Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
PLR-113130-97
Date:
January 29, 1999

Tax Year =
A =

Country B =

Country C =

Country D =

Year P =

Year Q =

Year R =

Date T =

Date U =

Date V =

Dear Mr. :

This responds to your letter dated June 29, 1997, on behalf of A, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that A's loss of U.S. citizenship 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 November 24, 1997. The information submitted for consideration is substantially as set forth below.

A was born in Country B on Date T. He arrived in the United States from Country B in Year P under a student visa. During the period in which A was in the United States on a student visa, certain students were given an opportunity to become United States citizens and A was granted United States citizenship in Year Q. In year R, A had the opportunity to start a business in Country C and moved there. Since moving to Country C, A married and raised his children who were all born in Country C. A has returned to the United States on either business or pleasure for no more than two

weeks during any calendar year since Year R.

Even though A has had no substantial contacts with the United States since moving to Country C, he maintained his United States citizenship in the event that the political situation in Country C changed such that A felt it necessary to leave Country C. On Date U, A became a citizen of Country C. He had not had any substantial contacts, either personal or professional, with the United States for over 40 years.

On Date V, after the effective date of section 877 (as amended by the Health Insurance Portability and Accountability Act of 1996), A voluntarily relinquished his U.S. citizenship. A's net worth on the date of loss of citizenship exceeded $500,000. A's gross assets had, and continue to have, a fair market value of more than $1,000,000, but less than $10,000,000.

A's assets primarily consist of cash, marketable securities, stock in a closely-held foreign business, and a foreign apartment. A's unrealized gain on the stock in his closely-held business and apartment constitute the total unrealized income or gain on all of his assets. A has no partnership interests, but maintains a portion of his investments through a grantor trust. A's current assets are generally representative of the assets he owned for the period that began five years prior to the date on which A lost U.S. citizenship and ending on the date A's ruling request was submitted. A has not removed appreciated tangible personal property from the United States during this five year period. A has consistently, and in a timely manner, satisfied his United States tax liabilities. Any gain from the sale of the assets would be subject to a capital gains tax rate in Country C of at least 10 percent. A does not intend to make any gifts during the 10 year period following his expatriation. Country C imposes inheritance taxes on the net amount of the inheritances; the tax rates vary according to the degree of relationship.

A's permanent home and tax home have been in Country C. His spouse, children and grandchildren lived and continue to live in Country C. A's social relationships have been in Country C as well as all of his political, cultural or other activities. Other than his accountant and stockbroker who are located in the United States, A's business activities were conducted in either Country C or Country D. A's personal belongings have been in Country C. His driver's license was issued in Country C. A has conducted his routine banking transactions in Country C.

Section 877, as amended, generally provides that a U.S. citizen who loses U.S. citizenship (an individual who "expatriates") within the 10-year period immediately preceding the close of the taxable year will be taxed on 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. Sections 2107 and 2501(a)(3) provide special estate and gift tax regimes, respectively, for individuals who expatriate with a principal purpose to

avoid taxes.

A former citizen will be treated as having expatriated with a principal purpose to avoid U.S. taxes for purposes of sections 877, 2107 and 2501(a)(3) if the individual's average income tax liability or the individual's net worth on the date of expatriation exceeds certain thresholds. See sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B). For purposes of applying the foregoing provisions, a former citizen is presumed to have lost U.S. citizenship with a principal purpose 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) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code.

Under Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, 1998-27 I.R.B. 30, a former citizen 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 citizen 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. See sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C). The rule also applies to an individual subject to section 877 who expatriated after February 5, 1994, but on or before July 8, 1996, and who submitted a ruling request by July 8, 1997, pursuant to Notice 97-19. See also section 877(e)(1).

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 under section 877 because he is described in a statutory category of individuals eligible to submit ruling requests, inasmuch as A has been present in the United States for less than thirty days during each year of the 10 year period ending on Date V, the date of expatriation. See section 877(c)(2)(B).

A submitted substantially all of the information required in 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 97-19, as modified by Notice 98-34, and therefore, A will not be presumed to have expatriated with a principal purpose of tax avoidance.

However, 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. 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), 2017(a)(1), and 2501(a)(3)(A) based on all the facts and circumstances. See section 877(c)(1).

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 taxable periods prior to his loss of citizenship or for periods after his loss of citizenship under sections of the Code other than sections 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,

Allen Goldstein
Reviewer
Office of the Associate
Chief Counsel (International)