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6 U.S. Code § 911 - Citizens or residents of the United States living abroad

U.S. Code Notes

(a) Exclusion from gross income
At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign earned income

(1) Definition
For purposes of this section—

(A) In general
The term "foreign earned income" with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income
The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income

(A) In general
The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate equal to the exclusion amount for the calendar year in which such taxable year begins.

(B) Attribution to year in which services are performed
For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income
In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(D) Exclusion amount

(i) In general
The exclusion amount for any calendar year is $80,000.

(ii) Inflation adjustment
In the case of any taxable year beginning in a calendar year after 2005, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "2004" for "2016" in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.

(c) Housing cost amount
For purposes of this section—

(1) In general
The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under paragraph (2), over

(B) an amount equal to the product of—

(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Limitation

(A) In general
The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations
The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.

(3) Housing expenses

(A) In general
The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household

(i) In general
Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) Separate household for spouse and dependents
If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—
(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(4) Special rules where housing expenses not provided by employer

(A) In general
To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) Limitation
For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-year carryover of housing amounts not allowed by reason of subparagraph (B)

(i) In general
The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) Limitation
For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) Employer provided amounts
For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) Foreign earned income
For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) Definitions and special rules
For purposes of this section—

(1) Qualified individual
The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) Earned income

(A) In general
The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) Taxpayer engaged in trade or business
In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) Tax home
The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States, unless such individual is serving in an area designated by the President of the United States by Executive order as a combat zone for purposes of section 112 in support of the Armed Forces of the United States.

(4) Waiver of period of stay in foreign country
Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A), (c)(1)(B)(ii), and (c)(2)(A)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence
If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,
then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits
No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income
The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(4)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country

(A) In general

If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term "foreign earned income" shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term "housing expenses" shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) Regulations
For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. 4301 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception
Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) Regulations
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election

(1) In general
An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) Revocation
A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any

taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Determination of tax liability

(1) In general

If, for any taxable year, any amount is excluded from gross income of a taxpayer under subsection (a), then, notwithstanding sections 1 and 55—

(A) if such taxpayer has taxable income for such taxable year, the tax imposed by section 1 for such taxable year shall be equal to the excess (if any) of—

(i) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for such taxable year, and

(B) if such taxpayer has a taxable excess (as defined in section 55(b)(1)(B)) for such taxable year, the amount determined under the first sentence of section 55(b)(1)(A) for such taxable year shall be equal to the excess (if any) of—

(i) the amount which would be determined under such sentence for such taxable year (subject to the limitation of section 55(b)(3)) if the taxpayer's taxable excess (as so defined) were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the amount which would be determined under such sentence for such taxable year if the taxpayer's taxable excess (as so defined) were equal to the amount excluded under subsection (a) for such taxable year.

For purposes of this paragraph, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.

(2) Special rules

(A) Regular tax

In applying section 1(h) for purposes of determining the tax under paragraph (1)(A)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds taxable income (hereafter in this subparagraph referred to as the capital gain excess)—

(i) the taxpayer's net capital gain (determined without regard to section 1(h)(11)) shall be reduced (but not below zero) by such capital gain excess,

(ii) the taxpayer's qualified dividend income shall be reduced by so much of such capital gain excess as exceeds the taxpayer's net capital gain (determined without regard to section 1(h)(11) and the reduction under clause (i)), and

(iii) adjusted net capital gain, unrecaptured section 1250 gain, and 28-percent rate gain shall each be determined after increasing the amount described in section 1(h)(4)(B) by such capital gain excess.

(B) Alternative minimum tax
In applying section 55(b)(3) for purposes of determining the tax under paragraph (1)(B)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds the taxable excess (as defined in section 55(b)(1)(B))—

(i) the rules of subparagraph (A) shall apply, except that such subparagraph shall be applied by substituting "the taxable excess (as defined in section 55(b)(1)(B))" for "taxable income", and

(ii) the reference in section 55(b)(3)(B) to the excess described in section 1(h)(1)(B), and the reference in section 55(b)(3)(C)(ii) to the excess described in section 1(h)(1)(C)(ii), shall each be treated as a reference to each such excess as determined under the rules of subparagraph (A) for purposes of determining the tax under paragraph (1)(A)(i).

(C) Definitions
Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h), except that in applying subparagraph (B) the adjustments under part VI of subchapter A shall be taken into account.

(g) Cross references
For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Pub. L. 85–866, title I, § 72(b), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–834, § 11(a), Oct. 16, 1962, 76 Stat. 1003; Pub. L. 88–272, title II, § 237(a), Feb. 26, 1964, 78 Stat. 128; Pub. L. 89–809, title I, § 105(e)(3), Nov. 13, 1966, 80 Stat. 1567; Pub. L. 94–455, title X, § 1011(a), (b), title XIX, §§ 1901(a)(115), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1610, 1784, 1834; Pub. L. 95–30, title I, § 102(b)(12), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, § 401(b)(4), title VII, §§ 701(u)(10)(A), 703(e), Nov. 6, 1978, 92 Stat. 2867, 2917, 2939; Pub. L. 95–615, title II, § 202(a)–(e), (g)(1), formerly § 202(a)–(f)(1), Nov. 8, 1978, 92 Stat. 3098–3100, renumbered § 202(a)–(e), (g)(1), and amended Pub. L. 96–222, title I, §§ 107(a)(3)(B), 108(a)(1)(A), (C), (D), Apr. 1, 1980, 94 Stat. 223, 224; Pub. L. 96–595, § 4(a)–(c)(1), Dec. 24, 1980, 94 Stat. 3466, 3467; Pub. L. 97–34, title I, § 111(a), Aug. 13, 1981, 95 Stat. 190; Pub. L. 97–448, title I, § 101(c), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title I, § 17, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title XII, § 1233(a), (b), Oct. 22, 1986, 100 Stat. 2564; Pub. L. 105–34, title XI, § 1172(a), Aug. 5, 1997, 111 Stat. 988; Pub. L. 109–222, title V, § 515(a)–(c), May 17, 2006, 120 Stat. 367; Pub. L. 110–172, § 4(c), Dec. 29, 2007, 121 Stat. 2476; Pub. L. 113–295, div. A, title II, §§ 202(b), 215(a), 221(a)(73), Dec. 19, 2014, 128 Stat. 4024, 4034, 4049; Pub. L. 115–97, title I, §§ 11002(d)(9), 12001(b)(3)(E), Dec. 22,

2017, 131 Stat. 2062, 2093; Pub. L. 115–123, div. D, title II, § 41116(a), Feb. 9, 2018, 132 Stat. 161; Pub. L. 115–141, div. U, title IV, § 401(a)(160), Mar. 23, 2018, 132 Stat. 1191.)