

## Part III - Administrative, Procedural, and Miscellaneous

### Form 8854 and Expatriation Reporting Rules

Notice 2005-36

#### PURPOSE

Form 8854, Initial and Annual Expatriation Information Statement, has been revised to reflect the substantial revisions made to the individual expatriation provisions of sections 877 and 6039G of the Internal Revenue Code ("Code") and the enactment of new section 7701(n) by section 804 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418, 1602 (the Act). Revised Form 8854 is required to be filed by every individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004. The purpose of this notice is to provide guidance with respect to the filing of the revised Form 8854 by such former citizens and long-term residents.

#### BACKGROUND

The Act made substantial changes to the tax and information reporting rules (and associated penalties) that apply to U.S. citizens and long-term residents, as defined in section 877(e), who lose their citizenship or terminate their long-term resident status after June 3, 2004. As a result of changes made by the Act, section 877 generally applies, without regard to tax motivation, to any former U.S. citizen or long-term resident: (i) whose net worth as of the date of loss of citizenship or termination of long-

term resident status equals or exceeds \$2,000,000, (ii) whose average annual net income tax liability for the five preceding taxable years exceeds \$124,000 (as adjusted annually for inflation), or (iii) who fails to certify under penalty of perjury that all of his or her federal tax obligations for the five preceding taxable years have been met.

New rules also apply to former U.S. citizens or long-term residents who are subject to the rules of section 877(a) and who return to the United States during the 10-year period described in section 877(a). Subject to a limited exception for work in the United States for an unrelated employer, section 877(g) provides that a former U.S. citizen or long-term resident will be treated for federal tax purposes as a citizen or resident of the United States, as the case may be, for the taxable year in which the individual is physically present in the United States more than 30 days during the taxable year.

Pursuant to section 7701(n), an individual who loses U.S. citizenship or terminates long-term resident status will continue to be treated for federal tax purposes as a citizen or long-term resident of the United States, as the case may be, until the individual (i) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate such status) to the Department of State or the Department of Homeland Security and (ii) provides a statement to the IRS in accordance with the revised requirements of section 6039G (“initial expatriation information statement”). Until such an individual complies with the notification and information reporting requirements of section 7701(n), the individual will continue to be treated as a citizen or long-term resident of the United States for federal tax purposes

regardless of the individual's status under U.S. immigration law.

Section 6039G also requires annual information reporting for each taxable year during which an individual is subject to the rules of section 877(a). The annual information statement, which requires detailed income, asset and liability information, is due on the date that the individual's U.S. income tax return for the taxable year is due or would be due if such a return were required to be filed.

#### REVISED FORM 8854

Form 8854 has been revised so that individuals may comply with the new information reporting requirements in sections 7701(n) and 6039G. In particular, Form 8854 has been expanded so that it functions as both the initial expatriation information statement for purposes of section 7701(n) and as the annual expatriation information statement under section 6039G. Revised Form 8854 and its instructions also address how individuals should certify (in accordance with section 877(a)(2)(C)) that they have met their federal tax obligations for the five preceding taxable years and what constitutes notification to the Department of State or the Department of Homeland Security for purposes of section 7701(n).

#### SPECIAL RULES FOR INDIVIDUALS FILING FORM 8854 BEFORE JUNE 15, 2005

The revised Form 8854 provides a procedure for individuals who lost U.S. citizenship or terminated long-term resident status after June 3, 2004, (i) to certify that they have satisfied their federal tax obligations within the meaning of section 877(a)(2)(C), (ii) to notify, in accordance with section 7701(n), the Department of State or the Department of Homeland Security of their expatriating act or termination of

residency, and (iii) to file a statement in accordance with section 6039G. Because an individual must provide a statement to the IRS in accordance with section 6039G to meet the requirements of section 7701(n), any individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004, must file a revised Form 8854 with the IRS. Although there is no due date for the initial filing of revised Form 8854, until an individual that loses U.S. citizenship or terminates long-term resident status completes and files that form with the IRS, the individual will continue to be treated as a citizen or long-term resident of the United States, as the case may be, for federal tax purposes.

Treasury and the IRS recognize that, until the revised Form 8854 was released, individuals who lost U.S. citizenship or terminated long-term resident status after June 3, 2004, did not know how to comply with the notification and information reporting requirements of section 7701(n). Accordingly, if an individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004, files the revised Form 8854 by June 15, 2005, the IRS will treat that form as if it were filed for purposes of section 7701(n) on the date on which the taxpayer provided the requisite notice to the Department of State or the Department of Homeland Security.

If an individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004, does not file a revised Form 8854 on or before June 15, 2005, the individual's loss of citizenship or termination of long-term resident status for federal tax purposes will be the later of the date on which a revised Form 8854 is filed with the IRS

or the date on which the taxpayer provides the requisite notice to the Department of State or the Department of Homeland Security.

The special rule provided by this Notice for Forms 8854 filed before June 15, 2005, applies only to individuals who file Form 8854 as an initial expatriation information statement. The due date for the filing of Form 8854 as an annual expatriation information statement is not affected.

#### EFFECT ON OTHER DOCUMENTS

Notice 98-34, 1998-2 C.B. 29, modifying Notice 97-19, 1997-1 C.B. 394, and Notice 97-19 are obsoleted to the extent necessary to reflect amendments made by section 804 of the Act.

#### EFFECTIVE DATE

This notice is effective for former U.S. citizens and long-term residents who lost their U.S. citizenship or terminated their long-term resident status after June 3, 2004.

#### DRAFTING INFORMATION

The principal author of this notice is Willard W. Yates of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Willard W. Yates at (202) 622-3880 (not a toll-free call).