



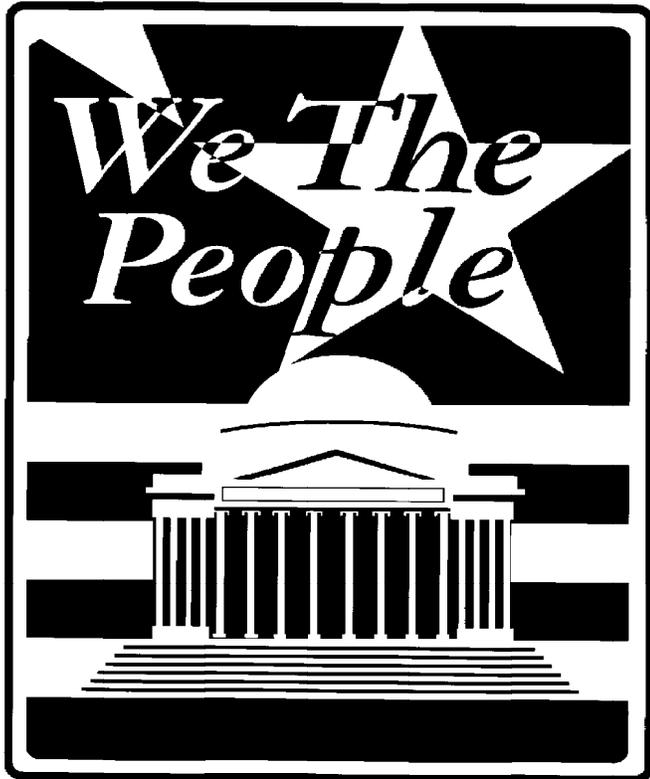
Department
of the
Treasury

Internal
Revenue
Service

Publication 54
Cat. No. 14999E

Tax Guide for U.S. Citizens and Resident Aliens Abroad

For use in preparing
1994 Returns



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Important Reminders

Form 2555-EZ. You may be able to file Form 2555-EZ, *Foreign Earned Income Exclusion*, if:

- You had foreign earned income of only wages and salaries of \$70,000 or less, and
- The return being filed is not for a short year.

Form 2555-EZ has fewer lines than Form 2555.

Foreign income tax withheld. If a foreign employer withheld taxes from your pay and paid those taxes to the foreign country's tax authority (not the U.S. treasury), you cannot claim those taxes on your U.S. income tax return as federal income tax withheld. You cannot claim those taxes as federal income tax withheld even if the amount is reported on your Form W-2, *Wage and Tax Statement*.

You may be able to claim a foreign tax credit on Form 1116, *Foreign Tax Credit (Individual, Estate, Trust, or Nonresident Alien Individual)* based on the amount withheld and paid to the foreign tax authority. See *Credit for Foreign Income Taxes* in Chapter 5.

Introduction

This publication discusses the special tax rules for U.S. citizens and resident aliens who work abroad, or who have income earned in foreign countries. The foreign earned income exclusion, the foreign housing exclusion, and the foreign housing deduction are explained.

Most U.S. citizens and resident aliens abroad must file U.S. income tax returns, even if they can exclude their earned income. You must file Form 2555, *Foreign Earned Income*, on which you show the exclusion of foreign earned income and the foreign housing exclusion or deduction, with your Form 1040. You will find an example with filled-in forms in this publication. If you are claiming the foreign earned income exclusion only, you may be able to use the shorter Form 2555-EZ rather than Form 2555.

To qualify for the exclusions or the deduction, you must meet either the bona fide residence test or the physical presence test and your tax home must be in a foreign country or countries throughout your period of foreign residence or presence. Bona fide residence test, physical presence test, and tax home are defined later.

If you pay foreign income taxes, you may be able to claim a foreign tax credit for those taxes. See the discussion in Chapter 5 under *Taxes of Foreign Countries and U.S. Possessions*.

If you must pay a tax on your income to a foreign country that has a tax treaty with the

United States, you may be entitled to certain benefits under the treaty. See Chapter 6.

If you own stock in a foreign corporation or have an interest in a foreign partnership, you may have to file information returns. See the instructions under *Information Returns and Reports* in Chapter 1.

Helpful information in a question-and-answer format is included in the back part of the publication.

1.

Filing Requirements

Topics

This chapter discusses:

- Whether you have to file a return
- When, how, and where to file your return
- How to express foreign currency in U.S. dollars
- What happens if you pay too little or too much tax
- When and how to file information returns

Useful Items

You may want to see:

Publication

- 501** Exemptions, Standard Deduction, and Filing Information
- 505** Tax Withholding and Estimated Tax
- 519** U.S. Tax Guide for Aliens
- 945** Tax Information for Those Affected by Operation Desert Storm
- 520** Scholarships and Fellowships

Form (and Instructions)

- 1040ES** Estimated Tax for Individuals
- 1040X** Amended U.S. Individual Income Tax Return
- 2350** Application for Extension of Time To File U.S. Income Tax Return
- 2555** Foreign Earned Income
- 2555-EZ** Foreign Earned Income Exclusion
- 4868** Application for Automatic Extension of Time To File U.S. Individual Income Tax Return
- 5471** Information Return of U.S. Persons With Respect To Certain Foreign Corporations
- 8822** Change of Address
- SS-5** Application for a Social Security Card

- TD F 90-22.1** Report of Foreign Bank and Financial Accounts

U.S. citizens and resident aliens living or traveling outside the United States generally are required to file income tax returns, estate tax returns, and gift tax returns and pay estimated tax in the same way as those residing in the United States.

Note. If you change your mailing address, be sure to notify the Internal Revenue Service using Form 8822, *Change of Address*. Mail it to the Internal Revenue Service Center for your old address (addresses for the Service Centers are on the back of the form). If you are changing both your home and business addresses, you should complete two separate forms.

Income Tax Returns

Your income, filing status, and age generally determine whether you must file a return. Generally you must file a return for 1994 if your income is at least the amount shown for your filing status in the following table:

If your filing status is:	You must file if your gross income is at least:
Single	\$ 6,250
65 or older	\$ 7,200
Head of household	\$ 8,050
65 or older	\$ 9,000
Qualifying widow(er)	\$ 8,800
65 or older	\$ 9,550
Married filing jointly	\$11,250
Not living with spouse at end of year	\$ 2,450
One spouse 65 or older	\$12,000
Both spouses 65 or older	\$12,750
Married filing separately	\$ 2,450

If you are the dependent of another taxpayer, see the instructions for Form 1040 for more information on your filing requirement.

Blindness does not affect your filing requirement.

You are considered to be 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1995, you would be considered to be 65 on December 31, 1994.

In determining whether or not you must file a return, you must consider as gross income any income that is excluded as foreign earned income or as a foreign housing amount. If you must file a return and all or part of your income is excluded under these rules, you must prepare Form 2555, discussed later. You may be able to file Form 2555-EZ if you are claiming only the foreign earned income exclusion.

If your net self-employment income is \$400 or more, you must file a return even though your gross income is below the amount for filing purposes listed above.

Nonresident Spouse Treated as a Resident

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other spouse is a nonresident alien, you can choose to treat the nonresident spouse as a U.S. resident. This includes situations in which one spouse is a nonresident alien at the beginning of the tax year, but a resident alien at the end of the year, and the other spouse is a nonresident alien at the end of the year.

If you make this choice, you and your spouse are treated for income tax purposes as residents for your entire tax year. For example, neither you nor your spouse can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect. You must file a joint income tax return for the year you make the choice, but you and your spouse can file joint or separate returns in later years.

Example 1. Pat Smith, a U.S. citizen for all of tax year 1994, is married to Norman, a nonresident alien. Pat and Norman make the choice to treat Norman as a resident alien by attaching a statement to their joint return for 1994. Pat and Norman must report their worldwide income in 1994 and later years unless the choice is ended or suspended. Although Pat and Norman must file a joint return for 1994, they can file joint or separate returns for later years.

Example 2. Bob and Sharon Williams are married and both are nonresident aliens. In June 1994, Bob became a resident alien and remained a resident for the rest of the year. Bob and Sharon both choose to be treated as resident aliens by attaching a statement to their 1994 joint return. Bob and Sharon must report their worldwide income in 1994 and later years unless the choice is ended or suspended. Bob and Sharon must file a joint return for 1994, but they can file either joint or separate returns for later years.

Social security number. You must include the social security number of your spouse on your return. To get a social security number for your spouse, apply at a Social Security office or U.S. consulate outside the United States. You must provide original or certified copies of documents to verify your spouse's age, identity, and citizenship and complete Form SS-5, *Application for a Social Security Card*.

How To Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following:

- 1) A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for the entire tax year, and
- 2) The name, address, and social security number of each spouse. (If one spouse died, include the name and address of the

person making the choice for the deceased spouse.)

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040 or Form 1040A. Be sure to write the word "Amended" across the top of the amended return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

Suspending the Choice

The choice to be treated as a resident alien does not apply to any tax year (after the tax year you made the choice) if neither spouse is a U.S. citizen or resident alien at any time during the tax year.

Example. Dick Brown was a resident alien on December 31, 1991, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed joint 1991 and 1992 income tax returns. On January 10, 1993, Dick became a nonresident alien. Judy had remained a nonresident alien throughout the period. Dick and Judy can file joint or separate returns for 1993. However, since neither Dick nor Judy is a resident alien at any time during 1994, their choice is suspended for that year. If either has U.S. source income or foreign source income effectively connected with a U.S. trade or business in 1994, they must file separate returns as nonresident aliens. If Dick becomes a resident alien again in 1995, their choice is no longer suspended. For years their choice is not suspended, they must include income received from sources both in and outside the United States in their income for each tax year.

Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained above) or ended in one of the following ways.

- 1) **Revocation.** Either spouse can revoke the choice for any tax year, provided he or she makes the revocation by the due date for filing the tax return for that tax year. The spouse who revokes must attach a signed statement declaring that the choice is being revoked. The statement must include the name, address, and social security number of each spouse. Include the name and address of any person who is revoking the choice for a deceased spouse. The statement also must include a list of any states, foreign countries, and possessions that have community property laws in which either spouse is domiciled or where real property is located from which either spouse receives income. File the statement as follows:

- a) If the spouse revoking the choice must file a return, attach the statement to the return for the first year the revocation applies,
 - b) If the spouse revoking the choice does not have to file a return, but does file a return (for example, to obtain a refund), attach the statement to the return, or
 - c) If the spouse revoking the choice does not have to file a return and does not file a claim for refund, send the statement to the Internal Revenue Service Center where you filed the last joint return.
- 2) **Death.** The death of either spouse ends the choice, beginning with the first tax year following the year the spouse died. However, if the surviving spouse is a U.S. citizen or resident and is entitled to the joint tax rates as a surviving spouse, the choice will not end until the close of the last year for which these joint rates may be used. If both spouses die in the same tax year, the choice ends on the first day after the close of the tax year in which the spouses died.
 - 3) **Legal separation.** A legal separation under a decree of divorce or separate maintenance ends the choice as of the beginning of the tax year in which the legal separation occurs.
 - 4) **Inadequate records.** The Internal Revenue Service may end the choice for any tax year that either spouse has failed to keep adequate books, records, and other information necessary to determine the correct income tax liability, or to provide adequate access to those records.

If the choice is ended for any of these reasons, neither spouse can make a choice in any later tax year.

Exemptions for nonresident alien spouse and dependents. You can claim an exemption for your nonresident alien spouse on your separate return, provided your spouse has no gross income for U.S. tax purposes and is not the dependent of another U.S. taxpayer.

You can also claim exemptions for dependents who qualify under all the dependency tests. The dependent must be a U.S. citizen or national, or must be a resident of the United States, Canada, or Mexico for some part of the calendar year in which your tax year begins.

Social security number. You must include on your return the social security number of each dependent you claim who is age 1 year or older. To get a social security number for a nonresident alien dependent, apply at a Social Security office or U.S. consulate outside the United States. You must provide original or certified copies of documents to verify the dependent's age, identity, and citizenship and complete Form SS-5.

Children. Children usually are citizens or residents of the same country as their parents. If you were a U.S. citizen when your child was born, the child may be a U.S. citizen even though the other parent is a nonresident alien, the child was born in a foreign country, and the

child lives abroad with the nonresident alien parent.

If you are a U.S. citizen living abroad and have a legally adopted child who is not a U.S. citizen or resident, you may take the child as a dependent if your home is the child's main home and the child is a member of your household for your entire tax year. For more information, see Publication 501, *Exemptions, Standard Deduction, and Filing Information*.

Head of household. If you do not choose to treat your nonresident spouse as a U.S. resident, you may be able to use head of household filing status. You must pay more than half the cost of maintaining a household for certain dependents or relatives other than your nonresident alien spouse. For more information, see Publication 501.

When To File

If you file on the calendar year basis, the due date for filing your return is April 15 (April 17 for 1994 returns) following the close of your tax year. If you file on a fiscal year basis (a year ending on the last day of any month except December), the due date is 3 months and 15 days after the close of your fiscal year.

Extensions

If you are a U.S. citizen or resident alien and both your tax home and your abode are outside the United States and Puerto Rico on the regular due date of your return, you are automatically granted a 2-month extension to file your return and pay any tax due. If you file on a calendar year basis, you have until June 15. If you file on a fiscal year basis, you have 5 months and 15 days after the end of your tax year in which to file your return. This extension is also available to U.S. citizens and residents on military duty outside the United States and Puerto Rico. Their assigned tour of duty outside the United States and Puerto Rico must include the entire due date of the return.

Your return is considered filed on time if it is postmarked on or before midnight of the due date for filing the return (including any extensions). None of the dates for filing returns or paying taxes is extended due to foreign holidays.

Statement required. If you use the 2-month extension discussed above, you must attach a statement to your return showing that you qualify for it. You must pay interest on any tax due shown on the return from the regular due date of the return (April 17 for 1994 calendar year filers) to the date the tax is paid. This interest applies only to the tax due with the return and not to any estimated tax payment due.

Automatic 4-month extension of time to file. You can get an automatic 4-month extension of time to file your return from the regular due date by filing Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*. You must file Form

4868 by the due date for your income tax return. You can file Form 4868 even if you cannot pay all of the tax you estimate you will owe. IRS will not charge you a penalty for failure to file if you do not pay all of the tax you will owe when you request the extension.

You will have to pay interest on any tax not paid by April 15 (April 17 for 1994 returns). And you may have to pay a late payment penalty if you have not paid at least 90% of your tax by that date.

Installment payments. If you cannot pay the full amount shown on Form 1040, line 64 (Form 1040A, line 32, or Form 1040EZ, line 11), with your return, you may ask to make monthly installment payments. However you will be charged interest and you may be charged a late payment penalty on the tax not paid by April 15 (April 17 for 1994 returns), even if your request to pay in installments is granted. To limit the interest and penalty charges, pay as much of the tax as possible with your return. But before requesting an installment agreement, you should consider other less costly alternatives, such as a bank loan.

To ask for an installment agreement, complete Form 9465, *Installment Agreement Request*.

Concurrent extensions. If you qualify for the 2-month extension discussed above because your tax home and abode are outside the United States and Puerto Rico, that extension and the 4-month extension run concurrently (both extensions start at the same time). You need not file Form 4868 until the new due date allowed by the first extension (June 15 for calendar year filers), but the total combined extension will still only be 4 months from the regular due date.

Other extensions. If you have not yet qualified under the bona fide residence test or the physical presence test, see *Bona fide residence test or physical presence test not yet met*, later, for information about other extensions besides the two discussed here for which you may qualify.

Extension of deadline for service in the Persian Gulf area. The deadline for filing tax returns, paying taxes, filing claims for refund, and taking other actions with the IRS is extended if you serve in the Armed Forces in a combat zone. The deadline for IRS to take certain actions, such as collection and examination actions, is also extended. When you file, write "Desert Storm" at the top of your return and on the envelope in which you mail it. See Publication 945, *Tax Information for Those Affected by Operation Desert Storm*, for a description of a combat zone and for a listing of the locations within the Persian Gulf area that are designated as combat zones.

Bona fide residence or physical presence test not yet met. You should request an extension of time to file your income tax return if all three of the following apply:

- 1) You are a U.S. citizen or resident;

- 2) You expect to meet either the bona fide residence test or the physical presence test, but not until after your tax return is due; and
- 3) Your tax home is in a foreign country (or countries) throughout your period of bona fide residence or physical presence, whichever applies.

Generally, if you are granted an extension it will be to 30 days beyond the date on which you can reasonably expect to qualify under either the bona fide residence test or the physical presence test. However, if you have moving expenses that are attributable to services performed in 2 years, you may be granted an extension to 90 days beyond the close of the year following the year of first arrival in the foreign country.

To obtain an extension, you should file Form 2350, *Application for Extension of Time To File U.S. Individual Income Tax Return*, and a copy with the Internal Revenue Service Center, Philadelphia, PA 19255, or the local Internal Revenue Service representative or other IRS employee.

You must file Form 2350 by the date for filing your return. Generally, if both your tax home and your abode are outside the United States and Puerto Rico on the regular due date of your return and you file on a calendar year basis, the date for filing your return is June 15. An extension can be granted to a date after you expect to meet the time requirements. Form 2350 may be obtained from the various IRS representatives located at the overseas offices listed in Chapter 7.

Form 2350 is filed by taxpayers who ordinarily expect to pay no additional tax because they will qualify for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction after they meet the bona fide residence test or physical presence test. If you obtain an extension of time and unforeseen events make it impossible for you to satisfy either one of these tests, you should file your income tax return as soon as possible because you must pay interest on any tax due after the regular due date of the return (even though an extension was granted).

You should make any request for an extension early, so that if it is denied you still can file your return on time. Otherwise, if you file late and additional tax is due, you may be subject to a penalty.

If you will have tax to pay with your return (even after qualifying for the exclusion or deduction), it may be advisable for you to file by the regular due date of your return or the due date as extended because your tax home and your abode are outside the United States and Puerto Rico on the regular due date. Or, instead of filing your return, you can pay the estimated amount of your tax liability with the Form 2350 request for extension. The reason for this is that interest is charged on the unpaid tax from the regular due date of the return to the date your tax is paid.

Also, a penalty of half of one percent of the unpaid tax, limited to 25%, is applied for each month beyond the due date that tax remains unpaid. The penalty increases to 1% a month

(or fraction thereof) after notice of levy is given. See *Penalty for failure to pay tax*, later.

If you file a return before you meet the bona fide residence test or the physical presence test, you must include all gross income from both U.S. and foreign sources and pay the tax on that income. If you later qualify for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction under the bona fide residence or physical presence rules, you can file a claim for refund of tax on Form 1040X. The refund will be the difference between the amount of tax already paid and the tax liability as figured after the exclusion or deduction.

Claim for refund. To make a claim for refund, you must file Form 1040X within 3 years from the time you filed your original return or within 2 years from the date you paid the tax for that year, whichever date is later. If you filed your return before the regular due date, you are considered to have filed the return on the due date. You should file claims with the office where you filed your original tax return.

Example. Your first full day of physical presence abroad is September 11, 1994, but you are not sure whether you will qualify for the exclusion of income under either the bona fide residence or the physical presence rules. Since your tax home and your abode are outside the United States and Puerto Rico on April 17, 1995, the due date for filing your 1994 tax return is automatically extended to June 15, 1995. You file your 1994 income tax return on May 15, 1995, and pay your full tax. You qualify for the exclusion on September 10, 1995. You have until May 15, 1998 (3 years from the date you actually filed your return), to file your claim for refund. You should file your claim for refund as soon as possible after September 10, 1995, but no later than May 15, 1998. Had you filed your 1994 return on or before April 17, 1995, the last date for filing a claim for refund would be April 17, 1998.

Penalty for failure to pay tax. A penalty of half of one percent of any additional tax due is charged for each month or part of a month the tax remains unpaid beyond the due date. If you qualify for the automatic 2-month extension because your tax home and abode are outside the United States and Puerto Rico, the due date is the due date allowed by that extension.

The penalty is limited to 25% of the unpaid tax. It will not be charged if you can show that the failure to pay is because of reasonable cause. You should attach a statement to your return giving the reason for the late payment.

The penalty for failure to pay increases to 1% for each month (or fraction thereof) that begins on the earlier of either:

- 1) The day 10 days after notice of levy is given, or
- 2) The day on which a jeopardy assessment is made.

Some other penalties that may be charged include those for:

- Failing to file returns,

- Not supplying a taxpayer identification number,
- Filing a frivolous income tax return, and
- Not including a tax shelter identification number on a return where required.

Some penalties may not be charged if non-compliance was due to reasonable cause.

Foreign Currency

You must express the amounts you report on your U.S. tax return in U.S. dollars. If you receive all or part of your income or pay some or all of your expenses in foreign currency, you must translate the foreign currency into U.S. dollars. How you do this depends on what currency is your functional currency. Your **functional currency** generally is the U.S. dollar unless you are required to use the currency of a foreign country.

You must make all federal income tax determinations in your functional currency. The U.S. dollar is the functional currency for all taxpayers except some qualified business units. A qualified business unit is a separate and clearly identified unit of a trade or business that maintains separate books and records. Therefore, unless you are self-employed, your functional currency is the U.S. dollar.

Even if you are self-employed and have a qualified business unit, your functional currency is the dollar if any of the following apply:

You conduct the business in dollars.

The principal place of business is located in the United States.

You choose to or are required to use the dollar as your functional currency.

The business books and records are not kept in the currency of the economic environment in which a significant part of the business activities is conducted.

If your functional currency is the U.S. dollar, you must immediately translate into dollars all items of income, expense, etc. (including taxes), that you receive, pay, or accrue in a foreign currency and that will affect computation of your income tax. Use the exchange rate prevailing when you receive, pay, or accrue the item. If there is more than one exchange rate, use the one that most properly reflects your income. You can generally get exchange rates from banks and U.S. Embassies.

If your functional currency is not the U.S. dollar, you make all income tax determinations in your functional currency and translate the results, such as income or loss, into U.S. dollars at the end of your tax year to report on your income tax return.

Blocked Income

You generally must report your foreign income in terms of U.S. dollars and, with one exception (see *Fulbright grants*, later), you must pay taxes due on it in U.S. dollars.

If, because of restrictions in a foreign country, your income is not readily convertible into U.S. dollars or into other money or property

readily convertible into U.S. dollars, your income is “blocked” or “deferrable” income. You can report this income in one of two ways:

- 1) Report the income and pay your federal income tax with U.S. dollars that you have in the United States or in some other country, or
- 2) Postpone the reporting of the income until it becomes unblocked.

If you choose to postpone the reporting of the income, you must file an information return with your tax return. For this information return, you should use another Form 1040 labeled “Report of Deferrable Foreign Income, pursuant to Rev. Rul. 74-351.” You must declare on the information return that the deferrable income will be included in taxable income in the year that it becomes unblocked. You also must state that you waive any right to claim that the deferrable income was includible in income for any earlier year.

You must report your income on your information return using the foreign currency in which you received that income. If you have blocked income from more than one foreign country, include a separate information return for each country.

Income becomes unblocked and reportable for tax purposes when it becomes convertible, or when it is converted, into dollars or into other money or property that is convertible into U.S. currency. Also, if you use blocked income for your personal expenses or dispose of it by gift, bequest, or devise, you must treat it as unblocked and reportable.

If you have received blocked income on which you have not paid the tax, you should check to see whether that income is still blocked. If it is not, you should take immediate steps to pay the tax on it, file a declaration or amended declaration of estimated tax, and include the income on your tax return for the year in which the income became unblocked.

If you choose to postpone reporting blocked income and in a later tax year you wish to begin including it in gross income although it is still blocked, you must obtain the permission of the IRS to do so. To apply for permission, you must file Form 3115, *Application for Change in Accounting Method*. You also must request permission from the IRS on Form 3115 if you have not chosen to defer the reporting of blocked income in the past, but now wish to begin reporting blocked income under the deferred method. See the instructions for Form 3115 for information.

Fulbright grants. All income must be reported in U.S. dollars. In most cases, the tax must also be paid in U.S. dollars. If, however, at least 70% of your entire Fulbright grant has been paid in nonconvertible foreign currency (blocked income), you may use the currency of the host country to pay the U.S. tax on that income. You can use foreign currency to pay your U.S. tax, but only the part that is attributable to the foreign currency payments you received under the grant. Details of these arrangements may be found in Publication 520, *Scholarships and Fellowships*, or obtained

from the U.S. Educational Foundations or Commissions in foreign countries.

Where To File and Pay

If you claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, or if you must file a return and you claim the exclusion of income for bona fide residents of American Samoa, you should file your return with the Internal Revenue Service Center, Philadelphia, PA 19255. These exclusions and the deduction are explained later.

If you are not claiming one of these exclusions or the deduction, but are living in a foreign country or U.S. possession and have no legal residence or principal place of business in the United States, you should file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

If you are not sure of the place of your legal residence and have no principal place of business in the United States, you also can file with the Philadelphia Service Center.

However, you should not file with the Philadelphia Service Center if you are a bona fide resident of the Virgin Islands or a resident of Guam or the Commonwealth of the Northern Mariana Islands on the last day of your tax year.

Resident of Virgin Islands. If you are a bona fide resident of the Virgin Islands on the last day of your tax year, you must file your return with and pay your tax on income you have from all sources to the Virgin Islands Bureau of Internal Revenue, Lockharts Garden No. 1A, Charlotte Amalie, St. Thomas, Virgin Islands 00802, even if your legal residence or principal place of business is located in the United States.

Non-Virgin Islands resident with Virgin Islands Income. If you are a U.S. citizen or resident and you have income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and you are not a bona fide resident of the Virgin Islands on the last day of your tax year, you must file identical tax returns with the United States and the Virgin Islands. You do this by filing the original return with the United States and filing a copy of the U.S. return (including all attachments, forms, and schedules) with the Virgin Islands Bureau of Internal Revenue.

The amount of tax you must pay to the Virgin Islands is figured by multiplying the total tax on your U.S. return (after certain adjustments) by a decimal. This decimal is found by dividing your adjusted gross income from the Virgin Islands by your worldwide adjusted gross income (from your U.S. return). Form 8689, *Allocation of Individual Income Tax to the Virgin Islands*, is used for this computation. You must complete this form and attach it to your return. You should pay any tax due to the Virgin Islands when you file your return with the Virgin Islands Bureau of Internal Revenue.

You should file your U.S. return with the Internal Revenue Service Center, Philadelphia, PA 19255.

Resident of Guam. If you are a resident of Guam on the last day of your tax year, you should file a Guam return with and pay your tax on income you have from all sources to the Department of Revenue and Taxation, Government of Guam, 378 Chalan San Antonio, Tamuning, Guam 96911.

However, if you are a resident of the United States on the last day of your tax year, you should file a U.S. return with and pay your tax on income you have from all sources to the Internal Revenue Service Center, Philadelphia, PA 19255.

See Publication 570, *Tax Guide for Individuals With Income From U.S. Possessions*, or information about the filing requirements for residents of Guam.

Resident of the Commonwealth of the Northern Mariana Islands. If you are a resident of the Commonwealth of the Northern Mariana Islands on the last day of your tax year, you should file a Northern Mariana Islands return with and pay your tax on income you have from all sources to the Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, Central Office, Saipan, MP 96950.

However, if you are a resident of the United States on the last day of your tax year, you should file a U.S. return with and pay your tax on income you have from all sources to the Internal Revenue Service Center, Philadelphia, PA 19255.

See Publication 570 for information about the filing requirements for residents of the Commonwealth of the Northern Mariana Islands.

Others file as shown in the instructions for filing Form 1040.

Terrorist or Military Action

U.S. income taxes are forgiven for U.S. Government military or civilian employees who die as a result of wounds or injuries sustained outside the United States in a terrorist or military action directed against the United States or its allies. The taxes are forgiven for the deceased employee's tax years beginning with the year immediately before the year in which the injury or wounds were incurred and ending with the year of death.

If the deceased government employee and the employee's spouse had a joint income tax liability for those years, the tax must be divided between the spouses to determine the amount forgiven.

For more information on how to have the tax forgiven or how to claim a refund of tax already paid, see Publication 559, *Survivors, Executors, and Administrators*.

Estimated Tax

The requirements for determining who must pay estimated tax are the same for a U.S. citizen or resident abroad as for a taxpayer in the United States. For current instructions on making your estimated tax payments, see Form 1040-ES.

If you had a tax liability for 1994, you may have to pay estimated tax for 1995. Generally, you must make estimated tax payments for 1995 if you expect to owe at least \$500 in tax for 1995, after subtracting your withholding and credits, and you expect your withholding and credits to be less than the smaller of:

- 1) 90% of the tax to be shown on your 1995 tax return, or
- 2) Generally, 100% of the tax shown on your 1994 tax return. (The return must cover all 12 months.)
- 3) 110% of the tax shown on your 1994 tax return if your adjusted gross income for 1994 is greater than \$150,000 (\$75,000 if you are married and file separately). The return must cover all 12 months.

See Publication 505, *Tax Withholding and Estimated Tax*, for more information.

The first installment of estimated tax is usually due on April 15 of the tax year.

When figuring your estimated gross income, subtract amounts you expect to exclude under the foreign earned income exclusion and the foreign housing exclusion. In addition, you can reduce your income by your estimated foreign housing deduction. However, if the actual amount of the exclusion or deduction is less than you estimate, you may be required to pay a penalty on the underpayment of estimated tax.

Information Returns and Reports

If you acquire or dispose of stock in a foreign corporation, own a controlling interest in a foreign corporation, or acquire or dispose of any interest in a foreign partnership, you may have to file an information return. You also may have to file an information return if you transfer property to a foreign trust, or if you have transferred property to a foreign trust with at least one U.S. beneficiary. Reports may be required if you ship currency to or from the United States or if you have an interest in a foreign bank or financial account.

Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, must generally be filed by U.S. shareholders of controlled foreign corporations and by shareholders, officers, and directors of foreign personal holding companies. Also, Form 5471 must be filed by officers, directors, and shareholders of U.S. entities that acquire, dispose of, or are involved in the reorganization of a foreign corporation.

You **must file** Form 5471 at the time you file your income tax return. More information about the filing of Form 5471 can be found in the instructions for this information return.

Form 3520, *Creation of or Transfers to Certain Foreign Trusts*, generally must be filed if you created a foreign trust or transferred money or property to a foreign trust.

You must file the form with the Internal Revenue Service Center, Philadelphia, PA 19255, by the 90th day after the creation of or the transfer of property to the trust.

Form 3520-A, *Annual Return of Foreign Trust With U.S. Beneficiaries*, generally must be filed if you transfer property to a foreign trust that has at least one U.S. beneficiary. After the transfer, you must file Form 3520-A annually as long as the trust has a U.S. beneficiary.

You must file the form with the Internal Revenue Service Center, Philadelphia, PA 19255, by the 15th day of the 4th month following the end of your tax year (regardless of the accounting period of the trust).

Form 4790, *Report of International Transportation of Currency or Monetary Instruments*, must be filed by each person who physically transports, mails, ships, or causes to be physically transported, mailed, or shipped, currency or other monetary instruments in a total amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States. The filing requirement also applies to each person who attempts to transport, mail, or ship the currency or monetary instruments or attempts to cause them to be transported, mailed, or shipped.

The term "monetary instruments" includes coin and currency of the United States or of any other country, money orders, investment securities in bearer form or otherwise in such form that title passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title passes upon delivery. The term includes bank checks, travelers' checks, and money orders that are signed, but on which the name of the payee has been omitted. The term does not include bank checks, travelers' checks, or money orders made payable to the order of a named person that have not been endorsed or that bear restrictive endorsements.

Filing requirements for Customs Form 4790 are the following:

Recipients. Each person who receives currency or other monetary instruments from a place outside the United States for which a report has not been filed by the shipper must file Customs Form 4790. It must be filed within 15 days after receipt with the Customs officer in charge at any port of entry or departure, or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229.

Shippers or mailers. If the currency or other monetary instrument does not accompany a person entering or departing the United States, Customs Form 4790 may be filed by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229, on or before the date of entry, departure, mailing, or shipping.

Travelers. Travelers must file Customs Form 4790 with the Customs officer in charge at any Customs port of entry or departure when entering or departing the United States.

Penalties. Civil and criminal penalties are provided for failure to file a report or if the report contains material omissions or misstatements. Also, the entire amount of the currency or monetary instrument may be subject to seizure and forfeiture.

More information about the filing of Customs Form 4790 can be found in the instructions on the back of the form.

Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*, must be filed if you had any financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country, except if the assets are with a U.S. military banking facility operated by a U.S. financial institution or if the combined assets in the account(s) are \$10,000 or less during the entire year.

You must file this form by June 30 each year with the Department of the Treasury at the address shown on the form. Form TD F 90-22.1 is not a tax return, so do not attach it to your Form 1040.

2.

Withholding Tax

Topics

This chapter discusses:

- Withholding income tax from the pay of U.S. citizens
- Withholding income tax from the pay of nonresident aliens
- Social security and Medicare taxes

Useful Items

You may want to see:

Publication

- 505** Tax Withholding and Estimated Tax

Form (and Instructions)

- 673** Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code
- W-4** Employee's Withholding Allowance Certificate

U.S. employers generally must withhold U.S. income tax from the pay of U.S. citizens performing services in a foreign country unless the employer is required by foreign law to withhold foreign income tax from the pay.

Your employer, however, is not required to withhold U.S. income tax from your wages earned abroad to the extent of the foreign earned income exclusion and foreign housing exclusion if your employer has good reason to believe that you will qualify for the exclusions of income.

Statement. You can submit a statement to your employer indicating that you will meet either the bona fide residence test or the physical presence test and indicating your estimated housing cost exclusion. You can obtain sample copies of an acceptable statement (Form 673, *Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code*) by writing to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024. Use of the form is not mandatory; you can prepare your own statement. See the next page for a copy of Form 673.

Form 673

You must submit the statement to your employer and not to the IRS.

Generally, filing a signed statement that includes a declaration under penalties of perjury is considered authority for your employer to discontinue withholding. However, if your employer has reason to believe that you will not qualify for an exclusion of income, your employer must disregard the statement and withhold the tax.

Your employer is not required to find out about amounts you received from any other source. But, if your employer has such information, it must be considered in determining whether your earned income is in excess of the limit on the exclusion.

Your employer, however, should withhold taxes from any wages you earn in the United States.

Foreign tax credit. If you plan to take a foreign tax credit, you may be eligible for additional withholding allowances on Form W-4, *Employee's Withholding Allowance Certificate*. You can take these additional withholding allowances only for foreign tax credits attributable to taxable salary or wage income. See Publication 505, *Tax Withholding and Estimated Tax*, for further information.

Withholding from pension payments. U.S. payers of benefits from employer deferred compensation plans, individual retirement plans, and commercial annuities generally must withhold income tax from the payments or distributions. Withholding will apply unless you choose exemption from withholding. You cannot choose exemption unless you provide the payer of the benefits with a residence address in the United States or a U.S. possession, or unless you certify to the payer that you are not a U.S. citizen or resident alien or someone who left the United States to avoid tax.

Department of the Treasury — Internal Revenue Service
Statement For Claiming Benefits Provided
by Section 911 of the Internal Revenue Code
(See Instructions on Reverse)

The following statement, when completed and furnished by a citizen of the United States to his or her employer, permits the employer to exclude from income tax withholding all or a part of the wages paid for services performed outside the United States.

Name (please print) Social security number

I expect to qualify for the foreign earned income exclusion under either the bona fide residence or physical presence test for calendar year or fiscal year beginning and ending

Please check applicable box

Bona Fide Residence Test

I am a citizen of the United States. I have been a bona fide resident of and my tax home has been located in (foreign country or countries) for an uninterrupted period which includes an entire tax year that began on (date), 19

I expect to remain a bona fide resident and retain my tax home in a foreign country (or countries) until the end of the tax year for which this statement is made. Or if not that period, from the date of this statement until (date within tax year), 19

I have not stated to the authorities of any foreign country named above that I am not a resident of that country. Or, if I made such a statement, the authorities of that country thereafter made a determination to the effect that I am a resident of that country.

Based on the facts in my case, I have good reason to believe that for this period of foreign residence I will satisfy the tax home and the bona fide foreign residence requirements prescribed by the section 911(d)(1)(A) of the Internal Revenue Code and qualify for the exclusion Code section 911(a) allows.

Physical Presence Test

I am a citizen of the United States. Except for occasional absences that won't disqualify me for the benefit of section 911(a) of the Internal Revenue Code, I expect to be present in and maintain my tax home in (foreign country or countries) for a 12-month period that includes the entire tax year. Or, if not the entire year, for the part of the tax year beginning on, 19, and ending on, 19

Based on the facts in my case, I have good reason to believe that for this period of presence in a foreign country or countries, I will satisfy the tax home and the 330 full-day requirements within a 12-month period under section 911(d)(1)(B).

I expect to qualify for an exclusion under section 911(a)(2), relating to the housing cost amount, for the entire year, or for the part of the tax year beginning on, 19, and ending on, 19. I estimate that my housing expenses for the qualifying period will be as follows:

- (1) Rent
(2) Utilities (other than telephone charges)
(3) Real & Personal Property Insurance
(4) Occupancy tax not deductible under section 164
(5) Nonrefundable fees paid for securing a leasehold
(6) Household Repairs
Total

I estimate that my base housing amount for my qualifying period will be. I estimate that my housing cost amount (housing expenses less the base housing amount) for the qualifying period will be

I understand that this total, plus the total reported on any other statements outstanding with other employers, should not be more than my expected housing cost amount exclusion.

If I become disqualified for the exclusions, I will immediately notify my employer and advise what part, if any, of the period I am qualified for.

I understand that any exemption from income tax withholding permitted by reason of furnishing this statement is not a determination by the Internal Revenue that any amount paid to me for any services performed during the tax year is excludable from gross income under the provisions of Code section 911(a).

Your Signature Date

Checking your withholding. Before you report how much U.S. income tax was withheld on your 1994 return, you should carefully review all information documents such as Form W-2, and Form 1099. Compare other records such as final pay records or bank statements, with Form W-2 or Form 1099 to verify the withholding on these forms. You may use the following chart to help you locate the U.S. income tax withholding box on each form.

WHERE TO FIND WITHHOLDING

FORM NUMBER	BOX NUMBER
W-2	2
W-2G	2
W-2C	2
1099-INT	4
1099-DIV	2
1099-B	4
1099-OID	4
1099-PATR	4
1099-MISC	4
1099-G	4
1099-R	4

Check your U.S. income tax withholding even if you pay someone else to prepare your tax return. You may be assessed penalties and interest if you claim more than your correct amount of withholding.

30% Flat Rate Withholding

Generally, U.S. payers of certain fixed or determinable annual or periodic income are required to withhold tax at a flat 30% (or lower treaty) rate on payments of this income to non-resident aliens. If you are a U.S. citizen or resident and are having this tax withheld in error from payments to you because you have a foreign address, you should notify the payer of the income to stop the withholding.

To do this, you must give the payer a written statement in duplicate stating that you are a citizen or resident of the United States. If you are a resident alien, you can claim U.S. residence by filing Form 1078, *Certificate of Alien Claiming Residence in the United States*, in duplicate with the payer.

Tax withheld in error can be claimed as a credit on your tax return if the amount is not adjusted by the payer of the income.

Social Security and Medicare Taxes

Social security and Medicare taxes may apply to wages paid to an employee regardless of where the services are performed.

General

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee:

- 1) Within the United States, regardless of the citizenship or residence of either the employee or the employer,
- 2) Outside the United States on or in connection with an American vessel or aircraft, regardless of the citizenship or residence of either the employee or the employer, **provided that** either:
 - a) The employment contract is entered into within the United States, or
 - b) The vessel or aircraft touches at a U.S. port while the employee is employed on it,
- 3) Outside the United States, as provided by an applicable **binational social security agreement** (discussed later),
- 4) Outside the United States by a U.S. citizen or a U.S. resident alien for an American employer (defined later), or
- 5) Outside the United States by a U.S. citizen or U.S. resident alien for a foreign affiliate of an American employer under a voluntary agreement entered into between the American employer and the U.S. Treasury Department.

American vessel or aircraft. An American vessel is any vessel documented or numbered under the laws of the United States, and any other vessel whose crew is employed solely by one or more U.S. citizens or residents or U.S. corporations. An American aircraft is an aircraft registered under the laws of the United States.

American employer. An American employer includes any of the following:

- 1) The U.S. Government or any of its instrumentalities,
- 2) An individual who is a resident of the United States,
- 3) A partnership of which at least two-thirds of the partners are U.S. residents,
- 4) A trust of which all the trustees are U.S. residents, or
- 5) A corporation organized under the laws of the United States, any U.S. state, or the District of Columbia, Puerto Rico, the Virgin Islands, Guam, or American Samoa.

Foreign affiliate. A foreign affiliate of an American employer is any foreign entity in which the American employer has at least a 10% interest, directly or through one or more entities. For a corporation, the 10% interest must be in its voting stock, and for any other entity the 10% interest must be in its profits.

Form 2032, Contract Coverage Under Title II of the Social Security Act, is used by American employers to extend social security coverage to U.S. citizens and residents working abroad for foreign affiliates of the American employers. Coverage under an agreement in effect on or after June 15, 1989, cannot be terminated.

Excludable meals and lodging. The value of meals and lodging provided to you for the convenience of your employer and excluded from your income is also excluded from your wages subject to social security tax.

Binational Social Security (Totalization) Agreements

The United States has entered into agreements with several foreign countries to coordinate social security coverage and taxation of workers who are employed in one of the countries. These agreements are commonly referred to as totalization agreements. Agreements are in effect with the following countries:

- Austria,
- Belgium,
- Canada,
- Finland,
- France,
- Germany,
- Greece
- Ireland,
- Italy,
- Luxembourg,
- The Netherlands,
- Norway,
- Portugal,
- Spain,
- Sweden,
- Switzerland, and
- The United Kingdom

Under these agreements, dual coverage and dual contributions (taxes) for the same work are eliminated. The agreements generally make sure that social security taxes are paid only to one country.

Generally, under these agreements, you will only be subject to social security taxes in the country where you are working. However, if you are temporarily sent to work in a foreign country, and your pay would otherwise be subject to social security taxes in both the United States and that country, you generally can remain covered only by U.S. social security. More information on any specific agreement can be obtained by contacting the United States Social Security Administration.

To establish that your pay in a foreign country is subject only to U.S. social security tax and is exempt from foreign social security tax, your employer in the United States should write to the United States Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, MD 21235.

Your employer should include the following information in the letter:

- 1) Your name,
- 2) Your U.S. social security number,
- 3) Your date and place of birth,
- 4) The country of which you are a citizen,
- 5) The country of your permanent residence,

- 6) The name and address of your employer in the United States and in the foreign country,
- 7) The date and place you were hired, and
- 8) The beginning date and the expected ending date of your employment in the foreign country.

If you are permanently working in a foreign country with which the United States has a social security agreement and your pay is exempt under the agreement from U.S. social security tax, you or your employer should get a statement from the authorized official or agency of the foreign country verifying that your pay is subject to social security coverage in that country.

If the authorities of the foreign country will not issue such a statement, either you or your employer should get a statement from the U.S. Social Security Administration, Office of International Policy, at the above address, that your wages are not covered by the U.S. social security system.

This statement should be kept by your employer because it establishes that your pay is exempt from U.S. social security tax. Only wages paid on or after the effective date of the agreement can be exempt from U.S. social security tax.

3. Self-Employment Tax

Topics

This chapter discusses:

- Who must pay self-employment tax
- Who is exempt from self-employment tax

Useful Items

You may want to see:

Publication

- 533** Self-Employment Tax
- 517** Social Security and Other Information for Members of the Clergy and Religious Workers

If you are a self-employed U.S. citizen or resident abroad, other than a U.S. citizen employee of an international organization, foreign government, or wholly owned instrumentality of a foreign government, you generally are subject to the self-employment tax. This is a social security and Medicare tax on net earnings from self-employment of \$400 or more a year. For 1994 the tax is on net earnings of

\$400 or more up to \$60,600 for the social security portion. All net earnings are subject to the Medicare portion. **Net earnings from self-employment** usually include all business income minus all business deductions allowed for tax purposes, including the 7.65% deduction.

Employed by a U.S. church. If you were employed by a U.S. church or a qualified church-controlled organization that elected exemption from social security and Medicare taxes, and you received wages of \$100 or more from the organization (after the 7.65% deduction), the amounts paid to you are subject to the self-employment tax. However, you can elect to be exempt from social security and Medicare taxes if you are a member of a qualifying religious sect. See Publication 533, *Self-Employment Tax*.

Effect of exclusion. You must take all of your self-employment income into account in figuring your net earnings from self-employment, even though the income is exempt from income tax because of the foreign earned income exclusion.

Example. You are in business abroad as a consultant and qualify for the foreign earned income exclusion. Your foreign earned income is \$90,000, business deductions \$24,000, and net profit \$66,000. You must pay social security tax on the maximum of \$60,600 and Medicare tax on \$60,951 (\$66,000 minus \$5,049 (\$66,000 × 7.65%)) in 1994, even though you exclude all of your earned income.

Optional method. You can use the nonfarm optional method if you are self-employed and your net nonfarm are less than \$1,733 and less than 72.189% of your gross nonfarm income. You must have had \$400 of net self-employment earnings in at least 2 of the 3 immediately preceding tax years. You cannot choose to report less than your actual net earnings from nonfarm self-employment and you cannot use the nonfarm optional method for more than 5 tax years. Use long Schedule SE (Form 1040). For more details get Publication 533, *Self-Employment Tax*.

Members of the clergy. Although members of the clergy may be employees in performing their ministerial services, they are treated as self-employed for self-employment tax purposes. Their U.S. self-employment tax is based upon net earnings from self-employment figured without regard to the foreign earned income exclusion or the foreign housing exclusion.

Members of the clergy are covered automatically by social security and Medicare unless they receive exemption from coverage for their ministerial duties because they conscientiously oppose public insurance due to religious reasons or because they oppose it due to the religious principles of their denomination. You must file Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*, to apply for this exemption.

This subject is discussed in further detail in Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*.

Puerto Rico, Guam, Commonwealth of the Northern Mariana Islands, American Samoa, or Virgin Islands. If you are a U.S. citizen or resident and own and operate a business in Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, or the Virgin Islands, you must pay tax on net earnings from self-employment (if it is \$400 or more) from those sources whether or not the income is exempt from U.S. income taxes (or whether or not you must otherwise file a U.S. income tax return). Unless your situation is described below, attach Schedule SE (Form 1040) to your U.S. income tax return.

If you do not have to file Form 1040 with the United States and you are a resident of:

- Guam,
- American Samoa,
- The Virgin Islands,
- The Commonwealth of the Northern Mariana Islands, or
- Puerto Rico,

figure your self-employment tax on either Form 1040-PR or Form 1040SS, whichever applies.

You must file these forms with the Internal Revenue Service Center, Philadelphia, PA 19255.

Exemption

The United States may enter into agreements with foreign countries to eliminate dual coverage and dual contributions (taxes) to social security systems for the same work. See *Binational Social Security (Totalization) Agreements* in Chapter 2 under *Social Security and Medicare Taxes*. As a general rule, self-employed persons who are subject to dual taxation will only be covered by the social security system of the country where they reside. For more information on how self-employed persons are affected under any specific agreement, contact the United States Social Security Administration.

If you are a U.S. citizen permanently working in a foreign country with which the United States has a social security agreement and you are exempt under the agreement from U.S. self-employment tax, you should get a statement from the authorized official or agency of the foreign country verifying that you are subject to social security coverage in that country.

If the authorities of the foreign country will not issue a statement, you should get a statement from the U.S. Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, MD 21235, that your earnings are not covered by the U.S. social security system.

Attach a photocopy of either statement to your federal income tax return each year you are exempt. Also enter "Exempt, see attached statement," on the line for self-employment tax on your return.

If you believe that your self-employment earnings should be exempt from foreign social security tax and subject only to U.S. self-employment tax, you should request a certificate of coverage from the United States Social Security Administration, Office of International Policy. The certificate will establish your exemption from the foreign social security tax.

4.

Foreign Earned Income and Housing: Exclusion-Deduction

Topics

This chapter discusses:

- Who qualifies for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction
- How to figure the foreign earned income exclusion
- How to figure the foreign housing exclusion and the foreign housing deduction

Useful Items

You may want to see:

Publication

- 519** U.S. Tax Guide for Aliens
- 596** Earned Income Credit

Form (and Instructions)

- 1040X** Amended U.S. Individual Income Tax Return
- 2555** Foreign Earned Income
- 2555-EZ** Foreign Earned Income Exclusion

If you meet certain requirements, you may qualify for the foreign earned income and foreign housing exclusions and the foreign housing deduction.

If you are a U.S. citizen or a resident alien of the United States and live abroad, you are taxed on your worldwide income. However, you may qualify to exclude up to \$70,000 of your foreign earned income. In addition, you can exclude or deduct certain foreign housing

amounts. See *Foreign Earned Income Exclusion* and *Foreign Housing Exclusion or Deduction*, later.

You may also be entitled to exclude from income the value of meals and lodging provided to you by your employer. See *Exclusion of Meals and Lodging*, later.

Requirements

To claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, you must have foreign earned income, your tax home must be in a foreign country, and you must be one of the following:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or a U.S. resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

See Publication 519, *U.S. Tax Guide for Aliens*, to find out if you qualify as a U.S. resident alien for tax purposes and whether you keep that alien status when you temporarily work abroad.

If you are a nonresident alien, your spouse is a U.S. citizen or resident, and you both choose to be treated as U.S. residents for tax purposes, you are considered a resident alien. For information on making the choice, see the discussion in Chapter 1 under *Nonresident Spouse Treated as a Resident*.

Waiver of minimum time requirements.

The minimum time requirements for the bona fide residence test and the physical presence test can be waived if you must leave a foreign country because of war, civil unrest, or similar adverse conditions in that country. See the discussion later under *Waiver of Time Requirements*.

Tax Home in Foreign Country

To qualify for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, your tax home must be in a foreign country throughout your period of residence or physical presence abroad. For this purpose, your period of physical presence is the 330 full days during which you were present in a foreign country, not the 12 consecutive months during which those days occurred.

Tax Home

Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you are permanently or indefinitely engaged to work as an employee or self-employed individual. Having a "tax home" in a given location does not necessarily mean that the given location is your residence or domicile for tax purposes.

If you do not have a regular or main place of business because of the nature of your work, your tax home may be the place where you regularly live. If you have neither a regular or main place of business nor a place where you regularly live, you are considered an itinerant and your tax home is wherever you work.

You are not considered to have a tax home in a foreign country for any period in which your abode is in the United States. However, your abode is not necessarily in the United States while you are temporarily in the United States. Your abode is also not necessarily in the United States merely because you maintain a dwelling in the United States, whether or not your spouse or dependents use the dwelling.

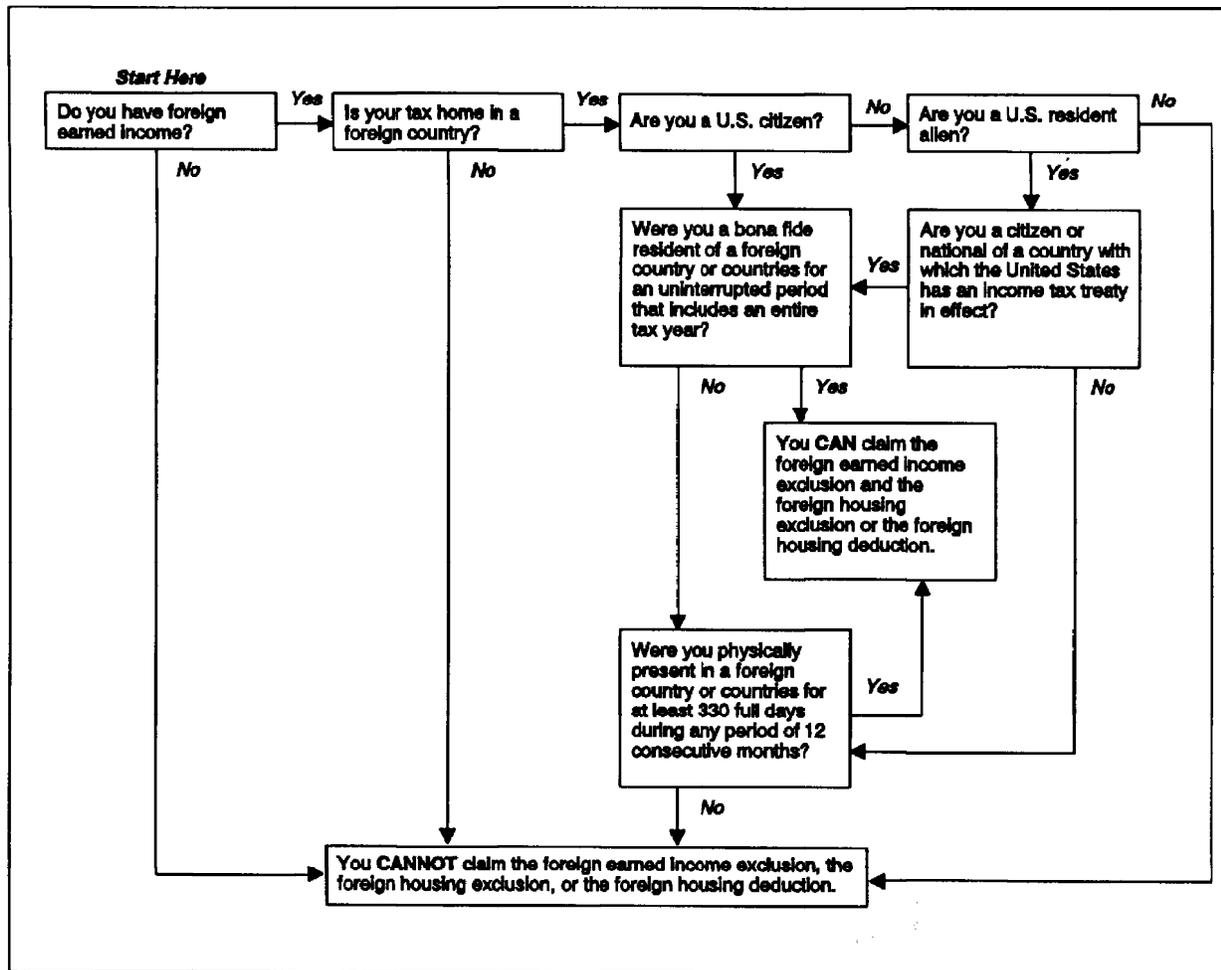
"Abode" has been variously defined as one's home, habitation, residence, domicile, or place of dwelling. It does not mean your principal place of business. "Abode" has a domestic rather than a vocational meaning and does not mean the same as "tax home." The location of your abode often will depend on where you maintain your economic, family, and personal ties.

Example 1. You are employed on an offshore oil rig in the territorial waters of a foreign country and work a 28-day on/28-day off schedule. You return to your family residence in the U.S. during your off periods. You are considered to have an abode in the U.S. and do not satisfy the tax home test in the foreign country. Therefore, you cannot claim either of the exclusions or the housing deduction.

Example 2. You were a marketing executive with a producer of machine tools in Toledo, Ohio, since 1984. In November 1993, your employer transferred you to London, England, for a minimum of 18 months to set up a sales operation for Europe. Before you left for London, you distributed new business cards showing your new business and home addresses in London. You kept ownership of your home in Toledo and rented it to another family, and you placed your car in storage. On November 2, 1993, you moved your spouse, children, furniture, and family pets to a home your employer rented for you in London.

Shortly after moving to London, you bought a car, and you and your spouse got British driving licenses. Your entire family got library cards for the local public library. You and your spouse opened bank accounts with a London bank and secured consumer credit. You joined a local business league, and both you and your spouse also became active in the neighborhood civic association and worked with a local charity. Your abode is in London for the

Figure 4-A. Can I Claim the Exclusion or Deduction?



time you live there, and you satisfy the tax home test in the foreign country.

Temporary or Indefinite Assignment

The location of your tax home often depends on whether your assignment is temporary or indefinite. If you are temporarily absent from your tax home in the United States on business, you may be able to deduct your away-from-home expenses (for travel, meals, and lodging) but you would not qualify for the foreign earned income exclusion. If your new work assignment is for an indefinite period, your new place of employment becomes your tax home, and you would not be able to deduct any of the related expenses that you have in the general area of this new work assignment. However, if your new tax home is in a foreign country and you meet the other requirements, your earnings may qualify for the foreign earned income exclusion.

If you expect your employment away from home in a single location to last, and it does last, for 1 year or less, it is temporary unless facts and circumstances indicate otherwise. If you expect it to last for more than 1 year or you

do not expect it to last for 1 year or less, it is indefinite. If you expect it to last for 1 year or less, but at some later date you expect it to last longer than 1 year, it is temporary (in the absence of facts and circumstances indicating otherwise) until your expectation changes.

Foreign Country

To meet the bona fide residence test or the physical presence test, you must live in or be present in a foreign country. A foreign country usually is any territory (including the air space and territorial waters) under the sovereignty of a government other than that of the United States.

The term "foreign country" includes the seabed and subsoil of those submarine areas adjacent to the territorial waters of a foreign country and over which the foreign country has exclusive rights under international law to explore and exploit the natural resources.

The term "foreign country" does *not* include Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, or U.S. possessions such as American

Samoa. For purposes of the foreign earned income exclusion, the foreign housing exclusion, and the foreign housing deduction, the terms "foreign," "abroad," and "overseas" refer to areas outside the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and the Antarctic region.

American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands

Residence or presence in a U.S. possession does *not* qualify you for the foreign earned income exclusion. You may, however, qualify for the possession exclusion.

American Samoa. There is a possession exclusion available to individuals who are bona fide residents of American Samoa for the entire tax year. Gross income from sources within American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, or income that is effectively connected with the conduct of a trade or business within those

possessions, may be eligible for this exclusion. Use Form 4563, *Exclusion of Income for Bona Fide Residents of American Samoa*, to figure the exclusion.

Guam and the Commonwealth of the Northern Mariana Islands. New exclusion rules will apply to residents of Guam and the Commonwealth of the Northern Mariana Islands when, and if, new implementation agreements take effect between the United States and those possessions.

For more information, see Publication 570, *Tax Guide for Individuals With Income From U.S. Possessions*.

Puerto Rico and Virgin Islands

Residents of Puerto Rico and the Virgin Islands are not entitled to the possession exclusion (discussed above) or to the exclusion of foreign earned income or the exclusion or deduction of foreign housing amounts under the bona fide residence or physical presence rules discussed later.

Puerto Rico. Generally, if you are a U.S. citizen who is a bona fide resident of Puerto Rico for the entire tax year, you are not subject to U.S. tax on income from Puerto Rican sources. This does not include amounts paid for services performed as an employee of the United States. However, you are subject to U.S. tax on your income from sources outside Puerto Rico. You cannot deduct expenses allocable to the exempt income.

Bona Fide Residence Test

The bona fide residence test applies to U.S. citizens and to any U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect.

Bona fide residence. To see if you meet the test of bona fide residence in a foreign country, you must find out if you have established such a residence.

Your bona fide residence is not necessarily the same as your domicile. Your domicile is your permanent home, the place to which you always return or intend to return.

Example. You could have your domicile in Cleveland, Ohio, and a bona fide residence in London if you intend to return eventually to Cleveland.

The fact that you go to London does not automatically make London your bona fide residence. If you go there as a tourist, or on a short business trip, and return to the United States, you have not established bona fide residence in London. But if you go to London to work for an indefinite or extended period and you set up permanent quarters there for yourself and your family, you probably have established a bona fide residence in a foreign country, even though you intend to return eventually to the United States.

You are clearly a transient in the first instance. However, in the second, you are a resident because your stay in London appears to

be permanent. If your residency is not as clearly defined as either of these illustrations, it may be more difficult to decide whether you have established a bona fide residence.

Determination. Questions of bona fide residence are determined according to each individual case, taking into account such factors as your intention or the purpose of your trip and the nature and length of your stay abroad.

You must show the Internal Revenue Service (IRS) that you have been a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year. The IRS decides whether you qualify as a bona fide resident of a foreign country largely on the basis of facts you report on Form 2555, *Foreign Earned Income*. File this form with your income tax return on which you claim the exclusion of foreign earned income. IRS cannot make this determination until you file Form 2555.

Statement to foreign authorities. You are not considered a bona fide resident of a foreign country if you make a statement to the authorities of that country that you are not a resident of that country, and the authorities hold that you are not subject to their income tax laws as a resident.

If you have made such a statement and the authorities have not made a final decision on your status, you are not considered to be a bona fide resident of that foreign country.

Special agreements and treaties. The income tax exemption provided in a treaty or other international agreement will not in itself prevent a person from being a *bona fide resident* of the foreign country. Whether a treaty prevents a person from becoming a bona fide resident of a foreign country is determined under all provisions of the treaty, including specific provisions relating to residence or privileges and immunities.

Example 1. You are a U.S. citizen employed in England by a U.S. employer under contract with the U.S. Armed Forces. You do not qualify for special status under the North Atlantic Treaty Status of Forces Agreement. You are subject to United Kingdom income taxes, and *may* qualify as a bona fide resident.

Example 2. You are a U.S. citizen in England who qualifies as an "employee" of an armed service or as a member of a "civilian component" under the North Atlantic Treaty Status of Forces Agreement. You do *not* qualify as a bona fide resident.

Example 3. You are a U.S. citizen employed in Japan by a U.S. employer under contract with the U.S. Armed Forces. You are subject to the agreement of the Treaty of Mutual Cooperation and Security between the United States and Japan. You do *not* qualify as a bona fide resident.

Example 4. You are a U.S. citizen employed as an "official" by the United Nations in Switzerland. You are exempt from Swiss taxation on the salary or wages paid to you by the United Nations. This does not prevent you

from qualifying as a bona fide resident if you meet *all* the requirements for that status.

Effect of voting by absentee ballot. If you are a U.S. citizen living abroad, you can vote by absentee ballot in any elections held in the United States without risking your status as a bona fide resident of a foreign country.

However, if you give information to the local election officials about the nature and length of your stay abroad that does not match the information you give for the bona fide residence test, the information given in connection with absentee voting will be considered in determining your status, but will not necessarily be conclusive.

Uninterrupted period including entire tax year. To qualify for bona fide residence, you must reside in a foreign country for an uninterrupted period that includes an entire tax year. An entire tax year is from January 1 through December 31 for taxpayers who file their income tax returns on a calendar year basis.

During the period of bona fide residence in a foreign country—even during the first full year—you can leave the country for brief or temporary trips back to the United States or elsewhere for vacation or business. To keep your status as a bona fide resident of a foreign country, you must have a clear intention of returning from such trips, without unreasonable delay, to your foreign residence or to a new bona fide residence in another foreign country.

Example 1. You are the Lisbon representative of a U.S. employer. You arrive with your family in Lisbon on November 1, 1992. Your assignment is indefinite, and you intend to live there with your family until your company sends you to a new post. You immediately establish residence there. On April 1, 1993, you arrive in the United States to meet with your employer, leaving your family in Lisbon. You return to Lisbon on May 1, and continue living there. On January 1, 1994, you have completed an uninterrupted period of residence for a full tax year (1993), and you may qualify as a bona fide resident of a foreign country.

Example 2. Assume that in Example 1, you are transferred back to the United States on December 13, 1993. You do not qualify under the bona fide residence test because your bona fide residence in the foreign country, although it lasted more than a year, did not include a full tax year. You may, however, qualify for the foreign earned income exclusion or the housing exclusion or deduction under the physical presence test discussed later.

Bona fide residence status not automatic. You do not automatically acquire bona fide resident status merely by living in a foreign country or countries for 1 year.

Example. If you go to a foreign country to work on a particular construction job for a specified period of time, you ordinarily will not be regarded as a bona fide resident of that country even though you work there for one tax year or longer. The length of your stay and the nature of your job are only some of the factors to be considered in determining whether you meet the bona fide residence test

Bona fide resident for part of a year. Once you have established bona fide residence in a foreign country for an uninterrupted period that includes an entire tax year, you will qualify as a bona fide resident for the period starting with the date you actually began the residence and ending with the date you abandon the foreign residence. Therefore, you could qualify as a bona fide resident for part of a tax year.

Example. You were a bona fide resident of England from March 1, 1992, through September 14, 1994. On September 15, 1994, you returned to the United States. Since you were a bona fide resident of a foreign country for all of 1993, you qualify as a bona fide resident from March 1, 1992, through September 14, 1994.

If you are assigned from one foreign post to another, you may or may not have a break in foreign residence between your assignments, depending on the circumstances.

Example 1. You were a resident of France from October 1, 1993, through November 30, 1994. On December 1, 1994, you and your family were returned to the United States by your employer to wait for an assignment to another foreign country. Your household goods also were returned to the United States.

Your foreign residence ended on November 30, 1994, and did not begin again until after you were assigned to another foreign country and physically entered that country. Since you were not a bona fide resident of a foreign country for the entire tax year of 1993 or 1994, you do not qualify under the bona fide residence test in either year. You may, however, qualify for the foreign earned income exclusion or the housing exclusion or deduction under the physical presence test, discussed later.

Example 2. Assume the same facts as in Example 1, except that upon completion of your assignment in France you were given a new assignment to England. On December 1, 1994, you and your family returned to the United States for a month's vacation. On January 2, 1995, you arrived in England for your new assignment. Because you did not interrupt your bona fide residence abroad, you qualify at the end of 1994 as a bona fide resident of a foreign country.

Physical Presence Test

You meet the physical presence test if you are physically present in a foreign country or countries 330 full days (approximately 11 months) during a period of 12 consecutive months. The 330 qualifying days do not have to be consecutive. The physical presence test applies to both U.S. citizens and resident aliens.

The physical presence test is concerned only with how long you stay in a foreign country or countries. This test does not depend on the kind of residence you establish, your intentions about returning, or the nature and purpose of your stay abroad. However, your intentions with regard to the nature and purpose of your stay abroad are relevant in determining whether you meet the tax home test.

12-month period. Your 12-month period can begin with any day of any calendar month. It

ends the day before the same calendar day, 12 months later.

Purpose of stay. Your presence in a foreign country does not have to be only for employment purposes. Some of the qualifying foreign-presence time can be vacation time in foreign countries.

Exceptions to length of stay. The requirement of at least 330 days in a foreign country within the 12-month period is, with one exception, unconditional. If, for example, you fall short of the requirement because illness forces your return to the United States, or you take a vacation in the United States, or you leave the foreign country under your employer's orders, you do not qualify under the physical presence test. You may, however, qualify if you are required to leave because of war or civil unrest. See *Waiver of Time Requirements*, later.

Full day. A full day is a period of 24 hours in a row, beginning at midnight. You must spend each of the 330 full days in a foreign country. When you leave the United States to go directly to a foreign country or when you return directly to the United States from a foreign country, the time you spend on or over international waters does not count toward the 330-day total.

Example. You leave the United States for France by air on June 10. You arrive in France at 9:00 a.m. on June 11. Your first full day in France is June 12.

If, in traveling from the United States to a foreign country, you pass over a foreign country before midnight of the day you leave, the first day you can count toward the 330-day total is the day following the day you leave the United States.

Example. You leave the United States by air at 9:30 a.m. on June 10 to travel to Spain. You pass over a part of France at 11:00 p.m. on June 10 and arrive in Spain at 12:30 a.m. on June 11. Your first full day in a foreign country is June 11.

You can move about from one place to another in a foreign country or to another foreign country without losing full days. But if any part of your travel is not within a foreign country or countries and takes 24 hours or more, you will lose full days.

Example 1. You leave London by air at 11:00 p.m. on July 6 and arrive in Stockholm at 5:00 a.m. on July 7. Your trip takes less than 24 hours and you lose no full days.

Example 2. You leave Norway by ship at 10:00 p.m. on July 6 and arrive in Portugal at 6:00 a.m. on July 8. Since the trip takes more than 24 hours, you lose as full days July 6, 7, and 8. If you remain in Portugal, your next full day in a foreign country is July 9.

If you are in transit between two points outside the United States and are physically present in the United States for less than 24 hours, you are not treated as present in the United States during the transit. You are treated as traveling over areas not within any foreign country.

How to figure the 12-month period. Three rules you should know when figuring the 12-month period are:

First, your 12-month period must be made up of consecutive months. **Any** 12-month period can be used if the 330 days in a foreign country fall within that period.

Second, you do not have to begin your 12-month period with your first full day in a foreign country or to end it with the day you leave. You can choose the 12-month period that gives you the greatest exclusion.

Example. You are a construction worker who works on and off in a foreign country over a 20-month period. You might pick up the 330 full days in a 12-month period only during the middle months of the time you work in the foreign country because the first few and last few months of the 20-month period are broken up by long visits to the United States.

Third, in determining if the 12-month period falls within a longer stay in the foreign country, **any** 12-month period can overlap another.

Example. You work in Canada for a 20-month period from January 1, 1993, through August 31, 1994, except that you spend February 1993 and February 1994 on vacation in the United States. You are present in Canada 330 full days during each of the following two 12-month periods. One 12-month period can begin January 1, 1993, and end December 31, 1993; the second period can begin September 1, 1993, and end August 31, 1994. By overlapping the 12-month periods in this way, you meet the physical presence test for the whole 20-month period. See Table 4-1.

Exceptions to Tests

The following discussions under this heading are exceptions to meeting the requirements under the bona fide residence and the physical presence tests.

Waiver of Time Requirements

Both the bona fide residence test and the physical presence test contain minimum time requirements that you must meet before you qualify under the test. The bona fide residence test requires residence in a foreign country or countries for an uninterrupted period that includes an entire tax year (January 1—December 31 for calendar year taxpayers). The physical presence test requires presence in a foreign country or countries for 330 days during a period of 12 consecutive months.

The minimum time requirements can be waived, however, if you must leave a foreign country because of **war, civil unrest, or similar adverse conditions** in that country. You also must be able to show that you reasonably could have expected to meet the minimum time requirements if it had not been for the adverse conditions. Before you can qualify for the waiver, you must actually have your tax home in the foreign country and be a bona fide resident of, or be physically present in, the foreign country.

Countries affected. The IRS has determined that adverse conditions existed in the following countries during the periods indicated. If you left one of these countries during the indicated period, you can qualify for the bona fide residence test or physical presence test without meeting the minimum time requirement. However, in figuring your exclusion, the number of your qualifying days of bona fide residence or physical presence includes only days of actual residence or presence within the country.

Country	Time Periods	
	Beginning	Ending
Afghanistan	April 23, 1979	(Still in effect)
Algeria	Feb. 13, 1992	March 13, 1992
	Dec. 10, 1993	(Still in effect)
Angola	Oct. 31, 1992	March 1, 1993
Bahrain	Jan. 17, 1991	April 9, 1991
Bosnia & Hercegovina	April 7, 1992	(Still in effect)
Colombia	Aug. 29, 1989	Nov. 22, 1989
Congo	June 15, 1993	Aug. 14, 1993
Croatia	April 7, 1992	(Still in effect)
Ethiopia	April 25, 1991	July 9, 1991
Former Yugoslav Republic of Macedonia	June 13, 1992	(Still in effect)
Haiti	Oct. 29, 1991	Jan. 18, 1994
Iran	Sept. 1, 1978	(Still in effect)
Iraq	Aug. 3, 1990	April 9, 1991
Jordan	Dec. 26, 1990	April 1, 1991
Kuwait	Aug. 3, 1990	April 9, 1991
Lebanon	Aug. 31, 1979	(Still in effect)
Liberia	June 1, 1990	Oct. 21, 1990
	Oct. 20, 1992	Feb. 16, 1993
Libya	Aug. 31, 1979	Aug. 31, 1992
Mauritania	Jan. 13, 1991	April 1, 1991
Montenegro	June 13, 1992	(Still in effect)
Morocco	Jan. 11, 1991	March 22, 1991
Oman	Jan. 17, 1991	April 9, 1991
Pakistan	Jan. 15, 1991	April 11, 1991
Panama	May 12, 1989	Nov. 6, 1989
People's Republic of China	June 7, 1989	Aug. 9, 1989
Philippines	Nov. 15, 1990	Dec. 14, 1990
Qatar	Jan. 17, 1991	April 9, 1991
Saudi Arabia	Jan. 17, 1991	April 9, 1991
Serbia	June 13, 1992	(Still in effect)
Sierra Leone	May 2, 1992	June 30, 1992
Somalia	Dec. 21, 1990	(Still in effect)
Sudan	Dec. 26, 1990	April 8, 1991
	Aug. 21, 1993	(Still in effect)
Tajikistan	Oct. 24, 1992	Feb. 19, 1993
Tanzania	Jan. 25, 1991	March 16, 1991
United Arab Emirates	Jan. 17, 1991	April 9, 1991
Yemen	Aug. 18, 1990	March 29, 1991
Yugoslavia	July 4, 1991	Aug. 8, 1991
	Sept. 19, 1991	Dec. 25, 1991
Zaire	Sept. 24, 1991	Jan. 18, 1994

*Montenegro and Serbia, formerly part of the Socialist Federal Republic of Yugoslavia, have asserted the formation of a joint independent state, but this entity has not been formally recognized as a state by the United States.

Note. The above list is effective up to and including April 25, 1994. See Publication 553, *Highlights of 1994 Tax Changes*, for any additions or changes to this list made after that date. If you find the above list indicates that you are entitled to a foreign earned income exclusion or deduction for a prior year, you should file an amended return. Also, if a future edition of this publication has a list different than this one, you may want to file an amended return based on the latest list.

U.S. Travel Restrictions

If you are present in a foreign country in violation of U.S. law, you will not be treated as a bona fide resident of or physically present in a foreign country while in violation of the law. Furthermore, income that you earn from sources within such a country for services performed during a period of violation does not qualify as foreign earned income. Housing expenses that you incur within that country (or outside that country for housing your spouse or dependents) while you are present in that country in violation of the law cannot be included in figuring your foreign housing amount.

Currently, the countries to which travel restrictions apply and the beginning dates of the restrictions are as follows:

Cuba — January 1, 1987,

Iraq — August 2, 1990,

Libya — January 1, 1987.

The restrictions are still in effect in all three countries.

Foreign Earned Income

The computation of the foreign earned income exclusion, the foreign housing exclusion, and the foreign housing deduction is based on foreign earned income. For this purpose, foreign earned income is income you receive for services you perform in a foreign country during a period your tax home is in a foreign country and you meet either the bona fide residence test or the physical presence test, which are discussed earlier.

Foreign earned income does not include amounts:

- 1) Already excluded from your income as meals and lodging furnished for the convenience of your employer,
- 2) Received as a pension or annuity, including social security benefits (see *Pensions and annuities*, later),
- 3) Paid by the U.S. Government to its employees (see *U.S. Government Employees*, later),
- 4) Included in your income because of your employer's contributions to a nonexempt employee trust or to a nonqualified annuity contract,
- 5) Included in your income as a recaptured unallowable moving expense (see *Moving Expenses* in Chapter 5), or

- 6) Received after the end of the tax year following the tax year in which you performed the services that earned the income.

Earned income is **pay for personal services** performed, such as wages, salaries, or professional fees. The list that follows classifies many types of income into three categories. The column headed *Variable* lists income that may fall into the category of earned, unearned, or partly into both. For more information on earned and unearned income, see *Earned and Unearned Income*, later.

Earned Income	Unearned Income	Variable
Salaries and wages	Dividends	Business profits
Commissions	Interest	Royalties
Bonuses	Capital gains	Rents
Professional fees	Gambling winnings	
Tips	Alimony	
	Social security benefits	
	Pensions	
	Annuities	

In addition to the types of earned income listed, the following noncash income and allowances or reimbursements are considered earned income. They must be included in the listing of earned income on Form 2555.

Noncash income. Fair market value of property or facilities provided by employer for:

- Home (lodging)
- Meals
- Car
- Other

Allowances or reimbursements for:

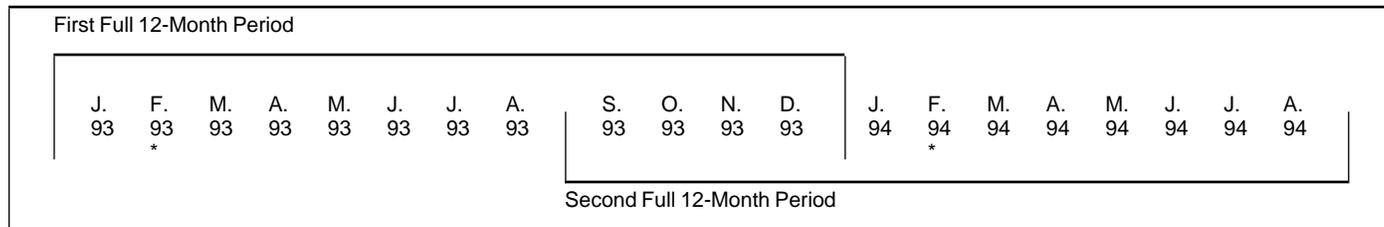
- Cost of living
- Overseas differential
- Family
- Education
- Home leave
- Quarters
- Moving (discussed later)
- Other

Source of Earned Income

The source of earned income is the place where you perform the services. Foreign earned income is income from the performance of personal services in a foreign country. Where or how payment is made has no effect on the source of income. For example, income you receive for your personal services performed in France is income from a foreign source even if the income is paid directly to a bank account in the United States by an employer located in New York City.

If you receive a specific amount for labor or personal services performed in the United States, you must report that amount as U.S.

TABLE 4-1. Time Line (For the Entire 20-Month Period You Worked in Canada)



* 28-day vacation in the United States.

source income. If you cannot accurately determine how much compensation you received for services performed in the United States, or for services performed partly in the United States and partly in a foreign country, determine the amount of U.S. source income using the method that most correctly shows the proper source of your income.

In most cases you may make this determination on a time basis. U.S. source income is the amount that results from multiplying your total pay (including noncash fringe benefits) by a fraction. The numerator (top number) is the number of days you performed services within the United States. The denominator (bottom number) is the total number of days of service for which you are paid.

Example. You are a U.S. citizen, a bona fide resident of Country A, and working as a mining engineer. Your salary is \$36,800 per year. You work a 5–day week, Monday through Friday. After eliminating the period of your vacation, you have a total of 240 workdays in the year. You worked in the United States during the year for 6 weeks, which included 30 workdays. The following shows how to figure your wages paid for personal services rendered in the United States during the year.

$$\frac{[\text{Number of days worked in the U.S. during year (30)} + \text{Number of days of service during the year for which payment was made (240)}] \times \text{Annual salary } (\$36,800)}{= \$4,600.}$$

Your U.S. source income is \$4,600.

Earned and Unearned Income

Earned income was defined earlier as pay for personal services performed. Some income is not easily identified as earned or unearned income. These types of income—specifically, income from sole proprietorships, partnerships, and corporations, stock options, pensions and annuities, royalties, rents, and fringe benefits—are further explained here. Income from sole proprietorships and partnerships generally is treated one way, and income from corporations is treated another way.

Trade or business—sole proprietorship or partnership. Generally, income from a business in which capital investment is an important part of producing income is unearned income. However, if you are a sole proprietor or partner and your personal services are also an

important part of producing the income, part of it will be treated as your pay (earned income).

The amount treated as your pay cannot be more than the smaller of:

- 1) The value of your personal services to the business, or
- 2) 30% of your share of the net profits of the business.

In some cases, it may not be possible to allow as much as 30% of the net profits as earned income. The percentage depends on the value of your personal services to the business.

Example 1. You are a U.S. citizen and meet the bona fide residence test. You invest in a partnership based in Italy that is engaged solely in selling merchandise outside the United States. You perform no services for the partnership. At the end of the tax year, your share of the net profits is \$80,000. The entire \$80,000 is unearned income.

Example 2. Assume that in Example 1 you spend time operating the business. Your share of the net profits is \$80,000. The law allows you to treat as earned income up to 30% of your share of the profits, or \$24,000. However, if the value of your services for the year is \$15,000, your earned income is limited to the value of your services, \$15,000.

If you have a net loss, the part of your gross profit that represents a reasonable allowance for personal services actually rendered is considered earned income. Because you do not have a net profit, the 30% limit does not apply.

If capital is not an income-producing factor and personal services produce the business income, the 30% rule does not apply. The entire amount of business income is earned income.

Example. You and Lou Green are management consultants and operate as an equal partnership in performing services outside the United States. Because capital is not an income-producing factor, all the gross income from the partnership is considered earned income.

Trade or business—corporation. The treatment of income from a corporation is not the same as the treatment of income from a sole proprietorship or partnership. The salary you receive from a corporation is earned income only if it represents a reasonable allowance as compensation for services you perform for the

corporation. Any amount over what is considered a reasonable salary is not earned income.

Example 1. You are a U.S. citizen and an officer and stockholder of a corporation in Canada. You perform no work or service of any kind for the corporation. During the tax year you receive a \$10,000 “salary” from the corporation. The entire \$10,000 clearly is not for personal services and, therefore, is not earned income.

Example 2. You are a U.S. citizen and devote full time as secretary-treasurer of your corporation. During the tax year you receive \$50,000 as salary from the corporation. If \$40,000 is a reasonable allowance as pay for the work you did, then \$40,000 is earned income.

Stock options. You may have earned income if you disposed of stock that you got by exercising a stock option granted to you under an employee stock purchase plan.

If your gain on the disposition of option stock is treated as capital gain, your gain is not earned income.

However, if you disposed of the stock less than 2 years after you were granted the option or less than 1 year after you got the stock, any gain on the disposition is earned income. It is considered received in the year you disposed of the stock and earned in the year you performed the services for which you were granted the option. Any part of the gain that is due to services you performed outside the U.S. is foreign earned income.

See Publication 525, *Taxable and Nontaxable Income*, for a discussion of treatment of stock options.

Pensions and annuities. For the foreign earned income exclusion, the foreign housing exclusion, and the foreign housing deduction, amounts received as pensions or annuities are not earned income.

Royalties. Royalties from the leasing of oil and mineral lands and patents generally are not earned income. These royalties are a form of rent or dividends and are classified as unearned income.

Royalties received by a writer **are** earned income if they are received:

- 1) For the transfer of property rights of the writer in the writer’s product, or

- 2) Under a contract to write a book or series of articles.

Rental income. Generally, rental income is unearned income. If you perform personal services in connection with the production of rent, up to 30% of your net rental income can be considered earned income.

Example. Larry Smith, a U.S. citizen living in France, owns and operates a rooming house in Paris. If he is operating the rooming house as a business that requires capital and personal services, he can consider up to 30% of net rental income as earned income. On the other hand, if he just owns the rooming house and performs no personal services connected with its operation, except perhaps making minor repairs and collecting rents, none of his net income from the house is considered earned income.

Income of an artist. Income you receive from the sale of paintings is earned income if you painted the pictures yourself.

Use of employer's property or facilities. If you receive fringe benefits in the form of the right to use your employer's property or facilities, you must add the fair market value of that right to your pay. **Fair market value** is the price at which the property would change hands between a willing buyer and a willing seller, neither being required to buy or sell, and both having reasonable knowledge of all the necessary facts.

Example. You are privately employed and live in Japan all year. You are paid a salary of \$4,000 a month. You live rent-free in a house provided by your employer that has a fair rental value of \$2,000 a month. The house is not provided for your employer's convenience. You report on the calendar year, cash basis. You received \$48,000 salary from foreign sources plus \$24,000 fair rental value of the house, or a total of \$72,000.

Reimbursement of employee expenses. If you are reimbursed under an accountable plan for expenses you incur on your employer's behalf and you have adequately accounted to your employer for the expenses, you should omit the reimbursement from your earned income to the extent of the expenses incurred.

The related expenses will not be considered allocable to excluded earned income if your expenses are equal to your reimbursement. If your expenses are more than your reimbursements, the excess is considered to have been incurred in producing earned income and this amount must be allocated between your excluded and included income in determining the deductible amount. (See Chapter 5.) However, if your reimbursements exceed your expenditures, you must include the excess reimbursements in your earned income.

These rules do **not** apply to straight-commission salespersons or other individuals who are employees and have arrangements with their employers under which, for withholding

tax purposes, their employers consider a percentage of the commissions to be attributable to the expenses of the employees and do not withhold taxes on that percentage.

Reimbursement of moving expenses. Earned income includes reimbursement of expenses of moving from one residence to another that are for your employment or self-employment. The rules for determining **when** the reimbursement is considered earned or **where** the reimbursement is considered earned may differ somewhat from the general rules previously discussed.

Although you receive the reimbursement in one tax year, it may be considered earned for services performed, or to be performed, in another tax year. You **must** report the reimbursement as income on your return in the year you receive it, even though it may be considered earned during a different year.

If a move is from the United States to a foreign country, the moving expense reimbursement is considered pay for future services to be performed at the new location. The reimbursement is considered earned solely in the year of the move if your tax home is in a foreign country and you qualify under the bona fide residence test or physical presence test for at least 120 days during that tax year.

If you do not qualify under either test for 120 days during the year of the move, the reimbursement is considered earned in the year of the move and the year following the year of the move. To figure the amount earned in the year of the move, multiply the reimbursement by a fraction. The numerator (top number) is the number of days in your qualifying period that fall within the year of the move, and the denominator (bottom number) is the total number of days in the year of the move.

The difference between the total reimbursement and the amount considered earned in the year of the move is the amount considered earned in the year following the year of the move. The part earned in each year is figured as shown in the following example.

Example. You are a U.S. citizen employed in the United States. You are told in October 1994 that you are being transferred to a foreign country to work for your employer. You arrive in the foreign country on December 15, 1994, and qualify as a bona fide resident for the remainder of 1994 and the entire tax year of 1995. Your employer reimburses you \$6,000 in January 1995 for the expense of moving to the foreign country. Because you do not qualify as a bona fide resident for at least 120 days during 1994, the reimbursement is considered pay for services performed in the foreign country for the tax years 1994 and 1995.

You figure the part of the moving expense reimbursement for services performed in the foreign country in 1994 by multiplying the total reimbursement by a fraction. The fraction is the number of days during which you were a bona fide resident in 1994 divided by 365. The remaining part of the reimbursement is for services performed in the foreign country in 1995.

This computation is used **only** to determine when the reimbursement is considered

earned. You would report the amount you include in income in tax year 1995, the year you received it.

If the move is between foreign countries, and you qualify for at least 120 days during the tax year under the bona fide residence test or the physical presence test, the moving expense reimbursement is considered earned in the tax year of the move.

If the move is to the United States, the moving expense reimbursement is generally considered to be U.S. source income.

However, if under either an agreement between you and your employer or a statement of company policy that is reduced to writing before your move to the foreign country, your employer will reimburse you for your move back to the United States regardless of whether you continue to work for the employer, the reimbursement is considered compensation for past services performed in the foreign country. The reimbursement is considered earned in the tax year of the move if you qualify under the bona fide residence test or the physical presence test for at least 120 days during that tax year. Otherwise, you treat the reimbursement as received for services performed in the foreign country in the year of the move and the year immediately preceding the year of the move.

See the discussion under *If a move is from the United States to a foreign country* to figure the amount of the reimbursement considered earned in the year of the move. The amount earned in the year preceding the year of the move is the difference between the total reimbursement and the amount earned in the year of the move.

Example. You are a U.S. citizen employed in a foreign country. You retire from employment with your employer on March 31, 1994, and return to the United States after having been a bona fide resident of the foreign country for several years. A written agreement with your employer entered into before you went abroad provided that you would be reimbursed for your move back to the United States.

In April 1994, your former employer reimburses you \$6,000 for your move back to the United States. Because you were not a bona fide resident for at least 120 days during the 1994 tax year, the reimbursement is considered pay for services performed in the foreign country for the tax years 1993 and 1994.

You figure the part of the moving expense reimbursement for services performed in the foreign country in 1994 by multiplying the total reimbursement by a fraction. The fraction is the number of days of foreign residence in 1994 (90) divided by 365. The remaining part of the reimbursement is attributable to services performed in the foreign country in 1993. You report the amount of the reimbursement on your 1994 Form 1040, the tax year you received it.

Note. In this example, if you qualify to exclude income under the **physical presence** test instead of the bona fide residence test for 1994, you may have had more than 120 qualifying days in 1994 because you can choose

the 12-month qualifying period that is most advantageous to you. (See *Physical presence test*, later under *Part-year exclusion*.) If so, the moving expense reimbursement would be considered earned entirely in 1994, the year of the move.

Storage expense reimbursements. If you are reimbursed for storage expenses, the reimbursement is attributable ratably to services you perform during the period for which the storage expenses are incurred.

U.S. Government Employees

For both the foreign earned income exclusion and the foreign housing exclusion or deduction, foreign earned income does not include any amounts paid by the United States or any of its agencies to its employees. Payments to employees of nonappropriated fund activities, such as Armed Forces post exchanges, officers' and enlisted personnel clubs, Embassy commissaries, and similar instrumentalities of the U.S. Government are not foreign earned income.

However, amounts paid by the United States or its agencies to persons who are **not** their employees may qualify for exclusion or deduction.

Employee. Generally, an employee is an individual who performs services that are subject to the will and control of an employer, both as to what must be done and how it must be done. Two of the usual characteristics of an employer-employee relationship are that the employer has the right to discharge the employee and the employer supplies the employee with tools and a place to work. On the other hand, a person providing services is generally considered an independent contractor if the recipient of the services has the right to control or direct only the result of the work and not the means and methods used to accomplish the result.

If you are a U.S. Government employee paid by a U.S. agency that assigned you to a foreign government to perform specific services for which the agency is reimbursed by the foreign government, your pay is from the U.S. Government and does not qualify for the exclusion or deduction.

Panama Canal Commission. U.S. employees of the Panama Canal Commission are employees of a U.S. Government agency and are not eligible for the foreign earned income exclusion on their salaries from that source. Furthermore, no provision of the Panama Canal Treaty or Agreement exempts their income from U.S. taxation. Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama can exclude certain foreign-area and cost-of-living allowances. See Publication 516, *Tax Information for U.S. Government Civilian Employees Stationed Abroad*, for more information.

Any overseas tropical differential received by these employees is not excludable from gross income.

American Institute in Taiwan. Amounts paid by the American Institute in Taiwan are not considered foreign earned income for purposes of the exclusion of foreign earned income or the exclusion or deduction of foreign housing amounts. If you are an employee of the American Institute in Taiwan, allowances you receive are exempt from U.S. tax up to the amount that equals tax-exempt allowances received by civilian employees of the U.S. Government.

Cost-of-living and foreign-area allowances paid under certain Acts of Congress to U.S. civilian officers and employees stationed in Alaska and Hawaii or elsewhere outside the 48 contiguous states and the District of Columbia can be excluded from gross income. See Publication 516 for more information. Post differentials are wages that must be included in gross income, regardless of the Act of Congress under which they are paid.

Exclusion of Meals and Lodging

You do not include in your income the value of meals and lodging provided to you and your family by your employer at no charge if the following conditions are met:

- 1) The meals are:
 - a) Furnished on the business premises of your employer, and
 - b) Furnished for the convenience of your employer.
- 2) The lodging is:
 - a) Furnished on the business premises of your employer,
 - b) Furnished for the convenience of your employer, and
 - c) A condition of your employment (you are required to accept it).

Amounts not included in income because of these rules are not included in foreign earned income.

Your family, for this purpose, includes only your spouse and your dependents.

Lodging includes the cost of heat, electricity, gas, water, sewer service, and similar items needed to make the lodging habitable.

Your employer's place of business generally means your workplace. For example, if you work as a housekeeper, meals and lodging provided in your employer's home are provided at your employer's place of business. Similarly, meals provided to cowhands while herding cattle on land leased or owned by their employer are considered provided at their employer's place of business.

Your employer's convenience. Whether meals or lodging are provided for your employer's convenience must be determined from all the facts. Meals or lodging provided to you and

your family by your employer will be considered provided for your employer's convenience if there is a good business reason for providing the meals or lodging, other than merely giving you more pay.

If your employer has a good business reason for providing the meals or lodging, you do not include their value in your income, even though your employer may also intend them as part of your pay. Thus, you can exclude the value of meals or lodging from your income even if a law or your employment contract says that they are provided as compensation.

On the other hand, if meals or lodging are provided to you or your family by your employer as a means of giving you more pay, and there is no other business reason for providing them, their value is extra income to you.

Condition of employment means you must accept the lodging to properly carry out the duties of your job. For example, you must be available for duty at all times.

Foreign camps. If you are provided lodging by or for your employer in a camp located in a foreign country, the camp is considered to be part of your employer's business premises. For this purpose, a camp is lodging that is:

- 1) Provided for your employer's convenience because the place where you work is in a remote area where satisfactory housing is not available to you on the open market within a reasonable commuting distance,
- 2) Located as close as reasonably possible in the area where you render services, and
- 3) Provided in a common area or enclave that is not available to the general public for lodging or accommodations and that normally houses at least ten employees.

Foreign Earned Income Exclusion

If your tax home is in a foreign country and you meet the bona fide residence test or the physical presence test, you can choose to exclude (subtract) from your income a limited amount of your foreign earned income. Foreign earned income is defined earlier. You cannot deduct expenses directly connected with the earning of excluded income. See Chapter 5.

You can also choose to exclude from your income a foreign housing amount. This is explained later. If you choose to exclude a foreign housing amount, you must figure the foreign housing exclusion first. Your foreign earned income exclusion is limited to the excess of your foreign earned income over the foreign housing exclusion.

Limit on Excludable Amount

You may be able to exclude up to \$70,000 of income earned in each year.

Limits. You cannot exclude more than the smaller of \$70,000 or the excess of your foreign earned income (discussed earlier) for the tax year over the foreign housing exclusion (discussed later).

If both you and your spouse work abroad and you each meet either the bona fide residence test or the physical presence test, you can each choose the foreign earned income exclusion. Thus, it is possible for a married couple together to exclude as much as \$140,000.

If you perform services in 1994 but do not receive income for those services until 1995, the income is generally considered earned in 1994. If you report your income on the cash basis, you report the income on your 1995 return. You can exclude the income in the year you receive it to the extent that it would have been eligible for the foreign earned income exclusion in 1994 had it been received in 1994.

Example. You qualify as a bona fide resident of a foreign country for all of 1994 and 1995. You report your income on the cash basis. In 1994 you receive \$65,000 for services you performed in the foreign country during 1994. You can exclude all of the \$65,000 received and earned in 1994.

In 1995 you receive \$85,000: \$10,000 for services performed in the foreign country during 1994 and \$75,000 for services performed in the foreign country during 1995. In 1995 you can exclude \$5,000 of the \$10,000 received for services performed in 1994. You must include the remaining \$5,000 in income in 1995 because you could not have excluded that income in 1994 had you received it in 1994. In 1995 you can also exclude \$70,000 of the \$75,000 received in 1995 for services performed during 1995.

Thus, your total foreign earned income excluded on your 1995 return would be \$75,000 (\$5,000 attributable to 1994 and \$70,000 attributable to 1995). You would have \$10,000 of includible income.

Year-end payroll period. As an exception to the rule that income is excludable for the year actually earned, if you are a cash basis taxpayer, a salary or wage payment that you receive after the end of the tax year in which you perform the services is considered earned entirely in the year you **receive** it if all the following apply:

- 1) The period for which the payment is made is a normal payroll period of your employer that regularly applies to you,
- 2) The payroll period includes the last day of your tax year,
- 3) The payroll period is not longer than 16 days, and
- 4) The payday comes at the same time in relation to the payroll period that it would normally come and it comes before the end of the next payroll period.

Income earned over more than 1 year. Regardless of when you actually receive income, you must credit it to the tax year in which you earned it in figuring your excludable amount

for that year. For example, a bonus that you receive in 1 year may be based on services you performed over several tax years. You determine the amount of the bonus that is considered earned in a particular tax year by dividing the bonus by the number of calendar months in the period when you performed the services that resulted in the bonus and then multiplying the result by the number of months you performed these services during the tax year. This is the amount that is subject to the exclusion limit for that tax year.

Income received more than 1 year after it was earned. Income received after the end of the tax year following the tax year in which you performed the services that earned it is **not** excludable as foreign earned income.

Community income. The maximum exclusion applies individually to the earnings of a husband and wife. Ignore any community property laws when you figure your limit on the foreign earned income exclusion.

Part-year exclusion. If you qualify under either the bona fide residence test or the physical presence test for only part of the tax year, you must adjust the maximum limit based on the number of qualifying days in your tax year. The number of qualifying days in your tax year is the number of days within the period you have your tax home in a foreign country and meet either test.

For this purpose, you can count as qualifying days all days within a period of 12 consecutive months once you are physically present and have your tax home in a foreign country for 330 full days. To figure your maximum exclusion, multiply \$70,000 by the number of your qualifying days in the year, and then divide the result by the number of days in your tax year.

Example. You report your income on the calendar-year basis and qualify under the bona fide residence test for only 75 days during 1994. You can exclude a maximum of 75/365 of \$70,000, or \$14,384, of your foreign earned income for the year. If you qualify under the bona fide residence test for all of 1995, you can exclude your foreign earned income up to the full \$70,000 limit for 1995.

Physical presence test. Under the physical presence test, a 12-month period can be **any** period of 12 consecutive months that includes 330 full days. If you qualify under the physical presence test for part of a tax year, it is important to carefully choose the 12-month period that will allow the maximum exclusion for that year.

Example. You are physically present and have your tax home in a foreign country for a 16-month period from June 1, 1993, through September 30, 1994, except for 15 days in December 1993 that you spend on vacation in the United States. You figure the maximum amount excludable from your income in 1993 as follows:

- 1) Beginning with June 1, 1993, count forward 330 full days (days during which you spend 24 hours in a foreign country). The

330th day, May 11, 1994, is the last day of a 12-month period.

- 2) Count backward 12 months from May 11, 1994, to find the first day of this 12-month period, May 12, 1993. This 12-month period runs from May 12, 1993, through May 11, 1994.
- 3) Count the total days during 1993 that fall within this 12-month period. This is 234 days (May 12, 1993—December 31, 1993).
- 4) Multiply \$70,000 by the fraction 234/365 to find your maximum exclusion for 1993 (\$44,877).

You figure the maximum exclusion for 1994 in the opposite manner:

- 1) Beginning with your last full day, September 30, 1994, count backward 330 full days. That day, October 21, 1993, is the first day of a 12-month period.
- 2) Count forward 12 months from October 21, 1993, to find the last day of this 12-month period, October 20, 1994. This 12-month period runs from October 21, 1993, through October 20, 1994.
- 3) Count the total days during 1994 that fall within this 12-month period. This is 293 days (January 1, 1994—October 20, 1994).
- 4) Multiply \$70,000, the maximum limit, by the fraction 293/365 to find your maximum exclusion for 1994 (\$56,192).

Note. These are limits on the amount you can exclude. You can never exclude more pay than you actually earned during your qualifying period.

Choosing the Exclusion

The foreign earned income exclusion is voluntary. You can separately choose the foreign earned income exclusion and the foreign housing exclusion by completing the appropriate parts of Form 2555, *Foreign Earned Income*. Your initial choice of the exclusions on Form 2555 or Form 2555-EZ generally must be filed with a timely filed return (including any extensions), a return amending a timely filed return, or a late-filed return filed within 1 year from the original due date of the return (determined without regard to any extensions).

However, you may file a return after the periods described above provided you owe no federal income tax after taking into account the exclusion. If you owe federal income tax after taking into account the exclusion, you may file a return after the periods described above provided you file before IRS discovers that you failed to elect the exclusion. You must type or legibly print at the top of the first page of the Form 1040 "FILED PURSUANT TO SECTION 1.911-7(a)(2)(i)(D)." If you owe federal income tax after taking into account the foreign earned income exclusion and the IRS discovered that you failed to elect the exclusion, you

must request a private letter ruling under Revenue Procedure 92-85 (as modified by Revenue Procedure 93-28).

Revenue procedures are published in the *Internal Revenue Bulletin* (I.R.B.) and in the *Cumulative Bulletin* (C.B.), which are volumes containing official matters of the Internal Revenue Service. You can buy the C.B. containing a particular revenue procedure from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

You may also be able to choose the foreign earned income exclusion by completing Form 2555-EZ, *Foreign Earned Income Exclusion*.

Once you choose to exclude your foreign earned income or housing amount, that choice remains in effect for that year and all later years unless you revoke it.

Revocation. You can revoke your choice for any tax year. You do this by attaching a statement that you are revoking one or more previously made choices to the return or amended return for the first year that you do not wish to claim the exclusion(s). You must revoke separately a choice to exclude foreign earned income and a choice to exclude foreign housing amounts.

If you revoked a choice and within 5 tax years again wish to choose the same exclusion, you must apply for IRS approval. You do this by requesting a ruling from the Internal Revenue Service. Mail your request for a ruling in duplicate to:

Associate Chief Counsel (International)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

In deciding whether to give approval, the IRS will consider any facts and circumstances that may be relevant. These may include a period of United States residence, a move from one foreign country to another foreign country with different tax rates, a substantial change in the tax laws of the foreign country of residence or physical presence, and a change of employer.

Foreign tax credit. If you take a foreign tax credit for tax on income you could have excluded under your election to exclude foreign earned income or your election to exclude foreign housing costs, one or both of the elections is considered revoked.

Earned income credit. You will not qualify for the earned income credit if you claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction for the year. For more information on this credit, see Publication 596, *Earned Income Credit*.

Foreign Housing Exclusion or Deduction

In addition to the foreign earned income exclusion, you can also separately claim an exclusion or a deduction from gross income for your housing amount if your tax home is in a foreign country and you qualify under either the bona fide residence test or the physical presence test.

The housing exclusion applies only to amounts considered paid for with employer-provided amounts. The housing deduction applies only to amounts paid for with the proceeds of self-employment.

If you are married and each spouse qualifies under one of the tests, see *Married Couples Living Apart*, later.

Housing Amount

Your housing amount is your housing expenses after subtracting a base amount.

Base amount. The base amount is 16% of the annual salary of a GS-14, step 1, U.S. Government employee, figured on a daily basis, times the number of days during the year that you meet the bona fide residence test or the physical presence test. The annual salary is determined on January 1 of the year in which your tax year begins.

On January 1, 1994, the GS-14 salary was \$56,627 per year; 16% of this amount comes to \$9,060 or \$24.82 per day. To figure your base amount if you are a calendar-year taxpayer, multiply \$24.82 by the number of your qualifying days during 1994 (see *Limit on Excludable Amount*, earlier). Subtract the result from your total housing expenses for 1994 to find your housing amount.

Example. You qualify under the physical presence test for all of 1994. During the year, you spend \$12,500 for your housing. Your housing amount is \$12,500 minus \$9,060, or \$3,440.

U.S. Government allowance. You must reduce your housing amount by any nontaxable U.S. Government or similar allowances intended to compensate you or your spouse wholly or partly for the expenses of housing during the same period for which you claim a foreign housing exclusion or deduction.

Housing expenses. Housing expenses include your reasonable expenses paid or incurred for housing in a foreign country for you and (if they live with you) for your spouse and dependents.

Consider only housing expenses for the part of the tax year that your tax home is in a foreign country and that you meet the bona fide residence test or the physical presence test.

Housing expenses include rent, the fair rental value of housing provided in kind by

your employer, and other expenses for housing, such as repairs, utilities (other than telephone charges), real and personal property insurance, nondeductible occupancy taxes, nonrefundable fees for securing a leasehold, rental of furniture and accessories, and residential parking.

Housing expenses **do not** include expenses that are lavish or extravagant under the circumstances. They also do not include deductible interest and taxes (including deductible interest and taxes of a tenant-stockholder in a cooperative housing corporation) or the cost of buying property, including principal payments on a mortgage. They do not include the cost of domestic labor (maids, gardeners, etc.), pay television subscriptions, improvements and other expenses that increase the value or appreciably prolong the life of property, purchased furniture or accessories, or depreciation or amortization of property or improvements.

No double benefit. You cannot include in housing expenses any amounts that you exclude from gross income as meals or lodging provided for your employer's convenience on the business premises (see *Exclusion of Meals and Lodging*, earlier) or that you deduct as moving expenses.

Second foreign household. Ordinarily, if you maintain two foreign households, your reasonable foreign housing expenses include only costs for the household that bears the closest relationship (not necessarily geographic) to your tax home. However, if you maintain a second, separate household outside the United States for your spouse or dependents because living conditions near your tax home are dangerous, unhealthful, or otherwise adverse, include the expenses for the second household in your reasonable foreign housing expenses. You cannot include expenses for more than one second foreign household at the same time.

If you maintain two households, one of which you exclude the value of because it is provided by your employer, you can still include the expenses for the second household in figuring a foreign housing exclusion or deduction.

Adverse living conditions include a state of warfare or civil insurrection in the general area of your tax home and conditions under which it is not feasible to provide family housing (for example, if you must live on a construction site or drilling rig).

Foreign Housing Exclusion

If you have no self-employment income, your entire housing amount is considered paid for with employer-provided amounts. This means that you can exclude (up to the limits) the entire amount.

Employer-provided amounts include any amounts paid to you or paid or incurred on your behalf by your employer that is taxable foreign earned income (without regard to the foreign earned income exclusion) to you for the tax year. This includes:

- 1) Your salary,

- 2) Any reimbursement for housing expenses,
- 3) Amounts your employer pays to a third party for your housing,
- 4) The fair rental value of company-owned housing furnished you unless that value is excluded from your income because it is provided for your employer's convenience,
- 5) Amounts paid to you by your employer as part of a tax equalization plan, and
- 6) Amounts paid to you or a third party by your employer for the education of your dependents.

Your only earnings that are not employer-provided amounts are earnings from self-employment.

Choosing the exclusion. You can choose the housing exclusion by completing the appropriate parts of Form 2555, following the rules explained earlier in *Choosing the Exclusion*, under *Foreign Earned Income Exclusion*. You cannot use Form 2555-EZ to claim the housing exclusion.

Your housing exclusion is the lesser of:

- That part of your housing amount paid for with employer-provided amounts, or
- Your foreign earned income.

If you choose the housing exclusion, you must figure it **before** figuring your foreign earned income exclusion. You cannot claim less than the full amount of the housing exclusion to which you are entitled.

Foreign tax credit. If you take a foreign tax credit for income you could have excluded as foreign earned income or foreign housing costs, then any election to exclude these amounts is considered revoked.

Foreign Housing Deduction

If none of your housing amount is considered paid for with employer-provided amounts, such as when all of your income is from self-employment, you can deduct your housing amount, subject to the limit below, in figuring your adjusted gross income.

Take the deduction by including it in the total on line 30 of Form 1040. Write the amount and "FHD" on the dotted line next to line 30.

If you are both an employee and a self-employed individual during the year, you can deduct part of your housing amount and exclude part of it. To find the part that you can take as a housing exclusion, multiply your housing amount by the employer-provided amounts (discussed earlier) and then divide the result by your foreign earned income. The balance of the housing amount can be deducted, subject to the limit below.

Example. Your housing amount for 1994 is \$6,000. During the year, your total foreign earned income is \$40,000, of which half (\$20,000) is from self-employment and half is from your services as an employee. Half (\$20,000/\$40,000) of your housing amount

(\$3,000) is considered provided by your employer. You can exclude this \$3,000 as a housing exclusion. You can deduct the remaining \$3,000 as a housing deduction subject to the following limit.

Limit. Your housing deduction cannot be more than your foreign earned income minus the total of:

- 1) Foreign earned income exclusion, plus
- 2) Your housing exclusion.

You can carry over to the next year any part of your housing deduction that is not allowed because of this limit.

Carryover. You are allowed to carry over your excess housing deduction to the following year only. If you cannot deduct it in the following year, you cannot carry it over to any other years. In the tax year to which you carry the excess housing amount, you can deduct it in figuring adjusted gross income, but only to the extent that your foreign earned income for that year is more than your foreign earned income exclusion, housing exclusion, and housing deduction for that year.

Married Couples Living Apart

If you and your spouse live apart and maintain separate households, you both may be able to claim the foreign housing exclusion or the foreign housing deduction for your own reasonable housing expenses. You can do this if you have different tax homes that are not within reasonable commuting distance of each other and neither spouse's residence is within reasonable commuting distance of the other spouse's tax home. Otherwise, only one spouse can exclude or deduct a housing amount.

If you both claim the housing exclusion or the housing deduction, neither of you can claim the expenses for a qualified second foreign household maintained for the other spouse. If one of you qualifies for but does not claim the exclusion or the deduction, the other spouse can claim the expenses for a qualified second household maintained for the first spouse. This would usually result in a larger total housing exclusion or deduction since you would apply only one base amount against the combined housing expenses.

If you and your spouse live together, both of you claim a foreign housing exclusion or a foreign housing deduction, and you file a joint return, you can figure your housing amounts either separately or jointly. If you file separate returns, you must figure your housing amounts separately. In figuring your housing amounts separately, you can allocate your housing expenses between yourselves in any proportion you wish, but each spouse must use his or her full base amount.

In figuring your housing amount jointly, you can combine your housing expenses and figure one base amount. If you figure your housing amount jointly, only one spouse can claim the housing exclusion or housing deduction.

Either spouse can claim the exclusion or deduction. However, if you and your spouse have different periods of residence or presence and the one with the shorter period of residence or presence claims the exclusion or deduction, you can claim as housing expenses only the expenses for that shorter period.

Example. Tom and Jane live together and file a joint return. Tom was a bona fide resident of and had his tax home in a foreign country from August 17, 1994, through December 31, 1995. Jane was a bona fide resident of and had her tax home in the same foreign country from September 15, 1994, through December 31, 1995.

During 1994 Tom earned and received \$50,000 of foreign earned income, and Jane earned and received \$25,000 of foreign earned income. Tom paid \$10,000 for housing expenses in 1994, of which \$7,500 was for expenses incurred from September 15 through the end of the year. Jane paid \$3,000 for housing expenses in 1994, all of which were incurred during her period of foreign residence.

Tom and Jane can choose to figure their housing amount jointly. If they do so, and Tom claims the housing exclusion, their housing expenses would be \$13,000 and their base amount, using Tom's period of residence, would be \$3,400.34 ($\24.82×137 days). Tom's housing amount would be \$9,599.66. If, instead, Jane claims the housing exclusion, their housing expenses would be limited to \$10,500 ($\$7,500 + \$3,000$) and their base amount, using Jane's period of residence, would be \$2,680.56 ($\24.82×108 days). Jane's housing amount would be \$7,819.44.

If Tom and Jane choose to figure their housing amounts separately, then Tom's separate base amount would be \$3,400.34 and Jane's separate base amount would be \$2,680.56. They could divide their total \$13,000 housing expenses between them in any proportion they wished.

Housing exclusion. Each spouse claiming a housing exclusion must figure separately the part of the housing amount that is attributable to employer-provided amounts, based on his or her separate foreign earned income.

Form 2555 and Form 2555-EZ

Form 2555 can be used to claim the foreign earned income exclusion. It must be used to claim the foreign housing exclusion or deduction. In some circumstances you can use Form 2555-EZ to claim the foreign earned income exclusion.

You must attach Form 2555, *Foreign Earned Income*, to your Form 1040 or 1040X if you claim the foreign housing exclusion or the foreign housing deduction. If you cannot use Form 2555-EZ, you must attach Form 2555 if you claim the foreign earned income exclusion. Form 2555 shows how you qualify for the bona fide residence test or physical presence test, how much of your earned income is excluded, and how to figure the amount of your

allowable housing exclusion or deduction. Unless you completely and correctly provide all the information, there will be delays in processing your original tax return or your claim for refund (Form 1040X). Do not submit Form 2555 by itself. See the instructions for Form 2555 if you are not sure about the information requested.

Form 2555–EZ

Form 2555–EZ is a form that has fewer lines than Form 2555. You may use this form if:

- You had foreign earned income of only wages and salaries of \$70,000 or less, and
- The return being filed is not for a short or fiscal year, and
- You do not have a housing deduction carryover.

However, you cannot have self-employment income, business or moving expenses, or claim the foreign housing deduction or housing exclusion.

Form 2555

If you claim exclusion under the bona fide residence test, you should fill out completely Parts II, IV, and V of Form 2555 as well as Part I. In filling out Part II, be sure to give your visa type and the period of your bona fide residence. Frequently, these items are overlooked.

If you claim exclusion under the physical presence test, you should fill out completely Parts III, IV, and V of Form 2555 as well as Part I. When filling out Part III, be sure to insert the beginning and ending dates of your 12-month period and the dates of your arrivals and departures as requested in the travel schedule. Your attention is directed to these items in particular because frequently they are omitted.

In addition, you must complete Part VI if you are claiming an exclusion or deduction of foreign housing amounts. Also complete Part IX if you are claiming the foreign housing deduction. If you are claiming the foreign earned income exclusion, complete Part VII. Finally, if you are claiming the foreign earned income exclusion, the foreign housing exclusion, or both, complete Part VIII.

If you and your spouse each qualify under the bona fide residence test or the physical presence test to claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, you must each file a separate Form 2555 to claim these benefits. See the discussion earlier under *Married Couples Living Apart*.

Illustrated Example

Jim and Judy Adams are married, with two dependent children. They are both U.S. citizens and file a joint U.S. income tax return. Each one has a tax home in a foreign country and each one meets the physical presence test for all of 1994. Therefore, they both can exclude their foreign earned income up to the limit.

Jim is a petroleum engineer. He works primarily in the Persian Gulf region. For 1994, his salary, which was entirely from foreign sources, amounted to \$71,000. In addition, his employer provided him an annual housing allowance of \$18,000, which he used to maintain a rented apartment at his tax home in Country X for the period he was not working at remote drilling sites.

At various times during the year, Jim worked at remote oil drilling sites in nearby countries. While he worked at these remote sites, his employer provided him lodging and meals at nearby camps. Satisfactory housing was not available on the open market near these drilling sites, and the lodging was provided in common areas that normally accommodated 10 or more employees and were not available to the general public. The fair market value of the lodging he was provided in these camps was \$2,000, and the value of the meals was \$1,000.

Jim was reimbursed by his employer, after he made an adequate accounting, for part of his travel expenses and other employee business expenses. In addition, Jim had \$2,500 of unreimbursed employee business expenses for travel, meals, and lodging that were allocable to his foreign earned income.

Because of adverse conditions in Country X, Judy and the children lived in Paris, France, while Jim worked in the Middle East. Judy had a job as an executive secretary with a U.S. company in Paris. Her earnings from this job were \$25,000 in 1994. These earnings were subject to French income tax.

The Adams family rented an apartment in Paris during 1994 for Judy and the children. They paid \$750 a month rent, including utilities, or \$9,000 for the year. The Adamses choose to treat the expenses for the Paris apartment as those for a qualified second foreign household, because conditions at Jim's tax home in Country X are considered to be adverse. They include the \$9,000 Paris housing expenses with Jim's \$18,000 Country X housing expenses and this results in a larger total housing exclusion.

Jim and Judy also had taxable U.S. interest income of \$7,500 in 1994. The Adamses had no other income for the year and do not itemize deductions.

The Adamses report their income, figure their foreign earned income exclusions and foreign housing exclusion, and figure their tax as shown on the accompanying filled-in forms.

First, they list their income on the front of Form 1040. Their combined salaries, including Jim's \$18,000 housing allowance, amount to \$114,000. They enter this on line 7 and their interest income of \$7,500 (including a list of payers and amounts on Schedule B (Form 1040)—not illustrated) on line 8a.

At this point, Jim will complete Form 2555 and Judy will complete Form 2555–EZ to figure their foreign earned income and housing exclusions. On Jim's Form 2555, Part IV, he lists his salary on line 19, his housing allowance on line 22e, and the fair market value of

meals and lodging provided in camps by his employer on lines 21a and 21b. This last item, totaling \$3,000, is not shown as income on Form 1040. Jim subtracts it on line 25 of Form 2555.

Jim combines his housing expenses, \$18,000, with the qualified expenses for the second household that he maintains for his wife and children, \$9,000, and enters total housing expenses of \$27,000 on line 28, Part VI. He puts a base amount of \$9,060 on line 30 and subtracts that amount to arrive at a total foreign housing amount of \$17,940 on line 31. He figures an exclusion of \$17,940 (attributable to the amounts provided by his employer) on line 34.

Note. Although Judy could claim a separate housing exclusion for the expenses of the Paris apartment, rather than combining those expenses with Jim's housing expenses, she does not do so because she would have to reduce her expenses by a separate base housing amount. Also, her foreign earned income is less than the \$70,000 maximum foreign earned income exclusion, so claiming a separate housing exclusion would not result in any tax benefit.

Jim figures his foreign earned income exclusion in Part VII of Form 2555. Because his foreign earned income minus his housing exclusion is greater than the maximum exclusion of \$70,000, Jim is entitled to exclude \$70,000 for 1994.

When Jim combines the exclusion of \$70,000 with his housing exclusion of \$17,940 in Part VIII, he comes up with a total exclusion of \$87,940.

None of his unreimbursed employee business expenses are allowable because they are all allocable to excluded income. However, the Adamses are still entitled to the full standard deduction for a married couple filing jointly.

Judy completes a Form 2555–EZ to figure her foreign earned income exclusion. Her foreign earned income is well below the maximum excludable amount (\$70,000). On Judy's Form 2555–EZ, Part IV, she lists her salary on line 17. She figures an exclusion of \$25,000 on line 18.

The Adamses enter their combined exclusions of \$112,940 on line 21, Form 1040. They identify this item to the left of the entry space. Their adjusted gross income on line 31 is \$8,560, mostly from their interest income, which does not qualify for exclusion.

After subtracting their standard deduction of \$6,350 and \$2,450 for each of their four exemptions, Jim and Judy arrive at a taxable income of zero on page 2 of Form 1040. They owe no tax for the year.

Form 1040, pages 1 and 2 for James and Judith Adams
Form 2555, pages 1 and 2 for James Adams
Form 2555, page 3 for James Adams
Form 2555–EZ, pages 1 and 2 for Judith Adams

1040 U.S. Individual Income Tax Return (f) 1994

Label section containing taxpayer information: James M. Adams, Judith E. Adams, 21 Rue Reynaud, Paris, France.

Filing Status section: Married filing joint return. Spouse's social security number: 222-00-2222.

Exemptions section: 2 dependents listed: Christopher Adams (son) and Stephen F. Adams (daughter).

Income section: Total income of 119,940 and total tax of 8,560.

Adjustments to Income section: Total adjustments of 119,940 and total tax of 8,560.

Adjusted Gross Income section: Total adjusted gross income of 8,560.

Tax Computation section: Amount from line 31 (adjusted gross income) 8,560.

Credits section: Federal income tax withheld 0.

Other Taxes section: Alternative minimum tax 0.

Payments section: Federal income tax withheld 0.

Refund or Amount You Owe section: Amount of line 61 you want refunded to you 0.

Sign Here section: Signature of James M. Adams, dated 2-15-95.

Preparer's Use Only section: Signature of Judith E. Adams, dated 2-15-95.

Department of the Treasury Internal Revenue Service

Attachment Sequence No. 34

Name shown on Form 1040 James M Adams

Your social security number 111 00 1111

Part I General Information

- 1 Your foreign address (including country) 10 Wady Abu Hassan, City A, Country X
3 Employer's name Pan American Oil Company
4a Employer's U.S. address N/A
4b Employer's foreign address 65 Sheik Hussein Street, City A, Country X
5 Employer is (check) a A foreign entity b A U.S. company c Other (specify)
6a If, after 1981, you filed Form 2555 to claim either of the exclusions or Form 2555-EZ to claim the foreign earned income exclusion, enter the last year you filed the form. 1993
b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here and go to line 7 now.
c Have you ever revoked either of the exclusions?
d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective.
e Of what country are you a citizen/national? United States
6a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See Second foreign household on page 3 of the instructions.
b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. Paris, France 365 days
9 List your tax home(s) during your tax year and date(s) established. City A, Country X 6-9-92

Next, complete either Part II or Part III. If an item does not apply, write "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test

- 10 Date bona fide residence began and ended
11 Kind of living quarters in foreign country
12a Did any of your family live with you abroad during any part of the tax year?
12b If "Yes," who and for what period?
13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country?
13b Are you required to pay income tax to the country where you claim bona fide residence?
14 If you were present in the United States or its possessions during the tax year, complete columns (a)-(d) below. Do not include the income from column (d) in Part IV, but report it on Form 1040.

Part III Taxpayers Qualifying Under Physical Presence Test

- 16 The physical presence test is based on the 12-month period from 1-1-94 through 12-31-94
17 Enter your principal country of employment during your tax year. Country X
18 If you traveled abroad during the 12-month period entered on line 16, complete columns (a)-(f) below. Exclude travel between foreign countries that did not involve travel on or over international waters, or in or over the United States, for 24 hours or more. If you have no travel to report during the period, enter "Physically present in a foreign country or countries for the entire 12-month period." Do not include the income from column (f) below in Part IV, but report it on Form 1040.

Part IV All Taxpayers

Note: Enter on lines 19 through 23 all income, including noncash income, you earned and actually or constructively received during your 1994 tax year for services you performed in a foreign country, if any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. Do not include income from line 14, column (d), or line 18, column (f). Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income. If you are a cash basis taxpayer, report on Form 1040 all income you received in 1994, no matter when you performed the service.

Table with 26 rows and 2 columns: Line number, Amount (in U.S. dollars)

For Paperwork Reduction Act Notice, see page 1 of separate instructions. Form 2555 (1994)

Part V All Taxpayers

27	Enter the amount from line 26	27	89,000	
	<ul style="list-style-type: none"> • If you choose to claim the housing exclusion or are claiming the housing deduction, complete Part VI. • All others, go to Part VII. 			

Part VI For Taxpayers Claiming the Housing Exclusion AND/OR Deduction

28	Qualified housing expenses for the tax year (see instructions)	28	27,000	
29	Number of days in your qualifying period that fall within your 1994 tax year (see instructions)	29	365	
30	Multiply \$24.82 by the number of days on line 29. If 365 entered on line 29, enter \$9,060.00 here	30	9,060	
31	Subtract line 30 from line 28. If zero or less, do not complete the rest of this part or any of Part IX	31	17,940	
32	Enter employer-provided amounts (see instructions)	32	89,000	
33	Divide line 32 by line 27. Enter the result as a decimal (to two places), but do not enter more than "1.00"	33		× 1.00
34	Housing exclusion. Multiply line 31 by line 33. Enter the result but do not enter more than the amount on line 32. Also, complete Part VIII ▶	34	17,940	

Note: The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.

Part VII For Taxpayers Claiming the Foreign Earned Income Exclusion

35	Maximum foreign earned income exclusion	35	570,000	00
36	<ul style="list-style-type: none"> • If you completed Part VI, enter the number from line 29. • All others, enter the number of days in your qualifying period that fall within your 1994 tax year (see the instructions for line 29). 	36	365	
37	<ul style="list-style-type: none"> • If line 36 and the number of days in your 1994 tax year (usually 365) are the same, enter "1.00." • Otherwise, divide line 36 by the number of days in your 1994 tax year and enter the result as a decimal (to two places). 	37		× 1.00
38	Multiply line 35 by line 37	38	70,000	
39	Subtract line 34 from line 27	39	71,060	
40	Foreign earned income exclusion. Enter the smaller of line 38 or line 39. Also, complete Part VIII ▶	40	70,000	

Part VIII For Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both

41	Add lines 34 and 40	41	87,940	
42	Deductions allowed in figuring your adjusted gross income (Form 1040, line 31) that are allocable to the excluded income. See instructions and attach computation	42		
43	Subtract line 42 from line 41. Enter the result here and in parentheses on Form 1040, line 21. Next to the amount write "Form 2555." On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22. ▶	43	87,940	

Part IX For Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 31 is more than line 34 and (b) line 27 is more than line 41.

44	Subtract line 34 from line 31	44		
45	Subtract line 41 from line 27	45		
46	Enter the smaller of line 44 or line 45	46		
	Note: If line 45 is more than line 46 and you couldn't deduct all of your 1993 housing deduction because of the 1993 limit, use the worksheet on page 4 of the instructions to figure the amount to enter on line 47. Otherwise, go to line 48.			
47	Housing deduction carryover from 1993 (from worksheet on page 4 of the instructions)	47		
48	Housing deduction. Add lines 46 and 47. Enter the total here and on Form 1040 to the left of line 30. Next to the amount on Form 1040, write "Form 2555." Add it to the total adjustments reported on that line ▶	48		

5.

Deductions and Credits

Topics

This chapter discusses:

- Excluding, deducting, or taking a credit for items related to excluded income
- Whether you can claim contributions to a foreign charitable organization
- Moving expenses
- Individual retirement arrangements (IRAs)
- Taxes of foreign countries and U.S. possessions
- How to report deductions on your return

Useful Items

You may want to see:

Publication

- 514** Foreign Tax Credit for Individuals
- 521** Moving Expenses
- 523** Selling Your Home
- 590** Individual Retirement Arrangements (IRAs)
- 597** Information on the United States–Canada Income Tax Treaty

Form (and Instructions)

- 1116** Foreign Tax Credit (Individual, Estate, Trust, or Nonresident Alien Individual)
- 2106** Employee Business Expenses
- 2555** Foreign Earned Income
- 2555–EZ** Foreign Earned Income Exclusion
- 3903** Moving Expenses
- 3903–F** Foreign Moving Expenses
- Schedule A (Form 1040)** Itemized Deductions
- Schedule C (Form 1040)** Profit or Loss From Business

U.S. citizens and resident aliens living outside the United States generally are allowed the same deductions as citizens and residents living in the United States.

Exclusion vs. Deduction

If you choose to exclude foreign earned income or housing amounts, you cannot deduct any item, exclude any item, or claim a credit for any item that can be allocated to or charged

against the excluded amounts. This includes any expenses, losses, and other normally deductible items that are allocable to the excluded income. You can deduct only those expenses connected with earning includible income.

This applies only to items definitely related to the excluded earned income, and does not apply to other items that are not definitely related to any type of gross income, such as those for personal exemptions, qualified retirement contributions, alimony payments, charitable contributions, medical expenses, mortgage interest, and real estate taxes on your personal residence. For this purpose, your housing deduction is not treated as allocable to your excluded income, but the deduction for self-employment tax is.

If you receive foreign earned income in a tax year after the year in which you earned it, you may have to file an amended return for the earlier year to properly adjust the amounts of deductions, credits, or exclusions allocable to your foreign earned income and housing exclusions.

Example. If you excluded all of your \$70,000 foreign earned income in 1993, you would not have been able to claim any deductions allocable to that excluded income. If you then receive a bonus of \$10,000 in 1994 for work you did abroad in 1993, you cannot exclude it because it exceeds the \$70,000 foreign earned income exclusion limit. (You have no housing exclusion.) But, you may file an amended return for 1993 to claim the 10/80 of your allocable deductions that are now allowable (\$10,000 included foreign earned income over \$80,000 total foreign earned income).

Contributions

If you make contributions directly to a foreign church or other foreign charitable organization, you cannot deduct the contributions (unless you make them to certain Canadian or Mexican organizations). However, you can deduct contributions to a U.S. organization that transfers funds to a charitable foreign organization if the U.S. organization controls the use of the funds by the foreign organization, or if the foreign organization is just an administrative arm of the U.S. organization.

Under the treaties with Canada and Mexico, you can deduct contributions to certain Canadian and Mexican charitable organizations. Your contribution to a Canadian or Mexican charitable organization is subject to the overall limits for charitable contributions under U.S. tax law. You cannot deduct more than the percentage limit on charitable contributions applied to your Canadian or Mexican source income. If you or a member of your family is enrolled at a Canadian college or university, the limit does not apply to gifts to that school. For additional information on the deduction of contributions to Canadian charities, see Publication 597, *Information on the United States–Canada Income Tax Treaty*. For more information about the United States–Mexico Income Tax Treaty, contact IRS at the address shown below.

The organization can tell you whether it qualifies. Or you can find out by writing to:

Internal Revenue Service
Assistant Commissioner (International)
Attn: CP:IN:C:TPS
950 L'Enfant Plaza South, S.W.
Washington, DC 20024

Moving Expenses

If you moved to a new home in 1994 because of your job or business, you may be able to deduct the expenses of your move. To be deductible, the moving expenses must have been paid or incurred in connection with starting work at a new job location.

In addition, if you sold your home and moved outside the U.S., you may be eligible for an extended replacement period to reinvest the proceeds in a new home and thereby postpone tax on the capital gain. For information, see Publication 523, *Selling Your Home*.

You may be able to deduct moving expenses if you meet the following requirements.

Distance. Your new job location must be **at least 50 miles** farther from your former home than your old job location was. If you did not have an old job location, your new job location must be at least 50 miles from your former home.

Note. The distances were 35 miles for expenses incurred before 1994.

Time. You must work full time for at least **39 weeks during the 12 months** right after you move. In addition, if you are self-employed, you must work full time for at least **78 weeks during the 24 months** right after you move.

Closely related to the start of work. In general, you must have incurred your moving expenses within 1 year from the time you first report to your new job or business. The move must be in connection with the start of work at the new location.

A move is generally considered closely related to the start of work if the distance from your new home to the new job location is not more than the distance from your former home to the new job location. A move that does not meet this requirement is considered closely related to the start of work if you are required to live at the new location as a condition of employment, or you will spend less time or money commuting from the new home to the new job.

Your expenses must be reasonable. You can only deduct expenses that are reasonable for the circumstances of your move. The cost of traveling from your former home to your new one should be by the shortest, most direct route available by conventional transportation.

Deductible moving expenses. Some of the moving expenses incurred after 1993 that you may be able to deduct include the reasonable costs of:

- 1) Moving household goods and personal effects (including packing, crating, in-transit storage, and insurance) of both you and members of your household. For foreign moves, costs of moving household goods and personal effects include reasonable expenses of moving the items to and from storage and storing them for part or all of the period your new place of work abroad continues to be your principal place of work.
- 2) Transportation and lodging for yourself and members of your household for one trip from your former home to your new home (including costs of getting passports).

A foreign move is a move in connection with the start of work at a new job location outside the United States and its possessions. A foreign move does not include a move back to the United States or its possessions.

A member of your household includes anyone who has both your former and new home as his or her home. It does not include a tenant or employee unless you can claim that person as a dependent.

Retirees. You can deduct the cost of moving to the United States when you permanently retire if your principal place of work and former home were outside the United States and its possessions. You do not have to meet the time test, discussed earlier. The other requirements, as previously discussed, must be met.

Survivors. You can deduct moving expenses for a move to the United States if you are the spouse or dependent of a person whose principal place of work at the time of death was outside the United States or its possessions. The move must begin within 6 months after the death of the decedent and must be from a home outside the United States in which you lived with the decedent at the time of death. You are not required to meet the time test, discussed earlier. However, the other requirements previously discussed must be met.

Forms to file. If your move is to a foreign country, file Form 3903-F, *Foreign Moving Expenses*. For all other moves, file Form 3903, *Moving Expenses*. In either case, report your moving expense deduction on line 24 of Form 1040. If you must reduce your moving expenses by the amount allocable to excluded income as explained in the following discussion, attach a statement to your return showing how you figured this amount.

For more information about figuring moving expenses, see Publication 521, *Moving Expenses*.

Allocation of moving expenses. Your deductible moving expenses must be incurred in connection with the start of your work at a new job location. When your new place of work is in a foreign country, your moving expenses are directly connected with the income earned in that foreign country. Therefore, if all or part of

the income that you earn at the new location is excluded under the foreign earned income exclusion or the housing exclusion, the part of your moving expense that is allocable to the excluded income is **not** deductible.

Also, if you move from a foreign country to the U.S. and:

- You are reimbursed for your move by your employer,
- You are able to treat the reimbursement as compensation for services performed in the foreign country, and
- You choose to exclude your foreign earned income,

you cannot deduct the part of the moving expense that is related to the excluded income.

The moving expense is connected with earning the income (including reimbursements, as discussed in Chapter 4 under *Reimbursement of moving expenses*) either entirely in the year of the move or in 2 years. It is connected with earning the income entirely in the year of the move if you qualify under the bona fide residence test or physical presence test for at least 120 days during that tax year.

If you do not qualify under either the bona fide residence test or the physical presence test for at least 120 days during the year of the move, the expense is connected with earning the income in 2 years. The moving expense is connected with the year of the move and the following year if the move is from the United States to a foreign country, **or** the year of the move and the preceding year if the move is from a foreign country to the United States.

To figure the amount of your moving expense that is allocable to your excluded foreign earned income (and not deductible) you must multiply your total moving expense deduction by a fraction. The numerator (top number) of the fraction is your total excluded foreign earned income and housing amounts for both years and the denominator (bottom number) of the fraction is the total foreign earned income for both years.

Example. You are transferred by your employer as of November 1, 1994, to a foreign country. Your tax home is in the foreign country, and you qualify as a bona fide resident for the entire tax year 1995. In 1994 you paid \$6,000 for allowable moving expenses for your move from the United States to the foreign country. You were fully reimbursed for these expenses in the same year. Your only other income consists of \$14,000 wages earned in 1994 after the date of your move, and \$80,000 wages earned in the foreign country for the entire year 1995. You exclude the maximum amount under the foreign earned income exclusion and have no housing exclusion.

Because you did not meet the bona fide residence test for at least 120 days during 1994, the year of the move, the moving expenses are attributable to services you performed in both 1994 and the following year, 1995. Your total foreign earned income for both years is \$100,000, consisting of \$14,000 wages for 1994, \$80,000 wages for 1995, and

\$6,000 moving expense reimbursement attributable to both years.

Of this total, \$81,699 is excluded, consisting of the \$70,000 full-year exclusion for 1995 and an \$11,699 part-year exclusion for 1994 (\$70,000 times the fraction of 61 qualifying bona fide residence days over 365 total days in the year). To find the part of your moving expenses that is not deductible, multiply your \$6,000 total expenses by the fraction \$81,699 over \$100,000. The result, \$4,902, is your non-deductible amount.

Note. You must report the full amount of the moving expense reimbursement on your 1994 return, the year in which you received the reimbursement. You attribute the reimbursement to both 1994 and 1995 **only** to figure the amount of foreign earned income eligible for exclusion for each year.

Recapture of moving expense deduction. If your moving expense deduction is attributable to your foreign earnings in 2 years (the year of the move and the following year), you should preferably request an extension of time to file your return for the year of the move until after the end of the following year. You should then have all the information needed to properly figure the moving expense deduction.

If you do not request an extension, you should figure the part of the entire moving expense deduction that is disallowed by multiplying the moving expense by a fraction, the numerator (top number) of which is your excluded foreign earned income for the year of the move, and the denominator (bottom number) of which is your total foreign earned income for the year of the move. Then, when you know your foreign earnings and exclusion for the following year, you must adjust the moving expense deduction by filing an amended return for the year of the move, or by recapturing any additional unallowable amount as income on your return for the following year. If, after you make the final computation, you have an additional amount of allowable moving expense deduction, you can claim this only on an amended return for the year of the move. You cannot claim it on the return for the second year.

If you move between foreign countries and you qualified under the bona fide residence test or the physical presence test for at least 120 days during the year of the move, your moving expense is allocable to the income earned in the year of the move.

If your new place of work is in the United States, the deductible moving expenses are directly connected with the income earned in the United States, and no allocation of expenses is necessary because your entire income will be taxable unless you are able to treat a reimbursement from your employer as foreign earned income (see the discussion in Chapter 4).

Storage expenses are attributable to services you perform during the year in which the storage expenses are incurred. The amount allocable to excluded income is not deductible.

Individual Retirement Arrangements

Contributions to your individual retirement arrangements (IRAs) are generally limited to the lesser of \$2,000 or your compensation that is includible in your gross income for the tax year. For this purpose, you must reduce your compensation by the amount of your foreign earned income exclusion and foreign housing exclusion, if any. You need not reduce your compensation by the foreign housing deduction.

If you are covered by an employer retirement plan at work (or if your spouse is covered), your deduction for your contributions to your IRAs may be limited based on your modified adjusted gross income. For this purpose, your adjusted gross income per your return is modified by figuring it without regard to the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction. Other modifications are also required. For more information on IRAs, see Publication 590, *Individual Retirement Arrangements (IRAs)*.

Taxes of Foreign Countries and U.S. Possessions

You can take either a tax credit or a tax deduction on your income tax return for income taxes imposed on you by a foreign country or a U.S. possession. Taken as a deduction, foreign income tax reduces your taxable income. Taken as a credit, foreign income tax reduces your tax liability. You must treat all foreign income taxes by the same method. You generally cannot deduct some foreign income taxes and take a credit for others. See *Deduction for Other Foreign Taxes*, later.

No specific rule can be given that will let you choose the more advantageous method. If foreign income taxes were imposed at a high rate, and the proportion of foreign income to U.S. income is small, a lower final tax may result from taking the foreign income tax deduction. In any event, you should figure your tax liability under both methods and then use the one that is better for you. However, in most cases, it is to your advantage to take foreign income taxes as a tax credit, which you subtract directly from your U.S. tax liability, rather than as a deduction in figuring taxable income.

You can make or change your choice within 10 years from the due date for filing your U.S. tax return for the tax year for which you make the claim.

The terms “foreign country” and “foreign taxes” also refer to possessions of the United States and the income taxes imposed by these possessions. See *Foreign Country*, in Chapter 4. **Foreign income taxes** are generally income taxes you pay to any foreign country.

The foreign income tax you can claim is the amount of foreign income tax that is the legal and actual tax liability you pay or accrue during

the year. Therefore, the amount you claim is not necessarily the amount of tax withheld by the foreign country. You cannot take a foreign tax credit or deduction for income tax you paid to a foreign country that would be refunded by the foreign country if you made a claim for refund.

If a foreign country returns your foreign tax payments to you in the form of a subsidy, you cannot claim these payments as taxes qualified for the foreign tax credit. A subsidy can be provided by any means but must be determined, directly or indirectly, in relation to the amount of tax, or to the base used to figure the tax.

Some ways of providing a subsidy are refunds, credits, deductions, payments or discharges of obligations. The credit is also not allowed if the subsidy is given to a person related to you, or persons who participated in a transaction or a related transaction with you.

Foreign income taxes on U.S. return. Foreign income taxes can only be taken as a credit on Form 1116. These amounts cannot be included as withheld income taxes on Form 1040, line 54.

Foreign taxes paid on excluded income. You cannot take a credit or deduction for foreign income taxes paid on income that is exempt from tax under the foreign earned income exclusion, the foreign housing exclusion, or the possession exclusion. If your wages are completely excluded, you cannot deduct or take a credit for any of the foreign taxes paid on these wages.

If only part of your wages are excluded, you cannot deduct or take a credit for the foreign income taxes allocable to the excluded part. You find the taxes allocable to your excluded wages by applying a fraction to the foreign taxes paid on foreign earned income received during the tax year. The numerator (top number) of the fraction is your excluded foreign earned income received during the tax year minus deductible expenses allocable to that income (not including the foreign housing deduction). The denominator (bottom number) of the fraction is your total foreign earned income received during the tax year minus all deductible expenses allocable to that income (including the foreign housing deduction).

If the foreign law taxes earned income and some other amount (for example, unearned income, earned income from U.S. sources, or a type of income not subject to U.S. tax), and the taxes on the other amount cannot be segregated, the denominator of the fraction is the total amount of income subject to foreign tax minus deductible expenses allocable to that income.

If you take a foreign tax credit for tax on income you could have excluded under your election to exclude foreign earned income or your election to exclude foreign housing costs, one or both of the elections is considered revoked.

Credit for Foreign Income Taxes

If you take the foreign tax credit, you must file Form 1116, *Foreign Tax Credit, (Individual, Estate, Trust, or Nonresident Alien Individual)* with Form 1040. Form 1116 enables you to figure the amount of foreign tax paid or accrued that you can claim as a foreign tax credit. Do not include the amount of foreign tax paid or accrued as withheld federal income taxes on Form 1040, line 54.

Limit

The foreign tax credit is limited to the part of your total U.S. tax that is in proportion to your taxable income from sources outside the United States compared to your total taxable income. The allowable foreign tax credit may not be more than your actual foreign tax liability.

Separate limit. You must figure the limit on a separate basis with regard to each of the following categories of income (see the instructions for Form 1116):

- 1) Passive income,
- 2) High withholding tax interest,
- 3) Financial services income,
- 4) Shipping income,
- 5) Certain dividends from a domestic international sales corporation (DISC) or former DISC,
- 6) Certain distributions from a foreign sales corporation (FSC) or former FSC attributable to foreign trade income,
- 7) Any lump-sum distributions from employer benefit plans for which the 5- or 10-year tax option is used to determine your tax, and
- 8) All other income not included above (general limitation income).

Figuring the limit. In figuring taxable income in each income category, you take into account only the income that you must include in income on your federal income tax return. Do not take any excluded income into account.

To determine your taxable income in each category from sources outside the United States, deduct expenses and losses that are definitely related to that income.

In addition, other expenses (such as itemized deductions or the standard deduction if you do not itemize) not definitely related to specific items of income must be apportioned to the foreign income in each category by a fraction. The numerator (top number) of the fraction is your gross foreign income in the separate limit category. The denominator (bottom number) of the fraction is your gross income from all sources. For this purpose, gross income includes amounts that are otherwise exempt or excluded. You must use special rules for deducting interest expenses. For more information on allocating and apportioning your deductions, see Publication 514, *Foreign Tax Credit for Individuals*.

Do not take the deduction for exemptions for yourself, your spouse, or your dependents in figuring taxable income for purposes of the limit.

You figure your U.S. tax liability, against which you apply your allowable credit and that you use in figuring that credit, on your taxable income that **does** take into account the deduction for exemptions.

Recapture of foreign losses. If you have an overall foreign loss and the loss reduces your U.S. source income (resulting in a reduction of your U.S. tax liability), you must recapture the loss in later years when you have taxable income from foreign sources. This is done by treating a part of your taxable income from foreign sources in later years as U.S. source income. This reduces the numerator of the limiting fraction and the resulting foreign tax credit limit.

Foreign tax credit carryback and carryover. The amount of foreign income tax not allowed as a credit because of the limit can be allowed as a carryback to 2 prior years and a carryover to 5 later years.

More information on figuring the foreign tax credit can be found in Publication 514.

Deduction for Foreign Income Taxes

Instead of taking the foreign tax credit, you can deduct foreign income taxes as an itemized deduction on Schedule A (Form 1040).

You can claim a deduction **only** for those foreign income taxes paid on income that is subject to U.S. tax. You cannot claim a deduction for foreign taxes paid on income excluded under the foreign earned income or housing exclusions.

Example. You are a U.S. citizen and qualify to exclude your foreign earned income. Your excluded wages in Country X are \$10,000 on which you paid income tax of \$1,000. You received dividends from Country X of \$2,000 on which you paid income tax of \$600.

You can claim a deduction for the \$600 tax payment because the dividends relating to it are subject to U.S. tax. Because the wages are exempt from U.S. tax, you cannot claim a deduction for the income tax of \$1,000.

If only a part of your earnings are excluded, see the earlier discussion under *Foreign taxes paid on excluded income*.

Deduction for Other Foreign Taxes

You can deduct real property taxes you pay that are imposed on you by a foreign country. You take this deduction on Schedule A (Form 1040). You cannot deduct other foreign taxes, such as personal property taxes, unless you incurred the expenses in a trade or business or in the production of income.

On the other hand, you generally can deduct personal property taxes when you pay them to U.S. possessions. But see Publication 570, *Tax Guide for Individuals With Income*

From U.S. Possessions, if you claim the possession exclusion.

The deduction for foreign taxes other than foreign income taxes is not related to the foreign tax credit. You can take deductions for these miscellaneous foreign taxes and also claim the foreign tax credit for income taxes imposed by a foreign country.

How To Report Deductions

The method of showing your deductions on your tax return and figuring the disallowed amount that is allocable to your excluded income depends on whether the deductible expenses are **allowed in figuring adjusted gross income** (Form 1040, line 31) or are **itemized deductions**.

If you have expenses or other items **allowed in figuring adjusted gross income**, enter the total amount for each of these items on the appropriate lines and schedules of Form 1040. Figure the nondeductible part (the amount related to the excluded income) on Form 2555. Enter the amount from line 43 of Form 2555 (or line 18 of Form 2555-EZ) in parentheses on Form 1040, line 21. Next to the amount, write "Exclusion(s) from Form 2555" or "Exclusion from Form 2555-EZ," whichever is applicable. Subtract the amount on line 21 from your income.

If you have expenses that would be **allowed as itemized deductions** if they were not related to excluded income, do not enter the part related to excluded income on Schedule A (Form 1040). Enter only the part not related to excluded income. To avoid unnecessary correspondence or contact with IRS, you should attach a statement showing how you figured the deductible amount.

Example 1. You are a U.S. citizen employed as an accountant, and your tax home is in a foreign country for the entire tax year. You meet the physical presence test, and your foreign earned income for the year was \$100,000, of which you choose to exclude \$70,000. You have no housing exclusion. You had unreimbursed business expenses of \$1,500 for travel and entertainment in earning your foreign income, of which \$500 were for meals and entertainment. These expenses are deductible only as miscellaneous deductions on Schedule A (Form 1040). You also have \$500 of miscellaneous expenses for managing investments that you enter on line 22 of Schedule A.

You must fill out Form 2106, *Employee Business Expenses*. On that form, reduce your deductible meal and entertainment expenses to 50% (\$250). You must reduce the remaining \$1,250 of travel and entertainment expenses by 70% (\$875) because you excluded 70% (\$70,000/\$100,000) of your foreign earned income. You carry the remaining total of \$375 to line 20 of Schedule A. Add the \$375 to the \$500 that you have on line 22 and enter the total (\$875) on line 23.

On line 25 of Schedule A, you enter \$600, which is 2% of your adjusted gross income of

\$30,000 (line 32, Form 1040) and subtract it from the amount on line 23.

Enter \$275 on line 26 of Schedule A.

Example 2. You are a U.S. citizen, have a tax home in a foreign country, and meet the physical presence test. You are self-employed and personal services produce the business income. Your gross income was \$100,000, business expenses \$60,000, and net income (profit) \$40,000. You choose the foreign earned income exclusion and exclude \$70,000 of your gross income. Since your excluded income is 70% of your total income, 70% of your business expenses are not deductible. Report your total income and expenses on Schedule C (Form 1040). On Form 2555 you will show the \$70,000 exclusion and the \$42,000 (70% × \$60,000) attributable to the exclusion.

Note. In this situation (Example 2), you would not use Form 2555-EZ since you had self-employment income and business expenses.

Example 3. Assume in Example 2, above, both capital and personal services combine to produce the business income. No more than 30% of your net income, or \$12,000, assuming that this amount is a reasonable allowance for your services, is considered earned and can be excluded. Your exclusion of \$12,000 is 12% of your gross income (\$12,000/\$100,000). Because you excluded 12% of your total income, \$7,200, or 12% of your business expenses, are attributable to the excluded income and are not deductible.

Example 4. You are a U.S. citizen, have a tax home in a foreign country, and meet the physical presence test. You are self-employed and both capital and personal services combine to produce business income. Your gross income was \$140,000, business expenses were \$170,000, and your net loss was \$30,000. A reasonable allowance for the services you performed for the business is \$75,000. Because you incurred a net loss, the earned income limit of 30% of your net profit does not apply. The \$75,000 is therefore foreign earned income. If you choose to exclude the maximum \$70,000, you exclude 50% of your gross income (\$70,000/\$140,000), and 50% of your business expenses (\$85,000) are attributable to that income and not deductible. Show your total income and expenses on Schedule C (Form 1040). On Form 2555, exclude \$70,000 and show \$85,000 on line 42. Subtract line 42 from line 41, and enter the difference on line 43. Enter this amount in parentheses on line 21, Form 1040, and subtract it from your income to arrive at total income on line 22 of Form 1040.

Note. In this situation (Example 4), you would probably not want to choose the foreign earned income exclusion if this was the first year you were eligible. If you had chosen the exclusion in an earlier year, you might want to revoke the choice for this year. To do so would mean that you could not claim the exclusion again for the next 5 tax years without IRS approval. See *Choosing the Exclusion*, in Chapter 4. Also, you would not use Form 2555-EZ

since self-employment income and business expenses were involved.

Example 5. You are a U.S. citizen, have a tax home in a foreign country, and meet the bona fide residence test. You have been performing services for clients as a partner in a firm rendering services exclusively in a foreign country. Capital investment is not material in producing the partnership's income. Under the terms of the partnership agreement, you are to receive 50% of the net profits. The partnership received gross income of \$200,000 and incurred operating expenses of \$80,000. Of the net profits of \$120,000, you received \$60,000 as your distributive share.

You choose to exclude \$70,000 of your share of the gross income. Therefore, because you exclude 70% (\$70,000/\$100,000) of your share of the gross income, you may not deduct \$28,000, 70% of your share of the operating expenses (70% × \$40,000). Report \$60,000, your distributive share of the partnership net profit, on Schedule E (Form 1040). On Form 2555, exclude \$70,000 and show \$28,000 on line 42.

Note. In this situation (Example 5), you would not use Form 2555-EZ since you had earned income other than salaries and wages and you had business expenses.

6. Tax Treaty Benefits

Topics

This chapter discusses:

- Some common tax treaty benefits
- How to get help in certain situations
- How to get copies of tax treaties

Useful Items

You may want to see:

Publication

- **597** Information on the United States-Canada Income Tax Treaty
- **901** U.S. Tax Treaties

The United States has tax treaties or conventions with many countries under which citizens and residents of the United States who are subject to taxes imposed by foreign countries are entitled to certain credits, deductions, exemptions, and reductions in the rate of taxes of those foreign countries. If a foreign country with which the United States has a treaty imposes a tax on you, you may be entitled to benefits under the treaty. See Table 6-1, *Table of Tax Treaties*, later.

Treaty benefits generally are available to residents of the United States. They generally are not available to U.S. citizens who do not reside in the United States. However, certain treaty benefits and safeguards, such as the nondiscrimination provisions, are available to U.S. citizens residing in the treaty country. U.S. citizens residing in a foreign country may also be entitled to benefits under that country's tax treaties with third countries.

Accordingly, **it is important that you carefully examine the specific treaty articles that may apply** to find if you are in fact entitled to a tax credit, tax exemption, reduced rate of tax, or other treaty benefit or safeguard.

Common Benefits

Some common tax treaty benefits are explained below. The credits, deductions, exemptions, reductions in rate, and other benefits provided by tax treaties are subject to conditions and restrictions that vary from one treaty to another. Also, benefits provided by certain treaties are not provided by others.

1) Personal service income. Pay for personal services performed in the treaty country as an employee or as an independent contractor or self-employed individual is partially or completely exempt from the income tax of the treaty country for U.S. residents who are in the treaty country for a limited number of days in the tax year and meet certain other specified requirements.

2) Professors and teachers. Pay received by U.S. residents who are teaching (and in some cases researching) is exempt from the foreign income tax of most treaty countries for temporary periods of up to 2 or sometimes 3 years.

3) Students, trainees, and apprentices. Under most treaties, U.S. residents are entitled to exemption from a treaty country's income tax on amounts received from the United States for study, research, or business, professional, and technical training. Also, under certain circumstances, a limited amount of pay received by students, trainees, and apprentices may be exempt from the income tax of many treaty countries.

Some treaties exempt grants, allowances, and awards received from governmental and certain nonprofit organizations. The amount must be received for studying or acquiring business experience and not as compensation for services.

4) Pensions and annuities. Nongovernment pensions and annuities received by U.S. residents generally are exempt from foreign income tax in most treaty countries.

Most treaties contain separate provisions for exempting government pensions and annuities from treaty country income tax, and some treaties provide exemption from the treaty country's income tax for social security payments.

5) Investment income. Most treaties provide for exemption from, or reduced rates of, treaty country income tax on investment-type income, such as interest and dividends received from sources in the treaty country by a

U.S. resident. Several treaties provide exemption for capital gains (other than from sales of real property in most cases) if specified requirements are met.

6) Tax credit provisions. The same income may be taxed by two countries when a U.S. resident receives income from or owns capital in a treaty country and both the United States and the treaty country impose tax on that income or capital.

The tax treaties to which the United States is a party are designed, in part, to prevent such double taxation of the same income by the United States and the treaty country. This is accomplished in the treaties by provisions that allow credits against, or deductions from, the taxes imposed by a treaty country, based on the U.S. tax imposed on the same income.

7) Nondiscrimination provisions. Most U.S. tax treaties provide that the treaty country cannot discriminate by imposing more burdensome taxes on U.S. citizens who are residents of the treaty country than it imposes on its own citizens in the same circumstances.

8) Saving clauses. U.S. treaties contain saving clauses that provide that the treaties do not affect the U.S. taxation of its own citizens and residents. As a result, most of the treaty benefits and safeguards with reference to a treaty country's taxes are available only to U.S. citizens who are not residents of the treaty country and to U.S. residents who are not citizens of the treaty country.

However, some treaties provide certain limited exceptions to saving clauses. It is therefore important that you examine the applicable saving clause to determine if such an exception applies.

Competent Authority Assistance

If you are a U.S. citizen or resident, you can request assistance from the U.S. competent authority if you think that the actions of the United States, a treaty country, or both, cause or will cause a tax situation contrary to the applicable treaty between the two countries. You should read any specific treaty articles, including the mutual agreement procedure article, that applies in your situation.

If your request provides a basis for competent authority assistance, the U.S. competent authority will consult with the treaty country competent authority on how to resolve the situation.

The U.S. competent authority cannot consider requests involving countries with which the United States does not have an applicable tax treaty.

It is important that you make your request for competent authority consideration as soon as you have been denied treaty benefits or the actions of both the United States and the foreign country have resulted in double taxation or will result in taxation contrary to the treaty. This is to provide the competent authorities adequate time to consult and arrive at an agreement so that the final determination of liability can be made before any procedural barriers

are imposed under foreign law or the particular treaty.

In addition to a timely request for assistance, you should take the following measures to protect your right to the review of your case by the competent authorities:

- 1) File a timely protective claim for credit or refund of U.S. taxes on Form 1040X in the event you do not qualify for the treaty benefit in question and thus are entitled to a foreign tax credit.
- 2) Take appropriate action under the procedures of the foreign country to avoid the lapse or termination of your right of appeal under the foreign country's income tax law.

Your request for competent authority consideration should be addressed to:

Assistant Commissioner (International)
Attn: Tax Treaty Division
Internal Revenue Service
P.O. Box 23598
Washington, DC 20026-3598

The request should contain all essential items of information including the following: the facts from which the issue arises; the amounts of income and tax involved; a description of the issue and identification of the relevant treaty provisions; the respective positions taken by you and the foreign country; and copies of any protests, briefs, or other pertinent documents.

Additional details on the procedures for requesting competent authority assistance are included in Revenue Procedure 91-23, 1991-1 C.B. 534. You can obtain copies of this procedure by writing to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

More information concerning the benefits and safeguards provided by U.S. tax treaties or information concerning double taxation problems can be obtained by writing to the IRS Assistant Commissioner (International).

Publication 901, *U.S. Tax Treaties*, contains an explanation of treaty provisions that apply to amounts received by teachers, students, workers, and government employees and pensioners who are alien nonresidents or residents of the United States. Since treaty provisions generally are reciprocal, you can usually substitute "United States" for the name of the treaty country whenever it appears, and vice versa when "U.S." appears in the treaty exemption discussions in Publication 901.

Publication 597, *Information on the United States-Canada Income Tax Treaty*, contains an explanation of a number of frequently used provisions of the United States-Canada income tax treaty along with the entire text of the treaty.

Obtaining Copies of Tax Treaties

Table 6-1, shown after Chapter 7, lists those countries with which the United States has income tax treaties.

The tax treaties are published in the *Internal Revenue Bulletin* (I.R.B.) and in the *Cumulative Bulletin* (C.B.), which are volumes containing official matters of the Internal Revenue Service. The column headed *Citation* shows the number of the I.R.B. or C.B. and the page on which a particular treaty may be found.

Regulations implementing some treaties were issued as Treasury Decisions (T.D.). Other treaties are explained by Treasury explanations. The fifth column lists the T.D. numbers and the I.R.B. or C.B. in which each T.D. or Treasury explanation is printed.

You can buy the C.B. containing a particular tax treaty, regulation, or explanation from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

7.

Taxpayer Appeal Rights and Assistance

Topics

This chapter discusses:

- Your appeal rights
- Assistance available to you from IRS

Useful Items

You may want to see:

Publication

- 1** Your Rights as a Taxpayer
- 556** Examination of Returns, Appeal Rights, and Claims for Refund
- 910** Guide to Free Tax Services

If you do not agree with an IRS examiner's findings, you have the right to appeal them. During the examination process, you will be given information about your appeal rights. Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases*, explains your appeal rights in detail and tells you exactly what to do if you want to appeal. You also can appeal a decision, such as your disqualification under the bona fide residence or the physical presence test.

Your return may be examined for any of various reasons. After the examination, if IRS

proposes any changes to your tax, you may either agree with those changes and pay any additional tax, or you may disagree with the changes and appeal the decision.

Appeal Rights

You can appeal the findings of an examination within the IRS through our Appeals Office. Most differences can be settled through this appeals system without expensive and time-consuming court trials. The time and place of this hearing is scheduled taking into account every reasonable consideration for your convenience. If the matter cannot be settled to your satisfaction in appeals, you can take your case to court.

For more information regarding your rights of appeal, see Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, and Publication 1, *Your Rights as a Taxpayer*.

Taxpayer Assistance

During the filing period, you can also get the necessary federal income tax forms and publications from U.S. embassies and consulates.

You may also call your nearest U.S. Embassy, Consulate, or IRS office listed below to find out when and where assistance will be available. These IRS telephone numbers include the country and city codes required if you are outside the local dialing area. The Nassau and Ottawa numbers include the U.S. area codes.

Bonn, Germany	(49)	(228)	339-2119
Caracas, Venezuela	(58)	(2)	285-4641
London, England	(44)	(71)	408-8076
Mexico City, Mexico	(52)	(5)	211-0042 Ext. 3557
Nassau, Bahamas		(809)	766-5040
Ottawa, Canada		(613)	563-1834
Paris, France	(33)	(1)	4296- 1202
Riyadh, Saudi Arabia	(966)	(1)	488-3800 Ext. 210
Rome, Italy	(39)	(6)	4674- 2560
S'ao Paulo, Brazil	(55)	(11)	881-6511 Ext. 287
Singapore	(65)		338-0251 Ext. 247
Sydney, Australia	(61)	(2)	373-9194
Tokyo, Japan	(81)	(3)	3224- 5466

During every tax return filing period, income tax forms and publications can be obtained from U.S. Embassies and consulates abroad.

The IRS conducts an overseas taxpayer assistance program during the filing season (January to mid-June). To find out if IRS personnel will be in your area, you should contact the consular office at the nearest U.S. Embassy.

If you need help or information about your federal tax liability, and cannot get it from these sources, write to the Internal Revenue

Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

If you have a question about a return you have filed, write to the Internal Revenue Service Center where you filed your return.

Problem Resolution Program (PRP). We have a Problem Resolution Program for taxpayers who have been unable to resolve their problems with IRS. If you have a tax problem that you cannot clear up through normal channels, write to the Problem Resolution Office in

the district or Service Center with which you have the problem. You may also write to the Problem Resolution Office in the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024, if you are abroad. (You can also contact one of the IRS offices located abroad, listed earlier.)

If your tax problem causes (or will cause) you to suffer a significant hardship, additional

assistance is available. A significant hardship may occur if you cannot maintain necessities such as food, clothing, shelter, transportation, and medical treatment. You can apply for relief by submitting Form 911, *Application for Taxpayer Assistance Order (TAO)*. The Taxpayer Ombudsman, Problem Resolution Officer, or other official will then review your case and may issue a Taxpayer Assistance Order (TAO), to suspend IRS action.

Table 6-1. Table of Tax Treaties

Country	Official Text Symbol	Effective Date	Citation	Applicable Treasury Explanations or Treasury Decisions (T.D.)
Australia	TIAS ¹ 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246.
Austria	TIAS 3923	Jan. 1, 1957	1957-2 C.B. 985	T.D. 6322, 1958-2 C.B. 1038.
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Belgium	TIAS 7463	Jan. 1, 1971	1973-1 C.B. 619	
Protocol	TIAS	Various		
Canada ²	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298.
China, People's Republic of	TIAS	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447.
Commonwealth of Independent States ³	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475.
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314.
Czech Republic	TIAS	Jan. 1, 1993		
Denmark	TIAS 1854	Jan. 1, 1948	1950-1 C.B. 77	T.D. 5692, 1949-1 C.B. 104; T.D. 5777, 1950-1 C.B. 76.
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243.
Finland	TIAS	Jan. 1, 1991		
France	TIAS 6518	Jan. 1, 1967	1968-2 C.B. 691	T.D. 6986, 1969-1 C.B. 365.
Protocol	TIAS 7270	Jan. 1, 1970	1972-1 C.B. 438	
Protocol	TIAS 9500	Jan. 1, 1979	1979-2 C.B. 411	1979-2 C.B. 428.
Protocol	TIAS 11096	Oct. 1, 1985	1987-2 C.B. 326	
Protocol	TIAS	Various		
Germany	TIAS	Jan. 1, 1990 ⁴		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638.
Protocol	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1059	
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354.
Iceland	TIAS 8151	Jan. 1, 1976	1976-1 C.B. 442	1976-1 C.B. 456.
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS	Jan. 1, 1990		
Ireland	TIAS 2356	Jan. 1, 1951	1958-2 C.B. 1060	T.D. 5897, 1952-1 C.B. 89.
Italy	TIAS 11064	Jan. 1, 1985	1992-1 C.B. 442	1992-1 C.B. 442
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291.
Japan	TIAS 7365	Jan. 1, 1973	1973-1 C.B. 630	1973-1 C.B. 653.
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965-1 C.B. 615	1965-1 C.B. 642.
Malta	TIAS 10567	Jan. 1, 1982	1984-2 C.B. 339	1984-2 C.B. 366.
Mexico	TIAS	Jan. 1, 1994	1994-34 I.R.B. 4	
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427.
Netherlands (new treaty)	TIAS	Jan. 1, 1994 ⁷		
Netherlands (old treaty)	TIAS 1855	Jan. 1, 1947	1950-1 C.B. 93	T.D. 5690, 1949-1 C.B. 92; T.D. 5778, 1950-1 C.B. 92.
Supplemental	TIAS 3366	Nov. 10, 1955	1956-2 C.B. 1116	T.D. 6153, 1955-2 C.B. 777.
Supplemental	TIAS 6051	Jan. 1, 1967	1967-2 C.B. 472	
Netherlands Antilles, Aruba ⁵	TIAS 3367	Jan. 1, 1955	1956-2 C.B. 1116	T.D. 6153, 1955-2 C.B. 777.
Protocol	TIAS 5665	Various	1965-1 C.B. 624	
New Zealand	TIAS 10772	Nov. 2, 1983	1990-2 C.B. 274	1990-2 C.B. 303
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693.
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454.
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755.
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412.
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427.
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504.
Russia	TIAS	Jan. 1, 1994 ⁸		
Slovak Republic	TIAS	Jan. 1, 1993		
Spain	TIAS	Jan. 1, 1991		
Sweden	TS 958 ⁹	Jan. 1, 1940	1940-2 C.B. 43	T.D. 4975, 1940-2 C.B. 43.
Supplemental	TIAS 5656	Various	1965-1 C.B. 626	1965-1 C.B. 674.
Switzerland	TIAS 2316	Jan. 1, 1951	1955-2 C.B. 815	T.D. 5867, 1951-2 C.B. 75; T.D. 6149, 1955-2 C.B. 814.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
United Kingdom	TIAS 9682	Jan. 1, 1975	1980-1 C.B. 394	1980-1 C.B. 455.

¹Treaties and Other International Act Series.

²The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*.

³The U.S.—U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

⁴The general effective date for the area that was the German Democratic Republic is January 1, 1991.

⁵The United States announced termination of most provisions of the United States-Netherlands Treaty that apply to Netherlands Antilles and Aruba, effective January 1, 1988.

⁶Treaty Series.

⁷For the first 12 months the new treaty is in effect, an election may be made to have the entire old treaty apply if it results in greater relief from tax.

⁸For the first tax year the treaty is in effect, an election may be made to have the entire U.S.—U.S.S.R. income tax treaty apply if it results in greater relief from tax.

Questions and Answers

This section answers the tax-related questions most often asked by taxpayers living abroad.

Filing Requirements— Where, When, and How To Pay

1) When are U.S. income tax returns due?

Generally, for calendar year taxpayers, U.S. income tax returns are due on April 15. However, because April 15, 1995, is on a Saturday, 1994 returns are due April 17, 1995. If you are a U.S. citizen or resident and both your tax home and your abode are outside the United States and Puerto Rico on the regular due date, an automatic extension is granted to June 15 for filing the return. Interest will be charged on any tax due, as shown on the return, from April 15.

2) Where do I file my U.S. income tax return?

If you claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction on Form 2555, the foreign earned income exclusion on Form 2555-EZ, or an exclusion of income for bona fide residents of American Samoa on Form 4563, you should file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

If you are not claiming one of these exclusions or the deduction, but are living in a foreign country or U.S. possession and have no legal residence or principal place of business in the United States, you should file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

If you are not sure of the place of your legal residence and have no principal place of business in the United States, you also can file with the Philadelphia Service Center. However, you should not file with the Philadelphia Service Center if you are a bona fide resident of the Virgin Islands or a resident of Guam or the Commonwealth of the Northern Mariana Islands on the last day of your tax year. See the discussion in Chapter 1.

3) I am going abroad this year and expect to qualify for the foreign earned income exclusion. How can I secure an extension of time to file my return, when should I file my return, and what forms are required?

a) You should file Form 2350 by the due date of your return to request an extension of time to file. Form 2350 is a special form for those U.S. citizens or residents abroad who expect to qualify under either the bona fide residence test or physical presence test and would like to have an extension of time to delay filing until after they have qualified.

b) If the extension is granted, you should file your return after you qualify, but by the approved extension date.

c) You must file your Form 1040 with Form 2555 (or Form 2555-EZ).

4) My entire income qualifies for the foreign earned income exclusion. Must I file a 1994 tax return?

Maybe. Every U.S. citizen or resident must file a 1994 U.S. income tax return if certain income levels are reached. Income for filing requirement purposes is figured without regard to the foreign earned income exclusion. The income levels for filing purposes are discussed under *Income Tax Returns* in Chapter 1.

5) I was sent abroad by my company in November 1994. I plan to secure an extension of time on Form 2350 to file my 1994 tax return because I expect to qualify for the foreign earned income exclusion under the physical presence test. However, if my company recalls me to the United States before the end of the qualifying period and I find I will not qualify for the exclusion, how and when should I file my 1994 return?

If your regular filing date has passed, you should file a return, Form 1040, as soon as possible for 1994. Include a statement with this return noting that you have returned to the United States and will not qualify for the foreign earned income exclusion. You must report

your worldwide income on the return. If you paid a foreign tax on the income earned abroad, you may be able to either deduct this tax or claim it as a credit against your U.S. income tax.

6) I am a U.S. citizen and have no taxable income from the United States, but I have substantial income from a foreign source. Am I required to file a U.S. income tax return?

Yes. All U.S. citizens and resident aliens, depending on the amount of the foreign source income, are subject to U.S. tax on their worldwide income. If you paid taxes to a foreign government on income from sources outside the United States, you may receive a foreign tax credit against your U.S. income tax liability for the foreign taxes paid. Form 1116 is used to figure the allowable credit.

7) I am a U.S. citizen who has retired, and I expect to remain in a foreign country. Do I have any further U.S. tax obligations?

Your U.S. tax obligation on your income is the same as that of a retired person living in the United States. (See the discussion in Chapter 1 of this publication for filing requirements.) U.S. payers of certain pension benefits must withhold tax from payments unless the recipient provides a residence address in the United States or a U.S. possession.

8) I have been a bona fide resident of a foreign country for over 5 years. Is it necessary for me to pay estimated tax?

U.S. taxpayers overseas must meet the same requirements for paying estimated tax as those in the United States.

If you had a tax liability for 1994, you may have to pay estimated tax for 1995. Generally, you must make estimated tax payments for 1995 if you expect to owe at least \$500 in tax for 1995, after subtracting your withholding and credits, and you expect your withholding and credits to be less than the smaller of:

- 1) 90% of the tax to be shown on your 1995 tax return, or

- 2) Generally, 100% of the tax shown on your 1994 tax return. (The return must cover all 12 months.)
- 3) 110% of the tax shown on your 1994 tax return if your adjusted gross income for 1994 is greater than \$150,000 (\$75,000 if you are married and file separately). The return must cover all 12 months.

See Publication 505, *Tax Withholding and Estimated Tax*, for more information.

Overseas taxpayers should not include in their estimated income any income they receive that is, or will be, exempt from U.S. taxation.

Overseas taxpayers can deduct their estimated housing deduction in figuring their estimated tax.

The first installment of estimated tax is due on April 15 of the year for which the tax is paid.

9) Will a check payable in foreign currency be acceptable in payment of my U.S. tax?

Generally, only U.S. currency is acceptable for payment of income tax. However, if you are a Fulbright grantee, see the discussion under *Fulbright grants* in Chapter 1.

10) I have met the test for physical presence in a foreign country and am filing returns for 1993 and 1994. Must I file a separate Form 2555 (or Form 2555-EZ) with each return?

Yes. A Form 2555 (or Form 2555-EZ) must be filed with each Form 1040 tax return on which the benefits of income earned abroad are claimed.

11) Does a Form 2555 (or 2555-EZ) with a Schedule C or Form W-2 attached constitute a return?

No. The Form 2555 (or 2555-EZ), Schedule C, and Form W-2 are merely attachments and do not relieve you of the requirement to file a Form 1040 to show the sources of income reported and the exclusions or deductions claimed.

12) On Form 2350, Application for Extension of Time to File U.S. Income Tax Return, which I

filed for my 1994 tax year, I stated that I would qualify under the physical presence test. If I qualify under the bona fide residence test, can I file my return on that basis?

Yes. You can claim the foreign earned income exclusion and the foreign housing exclusion or deduction under either test as long as you meet the qualification requirements. You are not bound by the test indicated in the application for extension of time. You must be sure, however, that you file the Form 1040 return by the date approved on Form 2350, since a return filed after that date may be subject to a failure to file penalty.

If you will not qualify under the bona fide residence test until a date later than the extension granted under the physical presence rule, apply for a new extension to a date 30 days beyond the date you expect to qualify as a bona fide resident.

13) I am a U.S. citizen who worked in the United States for 6 months in 1994. I accepted employment overseas in July 1994 and expect to qualify for the foreign earned income exclusion. Should I file a return and pay tax on the income earned in the United States during the first 6 months and then, when I qualify, file another return covering the last 6 months of the year?

No. You have the choice of one of the following two methods of filing your return for the year you go abroad and have not qualified for the foreign earned income exclusion either as a bona fide resident or under the physical presence test:

a) You can file your return when due under the regular filing rules, report all your income without excluding your foreign earned income, and pay the tax due. After you have qualified for the exclusion, you can file an amended return, Form 1040X, accompanied by Form 2555 (or 2555-EZ), for a refund of any excess tax paid.

b) You can postpone the filing of your tax return by applying on Form 2350 for an extension of time to file to a date 30 days beyond the date you expect to qualify under either the bona fide residence test or the physical presence test, then file your return reflecting the exclusion of foreign earned income. This allows you to file only once and saves you from paying the tax and waiting for a refund. However,

interest is charged on any tax due on the postponed tax return, but interest is not paid on refunds paid within 45 days after the return is filed. (If you have moving expenses that are attributable to services performed in two years, you may be granted an extension to 90 days beyond the close of the year following the year of first arrival in the foreign country.)

14) As a U.S. citizen I have lived abroad for a number of years and have only recently realized that I should have been filing U.S. income tax returns. How do I correct this oversight in not having filed returns for these years?

You must file the late returns as soon as possible, stating your reason for filing late. You should contact the Internal Revenue Service representative serving your area, or the Internal Revenue official who travels through your area (details can be obtained from your nearest U.S. consulate or Embassy), or you can write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, and ask for advice on filing the returns.

15) Under what circumstances must a dependent child file an income tax return?

If an unmarried dependent has no unearned income, an income tax return must be filed if total gross income is more than \$3,800 (\$4,750 if the child is blind).

If a dependent receives any unearned income for 1994 and has gross (total) income of more than \$600, an income tax return must be filed. However, if a child under age 14 has only interest or dividend income, the parents may be able to report it on their return. If they do, the child will not have to file a return.

In addition, certain unearned income of children who are younger than 14 at the end of the tax year is taxed at their parents' rates. For more information, see Publication 929, *Tax Rules for Children and Dependents*.

16) In 1988 I qualified to exempt my income earned abroad, but I did not claim this exemption on the return I filed in 1989. I paid all outstanding taxes with the return. Can I file a claim for refund now?

It is too late to claim this refund since a claim for refund must be filed within 3 years from the date the return was filed or 2 years from the date the tax was paid, whichever is later. For this purpose, a return filed before the due date is deemed to be filed on the due date.

Meeting the Requirements of Either the Bona Fide Residence Test or the Physical Presence Test

1) I recently came to Country X to work for the Orange Tractor Co., and I expect to be here for 5 or 6 years. I understand that upon the completion of 1 full year I will qualify under the bona fide residence test. Is this correct?

Not entirely. The law provides that to qualify under this test for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, a person must be a "bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year."

If, like most U.S. citizens, you file your return on a calendar year basis, the taxable year referred to in the law would be from January 1 to December 31 of any particular year. Unless you established residence in Country X on January 1, it would be more than 1 year before you could qualify as a bona fide resident of a foreign country. Once you have completed your qualifying period, however, you are entitled to exclude the income or to claim the housing exclusion or deduction from the date you established bona fide residence.

2) I understand the physical presence test to be simply a matter of being physically present in a foreign country for at least 330 days within 12 consecutive months; but what are the criteria of the bona fide residence test?

To be a bona fide resident of a foreign country, you must show that you entered a foreign country intending to remain there for an indefinite or prolonged period and, to that end, you are making your home in that country. Consideration is given to the type of quarters occupied, whether your family went with you abroad, the type of visa, the employment agreement, and any other factor pertinent to

show whether your stay in the foreign country is indefinite or prolonged.

To claim the foreign earned income exclusion or foreign housing exclusion or deduction under this test, the period of foreign residence must include 1 full tax year (usually January 1—December 31), but once you meet this time requirement, you figure the exclusions and the deduction from the date the residence actually began.

3) To meet the qualification of "an uninterrupted period which includes an entire taxable year" do I have to be physically present in a foreign country for the entire year?

No. Uninterrupted refers to the bona fide residence proper and not to the physical presence of the individual. During the period of bona fide residence in a foreign country, even during the first full year, you can leave the country for brief and temporary trips back to the United States or elsewhere for vacation, or even for business. To preserve your status as a bona fide resident of a foreign country, you must have a clear intention of returning from those trips, without unreasonable delay, to your foreign residence.

4) I am a U.S. citizen and during 1993 was a bona fide resident of Country X. On January 15, 1994, I was notified that I was to be assigned to Country Y. I was recalled to New York for 90 days orientation and then went to Country Y, where I have been since. Although I was not in Country X on January 1, I was a bona fide resident of Country X and was in Country Y on December 31, 1994. My family remained in Country X until completion of the orientation period, and my household goods were shipped directly to my new post. Can I qualify as a bona fide resident of a foreign country for 1994, or must I wait for the entire year of 1995 to qualify?

Since you did not break your period of foreign residence, you would continue to qualify as a bona fide resident for 1994.

5) Due to illness, I returned to the United States before I completed my qualifying period to claim the foreign earned income exclusion. Can I figure the exclusion for the period I resided abroad?

No. You are not entitled to any exclusion of foreign earned income since you did not complete your qualifying period under either the bona fide residence test or physical presence test. If you paid foreign tax on the income earned abroad, you may be able to claim that tax as a deduction or as a credit against your U.S. tax.

6) Can a resident alien of the United States qualify under the bona fide residence test or the physical presence test?

Resident aliens of the United States can qualify for the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction if they meet the requirements of the physical presence test. Certain resident aliens can qualify under the bona fide residence test.

7) On August 13, 1994, I left the United States and arrived in Country Z to work for the Gordon Manufacturing Company. I expected to be able to exclude my foreign earned income under the physical presence test because I planned to be in Country Z for at least 1 year. However, I was reassigned back to the United States and left Country Z on July 1, 1995. Can I exclude any of my foreign earned income?

You cannot exclude any of the income you earned in Country Z during 1994 because you were not in a foreign country for at least 330 full days as required under the physical presence test.

Foreign Earned Income

1) I am an employee of the U.S. Government working abroad. Can all or part of my Government income earned abroad qualify for the foreign earned income exclusion?

No. The foreign earned income exclusion applies to your foreign earned income, and amounts paid by the United States or its agencies to their employees, for this purpose, are not treated as foreign earned income.

2) I qualify under the bona fide residence test. Does my foreign earned income include my U.S. dividends and the interest I receive on a foreign bank account?

No. The only income that is foreign earned income is income from the performance of personal services abroad. Investment income, including income from foreign investments, is not earned income, but must be included in gross income reported on your Form 1040.

3) My company pays my foreign income tax on my foreign earnings. Does this constitute additional taxable compensation?

Yes. The amount is compensation for services performed. The tax paid by your company should be reported on Form 1040 and in item 22(f) of Part IV, Form 2555 (or Line 17 of Part IV, Form 2555-EZ).

4) I live in an apartment in a foreign city for which my employer pays the rent. Am I required to include in my income the cost to my employer (\$1,200 a month) or the fair market value of equivalent housing in the United States (\$800 a month)?

The amount included on your return is the fair market value (FMV) of the facility provided, where it is provided. You must include \$1,200 per month as additional compensation on Form 1040 and on your Form 2555 (item 21(a) of Part IV) or Form 2555-EZ (Line 17 of Part IV). There are situations when the FMV is not included in income.

5) My U.S. employer pays my salary into my U.S. bank account. Is this considered U.S. income or foreign income?

If you performed the services to earn this salary outside the United States, your salary is considered earned abroad. It does not matter that you are paid by a U.S. employer or that your salary is deposited in a U.S. bank account in the United States. The source of salary, wages, commissions, and other personal service income is the place where you perform the services.

6) What is considered a foreign country?

For the purposes of the foreign earned income exclusion and the foreign housing exclusion or deduction, foreign country means any territory under the sovereignty of a country other than the United States. Possessions of the United States are not treated as foreign countries.

7) What is meant by the source of earned income?

The word "source" refers to the place where the work or personal services that produce earned income are performed. In other words, income received for work in a foreign country has a source in that country. The foreign earned income exclusion and the foreign housing exclusion or deduction are limited to earned income from sources within foreign countries.

Foreign Earned Income Exclusion

1) I qualify for the foreign earned income exclusion and earned more than \$70,000 during 1994. Am I entitled to the maximum \$70,000 exclusion?

Not necessarily. Although you qualify for the foreign earned income exclusion, you may not have met either the bona fide residence test or the physical presence test for your entire tax year. If you did not meet either of these tests for your entire tax year, you must prorate the \$70,000 maximum exclusion based on the number of days that you did meet either test during the year.

2) How do I qualify for the foreign earned income exclusion?

To be eligible, you must have a tax home in a foreign country and you must be a U.S. citizen or a resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and you must be a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or you must be a U.S. citizen or resident and be physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

Your tax home must be in the foreign country or countries throughout your period of residence or presence. For this purpose, your period of physical presence is the 330 full days during which you are present in a foreign country, not the 12 consecutive months during which those days occur.

3) Is it true that my foreign earned income exclusion cannot exceed my foreign earned income?

Yes. The amount of the exclusion is limited each year to the amount of your foreign earned income after reducing that income by the foreign housing exclusion. The foreign earned income must be earned during the part of the tax year that you have your tax home abroad and meet either the bona fide residence test or the physical presence test.

4) My wife and I are both employed, reside together, and file a joint return. We meet the qualifications for claiming the foreign earned income exclusion. Do we each figure a separate foreign earned income exclusion and foreign housing exclusion?

You can each claim a foreign earned income exclusion since you both have foreign earned income. The amount of the exclusion for each of you cannot exceed your separate foreign earned incomes.

If you each have a housing amount, you can figure your housing exclusion either separately or jointly. See the discussion, *Married Couples Living Apart*, in Chapter 4 for further details.

Exemptions and Dependency Allowances

1) I am a U.S. citizen married to a nonresident alien who has no income from U.S. sources. Can I claim an exemption for my spouse on my U.S. tax return?

Yes. You can claim an exemption for your nonresident alien spouse on your tax return if your spouse has no income from sources within the United States and is not the dependent of another U.S. taxpayer.

You must use the married filing separately column in the Tax Table or the Tax Rate Schedule for married individuals filing a separate return, unless you qualify as a head of household. (Also see Question 14 under *General Tax Questions, later*.)

A U.S. citizen or resident married to a nonresident alien also can choose to treat the nonresident alien as a U.S. resident for all federal income tax purposes. This allows you to file a joint return, but also subjects the alien's worldwide income to U.S. income tax.

See *Exemptions for nonresident alien spouse and dependents*, in Chapter 1 under *Nonresident Spouse Treated as a Resident*.

2) What exemptions can be claimed by a U.S. citizen for a nonresident alien spouse who was blind and 65 years of age? The spouse did not have income from U.S. sources and was not a dependent of another U.S. taxpayer.

In 1994 a U.S. taxpayer can generally claim one exemption of \$2,450 for his or her spouse. In addition, if the U.S. taxpayer does not itemize deductions on Schedule A (Form 1040), the taxpayer may be entitled to a higher standard deduction if his or her spouse is age 65 or older or is blind at the end of 1994.

3) My wife is a nonresident alien who receives interest income from deposits in a U.S. bank. Is this income taxable to her?

Your nonresident alien spouse's bank deposit interest income is not taxed by the United States unless it is effectively connected with a U.S. trade or business. The exclusion of interest on bank deposits also applies to interest on deposits or withdrawable accounts with savings and loan associations, credit unions, mutual savings banks, and similar institutions, and on amounts held by insurance companies under an agreement to pay interest.

Interest received by your spouse from deposits in the foreign branches of U.S. banks is from foreign sources and is not subject to U.S. tax.

However, if you choose to treat your nonresident alien spouse as a U.S. resident as explained in question 1, all of the interest income is subject to tax and must be included on a U.S. tax return.

4) I spend \$375 a month to support my parents who live in Italy. I am sure this provides the bulk of their support. Can I claim them as dependents?

It depends on whether they are U.S. citizens or residents. If your parents are not U.S. citizens or residents, you cannot claim them as dependents even if you provide most of their support. To qualify as a dependent, a person generally must be either a citizen or national of the United States or a resident of the United States, Canada, or Mexico for some part of the tax year. The other tests of dependency also must be met.

5) Should I prorate my own personal exemption and the exemptions for my spouse and dependents, since I expect to exclude part of my income?

No. Do not prorate exemptions for yourself, your spouse, and your dependents. Claim the full \$2,450 for each exemption permitted.

Social Security Benefits and Self-Employment Tax

1) Are U.S. social security benefits taxable?

Benefits received by U.S. citizens and resident aliens may be taxable, depending on the total amount of income and the filing status of the taxpayer.

Benefits similar to social security received from other countries by U.S. citizens or residents may be taxable. U.S. social security benefits are taxed by some foreign countries. (Refer to our tax treaties with various countries for any benefit granted by the treaty.)

2) As a U.S. citizen or resident, how do I figure the amount of my U.S. social security benefits to include in gross income?

You may have to include part of your social security benefits in income depending on the amount of your benefits and your modified adjusted gross income.

Modified adjusted gross income is adjusted gross income plus the foreign earned income exclusion, foreign housing exclusion and deduction, Puerto Rican and possession income exclusions, exclusion for interest on certain U.S. Savings Bonds, and any tax-exempt interest received or accrued during the tax year.

See Publication 915, *Social Security Benefits and Equivalent Railroad Retirement Benefits* to figure if any of your benefits are includible in income.

If you think the new rules will increase your taxable benefit for 1995, you should take that increase into account when you figure your 1995 estimated tax.

3) How are railroad retirement benefits taxed?

The part of a tier 1 railroad retirement benefit that is equivalent to the social security benefit you would have been entitled to receive if the railroad employee's work had been covered under the social security system rather than

the railroad retirement system is treated the same as a social security benefit, discussed above.

The other part of a tier 1 benefit that is not considered a social security equivalent benefit is treated like a private pension or annuity, as are tier 2 railroad retirement benefits. Pensions and annuities are explained in Chapter 4 under *Earned and Unearned Income*. Vested dual benefits and supplemental annuities are also treated like private pensions but are fully taxable.

The proper amounts of the social security equivalent part of tier 1 benefits and any special guaranty benefits are shown on the Form RRB-1099, *PAYMENTS BY THE RAILROAD RETIREMENT BOARD*, that you receive from the Railroad Retirement Board. The taxable amounts of the non-social security equivalent part of tier 1, tier 2, vested dual benefits, and supplemental annuities are shown on the Form RRB-1099-R, *ANNUITIES OR PENSIONS BY THE RAILROAD RETIREMENT BOARD*, that you receive from the Railroad Retirement Board.

4) How do I get a social security number when I am overseas?

If you are 18 years of age or older, you must apply in person at a U.S. Embassy, consulate, or military installation. During your interview, you will be asked to show evidence of your identity, age, and citizenship. If you are under 18 years old, you should ask your local U.S. Embassy or consulate how to apply for a social security number.

5) Do I need social security numbers for my dependents?

You must provide a social security number on the return for any dependent you claim if the dependent is at least 1 year old by the end of the tax year for which you file the return. You should apply for this number early enough so that it can be assigned before your return is due. Nonresident alien dependents are not exempt from this requirement.

6) I know U.S. savings banks need my social security number, but do the U.S. companies in which I own stock require the number?

Yes. Corporations are required to request your number and include it when reporting dividend payments to the IRS.

7) I am a minister with earned income from abroad and expect to qualify in 1994 for the foreign earned income exclusion. How do I pay the self-employment tax that results from social security coverage?

Ministers, even though exempt from income tax under the foreign earned income exclusion, must file a Form 1040 accompanied by a Schedule SE and Form 2555. The self-employment tax figured on Schedule SE is entered on Form 1040 as the tax due with the return. Form 2555 will show why the earned income is not taxable for income tax purposes.

8) Because I expect to qualify for the foreign earned income exclusion, I have requested and received an extension of time until January 30, 1996, to file my 1994 return. However, since I will be paying self-employment tax on my spouse's income, should I file a 1994 return when due, pay the self-employment tax, and then file another return when I qualify for the exclusion?

No. You do not need to file a 1994 Form 1040 (the regular income tax return) when due if you have received an extension to file it by January 30, 1996. To stop interest from accruing on the self-employment tax due for 1994, you may pay enough estimated tax to cover the self-employment tax and any income tax that would be due after taking out the amount of excludable income.

Problems on Withholding

1) How can I get my employer to discontinue withholding federal income taxes from wages while I am overseas and eligible for the foreign earned income exclusion?

File a statement in duplicate with your employer stating that withholding should be reduced because you meet the bona fide residence test or physical presence test. See also the following question.

2) Does the Internal Revenue Service provide forms to be used by employees requesting employers to discontinue withholding income tax from wages they expect to be excluded as income earned abroad?

Yes. Form 673 is a sample statement that can be used by individuals who expect to qualify under the bona fide residence test or the physical presence test. A copy of this form is displayed in Chapter 2. You can get this form by writing to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

3) I am a U.S. citizen residing overseas, and I receive dividend and interest income from U.S. sources from which tax is being withheld at a rate of 30%. How can I have this situation corrected?

Write a letter in duplicate to the withholding agents who are paying you the dividends and interest and inform them you are a U.S. citizen residing abroad and therefore are not subject to the withholding at source rules that apply to nonresident aliens. This letter is their authority to stop withholding the 30% income tax at the source on payments due you. They must withhold this tax on any payment of income going outside the United States unless they have the authority to do otherwise.

4) As a U.S. citizen receiving dividend and interest income from the United States from which tax has been withheld, do I report the net dividend and interest income on my return, or do I report the gross amount and take credit for the tax withheld?

You must report the gross amount of the income received and take a tax credit for the tax withheld. This is to your advantage since the tax withheld is deducted in full from the tax due. It is also advisable to attach a statement to your return explaining this tax credit so there will be no question as to the amount of credit allowable.

Deductions

1) Not having many deductions to itemize, how do I figure the standard deduction?

For 1994 the standard deduction is \$6,350 for married persons filing a joint return and for certain widows or widowers; \$3,800 for a single person; \$5,600 for a head of household; and \$3,175 for a married person filing a separate return.

The standard deduction is higher if you are age 65 or older or blind, and different amounts apply

to dependents. See Publication 501, *Exemptions, Standard Deduction, and Filing Information*.

2) My wife and I are considering filing separate returns. Can I itemize deductions while she figures her tax using the standard deduction?

Yes. However if either spouse itemizes deductions, the standard deduction is zero for the other spouse and the other spouse should also itemize.

3) Can I claim a foreign tax credit even though I do not itemize deductions?

Yes. You can claim the foreign tax credit even though you do not itemize deductions.

4) I had to pay customs duty on a few things I brought back with me from Europe last summer. Can I include customs fees with my other deductible taxes?

No. Customs duties, like federal excise taxes, are not deductible.

5) Some taxes paid in the United States are not deductible if I itemize my deductions. Which ones are they?

Sales taxes, as well as the state and local taxes levied specifically on cigarettes, tobacco, and alcoholic beverages are not deductible. In addition, no deduction can be taken for drivers' licenses or gasoline taxes. Auto registration fees cannot be deducted except when they qualify as personal property taxes. To qualify as personal property taxes they must be based on the value of the auto.

Some state and local taxes are deductible, such as those on personal property, real estate, and income.

6) What types of foreign taxes are deductible?

Generally, real estate and foreign income taxes are deductible as itemized deductions. Foreign income taxes are deductible only if you do not claim the foreign tax credit. Foreign income taxes paid on excluded income are not deductible as an itemized deduction.

Note. Foreign income taxes are usually claimed under the credit provisions, if they apply, because this is more advantageous in most cases.

7) I rented an apartment in the United Kingdom and had to pay

a local tax called a "general rates" tax, which is based on occupancy of the apartment. Can I deduct this tax as a foreign real estate tax?

No. This tax does not qualify as a real estate tax since it is levied on the occupant of the premises rather than on the owner of the property.

Scholarship and Fellowship Grantees

1) I am a Fulbright grantee. What documentation must I attach to my return?

a) There are no special tax forms for Fulbright grantees. File on a regular Form 1040.

b) If you claim exemption as a scholarship or fellowship grantee, submit brochures and correspondence describing the grant and your duties.

c) If you are located in a foreign country and wish to pay tax in foreign currency, you should submit a certified statement showing that you were a Fulbright grantee and at least 70% of the grant was paid in nonconvertible foreign currency (see Publication 520).

2) I taught and lectured abroad in 1994 under taxable grants. What expenses can I deduct?

You may be able to deduct your travel, meals, and lodging expenses if you are *temporarily* absent from your regular place of employment. For more information about deducting travel, meals, and lodging expenses, get Publication 463.

3) I am a professor who is teaching abroad while on sabbatical leave from my position in the United States. What records am I required to keep to prove my meals and lodging if my wife and children live with me in an apartment and my wife does the cooking?

Keep a day-to-day record of expenses, with receipts where possible. Allocate meals by dividing the total expense by the number in your family and take your proportionate share. Generally, your deduction for rent will be limited to the amount you would have paid had you been abroad alone.

General Tax Questions

1) Will the Internal Revenue Service representatives at the Embassies and those who provide taxpayer assistance answer questions about tax laws of our home state and the laws of the foreign country where we reside as well as U.S. federal income tax laws?

No. The IRS representatives are authorized only to answer tax questions on U.S. federal income tax. You should write your home state's tax office for state tax information and contact the tax officials of the country where you reside for information regarding their taxes.

2) Can Internal Revenue Service personnel recommend tax practitioners who prepare returns?

No. IRS employees are not permitted to recommend tax practitioners who prepare income tax returns.

3) I just filed my return. How long will it take to get my refund?

It may take up to 10 weeks to issue a refund on a return that is properly made out. A refund may take longer than that if the return is filed just before the filing deadline.

An error on the return will also delay the refund. Among the most common causes of delay in receiving refunds are *unsigned* returns and incorrect social security numbers.

4) I have not received my refund from last year's return. Can I claim the credit against this year's tax?

No. That would cause problems to both years' returns. If your last year's refund is overdue, write to the Internal Revenue Service Center where you filed your return and ask about the status of the refund. Be sure to include your social security number in the letter.

5) I forgot to include interest income when I filed my return last week. What should I do?

To correct a mistake of this sort you should prepare Form 1040X. Complete this form, including the omitted interest income, refigure the tax, and send the form as soon as possible along with any additional tax due to the Internal Revenue Service Center where you filed your return. Form 1040X can be used to correct an individual Form 1040 income tax return filed for any year for which the period of limitation has not expired (usually

3 years after the due date of the return filed, or 2 years after the tax was paid, whichever is later).

6) What must I do if I cannot obtain a W-2 statement from my employer before the due date for filing?

File your return with the best information available and pay the tax. You can use Form 4852, *SUBSTITUTE FOR FORM W-2, WAGE AND TAX STATEMENT OR FORM 1099-R, DISTRIBUTIONS FROM PENSIONS, ANNUITIES, RETIREMENT OR PROFIT-SHARING PLANS, IRA'S, INSURANCE CONTRACTS, ETC.*, in place of the W-2 not received. When you have complete information, file an amended return to correct the original. Attach a statement of explanation to both returns. This clarifies your tax situation for the IRS and eliminates unnecessary correspondence.

At the end of the year, you should request an earnings statement from the Social Security Administration to ensure that your wages were properly reported by your employer and are credited to your social security records. You can get Form SSA-7004-PC to request the statement from U.S. Embassies or consular offices.

7) I am a U.S. citizen and, because I expect to qualify for the foreign earned income exclusion for 1994, all my foreign income (which consists solely of salary) will be exempt from U.S. tax. Do I get any tax benefit from income tax I paid on this salary to a foreign country during the tax year?

No. You cannot take either a tax credit or a tax deduction for foreign income taxes paid on income that is exempt from U.S. tax because of the foreign earned income exclusion.

8) I am a U.S. citizen stationed abroad. I made a personal loan to a nonresident alien who later went bankrupt. Can I claim a bad debt loss for this money?

The loss should be reported as a short-term capital loss on Schedule D (Form 1040). You have the burden of proving the validity of the loan, the subsequent bankruptcy, and the recovery or nonrecovery from the loan.

9) With which countries does the United States have tax treaties?

Table 6-1, *Table of Tax Treaties*, earlier in this publication lists those countries with which the United States has income tax treaties.

10) I am a retired U.S. citizen living in Europe. My only income is from U.S. sources on which I pay U.S. taxes. I am taxed on the same income in the foreign country where I reside. How do I avoid double taxation?

If you reside in a country that has an income tax treaty with the United States, that country may allow a credit against the tax you owe them for the U.S. tax paid on U.S. source income. Nontreaty countries, depending on their laws, may give the same type of credit against the tax you owe them for the U.S. tax paid on U.S. source income.

If double taxation exists and you cannot resolve the problem with the tax authorities of the foreign country, you can contact the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for assistance.

11) My total income after claiming the foreign earned income and housing exclusions for 1993 consists of \$5,000 taxable wages. Am I entitled to claim the refundable earned income credit?

No, if you claim the foreign earned income exclusion, the foreign housing exclusion, or the foreign housing deduction, you cannot claim the earned income credit.

12) Before being transferred overseas by my company, I sold my old home at a gain. How long do I have to buy a replacement home and postpone recognizing the gain?

Generally, to postpone recognizing gain on the sale of a home, you must buy or build and live in your replacement home within a period beginning 2 years before and ending 2 years after the date of sale of your old home. The replacement home may be located outside the United States.

However, the replacement period after the sale of your old home is suspended during any time that you (or your spouse if the old home and the new home are used by both you and your spouse as your principal residence) have a tax home outside the United States after the date of the sale of the old

home. This suspension applies only if your stay abroad begins before the end of the 2-year replacement period. However, the replacement period plus the period of suspension is limited to 4 years from the date of the sale of the old home.

Get Publication 523, *Selling Your Home*, for more information.

13) Last May my employer transferred me to our office in Puerto Rico. I understand that my salary earned in Puerto Rico is tax exempt. Is this correct?

As long as your employer is not the U.S. Government, all income from sources within Puerto Rico is exempt from U.S. tax if you are a bona fide resident of Puerto Rico during the entire tax year. The income you received from Puerto Rican sources the year you moved to Puerto Rico is not exempt. The tax paid to Puerto Rico in the year you moved to Puerto Rico can be claimed as a foreign tax credit on Form 1116.

14) I am a U.S. citizen married to a nonresident alien. I believe I have all the qualifications to claim the head of household tax rates. Can I claim the head of household tax rates in 1994?

Yes. Although your nonresident alien spouse cannot qualify you as a head of household, you can qualify if (a) or (b) applies:

- a) You paid more than half the cost of keeping up a home that was the principal home for the whole year for your mother or father whom you can claim as your dependent (your parent does not have to have lived with you), or
- b) You paid more than half the cost of keeping up the home in which you lived and in which one of the following also lived for more than half the year:

- Your unmarried child, grandchild, stepchild, foster child, or adopted child. This child (except for foster child) does not have to be your dependent.
- Your married child, grandchild, stepchild, or adopted child whom you can claim as your dependent, or whom you could claim as your dependent except that you signed a statement allowing the noncustodial parent to claim the dependent, or the noncustodial parent provides at least \$600 support and claims the dependent under a pre-1985 agreement.

- Any relative listed below whom you can claim as a dependent.

Parent	Father-in-law
Grandparent	Brother-in-law
Brother	Sister-in-law
Half-brother	Half-sister
Sister	Son-in-law
Stepbrother	Daughter-in-law, or
Stepsister	If related by blood:
Stepmother	—Uncle
Stepfather	—Aunt
Mother-in-law	—Nephew
	—Niece

If your spouse was a nonresident alien at any time during the year and you do not choose to treat your non-resident spouse as a resident alien, then you are treated as unmarried for head of household purposes. You must have another qualifying relative and meet the other tests to be eligible to file as head of household. You can use the head of household column in the Tax Table or the head of household Tax Rate Schedule.

It may be advantageous to choose to treat your nonresident alien spouse as a U.S. resident and file a joint income tax return. Once you make the choice, however, you must report the worldwide income of both yourself and your spouse.

Penalties and Interest

1) Does the June 15 extended due date for filing my return because both my tax home and my abode are outside the United States and Puerto Rico on the regular due date relieve me from having to pay interest on tax not paid by April 15?

No. An extension, whether an automatic extension or one requested in writing, does not relieve you of the payment of interest on the tax due as of April 15 following the year for which the return is filed. The interest should be included in your payment.

2) If I wait to file my 1994 return until I qualify for the foreign earned income exclusion, I will be charged interest on the U.S. tax I will owe. To avoid being charged interest, may I file my return on time, reporting only my taxable income, excluding my salary for services abroad that will be exempt after I have met the qualifications?

No. If you file a return before you qualify for the exclusion, you must

report all income, including all income for services performed abroad, and pay tax on all of it. After you meet the qualifications, you can file a claim for refund by excluding the income earned abroad.

If you defer the filing of your return, you can avoid interest on tax due on your return to be filed by paying the tax you estimate you will owe with your request for an extension of time to file on Form 2350, or by

paying enough estimated tax to cover any tax that you expect will be due on the return. ■
