

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
October 12, 2000

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Index (UIL) No.: 871.02-12
CASE MIS No.: TAM-116526-00; CC:INTL:BR1

Chief, Appeals Office

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Taxpayer =
Employer =
Country A =
Date 1 =
Date 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =

ISSUE:

Whether a U.S. citizen may exclude his pension income from gross income under section 871(f)(1) if he was a nonresident alien when he performed the services that entitled him to the pension and when he began to receive annuity payments, and those services were performed outside the United States.

CONCLUSION:

No. Section 871(f)(1) applies to nonresident aliens, not U.S. citizens.

FACTS:

Taxpayer worked as a civilian employee for Employer in Country A, for which he accrued a civil service pension. He was, at that time, a national of Country A. On Date 1, Taxpayer began to receive annuity payments from his civil service pension, which were excluded from his U.S. taxable income under section 871(f)(1). On Date 2 Taxpayer was granted resident alien status and admitted to the United

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States. He became a U.S. citizen in Year 3. Since moving to the United States, Taxpayer has included his pension payments in his gross income. He has, however, filed amended returns for Years 4 through 6. His claim is that he is still entitled to exclude his pension income from his gross income under section 871(f)(1) because he was a nonresident alien when he performed the services that entitled him to the pension and when his annuity payments began, and because the services were performed outside the United States. He received a refund for Year 5, the amount of which is now set as a deficiency.

LAW AND ANALYSIS:

Section 871(f)(1) provides that for purpose of section 871, which applies solely to nonresident aliens, gross income does not need to include any amount received as an annuity under either a qualified annuity plan described in section 403(a)(1) or a qualified trust described in section 401(a) that is exempt from tax under section 501(a), provided certain requirements are satisfied.

When Taxpayer was a nonresident alien, he met the requirements of section 871(f)(1) and properly excluded his U.S. civil service pension annuity payments from his U.S. gross income. Annuity payments received after taxpayer became a resident alien, Date 2, may not be excluded from gross income because section 871 applies solely to nonresident aliens.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.