

Internal Revenue Service

Department of the Treasury

Number: **200116027**
Release Date: 4/20/2001
Index Numbers: 9100.17-00

Washington, DC 20224

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Refer Reply To:

CC:INTL:PLR-103548-00

Date:

January 18, 2001

LEGEND

Taxpayer =
Tax Years at Issue =
Tax Professional =

Dear Taxpayer:

This replies to a letter dated December 23, 1999, requesting that you be granted an extension of time under Treas. Reg. § 301.9100-3 to elect the foreign earned income exclusion for the Tax Years at Issue. Additional information was submitted in letters dated February 25, June 7, July 17, August 30 (fax), September 5, 22, 29, and November 2, 2000. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by Taxpayer. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

The affidavit of the Taxpayer together with the affidavits of the Tax Professional indicate that Taxpayer reasonably relied on a qualified tax professional for the Tax Years at Issue. Taxpayer failed to elect the foreign earned income exclusion for the Tax Years at Issue.

Treas. Reg. § 301.9100 -1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date

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prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1)(v) provides relief if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(e)(3) provides, in part, that the taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure, and that an affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer.

Treas. Reg. § 1.911-7(a)(2) provides the rules to make a valid election of the foreign earned income exclusion. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to elect the foreign earned income exclusion for the Tax Years at Issue. The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election. § 301.9100-1(a). A copy of this ruling letter should be associated with the tax returns for the Tax Years at Issue.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

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