

III. METHODOLOGY OF JOINT COMMITTEE STAFF REVIEW

In accordance with the request of Chairman Archer in 1999, and the requests of Mr. Rangel and Mr. Moran in 2002, the Joint Committee staff has studied the present-law tax rules and related immigration laws relating to tax-motivated citizenship relinquishment or residency termination. The purpose of the review is to:

- (1) determine whether the present-law rules have been applied in the manner intended by the Congress;
- (2) determine whether the administration of the present-law rules has been effective in deterring tax-motivated citizenship relinquishment or residency termination; and
- (3) if the present-law rules or administration are not effective, make recommendations on ways to improve the rules or administration.

To meet these objectives, the Joint Committee staff undertook a thorough examination of the prior-law and present-law tax and immigration rules relating to tax-motivated citizenship relinquishment or residency termination and the relevant legislative history.²⁰ The Joint Committee staff reviewed the tax and information reporting forms and schedules required to be filed by former citizens and former long-term residents.²¹ The Joint Committee staff studied the relevant IRS notices and private letter rulings that have been issued under present law.²² The Joint Committee staff reviewed numerous commentaries by academics and practitioners relating to present law and proposed alternatives. The Joint Committee staff sought expertise from the Congressional Research Service (“CRS”) to help understand immigration law, constitutional issues, and other non-tax legal matters.²³

To assess the effectiveness of the administration of present law, the Joint Committee staff met with representatives of the relevant Federal agencies, including the Department of Treasury and the IRS (March 17, 2000), the Department of State (March 15, 2000), and the INS (March 6, 2000). In the course of completing and updating of the report in 2002, the Joint Committee staff met with representatives of the IRS (September 3, 2002). In addition, the Joint Committee staff

²⁰ Part IV, below, describes the prior-law and present-law tax rules related to tax-motivated citizenship relinquishment and residency termination. Part V, below, describes present law relating to the requirements for United States citizenship, immigration, and visas. Part VI, below, reviews the relevant legislative history. Relevant tax treaties are reviewed at A-2.

²¹ A copy of IRS Form 8854, Expatriation Information Statement, is at A-204.

²² Copies of IRS Notice 97-19 and Notice 98-34 are at A-166 and A-193, respectively. Summaries of IRS private letter rulings issued to former citizens and former long-term residents are at A-218.

²³ See Memorandum I and II at A-53 and A-59, respectively.

requested information from each of these organizations (as well as the Tax Division of the Department of Justice) relating to the administration of present law, including requests to various agencies for updated information in 2002. All of the agencies responded. The written responses were supplemented as necessary by discussions with representatives of the relevant agencies, and in certain cases the Joint Committee staff made additional written inquiries based upon agency responses.²⁴

In addition to direct inquiries, the Joint Committee staff engaged the GAO to study administrative procedures of the IRS, the INS, and the Department of State. The Joint Committee staff requested that the GAO compile data related to the number of former citizens and former long-term residents, tax return information of such individuals, and information relating to country of citizenship and residence of individuals who have relinquished citizenship or terminated residency. The Joint Committee staff met with the staff of the GAO on numerous occasions to discuss findings and to refine both requests for data and additional information regarding administrative procedures of the various agencies.²⁵

The Joint Committee staff examined available tax records regarding certain individuals who have relinquished citizenship or terminated residency. This information is confidential return information, the disclosure of which is prohibited by section 6103, and is not reproduced in this report.

The Joint Committee staff discussed with practitioners the advice they offer to clients who may be contemplating citizenship relinquishment or residency termination. The Joint Committee staff asked how such individuals plan for citizenship relinquishment or residency termination and how the changes enacted in 1996 affected such planning. The Joint Committee staff queried practitioners for their opinions of how various modifications to present law might alter the planning advice they offer to such individuals. The Joint Committee staff also reviewed published materials that purport to give advice regarding the avoidance of U.S. tax through citizenship relinquishment or residency termination.

The Joint Committee staff reviewed the laws of selected foreign countries that impose tax consequences in connection with citizenship relinquishment, residency termination, and immigration. The Joint Committee staff also reviewed the tax laws relating to estates, inheritances, and gifts, with respect to both countries that are members of the Organization for Economic Cooperation and Development and countries that are reported to be the new country of

²⁴ Copies of relevant correspondence are at A-10. Confidential tax return information, the disclosure of which is prohibited by section 6103, has been redacted.

²⁵ The GAO Report is at A-256. The GAO did not participate in the completing and updating of the Joint Committee staff review subsequent to 2000. Certain information examined by the GAO is confidential return information, the disclosure of which is prohibited by section 6103. This information was shared with the Joint Committee staff but is not reproduced in this report.

residence or citizenship of certain former citizens and former long-term residents subject to the alternative tax regime.²⁶

²⁶ Part IX., below, provides a summary of other countries' taxation of citizenship relinquishment, residency termination, and immigration, and a summary of other countries' taxation of estates, inheritances, and gifts. The Law Library of the Library of Congress assisted the Joint Committee staff in researching these foreign laws.