

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br1-PLR-168956-02

Date:

February 24, 2003

TY:

A =

Date B =

Country C =

Year 1 =

Year 2 =

Dear :

This is in response to a letter dated August 1, 2002, requesting a ruling concerning A's loss of lawful permanent resident status (expatriation) and the extent to which gain resulting from the sale of A's U.S. residence may be excluded. Additional information was submitted in letters dated November 14, 2002, and January 20 and January 22, 2003. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

STATEMENT OF FACTS

A was born on Date B in Country C. A came to the United States in Year 1 and obtained a green card in the same year. A is a citizen of Country C where she now lives. A will relinquish her green card upon the receipt of this ruling. A will be subject to Country C tax on her worldwide income. On the date of A's expatriation, her net worth will exceed the applicable amount set forth in I.R.C. § 877(a)(2).

A and her husband purchased a home in Year 1 and lived in it with their family until Year 2 when it was sold. Gain from the sale was less than \$500,000. A and her husband filed a joint return for Year 2 and excluded the gain from the sale from their gross income. Neither A nor his wife excluded gain from the sale or exchange of property under section 121 within the two years preceding the year of the sale.

RULINGS REQUESTED

1. A's loss of permanent resident status (expatriation) will not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code.
2. A and her husband properly excluded from gross income the gain they realized on the sale of their U.S. residence in Year 2.

STATEMENT OF LAW AND ANALYSIS

Ruling One

Section 877 generally provides that a citizen who loses U.S. citizenship or a U.S. long-term resident who ceases to be taxed as a lawful permanent resident (individuals who "expatriate") within the 10-year period immediately preceding the close of the taxable year will be subject to the special rules of section 877(d) for such taxable year, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Sections 2107 and 2501(a)(3) provide special estate and gift tax regimes, respectively, for individuals who expatriate with a principal purpose to avoid U.S. taxes.

A former U.S. citizen or former U.S. long-term resident will be treated as having expatriated with a principal purpose to avoid U.S. taxes for purposes of sections 877, 2107 and 2501(a)(3) if the individual's average income tax liability or the individual's net worth on the date of expatriation exceed certain thresholds. See sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B).

A former U.S. citizen whose net worth or average tax liability exceeds these thresholds, however, will not be presumed to have a principal purpose of tax avoidance if that former citizen is described within certain statutory categories and submits a

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request for a ruling within one year of the date of loss of U.S. citizenship for the Secretary's determination as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes. See sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C).

Under Notice 98-34, 1998-2 C.B. 29, modifying Notice 97-19, 1997-1 C.B. 394, a former long-term resident whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance if that former resident is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes.

Notice 98-34 requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes.

A is eligible to request a ruling pursuant to Notice 98-34 because she is a citizen and resident, fully subject to tax in Country C, the country in which she was born.

A submitted all of the information required to be submitted by Notice 97-19, as modified by Notice 98-34, including additional information requested by the Service after review of the submission.

Accordingly, based solely on the facts submitted and the representations made, we conclude that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 98-34. Therefore provided A expatriates within one year of the date of this letter, A will not be presumed under section 877(a)(2) to have as one of her principal purposes for expatriating the avoidance of U.S. taxes. We further conclude that provided A expatriates within one year of the date of this letter, A will not be treated under section 877(a)(2) as having as one of her principal purposes for expatriating the avoidance of U.S. taxes because the information submitted clearly establishes the lack of a principal purpose to avoid taxes under subtitle A or B of the Code.

Ruling Two

Section 121(a) provides generally that gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

Section 121 provides that the maximum exclusion available to a husband and wife is \$500,000. A married couple is entitled to exclude up to that amount only if several conditions are met: (1) the spouses file a joint return for the year of the sale or exchange; (2) either spouse meets the 2-year ownership requirements; (3) both

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spouses meet the 2-year use requirements; and (4) neither spouse excluded gain from a prior sale or exchange of property under section 121 within the last 2 years. Section 121(b)(2); section 1.121-2(a)(3)(i) of the Income Tax Regulations.

Section 121(e) provides that no exclusion of gain on the sale or exchange of a principal residence is available if the treatment provided by section 877(a)(1) applies to the individual.

We conclude that A and her husband satisfied all of the relevant requirements of section 121 and properly excluded the gain from the sale of their home in Year 2.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed as to A's U.S. tax liability for the taxable years prior to or after her expatriation under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, a copy of this letter will be sent to A.

Sincerely,

W. Edward Williams
Senior Technical Reviewer
CC:INTL:Br1

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