Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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PLR-118310-98
Date:
January 28, 1999

TY:

A =

Country B =

Year C =

Date D =

This is in response to your letter dated September 19, 1998, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that A's surrender of her U.S. Alien Registration Card (Green Card) 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 a letter dated January 7, 1999. 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 is a citizen by birth of Country B. A obtained her Green Card in Year C. She obtained her Green Card for the principal reason of spending more time in the U.S. with her three daughters who were at the time attending college in the United States. However, because of her many other family, social and business connections in Country B, she was unable to spend as much time as she had expected in the United States.

On one or more occasions when she was entering the United States, A was detained for questioning by the U.S. Immigration and Naturalization Service because she was spending too much time in Country B. A was informed that if she was not going to reside in the United States, she did not need a Green Card. In late 1995, A decided that she would not be able to reside in the United States, and that she would relinquish her Green Card and obtain a tourist visa. A relinquished her Green Card on Date D.

On the date A relinquished her Green Card (expatriated) her net worth exceeded $500,000. A is a resident and domiciliary of Country B for all tax purposes. Country B does not make a distinction between residents and domiciliaries. All residents are subject to income tax on their income and gains derived from sources within Country B in accordance with Country B sourcing rules. A's assets consist primarily of U.S. marketable securities, a retirement account, a condominium in the United States, Country B real estate and a one-half interest in her husband's property.

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 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.

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 2501(a)(1) of the Code generally provides that a tax will be imposed for each calendar year on the transfer of property by gift during such year by any individual, resident or nonresident. Section 2501(a)(2) of the Code 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) of the Code provides that this exception does not apply in the case of a donor who, within the 10-year period ending with the date of a transfer, lost U.S. citizenship, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes.

Section 877(e) of the Code generally provides that any long-term resident who ceases to be a lawful permanent resident of the United States or commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country shall be treated for purposes of this section and sections 2107, 2501 and 6039 [sic 6039G] in the same manner as if such

resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

For purposes of applying the foregoing provisions, a former citizen is considered to have lost U.S. citizenship with a principal purpose to avoid U.S. citizenship if either (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation exceeded $100,000 (as modified by post-1996 cost-of-living adjustments); or (ii) the net worth of the individual on the date of expatriation was at least $500,000 (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code.

However, a former citizen will not be considered to have lost citizenship with a principal purpose to avoid U.S. taxes as a result of the individual's tax liability or net worth if he or she qualifies for an exception under section 877(c) of the Code. To qualify for an exception, a former citizen must be described in certain statutory categories and submit a ruling request for a determination by the Secretary as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes. Section 877(c)(1) of the Code. See also sections 2107(a)(2)(B) and 2501(a)(3)(C) of the Code.

Under Notice 97-19, as modified by Notice 98-34, 1998-27 I.R.B. 30, 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 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.

Notice 97-19, as 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 is eligible to request a ruling pursuant to Notice 98-34, because she is described in one of the categories of individuals eligible to submit ruling requests. A is a resident fully liable to tax in Country B, the country in which she was born.

A submitted all the information required by Notice 97-19, as modified by Notice 98-34, 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 and therefore, A will not be presumed to have expatriated with a principal purpose of tax avoidance. It is further held that A will not be treated under section 877(a)(2) as having as one of her principal purposes for

expatriating the avoidance of U.S. taxes because the information submitted clearly establishes the lack of a principal purpose to avoid taxes under subtitle A or B of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed as to A's U.S. tax liability for the taxable years prior to expatriation, or to tax periods after A's expatriation under sections of the Code other than section 877, 2107 and 2501(a)(3).

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,

_____

W. Edward Williams
Senior Technical Reviewer
Office of Associate Chief Counsel
(International)