Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:3-PLR-113171-97
Date:
Nov. 4th 1998

Tax year =

A =

Date B =

Country C =

Country D =

This responds to your letter dated June 27, 1997, on behalf of A, requesting a ruling pursuant to Notice 97-19, 1997-10 I.R.B. 40, under section 877 of the Internal Revenue Code of 1986 ("Code") that A's termination of long-term U.S. residence did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. Additional information was submitted in letters dated October 3, 1997, October 7, 1997, October 14, 1997, October 29, 1997, November 10, 1997 and November 24, 1997. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A, a former long-term resident of the United States within the meaning of section

877(e), voluntarily relinquished his U.S. lawful permanent resident status ("expatriated") on Date B in 1995 by surrendering his green card. A is 37 years old. A and A's parents were born in Country C. However, when A was six months old, A's family emigrated to Country D because of a change in the political climate in Country C. A and A's parents are naturalized citizens of Country D. A's spouse is not a citizen of the United States.

A's net worth on Date B (the date that he expatriated) exceeded $500,000. A's gross assets have a fair market value of less than $10,000,000. A represents that his current assets are representative of the assets he owned for the period that began five years prior to the date on which he expatriated and ending on the date that his ruling request was submitted. A does not expect any significant changes to his balance sheet during the 10-year period following his expatriation. A's average annual net U.S. income tax for the five taxable years prior to his expatriation was less than $100,000.

Section 877, as amended by the Health Insurance Portability and Accountability Act of 1996, generally provides that a U.S. citizen who loses citizenship or a long-term resident who ceases to be taxed as a lawful permanent resident of the United States within the 10-year period immediately preceding the close of the taxable year will be taxed on all of his or her U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. See sections 877(a)(1) and (e).

Section 2107(a)(1) generally provides that U.S. estate tax will be imposed on the transfer of the taxable estate of every nonresident decedent if the individual lost U.S. citizenship within the 10-year period ending on the date of death, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Section 877(e) provides that a long-term resident who ceases to be taxed as a lawful permanent resident of the United States will be treated in the same manner as a U.S. citizen who lost U.S. citizenship for purposes of section 2107.

Section 2501(a)(1) generally provides that a tax will be imposed for each calendar year on the transfer of property made by gift during such year by any individual, resident or nonresident. Section 2501(a)(3) provides that section 2501(a)(1) will not apply to the transfer of intangible property made by a nonresident not a citizen of the United States. However, section 2501(a)(3)(A) provides that this exception does not apply in the case of a donor who lost U.S. citizenship within the 10-year period ending on the date of the transfer, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Section 877(e) provides that a long-term resident who ceases to be taxed as a lawful permanent resident of the United States will be treated in the same manner as a U.S. citizen who lost U.S. citizenship for purposes of section 2501.

For purposes of the foregoing provisions, a former citizen or former long-term resident is considered to have lost U.S. citizenship or ceased to be taxed as a long-term U.S. resident with a principal purpose under section 877(a)(2) to avoid U.S. taxes if (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation is greater than $100,000, or (ii) the individual's net worth on the date of expatriation is $500,000 or more (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) and (e) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code. Section 877, as amended, is generally effective after February 5, 1995.

Under Notice 98-34, 1998-27 I.R.B. 30, modifying Notice 97-19, 1997-1 C.B. 394, a former long-term resident whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance under section 877(a)(2) if that former resident is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes. Although the presumption of tax avoidance under section 877(a)(2) will not apply to such an individual, he may nevertheless be considered to have a principal purpose of tax avoidance under section 877(a)(1) based on facts and circumstances.

Section IV of Notice 97-19 provides that a former long-term resident who narrowly fails to satisfy the criteria of an enumerated category may also submit a ruling request. However, the Secretary, in his sole discretion, may decline to rule on any request if the Secretary determines that the individual does not narrowly fail to satisfy the criteria of one of those categories.

A is eligible to request a ruling pursuant to Notice 97-19 because he narrowly fails to satisfy the criteria of a category of individuals eligible to submit ruling requests. Although A was not born in Country D, A moved to Country D when he was only six months old and subsequently became a naturalized citizen of Country D. A represents that he is, and will continue to be, fully liable to tax in Country D by reason of his residence. Accordingly, A narrowly fails to satisfy the category of long-term residents eligible to submit ruling requests because they are citizens of their country of birth and become fully liable to tax in such country by reason of their residence, as described in paragraph 1(a) of Section IV of Notice 97-19.

Notice 97-19, modified by Notice 98-34, requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes. A submitted all the information required by Notice 97-19, including any additional information requested by the Service after review of the submission.

Accordingly, based solely on the information submitted and the representations made, it is held that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 98-34. Therefore, A will not treated under section 877(a)(2) as having as one of his principal purposes for expatriating the avoidance of U.S. taxes. While this ruling rebuts the presumption of tax avoidance under section 877(a)(2), it is not conclusive as to whether A subsequently may be found to have a principal purpose of tax avoidance under sections 877(a)(1), 2107(a)(1), and 2501(a)(3)(A) based on all the facts and circumstances. See section 877(c)(1).

Because the information submitted does not clearly establish the existence or lack of a principal purpose to avoid taxes under subtitle A or B of the Code, no opinion is expressed as to whether A's expatriation had for one of its principal purposes the avoidance of such taxes under sections 877(a)(1), 2107(a)(1), and 2501(a)(3)(A). In addition, no opinion is expressed as to A's U.S. tax liability for taxable periods prior to his loss of long-term resident status.

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to A.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief Counsel
(International)