

Internal Revenue Service, Treasury

§ 1.911-5

housing cost amount less the portion attributable to employer provided amounts (\$25,000—18,750), to taxable year 1985.

(Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 8006, 50 FR 2970, Jan. 23, 1985]

§ 1.911-5 Special rules for married couples.

(a) *Married couples with two qualified individuals*—(1) *In general.* In the case in which a husband and wife both are qualified individuals under § 1.911-2(a), each individual may make one or more elections under § 1.911-7 and exclude from gross income foreign earned income and exclude or deduct housing cost amounts subject to the rules of paragraphs (a)(2) and (3) of this section.

(2) *Computation of excluded foreign earned income.* The amount of excludable foreign earned income is determined separately for each spouse under the rule of § 1.911-3 on the basis of the income attributable to the services of that spouse. If the spouses file separate returns each may exclude the amount of his or her foreign earned income attributable to his or her services subject to the limitations of § 1.911-3(d)(2). If the spouses file a joint return, the sum of these foreign earned income amounts so determined for each spouse may be excluded. For example, H and W both qualify under § 1.911-2(a)(2)(i) for the entire 1983 taxable year. During 1983 W earns \$100,000 of foreign earned income and H earns \$45,000 of foreign earned income. H and W file a joint return for 1983. On their joint return H and W may exclude from gross income a total of \$125,000. That amount is determined by adding W's section 911(a)(1) limitation, \$80,000 (the lesser of $\$80,000 \times 365/365$ or \$100,000), and H's section 911(a)(1) limitation, \$45,000 (the lesser of $\$80,000 \times 365/365$ or \$45,000).

(3) *Computation of housing cost amount*—(i) *Spouses residing together.* If the spouses reside together, and file a joint return, they may compute their housing cost amount either jointly or separately. If the spouses reside together and file separate returns, they must compute their housing cost amounts separately. If the spouses compute their housing cost amounts separately, they may allocate the

housing expenses to either of them or between them for the purpose of calculating separate housing cost amounts, but each spouse claiming a housing cost amount exclusion or deduction must use his or her full base housing amount in such computation. If the spouses compute their housing cost amount jointly, then only one of the spouses may claim the housing cost amount exclusion or deduction.

Either spouse may claim the housing cost amount exclusion or deduction; however, if the spouses have different periods of residence or presence and the spouse with the shorter period of residence or presence claims the exclusion or deduction, then only the expenses incurred in that shorter period may be claimed as housing expenses. The spouse claiming the exclusion or deduction may aggregate the couple's housing expenses, and subtract his or her base housing amount. For example, H and W reside together and file a joint return. H was a bona fide resident of and maintained his tax home in foreign country M from August 17, 1982, through December 31, 1983. W was a bona fide resident of and maintained her tax home in foreign country M from September 15, 1982, through December 31, 1983. During 1982, H and W earn and receive, respectively, \$25,000 and \$10,000 of foreign earned income. H paid \$10,000 for qualified housing expenses in 1982, \$7,500 of that was for qualified housing expenses incurred from September 15, 1982, through December 31, 1982. W paid \$3,000 for qualified housing expenses in 1982 all of which were incurred during her period of residence. H and W may choose to compute their housing cost amount jointly. If they do so and H claims the housing cost amount exclusion his exclusion would be \$10,617. H's housing expenses would be \$13,000 (\$10,000+\$3,000) and his base housing amount would be \$2,383 ($(\$39,689 \times .16) \times 137/365 = \$2,383$). If instead W claims the housing cost amount exclusion her exclusion would be \$8,621. W's housing expenses would be \$10,500 (\$7,500+\$3,000) and her base housing amount would be \$1,879 ($(\$39,689 \times .16) \times 108/365 = \$1,879$). If H and W file jointly and both claim a housing cost amount exclusion, then H's and W's housing cost amounts

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would be, respectively, \$7,617 (\$10,000 - 2,383) and \$1,121 (\$3,000 - 1,879).

(ii) *Spouses residing apart.* If the spouses reside apart, both spouses may exclude or deduct their housing cost amount if the spouses have different tax homes that are not within reasonable commuting distance (as defined in § 1.119-1(d)(4)) of each other and neither spouse's residence is within a reasonable commuting distance of the other spouse's tax home. If the spouses' tax homes, or one spouse's residence and the other spouse's tax home, are within a reasonable commuting distance of each other, only one spouse may exclude or deduct his or her housing cost amount. Regardless of whether the spouses file joint or separate returns, the amount of the housing cost amount exclusion or deduction must be determined separately for each spouse under the rules of § 1.911-4. If both spouses claim a housing cost amount exclusion or deduction directly as qualified individuals, neither may claim any such exclusion or deduction under section 911(c)(2)(B)(ii), relating to a second foreign household maintained for the other spouse. If one spouse fails to claim a housing cost amount exclusion or deduction which that spouse could claim directly, the other spouse may claim such exclusion or deduction under section 911(c)(2)(B)(ii), relating to a second foreign household maintained for the first spouse, provided that all the requirements of that section are met. Spouses may not claim more than one second foreign household and the expenses of such household may only be claimed by one spouse. For example, if both H and W are qualified individuals and H's tax home is in London and W's tax home is in Paris, then both H and W may exclude or deduct their housing cost amounts; however, H and W must compute these amounts separately regardless of whether they file joint or separate returns. If instead of living in Paris, W lives in an area where there are adverse living conditions and W maintains H's home in London, then W may add those housing expenses to her housing expenses and compute one base housing amount. In that case H may not claim a housing cost amount exclusion or deduction.

(iii) *Housing cost amount attributable to employer provided amounts.* Each spouse claiming a housing cost amount exclusion or deduction shall compute the portion of the housing cost amount that is attributable to employer provided amounts separately, based on his or her separate foreign earned income, in accordance with § 1.911-4(d)(3).

(b) *Married couples with community income.* The amount of excludable foreign earned income of a husband and wife with community income is determined separately for each spouse in accordance with paragraph (a) of this section on the basis of income attributable to that spouse's services without regard to community property laws. See sections 879 and 6013 (g) and (h) for special rules regarding treatment of community income of a nonresident alien individual married to a U.S. citizen or resident.

(Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 8006, 50 FR 2972, Jan. 23, 1985]

§ 1.911-6 Disallowance of deductions, exclusions, and credits.

(a) *In general.* No deduction or exclusion from gross income under subtitle A of the Code or credit against the tax imposed by chapter 1 of the Code shall be allowed to the extent the deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under section 911(a). For purposes of the preceding sentence, deductions, exclusions, and credits which are definitely related (as provided in § 1.861-8), in whole or in part, to earned income shall be allocated and apportioned to foreign earned income and U.S. source earned income in accordance with the rules contained in § 1.861-8. Deductions, exclusions, and credits which are definitely related to all gross income under § 1.861-8, including deductions for interest described in § 1.861-8(e)(2)(ii), are definitely related, in whole or in part, to earned income. In the case of interest expense allocable, in whole or in part, to foreign earned income under § 1.861-8(e)(2)(ii), the expense shall normally be apportioned under option one of the optional gross income methods of apportionment (§ 1.861-8(e)(2)(v)i(A)),