



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

I am responding to your letter dated February 16, 2005, on behalf of your constituent, _____, of _____ asks whether hazardous duty pay and hardship differential payments received by her husband, a contractor for the United States Government in Afghanistan, are includible in gross income.

Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived, unless a specific exception applies. There is no specific statutory exclusion for hazardous duty pay or hardship differentials received by United States citizens working abroad.

However, § 911 allows a United States individual, whose tax home is in a foreign country and who is a bona fide resident of a foreign country, or who during any period of 12 consecutive months is present in a foreign country during at least 330 full days, to exclude from gross income and exempt from United States taxation the foreign earned income and housing cost amount of such individual. In general, foreign earned income means wages, salaries or other amounts received as compensation for personal services actually rendered by the United States individual in a foreign country or countries. See §§ 911(b)(1)(A) and 911(d)(2). However, § 911(b)(1)(B)(ii) provides that foreign earned income does not include amounts "paid by the United States or an agency thereof to an employee of the United States or an agency thereof." Thus, the hazardous duty pay and hardship differentials received by _____ would qualify as foreign earned income under § 911, unless _____ is an employee of the United States Government. It should be noted that if _____ is an independent contractor for the United States Government, or is employed by an independent contractor working for the United States Government, he is not excepted from qualifying for the benefits of § 911.

The amount excludible under § 911, however, is currently limited to \$80,000. Therefore, any amounts earned by _____ for services performed in Afghanistan,

including hazardous duty pay and hardship differentials, over the \$80,000 limitation would be subject to United States tax.

I hope this information is helpful. If you have any additional questions, please contact me or _____ of my office at _____.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)