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).

(3) *Computation of housing cost amount*—(i) *Spouses residing together.* If the spouses reside together, and file a joint return, they may compute their housing cost amount either jointly or separately. If the spouses reside together and file separate returns, they must compute their housing cost amounts separately. If the spouses compute their housing cost amounts separately, they may allocate the housing expenses to either of them or between them for the purpose of calculating separate housing cost amounts, but each spouse claiming a housing cost amount exclusion or deduction must use his or her full base housing amount in such computation. If the spouses compute their housing cost amount jointly, then only one of the spouses may claim the housing cost amount exclusion or deduction.

Either spouse may claim the housing cost amount exclusion or deduction; however, if the spouses have different periods of residence or presence and the spouse with the shorter period of residence or presence claims the exclusion or deduction, then only the expenses incurred in that shorter period may be claimed as housing expenses. The spouse claiming the exclusion or deduction may aggregate the couple's housing expenses, and subtract his or her base housing amount. For example, H and W reside together and file a joint return. H was a bona fide resident of and maintained his tax home in foreign country M from August 17, 1982, through December 31, 1983. W was a bona fide resident of and maintained her tax home in foreign country M from September 15, 1982, through December 31, 1983. During 1982, H and W earn and receive, respectively, $25,000 and $10,000 of foreign earned income. H paid $10,000 for qualified housing expenses in 1982, $7,500 of that was for qualified housing expenses incurred from September 15, 1982, through December 31, 1982. W paid $3,000 for qualified housing expenses in 1982 all of which were incurred during her period of residence. H and W may choose to compute their housing cost amount jointly. If they do so and H claims the housing cost amount exclusion his exclusion would be $10,617. H's housing expenses would be $13,000 ($10,000+$3,000) and his base housing amount would be $2,383 ((39,689×.16)×137/365=$2,383). If instead W claims the housing cost amount exclusion her exclusion would be $8,621. W's housing expenses would be $10,500 ($7,500+3,000) and her base housing amount would be $1,879 (($39,689×.16)×108/365=$1,879). If H and W file jointly and both claim a housing cost amount exclusion, then H's and W's housing cost amounts would be, respectively, $7,617 ($10,000−2,383) and $1,121 ($3,000−1,879).

(ii) *Spouses residing apart.* If the spouses reside apart, both spouses may exclude or deduct their housing cost amount if the spouses have different tax homes that are not within reasonable commuting distance (as defined in §1.119–1(d)(4)) of each other and neither spouse's residence is within a reasonable commuting distance of the other spouse's tax home. If the spouses' tax homes, or one spouse's residence and the other spouse's tax home, are within a reasonable commuting distance of each other, only one spouse may exclude or deduct his or her housing cost amount. Regardless of whether the spouses file joint or separate returns, the amount of the housing cost amount exclusion or deduction must be determined separately for each spouse under the rules of §1.911–4. If both spouses claim a housing cost amount exclusion or deduction directly as qualified individuals, neither may claim any such exclusion or deduction under section 911(c)(2)(B)(ii), relating to a second foreign household maintained for the other spouse. If one spouse fails to claim a housing cost amount exclusion or deduction which that spouse could claim directly, the other spouse may claim such exclusion or deduction under section 911(c)(2)(B)(ii), relating to a second foreign household maintained for the first spouse, provided that all the requirements of that section are met. Spouses may not claim more than one second foreign household and the expenses of such household may only be claimed by one spouse. For example, if both H and W are qualified individuals and H's tax home is in London and W's tax home is in Paris, then both H and W may exclude or deduct their housing cost

amounts; however, H and W must compute these amounts separately regardless of whether they file joint or separate returns. If instead of living in Paris, W lives in an area where there are adverse living conditions and W maintains H's home in London, then W may add those housing expenses to her housing expenses and compute one base housing amount. In that case H may not claim a housing cost amount exclusion or deduction.

(iii) *Housing cost amount attributable to employer provided amounts.* Each spouse claiming a housing cost amount exclusion or deduction shall compute the portion of the housing cost amount that is attributable to employer provided amounts separately, based on his or her separate foreign earned income, in accordance with §1.911–4(d)(3).

(b) *Married couples with community income.* The amount of excludable foreign earned income of a husband and wife with community income is determined separately for each spouse in accordance with paragraph (a) of this section on the basis of income attributable to that spouse's services without regard to community property laws. See sections 879 and 6013 (g) and (h) for special rules regarding treatment of community income of a nonresident alien individual married to a U.S. citizen or resident.

(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 2972, Jan. 23, 1985]

§1.911–6 Disallowance of deductions, exclusions, and credits.

(a) *In general.* No deduction or exclusion from gross income under subtitle A of the Code or credit against the tax imposed by chapter 1 of the Code shall be allowed to the extent the deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under section 911(a). For purposes of the preceding sentence, deductions, exclusions, and credits which are definitely related (as provided in §1.861–8), in whole or in part, to earned income shall be allocated and apportioned to foreign earned income and U.S. source earned income in accordance with the rules contained in §1.861–8. Deductions, exclusions, and credits which are definitely related to all gross income under §1.861–8, including deductions for interest described in §1.861–8(e)(2)(ii), are definitely related, in whole or in part, to earned income. In the case of interest expense allocable, in whole or in part, to foreign earned income under §1.861–8(e)(2)(ii), the expense shall normally be apportioned under option one of the optional gross income methods of apportionment (§1.861–8(e)(2)(v)i(A)), but without regard to conditions (*1*) and (*2*) of subdivision (vi)(A) (the fifty percent conditions). Such interest expense shall not normally be apportioned under the asset method of §1.861–8(e)(2)(v). This is because, where section 911 is the operative section, the expense normally relates more closely to gross income generated from activities than to the amount of capital utilized or invested in activities or property. Deductions that are allocated and apportioned to foreign earned income must then be allocated and apportioned to foreign earned income that is excluded under section 911(a). If an individual has foreign earned income from both self-employment and other employment, the amount excluded under section 911(a)(1) shall be deemed to include a pro rata amount of the self-employment income and the income from other employment; thus, a pro rata portion of deductible expenses attributable to self-employment income must be disallowed. For purposes of section 911 (d)(6) and this section only, deductions, exclusions, or credits which are not definitely related to any class of gross income shall not be allocable or chargeable to excluded amounts and are, therefore, deductible to the extent allowed by chapter 1 of the Code. Examples of deductions that are not definitely related to a class of gross income are personal and family medical expenses, qualified retirement contributions (but see section 219(b)(1)), real estate taxes and mortgage interest on a personal residence, charitable contributions, alimony payments, and deductions for personal exemptions. In addition, for purposes of this section, amounts excludable or deductible under section 911 or 119 shall not be allocable or chargeable to other amounts excluded under section 911(a).