

## SUBCHAPTER A—INCOME TAX (CONTINUED)

### PART 1—INCOME TAXES

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Sections 1.987-1 through 1.987-5 also issued under 26 U.S.C. 987.

Sections 1.988-0 through 1.988-5 also issued under 26 U.S.C. 988.

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### EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

#### § 1.911-1 Partial exclusion for earned income from sources within a foreign country and foreign housing costs.

(a) *In general.* Section 911 provides that a qualified individual may elect to exclude the individual's foreign earned income and the housing cost amount from the individual's gross income for the taxable year. Foreign earned income is excludable to the extent of the applicable limitation for the taxable year. The housing cost amount for the taxable year is excludable to the extent attributable to employer provided amounts. If a portion of the housing cost amount for the taxable year is attributable to non-employer provided amounts, such amount may be deductible by the qualified individual subject to a limitation. The amounts excluded under section 911(a) and the amount deducted under section 911(c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such taxable year. Foreign earned income must be earned during a period for which the individual qualifies to make an election under section 911(d)(1). A housing cost amount that would be deductible except for the application of this limitation may be carried over to the next taxable year and is deductible to the extent of the limitation for that year. Except as otherwise provided, §§ 1.911-1 through 1.911-7 apply to taxable years beginning after December 31, 1981. These sections do not apply to any item of income, expense, deduction, or credit arising before January 1, 1982, even if such item is attributable to services performed after December 31, 1981.

(b) *Scope.* Section 1.911-2 provides rules for determining whether an individual qualifies to make an election under section 911. Section 1.911-3 provides rules for determining the amount

of foreign earned income that is excludable under section 911(a)(1). Section 1.911-4 provides rules for determining the housing cost amount and the portions excludable under section 911(a)(2) or deductible under section 911(c)(3). Section 1.911-5 provides special rules applicable to married couples. Section 1.911-6 provides for the disallowance of deductions, exclusions, and credits attributable to amounts excluded under section 911. Section 1.911-7 provides procedural rules for making or revoking an election under section 911. Section 1.911-8 provides a reference to rules applicable to taxable years beginning before January 1, 1982.

(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)

[T.D. 8006, 50 FR 2964, Jan. 23, 1985]

#### § 1.911-2 Qualified individuals.

(a) *In general.* An individual is a qualified individual if:

(1) The individual's tax home is in a foreign country or countries through-out—

(i) The period of bona fide residence described in paragraph (a)(2)(i) of this section, or

(ii) The 330 full days of presence described in paragraph (a)(2)(ii) of this section, and

(2) The individual is either—

(i) A citizen of the United States who establishes to the satisfaction of the Commissioner or his delegate that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(ii) A citizen or resident of the United States who has been physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months.

(b) *Tax home.* For purposes of paragraph (a)(i) of this section, the term "tax home" has the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual's tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of

business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual's abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual's abode is in the United States during that time. Maintenance of a dwelling in the United States by an individual, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States.

(c) *Determination of bona fide residence.* For purposes of paragraph (a)(2)(i) of this section, whether an individual is a bona fide resident of a foreign country shall be determined by applying, to the extent practical, the principles of section 871 and the regulations thereunder, relating to the determination of the residence of aliens. Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business. An individual with earned income from sources within a foreign country is not a bona fide resident of that country if:

(1) The individual claims to be a non-resident of that foreign country in a statement submitted to the authorities of that country, and

(2) The earned income of the individual is not subject, by reason of non-residency in the foreign country, to the income tax of that country.

If an individual has submitted a statement of nonresidence to the authorities of a foreign country the accuracy of which has not been resolved as of any date when a determination of the individual's bona fide residence is being made, then the individual will not be considered a bona fide resident of the foreign country as of that date.

(d) *Determination of physical presence.* For purposes of paragraph (a)(2)(ii) of this section, the following rules apply.

(1) *Twelve-month test.* A period of twelve consecutive months may begin with any day but must end on the day