

26 CFR 1.911-7

§ 1.911-7 Procedural rules.

(a) Elections of a qualified individual -- (1) In general. In order to receive either exclusion provided by section 911(a) [26 USCS § 911(a)], a qualified individual must elect, separately with respect to each exclusion, to exclude foreign earned income under section 911(a)(1) [26 USCS § 911(a)(1)] and the housing cost amount under section 911(a)(2) [26 USCS § 911(a)(2)]. Any such elections may be made on Form 2555 or on a comparable form. Each election must be filed either with the income tax return, or with an amended return, for the first taxable year of the individual for which the election is to be effective. An election once made remains in effect for that year and all subsequent years unless revoked under paragraph (b) of this section. Each election shall contain information sufficient to determine whether the individual is a qualified individual as provided in § 1.911-2. The statement shall include the following information:

- (i) The individual's name, address, and social security number;
- (ii) The name of the individual's employer;
- (iii) Whether the individual claimed exclusions under section 911 [26 USCS § 911] for earlier years after 1981 and within the five preceding taxable years;
- (iv) Whether the individual has revoked a previously made election and the taxable year for which such revocation was effective;
- (v) The exclusion or exclusions the individual is electing;
- (vi) The foreign country or countries in which the individual's tax home is located and the date when such tax home was established;
- (vii) The status (either bona fide residence or physical presence) under which the individual claims the exclusion;
- (viii) The individual's qualifying period of residence or presence;
- (ix) The individual's foreign earned income for the taxable year including the fair market value of all noncash remuneration; and,
- (x) If the individual elects to exclude the housing cost amount, the individual's housing expenses.

(2) **Requirement of a return** -- (i) In general. In order to make a valid election under this paragraph (a), the 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) [26 USCS § 6511(a)] amending the foregoing timely filed income tax return,**
- (C) **With an original income tax return that is filed within one year after the due date of the return (determined without regard to any extension of time to file); this one year period does not constitute an extension of time for any purpose -- it is merely a period during which a valid election may be made on a late return, 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

(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.

(3) A taxpayer filing an income tax return pursuant to paragraph (a)(2)(i)(D)(1) or (2) of this section must type or legibly print the following statement at the top of the first page of the Form 1040: "Filed Pursuant to Section 1.911-7(a)(2)(i)(D)."

(ii) Election for 1982 and 1983 taxable years. Solely for purposes of paragraph (a)(2)(i)(A) of this section, an income tax return for any taxable year beginning before January 1, 1984 shall be considered timely filed if it is filed on or before July 23, 1985.

(3) Housing cost amount deduction. An individual does not have to make an election in order to claim the housing cost amount deduction. However, such individual must provide the Commissioner with information sufficient to determine the individual's correct amount of tax. Such information shall include the following: The individual's name, address, and social security number; the name of the individual's employer; the foreign country in which the individual's tax home was established; the status under which the individual claims the deduction; the individual's qualifying period of residence or presence; the individual's foreign earned income for the taxable year; and the individual's housing expenses.

(4) Effect of immaterial error or omission. An inadvertent error or omission of information required to be provided to make an election under this paragraph (a) shall not render the election invalid if the error or omission is not material in determining whether the individual is a qualified individual or whether the individual intends to make the election.

(b) Revocation of election -- (1) In general. An individual may revoke any election made under paragraph (a) of this section for any taxable year. A revocation must be made separately with respect to each election. The individual may revoke an election for any taxable year, including the first taxable year for which an election was effective, by filing a statement that the individual is revoking one or more of the previously made elections. The statement must be filed with the income tax return, or with an amended return, for the first taxable year of the individual for which the revocation is to be effective. A revocation once made is effective for that year and all subsequent years. If an election is revoked for any taxable year, including the first taxable year for which the election was effective, the individual may not, without the consent of the Commissioner, again make the same election until the sixth taxable year following the taxable year for which the revocation was first effective. For example, a qualified individual makes an election to exclude foreign earned income under section 911(a)(1) [26 USCS § 911(a)(1)] and files it with his 1982 income tax return. The individual files 1983 and 1984 income tax returns on which he excludes his foreign earned income. Then, within 3 years after filing his 1982 income tax return, the individual files an amended 1982 income tax return with a statement revoking his election to exclude foreign earned income under section 911(a)(1) [26 USCS § 911(a)(1)]. The revocation of the election is effective for taxable years 1982, 1983, and 1984. The individual may not elect to exclude income under section 911(a)(1) [26 USCS § 911(a)(1)] for any taxable year before 1988, unless he obtains consent to reelect under paragraph (b)(2) of this section.

(2) Reelection before sixth taxable year after revocation. If an individual revoked an election under paragraph (b)(1) of this section and within five taxable years the individual wishes to reelect the same exclusion, then the individual may apply for consent to the reelection. The application for consent shall be made by requesting a ruling from the Associate Chief Counsel (Technical), National Office, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. In

determining whether to consent to reelection the Associate Chief Counsel or his delegate shall consider any facts and circumstances that may be relevant to the determination. Relevant facts and circumstances may include the following: a period of United States residence, a move from one foreign country to another foreign country with differing tax rates, a substantial change in the tax laws of the foreign country of residence or physical presence, and a change of employer.

(c) Returns and extensions -- (1) In general. Any return filed before completion of the period necessary to qualify an individual for any exclusion or deduction provided by section 911 [26 USCS § 911] shall be filed without regard to any exclusion or deduction provided by that section. A claim for a credit or refund of any overpayment of tax may be filed, however, if the taxpayer subsequently qualifies for any exclusion or deduction under section 911 [26 USCS § 911]. See section 6012(c) [26 USCS § 6012(c)] and § 1.6012-1(a)(3), relating to returns to be filed and information to be furnished by individuals who qualify for any exclusion or deduction under section 911 [26 USCS § 911].

(2) Extensions. An individual desiring an extension of time (in addition to the automatic extension of time granted by § 1.6081-4) for filing a return until after the completion of the qualifying period described in paragraph (c)(1) of this section for claiming any exclusion or deduction under section 911 [26 USCS § 911] may apply for an extension. An individual whose moving expense deduction is attributable to services performed in two years may apply for an extension of time for filing a return until after the end of the second year. The individual may make such application on Form 2350, "Application for Extension of Time to File U.S. Income Tax Return" or in any other manner prescribed by the Commissioner. The application must be filed in accordance with the instructions to the form or as prescribed by the Commissioner. The application must set forth the facts relied on to justify the extension of time requested and must include a statement as to the earliest date the individual expects to become entitled to any exclusion or deduction by reason of completion of the qualifying period.

(d) Declaration of estimated tax. In estimating gross income for the purpose of determining whether a declaration of estimated tax must be made for any taxable year, an individual is not required to take into account income which the individual reasonably believes will be excluded from gross income under the provisions of section 911 [26 USCS § 911]. In computing estimated tax, however, the individual must take into account, among other things, the denial of the foreign tax credit for foreign taxes allocable to the excluded income (see § 1.911-6(c)).

(e) Effective/applicability date. This section applies to applications for extension of time to file returns filed after July 1, 2008.

HISTORY: [T.D. 8006, 50 FR 2976, Jan. 23, 1985; T.D. 8480, 58 FR 34885, June 30, 1993; 73 FR 37362, 37365, July 1, 2008, T.D. 9407]

AUTHORITY: (Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

NOTES: Section 1.911-7 also issued under 26 U.S.C. 911(d)(9).

[EFFECTIVE DATE NOTE: 73 FR 37362, 37365, July 1, 2008, amended this section, effective July 1, 2008.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

EDITORIAL NOTE: IRS published a document at 45 FR 6088, Jan. 25, 1980, deleting statutory sections from their regulations. In Chapter I, cross references to the deleted material have been changed to the corresponding sections of the IRS Code of 1954 or to the appropriate regulations

sections. When either such change produced a redundancy, the cross reference has been deleted. For further explanation, see *45 FR 20795*, March 31, 1980.

[The OMB control numbers for title 26 appear in §§ 601.9000 and 602.101 of this chapter.]

NOTES APPLICABLE TO ENTIRE SUBCHAPTER:

Supplementary Publications: Internal Revenue Service Looseleaf Regulations System, Alcohol and Tobacco Tax Regulations, and Regulations Under Tax Conventions.

EDITORIAL NOTE: Treasury Decision 6091, *19 FR 5167*, Aug. 17, 1954, provides in part as follows:

PARAGRAPH 1. All regulations (including all Treasury decisions) prescribed by, or under authority duly delegated by, the Secretary of the Treasury, or jointly by the Secretary and the Commissioner of Internal Revenue, or by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or jointly by the Commissioner of Internal Revenue and the Commissioner of Customs or the Commissioner of Narcotics with the approval of the Secretary of the Treasury, applicable under any provision of law in effect on the date of enactment of the Code, to the extent such provision of law is repealed by the Code, are hereby prescribed under and made applicable to the provisions of the Code corresponding to the provision of law so repealed insofar as any such regulation is not inconsistent with the Code. Such regulations shall become effective as regulations under the various provisions of the Code as of the dates the corresponding provisions of law are repealed by the Code, until superseded by regulations issued under the Code.

PAR. 2. With respect to any provision of the Code which depends for its application upon the promulgation of regulations or which is to be applied in such manner as may be prescribed by regulations, all instructions or rules in effect immediately prior to the enactment of the Code, to the extent such instructions or rules could be prescribed as regulations under authority of such provision of the Code, shall be applied as regulations under such provision insofar as such instructions or rules are not inconsistent with the Code. Such instructions or rules shall be applied as regulations under the applicable provision of the Code as of the date such provision takes effect.

PAR. 3. If any election made or other act done pursuant to any provision of the Internal Revenue Code of 1939 or prior internal revenue laws would (except for the enactment of the Code) be effective for any period subsequent to such enactment, and if corresponding provisions are contained in the Code, such election or other act shall be given the same effect under the corresponding provisions of the Code to the extent not inconsistent therewith. The term "act" includes, but is not limited to, an allocation, identification, declaration, agreement, option, waiver, relinquishment, or renunciation.

PAR. 4. The limits of the various internal revenue districts have not been changed by the enactment of the Code. Furthermore, delegations of authority made pursuant to the provisions of Reorganization Plan No. 26 of 1950 and Reorganization Plan No. 1 of 1952 (as well as redelegation thereunder), including those governing the authority of the Commissioner of Internal Revenue, the Regional Commissioners of Internal Revenue, or the District Directors of Internal Revenue, are applicable to the provisions of the Code to the extent consistent therewith.

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