

101

MICHIGAN STATE UNIVERSITY

VIETNAM ADVISORY GROUP

File No.
00-2

January 17, 1958

TO: All American Staff

FROM: Administrative Services Division

SUBJECT: United States Federal Income Tax

The purpose of this memo is to provide some guidance in the handling of your Federal income tax matters as U.S. citizens abroad. If the following information does not answer your income tax questions, the 1957 U.S. Master Tax Guide and the Income Tax Guides for United States Citizens Abroad are available for your use in the Administrative Services Division. A supply of tax forms have been requested from East Lansing and a notice will be put out when they arrive.

TAX EXEMPT STATUS

Following is paragraph 858 "Citizen in Foreign Country" from the U.S. Master Tax Guide, Commerce Clearing House, Inc., November 1956. This paragraph should answer your questions regarding exemption from the Federal Income Tax.

858. **CITIZEN IN FOREIGN COUNTRY.** A citizen (1) who is a bonafide nonresident for an uninterrupted period which includes an entire taxable year, or (2) who is outside the United States for at least 510 days during 18 consecutive months -- the 510 days need not be consecutive -- is exempt from tax on compensation received for services performed outside of the United States, except amounts received from the United States or any agency, during the period for which either of these tests is met, except that under (2) the exclusion is limited to \$20,000 for a full taxable year.

If the 18-month period does not include the entire taxable year, the exclusion is limited to that part of \$20,000 which the number of days in the part of the taxable year within the 18-month period is of the total number of days in such year. (Code Sec. 911.)

EXAMPLE (1): Taxpayer lives in a foreign country during the period January 1, 1956, through June 30, 1957. In November and December 1956, he spends 37 days visiting in the United States.

While abroad he earns \$50,000 in 1956 and \$25,000 in 1957. He may exclude \$20,000 in 1956 and $181/365$ of \$20,000 in 1957. The numerator in this fraction represents the number of days of the 18-month period which fall in 1957; the denominator, the total number of days in 1957.

The 18-month period need not necessarily begin with the day of arrival in a foreign country, nor end with the day of departure therefrom. A taxpayer is entitled to the exemption if he has been abroad for 510 full days (17 months). A "full day" is a continuous period from midnight of one day, until midnight of the next day, twenty-four hours later. Time spent in a foreign country in the employment of the United States Government will count toward satisfaction of the 510-full-day requirement, even though amounts paid by such Government are not excludable from gross income.

EXAMPLE (2): Taxpayer is abroad for the entire period January 1, 1956, through May 24, 1957 -- a period of 510 days. He is entitled to the exclusion. If he had returned to the U.S. for a two-day visit he would not have been entitled to the exclusion

EXAMPLE (3): Taxpayer is abroad for the entire period January 1, 1956 through June 30, 1957 -- a period of 18 consecutive months. He earns no income in 1956 to which the exclusion could apply, but earns \$50,000 abroad during the 6-month period in 1957. He can begin the 18-months period on February 1, 1956 and terminate it on July 31, 1957, since during this period he was abroad more than 510 days. This means that he can exclude $212/365$ of \$20,000 earned abroad in 1957, the numerator representing the number of days in the period January 1, thru July 31, 1957. If he began the 18-month period on January 1, 1956, it would terminate on June 30, 1957, and the fraction would be only $181/365$.

A taxpayer will not be allowed any deductions which are properly allowable to or chargeable against amounts excluded under this provision. "Earned income" means wages, salaries, professional fees, insurance commissions and other amounts received as compensation for personal services. It does not include income from a business or from capital. Where, however, a taxpayer is in a trade or business in which both services and capital are income-producing factors, a reasonable allowance for personal services can be considered as earned income, but not to exceed 30% of his share of the net profits from the business (Code Sec. 911 (b)).

The Commissioner has ruled that income earned in a possession of the United States is not within the exemption since a possession of the United States is not a foreign country. The Philippines became a foreign country on July 4, 1946.

Income received from the United States or one of its agencies cannot be excluded under these rules. Thus, United States soldiers and sailors stationed abroad do not come within these exceptions. Amounts paid to United States citizens performing services abroad for the United States Government under a contract between their employer and the Government are not "amounts paid by the United States or an agency".

Where a husband earns income from abroad which he is entitled to exclude, the entire income is exempt on the individual income tax returns of the husband and wife filing separate returns in a community property state regardless of whether the wife meets the statutory requirements herself.

A missionary meeting the statutory requirements of bona fide residence in a foreign country is not taxable on his furlough allowance whether or not he intends to return to the foreign country.

FILING OF INCOME TAX RETURNS

Section 6161 (a) of the Internal Revenue Code provides for a deferment in filing the tax return while the taxpayer is overseas provided the taxpayer requests permission for the delay. The Lansing, Michigan Internal Revenue Office informs us that it is reasonable to expect to receive permission for an extension until the taxpayer returns to the United States, provided of course, he requests it.

WHERE RIGHT TO EXEMPTION IS NOT YET ESTABLISHED

Section 11.04 Income Tax Guides for United States Citizens Abroad, U.S. Treasury Department 1955 is as follows:

" If a citizen employed abroad has not been there long enough to qualify for exemption under either the "foreign residence" rule or the "presence in a foreign country" rule at the time his income tax return is due to be filed, he must either include the compensation in his gross income and pay the Federal tax due thereon, or obtain an extension of time for the filing of his return. (See par. .06 of this section.) If he elects to include the compensation in his gross income, he may, after he has met the statutory requirements for exemption and within the statutory period, file an amended return or a claim on Form 843 for refund or credit of any tax thus overpaid. For example, a citizen was a bona fide resident of a foreign country from November 1, 1953, through January 31, 1955, during which period he performed personal services abroad. He would be required to include in his 1953 return, filed on the calendar year basis, all income for the year, including the "earned income" received during the period November 1, 1953, through December 31, 1953, since he had not met the requirements of section 911 (a)(1) of the 1954 Code as of the due date for the filing of such return. However, since the requirements of that section would be met as of December 31, 1954, he would then be entitled to a refund or credit of any overpayment of tax resulting from the exclusion of the "earned income" received during the period November 1, 1953, through December 31, 1953, and a claim on Form 843 or amended return should then be filed.

DUE DATE FOR FILING RETURNS.- Section 11.05 Income Tax Guides for United States Citizens Abroad,

" Citizens of the United States who, on April 15, are residing or traveling outside of the United States and who file their returns on the calendar year basis are automatically allowed an extension of time until June 15 for filing the return for the preceding taxable year. Similarly, an extension of 2 months is granted to fiscal-year taxpayers. A taxpayer who takes advantage of this extension must attach to his return a statement showing that he was residing or + traveling outside the United States on the due date (April 15, for calendar-year taxpayers), and he must pay interest at the rate of 6 percent per annum on the unpaid tax, if any, from the due date until paid.

EXPENSIONS OF TIME FOR FILING RETURNS.- Section 11.06

"An extension of time for filing income tax returns may be granted for more than 6 months in the case of citizens of the United States who are abroad. A citizens desiring an extension of time, in addition to the 2 months automatically granted, for filing his return until after the completion of the qualifying period under section 911 of the 1954 Code should make application therefor with the District Director of Internal Revenue with whom the return is required to be filed. The application must be in writing, properly signed by the taxpayer or his duly authorized agent, and must be made before the due date for filing the return with respect to which the extension is requested. The application should set forth the facts relied upon to justify the extension of time requested and should include a statement as to the earliest date the taxpayer expects to be in a position to determine whether he will be entitled to the exclusion provided by section 911 of the 1954 Code.