



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

OFFICE OF  
CHIEF COUNSEL

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CONEX-133039-05

Dear :

I am responding to your letter dated June 3, 2005, to \_\_\_\_\_, IRS government liaison analyst in \_\_\_\_\_, on behalf of your constituent, \_\_\_\_\_ You asked for additional information about section 911 of the Internal Revenue Code (the Code). Specifically, you asked:

- 1) Do U.S. citizens living or working abroad have to pay federal income taxes on any of the income above the excluded amount of \$80,000 under section 911 of the Code?
- 2) What is the rationale for not allowing federal government civilian employees working abroad to be eligible for the section 911 foreign earned income exclusion?
- 3) Are appropriated fund government employees eligible for section 911 benefits?

**1) Do U.S. citizens living or working abroad have to pay federal income taxes on any of the income above the excluded amount of \$80,000 under section 911 of the Code?**

Section 911 of the Code allows an exclusion of up to \$80,000 from gross income for foreign earned income of a qualified individual. Foreign earned income is defined under section 911(b)(1)(A) of the Code as the amount received by a qualified individual from sources within a foreign country which constitutes earned income attributable to services performed by such individual. Section 911(d)(2)(A) of the Code defines the term "earned income" to mean wages, salaries, or professional fees and other amounts received as compensation for personal services actually rendered. Any amount of foreign earned income received by a qualified individual over \$80,000 is included in gross income and subject to U.S. taxation.

## **2) What is the rationale for not allowing federal government civilian employees working abroad to be eligible for the section 911 foreign earned income exclusion?**

The ineligibility of I.R.C. section 911 benefits for government employees is statutory. Specifically, I.R.C. section 911(b)(1)(B)(ii) excludes from the definition of foreign earned income amounts paid by the United States or an agency thereof to an employee of the United States or an agency thereof. Congress enacted a foreign earned income exclusion in 1926. Since that time, the original provision has been modified a number of times. In 1932, U.S. government employees were excepted from claiming the foreign earned income exclusion.

Generally, U.S. citizens and residents are taxed by the U.S. on their worldwide income. Concerned with increasing competitive pressures that American businesses faced abroad, Congress enacted the foreign earned income exclusion to encourage Americans to work abroad by alleviating the tax burden of those individuals, who generally were being taxed by both the United States and the foreign jurisdiction. Thus, the stated purpose of the foreign earned income exclusion was to equate the tax burden of U.S. citizens or residents working abroad with that of U.S. citizens or residents working at home. 67 CONG. REC. 796 (remarks by Sen. Smoot); see Note, Section 911 Tax Reform, 54 MINN. L. REV. 823, 826-27 (1970).

Thereafter, Congress realized that through tax treaties and other international agreements, U.S. government employees usually were exempt from any foreign taxation of their foreign earned income. Because of the virtually complete exemption of these individuals from U.S. and foreign income tax after applying the foreign earned income exclusion, Congress eliminated the exclusion for any individuals "paid by the United States or any agency thereof" in 1932. See S. REP. NO. NO. 665, 72d Cong., 1<sup>st</sup> Sess. 31 (1932), *reprinted in* 1939-1 (vol. 2) C.B. 496, 518. This exception was limited to U.S. government employees paid by the United States or an agency thereof in 1981.

## **3) Are appropriated fund government employees eligible for section 911 benefits?**

All U.S. government employees are ineligible to claim the benefits under section 911 of the Code. At one point, there was an issue about whether U.S. government employees who were paid from non-appropriated funds were paid by the United States. That issue has been resolved. U.S. government employees paid from non-appropriated funds are considered paid by the United States. There was never an issue about whether government employees paid out of appropriated funds were paid by the United States. That is how most government employees are paid. Your constituent is a government employee paid from government appropriated funds. Those individuals have always been paid by the United States and are ineligible to claim the section 911 benefits.

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If you have any additional questions, please contact me or  
at .

Sincerely,

Phyllis E. Marcus  
Branch Chief  
Office of the Associate Chief Counsel (INTL)