1984. In 1982, C excludes $62,412 under section 911(a)(1). That is the lesser of foreign earned income for 1982 ($58,000+$4,412) or the annual rate for the taxable year multiplied by a fraction the numerator of which is C's qualifying days in the taxable year and the denominator of which is the number of days in the taxable year ($75,000×306/365). C continues to perform services in foreign country J throughout 1983 and 1984. C would be able to exclude the remaining $5,294 attributable to services performed in 1983 and $5,294 attributable to services performed in 1984 if those amounts would be excludable if they had been received in 1983 or 1984 respectively. If C is entitled to exclude the additional amounts, C must claim the exclusion by filing an amended return for 1982.

Example 4. D is a U.S. citizen and a calendar year taxpayer. In September, 1984 D moves to a foreign country K. D is physically present in K, and D's tax home is in K, from September 15, 1984 through December 31, 1985. D receives $6,000 in April, 1985 from his employer, as a reimbursement for expenses of moving to K, pursuant to a written agreement that such moving expenses would be reimbursed to D upon successful completion of 6 months employment in K. Under paragraph (e)(15)(i) of this section, the reimbursement is attributable to services performed in K. Under the physical presence test of §1.911–2(a)(2)(ii), among other periods D is a qualified individual for the period of August 10, 1984 through August 9, 1985, which includes 144 days in 1984. Under paragraph (e)(5)(ii)(A) of this section, for the purpose of determining the amount eligible for exclusion, the reimbursement is considered attributable to services performed in 1984 (the year of the move) because D is a qualified individual under §1.911–2(a) for a period that includes 120 days in 1984. The reimbursement may be excluded under paragraphs (d)(2) and (e)(2) of this section, to the extent that D's foreign earned income for 1984 that was earned and received in 1984 was less than the annual rate for the taxable year multiplied by the number of D's qualifying days in the taxable year over the number of days in D's taxable year ($80,000×144/366), or $31,475.

Example 5. The facts are the same as in example 4 except that D is not a qualified individual under the physical presence test, but is a qualified individual under the bona fide residence test for the period of September 15, 1984 through December 31, 1985. Under paragraph (e)(5)(ii)(A) of this section, for the purpose of determining the amount eligible for exclusion, the reimbursement is considered attributable to services performed in 1984 and 1985 because D is not a qualified individual for a period that includes 120 days in 1984 (the year of the move). The portion of the reimbursement treated as attributable to services performed in 1984 is $6,000×108/366, or $1,770, and may be excluded, subject to D's 1984 section 911(a)(1) limitation. The balance of the reimbursement, $4,230, is treated as attributable to services performed in 1985, and may be excluded to the extent provided in paragraphs (d)(2) and (e)(2) of this section.

Example 6. The facts are the same as in example 4, with the following additions. Before D moved to K, D and his employer signed a written agreement that D would perform services for the employer for at least one year, primarily in country K, and, if D did not voluntarily cease to work for the employer primarily in country K before one year had elapsed, the employer would reimburse D for one half of D's expenses, up to a maximum of $4,000, of moving back to the United States. The agreement also stated that, if D did not voluntarily leave the employment in K before two years had elapsed, the employer would reimburse D for all of D's reasonable expenses of moving back to the United States. The agreement further stated that D's right to reimbursement would not be conditioned upon the performance of services after D ceased to work in K. D worked in country K for all of 1985. On January 1, 1986, D left K and moved to the United States. In February, 1986 the employer paid D $3,500 as reimbursement for one-half of D's expenses of moving to the United States. Although D did not fulfill the condition in the agreement to receive full reimbursement, all of the conditions in the agreement set forth definitely ascertainable standards and no condition could be fulfilled after D moved back to the United States. The agreement fulfills the requirements of paragraph (e)(5)(i) of this section, and therefore is evidence that the reimbursement should not be attributable to future services to be performed at D's new principal place of work. Under the facts and circumstances, the reimbursement is attributable to services performed in K. Under paragraph (e)(5)(ii)(A) of this section, the entire reimbursement is attributable to services performed in 1985. The amount attributable to 1985 may be excluded to the extent provided in paragraphs (d)(2) and (e)(2) of this section.

(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 2966, Jan. 23, 1985]

§ 1.911–4 Determination of housing cost amount eligible for exclusion or deduction.

(a) *Definition of housing cost amount.* The term ''housing cost amount'' means an amount equal to the reasonable expenses paid or incurred (as defined in section 7701(a)(25)) during the taxable year by or on behalf of the individual attributable to housing in a

foreign country for the individual and any spouse or dependents who reside with the individual (or live in a second foreign household described in paragraph (b)(5) of this section) less the base housing amount as defined in paragraph (c) of this section. The housing cost amount must be reduced by the amount of any military or section 912 allowance or similar allowance excludable from gross income that is intended to compensate the individual or the individual's spouse in whole or in part for the expenses of housing during the same period for which the individual claims a housing cost amount exclusion or deduction.

(b) *Housing expenses*—(1) *Included expenses.* For purposes of paragraph (a) of this section, housing expenses include rent, the fair rental value of housing provided in kind by the employer, utilities (other than telephone charges), real and personal property insurance, occupancy taxes not described in paragraph (b)(2)(v) of this section, nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, household repairs, and residential parking.

(2) *Excluded expenses.* Housing expenses do not include:

(i) The cost of house purchase, improvements, and other costs that are capital expenditures;

(ii) The cost of purchased furniture or accessories or domestic labor (maids, gardeners, etc.);

(iii) Amortized payments of principal with respect to an evidence of indebtedness secured by a mortgage on the taxpayer's housing;

(iv) Depreciation of housing owned by the taxpayer, or amortization or depreciation of capital improvements made to housing leased by the taxpayer;

(v) Interest and taxes deductible under section 163 or 164 or other amounts deductible under section 216(a) (relating to deduction of interest and taxes by cooperative housing corporation tenant);

(vi) The expenses of more than one foreign household except as provided in paragraph (b)(5) of this section;

(vii) Expenses excluded from gross income under section 119;

(viii) Expenses claimed as deductible moving expenses under section 217; or

(ix) The cost of a pay television subscription.

(3) *Limitation.* Housing expenses are taken into account for purposes of this section only to the extent attributable to housing for portions of the taxable year within the period during which the individual satisfies the requirements of §1.911–2(a). Housing expenses are not taken into account for the period during which the value of the individual's housing is excluded from gross income under section 119, unless the individual maintains a second foreign household described in paragraph (b)(5) of this section. If an individual maintains two foreign households, only expenses incurred with respect to the abode which bears the closest relationship, not necessarily geographic, with respect to the individual's tax home shall be taken into account, unless one of the households is a second foreign household.

(4) *Reasonableness.* An amount paid for housing shall not be treated as reasonable, for purposes of paragraph (a) of this section, to the extent that the expense is lavish or extravagant under the circumstances.

(5) *Expenses of a second foreign household*—(i) *In general.* The term ''second foreign household'' means a separate abode maintained by an individual outside of the U.S. for his or her spouse or dependents (who, if minors, are in the individual's legal custody or the joint custody of the individual and the individual's spouse) at a place other than the tax home of the individual because of adverse living conditions at the individual's tax home. If an individual maintains a second foreign household the expenses of the second foreign household may be included in the individual's housing expenses under paragraph (b)(1) of this section. Under no circumstances shall an individual be considered to maintain more than one second foreign household at the same time.

(ii) *Adverse living conditions.* Solely for purposes of paragraph (b)(5)(i) of this section, adverse living conditions

are living conditions which are dangerous, unhealthful, or otherwise adverse. Adverse living conditions include a state of warfare or civil insurrection in the general area of the individual's tax home. Adverse living conditions exist if the individual resides on the business premises of the employer for the convenience of the employer and, because of the nature of the business (for example, a construction site or drilling rig), it is not feasible for the employer to provide housing for the individual's spouse or dependents. The criteria used by the Department of State in granting a separate maintenance allowance are relevant, but not determinative, for purposes of determining whether a separate household is provided because of adverse living conditions.

(c) *Base housing amount*—(1) *In general.* The base housing amount is equal to the product of 16 percent of the annual salary of an employee of the United States who is compensated at a rate equal to the annual salary rate paid for step 1 of grade GS–14, multiplied by the following fraction:

$$\frac{\text{The number of qualifying days}}{\text{The number of days in the taxable year}}$$

For purposes of the above fraction, the number of qualifying days is determined in accordance with §1.911–3(d)(3).

(2) *Annual salary of step 1 of grade GS–14.* The annual salary rate for a step 1 of grade GS–14 is determined on January first of the calendar year in which the individual's taxable year begins.

(d) *Housing cost amount exclusion*—(1) *Limitation.* A qualified individual who has elected to exclude his or her housing cost amount may only exclude the lesser of the full amount of either the individual's housing cost amount attributable to employer provided amounts or the individual's foreign earned income for the taxable year. A qualified individual who elects to exclude his or her housing cost amount may not claim less than the full amount of the housing cost exclusion determined under this paragraph.

(2) *Employer provided amounts.* For purposes of this section, the term ''employer provided amounts'' means any amounts paid or incurred on behalf of the individual by the individual's employer which are foreign earned income included in the individual's gross income for the taxable year (without regard to section 911). Employer provided amounts include, but are not limited to, the following amounts: Any salary paid by the employer to the employee; any reimbursement paid by the employer to the employee for housing expenses, educational expenses for the individual's dependents, or as part of a tax equalization plan; the fair market value of compensation provided in kind (including lodging, unless excluded under section 119, relating to meals and lodging furnished for the convenience of the employer); and any amount paid by the employer to any third party on behalf of the employee. An individual will only have earnings that are not employer provided amounts if the individual has earnings from self-employment.

(3) *Housing cost amount attributable to employer provided amounts.* For the purpose of determining what portion of the housing cost amount is excludable and what portion is deductible the following rules apply. If the individual has no income from self-employment, then the entire housing cost amount is attributable to employer provided amounts and is, therefore, excludable to the extent of the limitation provided in paragraph (d)(1) of this section. If the individual only has income from self-employment, then the entire housing cost amount is attributable to non-employer provided amounts and is, therefore, deductible to the extent of the limitation provided in paragraph (e) of this section. In all other instances, the housing cost amount attributable to employer provided amounts shall be determined by multiplying the housing cost amount by the following fraction: Employer provided amounts over foreign earned income for the taxable year. The housing cost amount attributable to non-employer provided amounts shall be determined by subtracting the portion of the housing cost amount attributable to employer provided amounts from the total housing cost amount.

(e) *Housing cost amount deduction*—(1) *In general.* If a portion of the individual's housing cost amount is determined under paragraph (d)(3) of this section to be attributable to non-employer provided amounts, the individual may deduct that amount from gross income for the taxable year but only to the extent of the individual's foreign earned income (as defined in § 1.911–3) for the taxable year in excess of foreign earned income excluded and the housing cost amount excluded from gross income for the taxable year under § 1.911–3 and this section.

(2) *Carryover.* If any portion of the individual's housing cost amount deduction is disallowed for the taxable year under paragraph (e)(1) of this section, such portion shall be carried over and treated as a deduction from gross income for the succeeding taxable year (but only for the succeeding taxable year) to the extent of the excess, if any, of:

(i) The amount of foreign earned income for the succeeding taxable year less the foreign earned income and the housing cost amount excluded from gross income under § 1.911–3 and this section for the succeeding taxable year over,

(ii) The portion, if any, of the housing cost amount that is deductible under paragraph (e)(1) of this section for the succeeding taxable year.

(f) *Examples.* The following examples illustrate the application of this section. In all examples the annual rate for a step 1 of GS–14 as of January first of the calendar year in which the individual's taxable year begins is $39,689.

Example 1. B, a U.S. citizen is a calendar year taxpayer who was a bona fide resident of and whose tax home was located in foreign country G for the entire taxable year 1982. B receives an $80,000 salary from B's employer for services performed in G. B incurs no business expenses. B receives housing provided by B's employer with a fair rental value of $15,000. The value of the housing furnished by B's employer is not excluded from gross income under section 119. B pays $10,000 for housing expenses. B's gross income and foreign earned income for 1982 is $95,000. B elects the foreign earned income exclusion of section 911(a)(1) and the housing cost amount exclusion of section 911(a)(2). B must first compute his housing cost amount exclusion. B's housing cost amount is $18,650 determined by reducing B's housing expenses, $25,000 ($15,000 fair rental value of housing and $10,000 of other expenses), by the base housing amount of $6,350 (($39,689×.16)×365/365). Because B has no income from self-employment, the entire amount is attributable to employer provided amounts and therefore, is excludable. B's section 911(a)(1) limitation is $75,000. That is the lesser of $75,000×365/365 or $95,000 − 18,650. B's total exclusion for 1982 under section 911(a)(1) and (2) is $93,650.

Example 2. The facts are the same as in example 1 except that B's salary for 1982 is $70,000. B's foreign earned income for 1982 is $85,000. B's housing cost amount is $18,650, all of which is attributable to employer provided amounts. B's housing cost amount is excludable to the extent of the lesser of B's housing cost amount attributable to employer provided amounts, $18,650, or the foreign earned income for the taxable year, $85,000. Thus, B excludes $18,650 under section 911(a)(2). B's section 911(a)(1) limitation for 1982 is $66,350 (the lesser of $75,000×365/365 or $85,000 − 18,650). B's total exclusion for 1982 under section 911(a)(1) and (2) is $85,000.

Example 3. The facts are the same as in example 2 except that in 1983, B receives $5,000 attributable to services performed in 1982. B may exclude the entire $5,000 in 1983 because such amount would have been excludable under § 1.911–3(d)(1) had it been received in 1982.

Example 4. C is a U.S. citizen self-employed and a calendar year and cash basis taxpayer. C arrived in foreign country H on October 3, 1982, and departed from H on March 8, 1984. C's tax home was located in H throughout that period. C was physically present for 330 full days during the twelve consecutive month period August 30, 1982, through August 29, 1983. The number of C's qualifying days in 1982 is 124. During 1982 C had $35,000 of foreign earned income, none of which was attributable to employer provided amounts and $8,000 of reasonable housing expenses. C's housing cost amount is $5,843 ($8,000 − ((39,689×.16)×124/365)). C elects to exclude her foreign earned income under § 1.911–3(d)(1). C's section 911(a)(1) limitation for 1982 is $25,479 (the lesser of C's foreign earned income for the taxable year ($35,000) or the annual rate for the taxable year multiplied by the number of C's qualifying days over the number of days in the taxable year ($75,000×124/365=$25,479). C may not claim the housing cost amount exclusion under section 911(a)(2) because no portion of the housing cost amount is attributable to employer provided amounts. C may deduct the lesser of her housing cost amount ($5,843) or her foreign earned income in excess of amounts excluded under section 911(a) ($35,000 − 25,479=$9,521). Thus, C's housing cost amount deduction is $5,843.

Example 5. The facts are the same as in example 4 except that C had $30,000 of foreign

earned income for 1982, none of which was attributable to employer provided amounts. C elects to exclude $25,479 under §1.911–3(d)(1). C may only deduct $4,521 of her housing cost amount under paragraph (e)(1) of this section because her foreign earned income in excess of amounts excluded under section 911(a) is $4,521($30,000−25,479). The $1,322 of unused housing cost amount deduction may be carried over to the subsequent taxable year.

Example 6. The facts are the same as in example 4 except that C had $15,000 of foreign earned income of 1982, none of which was attributable to employer provided amounts. C elects to exclude the entire $15,000 under §1.911–3(d)(1). C is not entitled to a housing cost amount deduction for 1982 since she has no foreign earned income in excess of amounts excluded under section 911(a). C may carry over her entire housing cost amount deduction to 1983.

Example 7. The facts are the same as in example 6. In addition, during taxable year 1983 C had $115,000 of foreign earned income, none of which was attributable to employer provided amounts, and $40,000 of reasonable housing expenses C elects to exclude her foreign earned income under §1.911–3(d)(1). C's section 911(a)(1) limitation is the lesser of $115,000 or $80,000 ($80,000×365/365). C's housing cost amount for 1983 is $33,650 (40,000−(39,689×.16)×365/365). Since no portion of that amount is attributable to employer provided amounts, C may not claim a housing cost amount exclusion. C may deduct the lesser of her housing cost amount ($33,650) or her foreign earned income in excess of amounts excluded under section 911(a) ($115,000−80,000=35,000). Thus, C may deduct her $33,650 housing cost amount in 1983. In addition, C may deduct $1,350 of the housing cost amount deduction carried over from taxable year 1982.

(($115.000−80,000)−33,650=$1,350). The remaining $4,493 ($5,843−1,350) of the housing cost amount deduction carried over from taxable year 1982 may not be deducted in 1983 or carried over to 1984.

Example 8. D is a U.S. citizen and a calendar year and cash basis taxpayer. D is a bona fide resident of and maintains his tax home in foreign country J for all of taxable year 1984. In 1984, D earns $80,000 of foreign earned income, $60,000 of which is an employer provided amount and $20,000 of which is a non-employer provided amount. D's total housing cost amount for 1984 is $25,000. D elects to exclude, under section 911(a)(2), the portion of his housing cost amount that is attributable to employer provided amounts. D's excludable housing cost amount is $18,750; that is the total housing cost amount ($25,000) multiplied by employer provided amounts for the taxable year ($60,000) over foreign earned income for the taxable year ($80,000). D also elects to exclude his foreign earned income under §1.911–3(d)(1). D's section 911(a)(1) limitation for 1984 is $61,250 (the lesser of $80,000−$18,750 or $80,000×366/366). D's total exclusion for 1984 under section 911(a)(1) and (2) is $80,000. D cannot claim a housing cost amount deduction in 1984 because D has no foreign earned income in excess of his foreign earned income and housing cost amount excluded from gross income for the taxable year under §1.911–3 and this section. D may carry over his housing cost amount deduction of $6,250, the total housing cost amount less the portion attributable to employer provided amounts ($25,000−18,750), to taxable year 1985.

(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 2970, Jan. 23, 1985]

§1.911–5 Special rules for married couples.

(a) *Married couples with two qualified individuals*—(1) *In general.* In the case in which a husband and wife both are qualified individuals under §1.911–2(a), each individual may make one or more elections under §1.911–7 and exclude from gross income foreign earned income and exclude or deduct housing cost amounts subject to the rules of paragraphs (a)(2) and (3) of this section.

(2) *Computation of excluded foreign earned income.* The amount of excludable foreign earned income is determined separately for each spouse under the rule of §1.911–3 on the basis of the income attributable to the services of that spouse. If the spouses file separate returns each may exclude the amount of his or her foreign earned income attributable to his or her services subject to the limitations of §1.911–3(d)(2). If the spouses file a joint return, the sum of these foreign earned income amounts so determined for each spouse may be excluded. For example, H and W both qualify under §1.911–2(a)(2)(i) for the entire 1983 taxable year. During 1983 W earns $100,000 of foreign earned income and H earns $45,000 of foreign earned income. H and W file a joint return for 1983. On their joint return H and W may exclude from gross income a total of $125,000. That amount is determined by adding W's section 911(a)(1) limitation, $80,000 (the lesser of $80,000×365/365 or $100,000), and H's section 911(a)(1) limitation, $45,000 (the lesser of $80,000×365/365 or $45,000).