years at issue. Additional information was submitted in letters dated April 3, 2002, April 30, 2002, and September 30, 2002. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by Taxpayer. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

The affidavit of the Taxpayer and the documentation submitted indicate that Taxpayer engaged Individual A, a CPA, to file Forms 1040 for the tax years at issue and claim the foreign earned income exclusion for each year. However, for various reasons this was not done.

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Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 1.911-7(a)(2) provides the rules to make a valid election of the foreign earned income exclusion. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to elect the foreign earned income exclusion for the tax years at issue.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the elections. § 301.9100 -1(a).

A copy of this ruling letter should be associated with the income tax returns for the tax years at issue.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented, including the effect on interest and penalties attributable to the late filing of Forms 1040 for the tax years at issue.

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This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)