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(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 2965, Jan. 23, 1985]

### § 1.911–3 Determination of amount of foreign earned income to be excluded.

(a) *Definition of foreign earned income.* For purposes of section 911 and the regulations thereunder, the term ''foreign earned income'' means earned income (as defined in paragraph (b) of this section) from sources within a foreign country (as defined in §1.911–2(h)) that is earned during a period for which the individual qualifies under §1.911–2(a) to make an election. Earned income is from sources within a foreign country if it is attributable to services performed by an individual in a foreign country or countries. The place of receipt of earned income is immaterial in determining whether earned income is attributable to services performed in a foreign country or countries.

(b) *Definition of earned income*—(1) *In general.* The term ''earned income'' means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered including the fair market value of all remuneration paid in any medium other than cash. Earned income does not include any portion of an amount paid by a corporation which represents a distribution of earnings and profits rather than a reasonable allowance as compensation for personal services actually rendered to the corporation.

(2) *Earned income from business in which capital is material.* In the case of an individual engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the individual shall be considered earned income, but the total amount which shall be treated as the earned income of the individual from such trade or business shall in no case exceed thirty percent of the individual's share of the net profits of such trade or business.

(3) *Professional fees.* Earned income includes all fees received by an individual engaged in a professional occupation (such as doctor or lawyer) in the performance of professional activities. Professional fees constitute earned income even though the individual employs assistants to perform part or all of the services, provided the patients or clients are those of the individual and look to the individual as the person responsible for the services rendered.

(c) *Amounts not included in foreign earned income.* Foreign earned income does not include an amount:

(1) Excluded from gross income under section 119;

(2) Received as a pension or annuity (including social security benefits);

(3) Paid to an employee by an employer which is the U.S. government or any U.S. government agency or instrumentality;

(4) Included in the individual's gross income by reason of section 402(b) (relating to the taxability of a beneficiary of a nonexempt trust) or section 403(c) (relating to the taxability of a beneficiary under a nonqualified annuity or under annuities purchased by exempt organizations);

(5) Included in gross income by reason of §1.911–6(b)(4)(ii); or

(6) Received after the close of the first taxable year following the taxable year in which the services giving rise to the amounts were performed. For treatment of amounts received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, and with respect to which there existed on March 12, 1962, a right (whether forfeitable or nonforfeitable) to receive such amounts, see §1.72–8.

(d) *Determination of the amount of foreign earned income that may be excluded under section 911(a)(1)*—(1) *In general.* Foreign earned income described in this section may be excluded under section 911(a)(1) and this paragraph only to the extent of the limitation specified in paragraph (d)(2) of this section. Income is considered to be earned in the taxable year in which the services giving rise to the income are performed. The determination of the amount of excluded earned income in this manner does not affect the time

for reporting any amounts included in gross income.

(2) *Limitation*—(i) *In general.* The term ''section 911(a)(1) limitation'' means the amount of foreign earned income for a taxable year which may be excluded under section 911(a)(1). The section 911(a)(1) limitation shall be equal to the lesser of the qualified individual's foreign earned income for the taxable year in excess of amounts that the individual elected to exclude from gross income under section 911(a)(2) or the product of the annual rate for the taxable year (as specified in paragraph (d)(2)(ii) of this section) multiplied by the following fraction:

$$\frac{\text{The number of qualifying days in the taxable year}}{\text{The number of days in the taxable year}}$$

(ii) *Annual rate for the taxable year.* The annual rate for the taxable year is the rate set forth in section 911(b)(2)(A).

(3) *Number of qualifying days.* For purposes of section 911 and the regulations thereunder, the number of qualifying days is the number of days in the taxable year within the period during which the individual met the tax home requirement and either the bona fide residence requirement or the physical presence requirement of §1.911–2(a). Although the period of bona fide residence must include an entire taxable year, the entire uninterrupted period of residence may include fractional parts of a taxable year. For instance, if an individual who was a calendar year taxpayer established a tax home and a residence in a foreign country as of November 1, 1982, and maintained the tax home and the residence through March 31, 1984, then the uninterrupted period of bona fide residence includes fractional parts of the years 1982 and 1984, and all of 1983. The number of qualifying days in 1982 is sixty-one. The number of qualifying days in 1983 is 365. The number of qualifying days in 1984 is ninety-one. The period during which the physical presence requirement of §1.911–2(a)(2)(ii) is met is any twelve consecutive month period during which the individual is physically present in one or more foreign countries for 330 days and the individual's tax home is in a foreign country during each day of such physical presence. Such period may include days when the individual is not physically present in a foreign country, and days when the individual does not maintain a tax home in a foreign country. Such period may include fractional parts of a taxable year. Thus, if an individual's period of physical, presence is the twelve-month period beginning June 1, 1982, and ending May 31, 1983, the number of qualifying days in 1982 is 214 and the number of qualifying days in 1983 is 151.

(e) *Attribution rules*—(1) *In general.* Foreign earned income is considered to be earned in the taxable year in which the individual performed the services giving rise to the income. If income is earned in one taxable year and received in another taxable year, then, for purposes of determining the amount of foreign earned income that the individual may exclude under section 911(a), the individual must attribute the income to the taxable year in which the services giving rise to the income were performed. Thus, any reimbursement would be attributable to the taxable year in which the services giving rise to the obligation to pay the reimbursement were performed, not the taxable year in which the reimbursement was received. For example, tax equalization payments are normally received in the year after the year in which the services giving rise to the obligation to pay the tax equalization payment were performed. Therefore, such payments will almost always have to be attributed to the prior year. Foreign earned income attributable to services performed in a preceding taxable year shall be excludable from gross income in the year of receipt only to the extent such amount could have been excluded under paragraph (d)(1) in the preceding taxable year, had such amount been received in the preceding taxable year. The taxable year to which income is attributable will be determined on the basis of all the facts and circumstances.

(2) *Priority of use of the section 911(a)(1) limitation.* Foreign earned income received in the year in which it is earned shall be applied to the section 911(a)(1) limitation for that year before applying income earned in that year

that is received in any other year. Foreign earned income that is earned in one year and received in another year shall be applied to the section 911(a)(1) limitation for the year in which it was earned, on a year by year basis, in any order that the individual chooses. (But see section 911(b)(1)(B)(iv)). An individual may not amend his return to change the treatment of income with respect to the section 911(a)(1) exclusion after the period provided by section 6511(a). The special period of limitation provided by section 6511(d)(3) does not apply for this purpose. For example, C, a qualified individual, receives an advance bonus of $10,000 in 1982, salary of $70,000 in 1983, and a performance bonus of $10,000 in 1984, all of which are foreign earned income for 1983. C has a section 911(a)(1) limitation for 1983 of $80,000, and has no housing cost amount exclusion. On his income tax return for 1983, C elects to exclude foreign earned income of $70,000 received in 1983. C may also exclude his $10,000 advance bonus received in 1982 (by filing an amended return for 1982), or he may exclude the $10,000 performance bonus received in 1984 on his 1984 income tax return. However, C may not exclude part of the 1982 bonus and part of the 1984 bonus.

(3) *Exception for year-end payroll period.* Notwithstanding paragraph (e)(1) of this section, salary or wage payments of a cash basis taxpayer shall be attributed entirely to the year of receipt under the following circumstances:

(i) The period for which the payment is made is a normal payroll period of the employer which regularly applies to the employee;

(ii) The payroll period includes the last day of the employee's taxable year;

(iii) The payroll period does not exceed 16 days; and

(iv) The payment is part of a normal payroll of the employer that is distributed at the same time, in relation to the payroll period, that such payroll would normally be distributed, and is distributed before the end of the next succeeding payroll period.

(4) *Attribution of bonuses and substantially nonvested property to periods in which services were performed*—(i) *In general.* Bonuses and substantially nonvested property are attributable to all of the services giving rise to the income on the basis of all the facts and circumstances. If an individual receives a bonus or substantially nonvested property (as defined in §1.83–3(b)) and it is determined to be attributable to services performed in more than one taxable year, then, for purposes of determining the amount eligible for exclusion from gross income in the year the bonus is received or the property vests, a portion of such amount shall be treated as attributable to services performed in each taxable year (or portion thereof) during the period when services giving rise to the bonus or the substantially nonvested property were performed. Such portion shall be determined by dividing the amount of the bonus or the excess of the fair market value of the vested property over the amount paid, if any, for the vested property, by the number of months in the period when services giving rise to such amount were performed, and multiplying the quotient by the number of months in such period in the taxable year. For purposes of this section, the term ''month'' means a calendar month. A fraction of a calendar month shall be deemed a month if it includes fifteen or more days.

(ii) *Examples.* The following examples illustrate the application of this paragraph (e)(4).

*Example 1.* A, an employee of M Corporation during all of 1983 and 1984, worked in the United States from January 1 through April 30, 1983, and received $12,000 of salary for that period. A worked in country F from May 1, 1983 through the end of 1984, and is a qualified individual under §1.911–2(a) for that period. For the period from May 1 through December 31, 1983, A received $32,000 of salary. M pays a bonus on December 20, 1983 to each of M's employees in an amount equal to 10 percent of the employee's regular wages or salary for the 1983 calendar year. The amount of A's bonus is $4,400 for 1983. The portion of A's bonus that is attributable to services performed in country F and is foreign earned income for 1983 is $3,200, or $32,000 × 10 percent. The remaining $1,200 of A's bonus is attributable to services performed in the United States, and is not foreign earned income.

*Example 2.* The facts are the same as in example 1, except that M determines bonuses

separately for each country based on the productivity of the employees in that country. M pays a bonus to employees in country F, in the amount of 15 percent of each employee's wages or salary earned in country F. A's country F bonus is $4,800 for 1983 ($32,000 × 15 percent), and is foreign earned income for 1983. If A also receives a bonus (or if A's bonus is increased) for working in the United States during 1983, that amount is not foreign earned income.

*Example 3.* X corporation offers its employees a bonus of $40,000 if the employee accepts employment in a foreign country and remains in a foreign country for a period of at least four years. A, an employee of X, is a calendar year and cash basis taxpayer. A accepts employment with X in foreign country F. A begins work in F on July 1, 1983 and continues to work in F for X until June 30, 1987. In 1987 X pays A a $40,000 bonus. The bonus is attributable to services A performed from July 1, 1983 through June 30, 1987. The amount of the bonus attributable to 1987 is $5,000 (($40,000 ÷ 48) × 6). The amount of the bonus attributable to 1986 is $10,000 (($40,000 ÷ 48) × 12). A may exclude the $10,000 attributable to 1986 only to the extent that amount could have been excluded under section 911(a)(1) had A received it in 1986. The remaining $25,000 is attributable to services performed in taxable years before 1986. Such amounts may not be excluded under section 911 because they are received after the close of the taxable year following the taxable year in which the services giving rise to the income were performed.

(iii) *Special rule for elections under section 83(b).* If an individual receives substantially nonvested property and makes an election under section 83(b) and §1.83–2(a) to include in his gross income the amount determined under section 83(b)(1)(A) and (B) and §1.83–2(a) for the taxable year in which the property is transferred (as defined in §1.83–3(a)), then, for the purpose of determining the amount eligible for exclusion in the year of receipt, the individual may elect either of the following options:

(A) Substantially nonvested property may be treated as attributable entirely to services performed in the taxable year in which an election to include it in income is made. If so treated, then the amount otherwise included in gross income as determined under §1.83–2(a) will be excludable under section 911(a) for such year subject to the limitation provided in §1.911–3(d)(2) for such year.

(B) A portion of the substantially nonvested property may be treated as attributable to services performed or to be performed in each taxable year during which the substantial risk of forfeiture (as defined in section 83(c) and §1.83–3(c)) exists. The portion treated as attributable to services performed or to be performed in each taxable year is determined by dividing the amount of the substantially nonvested property included in gross income as determined under §1.83–2(a) by the number of months during the period when a substantial risk of forfeiture exists. The quotient is multiplied by the total number of months in the taxable year during which a substantial risk of forfeiture exists. The amount determined to be attributable to services performed in the year the election is made shall be excluded from gross income for such year as provided in paragraph (d)(2) of this section. Amounts treated as attributable to services performed in subsequent taxable years shall be excludable in the year of receipt only to the extent such amounts could be excluded under paragraph (d)(2) of this section in such subsequent years. An individual may obtain such additional exclusion by filing an amended return for the taxable year in which the property was transferred. The individual may only amend his or her return within the period provided by section 6511(a) and the regulations thereunder.

(5) *Moving expense reimbursements*—(i) *Source of reimbursements.* For the purpose of determining whether a moving expense reimbursement is attributable to services performed within a foreign country or within the United States, in the absence of evidence to the contrary, the reimbursement shall be attributable to future services to be performed at the new principal place of work. Thus, a reimbursement received by an employee from his employer for the expenses of a move to a foreign country will generally be attributable to services performed in the foreign country. A reimbursement received by an employee from his employer for the expenses of a move from a foreign country to the United States will generally be attributable to services performed in the United States. For purposes of this paragraph (e)(5), evidence to the contrary includes, but is not

limited to, an agreement, between the employer and the employee, or a statement of company policy, which is reduced to writing before the move to the foreign country and which is entered into or established to induce the employee or employees to move to a foreign country. The writing must state that the employer will reimburse the employee for moving expenses incurred in returning to the United States regardless of whether the employee continues to work for the employer after the employee returns to the United States. The writing may contain conditions upon which the right to reimbursement is determined as long as the conditions set forth standards that are definitely ascertainable and the conditions can only be fulfilled prior to, or through completion of the employee's return move to the United States that is the subject of the writing. In no case will an oral agreement or statement of company policy concerning moving expenses be considered evidence to the contrary. For the purpose of determining whether a storage expense reimbursement is attributable to services performed within a foreign country, in the case of storage expenses incurred after December 31, 1983, the reimbursement shall be attributable to services performed during the period of time for which the storage expenses are incurred.

(ii) *Attribution of foreign source reimbursements to taxable years in which services are performed*—(A) *In general.* If a reimbursement for moving expenses is determined to be from foreign sources under paragraph (e)(5)(i) of this section, then for the purpose of determining the amount eligible for exclusion in accordance with paragraphs (d)(2) and (e)(2) of this section, the reimbursement shall be considered attributable to services performed in the year of the move as long as the individual is a qualified individual for a period that includes 120 days in the year of the move. The period that is used in determining the number of qualifying days for purposes of the individual's section 911(a)(1) limitation (under paragraph (d)(2) of this section) must also be used in determining whether the individual is a qualified individual for a period that includes 120 days in the year of the move. If the individual is not a qualified individual for such period, then the individual shall treat a portion of the reimbursement as attributable to services performed in the year of the move, and a portion as attributable to services performed in the succeeding taxable year, if the move is from the United States to a foreign country, or to the prior taxable year, if the move is from a foreign country to the United States. The portion of the reimbursement treated as attributable to services performed in the year of the move shall be determined by multiplying the total reimbursement by the following fraction:

$$\frac{\text{The number of qualifying days (as defined in paragraph (d)(3) of this section) in the year of the move}}{\text{The number of days in the taxable year of the move.}}$$

The remaining portion of the reimbursement shall be treated as attributable to services performed in the year succeeding or preceding the year of the move. Amounts treated as attributable to services performed in a year succeeding or preceding the year of the move shall be excludable in the year of receipt only to the extent such amounts could be excluded under paragraph (d)(2) of this section in such succeeding or preceding year.

(B) *Moves beginning before January 1, 1984.* Notwithstanding paragraph (e)(5)(ii)(A) of this section, this paragraph (e)(5)(ii)(B) shall apply for moves begun before January 1, 1984. If a reimbursement for moving expenses is determined to be from foreign sources under paragraph (e)(5)(i) of this section, then for the purpose of determining the amount eligible for exclusion in accordance with paragraphs

(d)(2) and (e)(2) of this section, the reimbursement shall be considered attributable to services performed in the year of the move. However, if the individual does not qualify under section 911(d)(1) and §1.911–2(a) for the entire taxable year of the move, then the individual shall treat a portion of the reimbursement as attributable to services performed in the succeeding taxable year, if the move is from the United States to a foreign country, or to the prior taxable year, if the move is from a foreign country to the United States. The portion of the reimbursement treated as attributable to services performed in the year succeeding or preceding the move shall be determined by multiplying the total reimbursement by the following fraction:

$$\frac{\text{The number of qualifying days (as defined in paragraph (d)(3) of this section) in the year of the move}}{\text{The number of days in the taxable year of the move.}}$$

and subtracting the product from the total reimbursement. Amounts treated as attributable to services performed in a year succeeding or preceding the year of the move shall be excludable in the year of receipt only to the extent such amounts could be excluded under paragraph (d)(2) of this section in such succeeding or preceding year.

(f) *Examples.* The following examples illustrate the application of this section.

*Example 1.* A is a U.S. citizen and calendar year taxpayer. A's tax home was in foreign country F and A was physically present in F for 330 days during the period from July 4, 1982 through July 3, 1983. The number of A's qualifying days in 1982 as determined under paragraph (d)(2) of this section is 181. In 1982 A receives $40,000 attributable to services performed in foreign country F in 1982. Under paragraph (d)(2) of this section A's section 911(a)(1) limitation is $37,192, that is the lesser of $40,000 (foreign earned income) or

$$\$75{,}000\,(\text{annual rate}) \times \frac{181\,(\text{qualifying days})}{365\,(\text{days in taxable year}).}$$

*Example 2.* The facts are the same as in example 1 except that in 1982 A receives $30,000 attributable to services performed in foreign country F. A excludes this amount from gross income under paragraph (d) of this section. In addition, in 1983 A receives $10,000 attributable to services performed in F in 1982 and $35,000 attributable to services performed in F in 1983. On his return for 1983, A must report $45,000 of income. A's section 911(a)(1) limitation for 1983 is the lesser of $35,000 (foreign earned income) or $49,329, the annual rate for the taxable year multiplied by a fraction the numerator of which is A's qualifying days in the taxable year and the denominator of which is the number of days in the taxable year ($80,000 × 184/365). On his tax return for 1983 A may exclude $35,000 attributable to services performed in 1983. A may only exclude $7,192 of the $10,000 received in 1983 attributable to services performed in 1982 because such amount is only excludable in 1983 to the extent such amount could have been excluded in 1982 subject to the section 911(a)(1) limitation for 1982 which is $37,192 ($75,000 × 181/365). No portion of amounts attributable to services performed in 1982 may be used in calculating A's section 911(a)(1) limitation for 1983. Thus, even though A could have excluded an additional $5,329 in 1983 if A had had more foreign earned income attributable to 1983, A may not exclude the $2,808 of remaining foreign earned income attributable to 1982.

*Example 3.* C is a U.S. citizen and calendar year taxpayer. C establishes a bona fide residence and a tax home in foreign country J on March 1, 1982, and maintains a tax home and a residence in J until December 31, 1986. In March of 1982 C's employer, Y corporation, transfers stock in Y to C. The stock is subject to forfeiture if C returns to the U.S. before January 1, 1985. C elects under section 83(b) to include $15,000, the amount determined with respect to such stock under section 83(b)(1), in gross income in 1982. C's

other foreign earned income in 1982 is $58,000. C elects under paragraph (e)(4)(iii)(B) of this section to treat the stock as if earned over the period of the substantial risk of forfeiture. The number of months in the period of the substantial risk of forfeiture is thirty-four. The number of months in the taxable year 1982 within the period of foreign employment is ten. For purposes of determining C's section 911(a)(1) limitation, $4,412 (($15,000/34) × 10) of the amount included in gross income under section 83(b) is treated as attributable to services performed in 1982, $5,294 is treated as attributable to services to be performed in 1983, and $5,294 is treated as attributable to services to be performed in 1984. In 1982, C excludes $62,412 under section 911(a)(1). That is the lesser of foreign earned income for 1982 ($58,000 + $4,412) or the annual rate for the taxable year multiplied by a fraction the numerator of which is C's qualifying days in the taxable year and the denominator of which is the number of days in the taxable year ($75,000 × 306/365). C continues to perform services in foreign country J throughout 1983 and 1984. C would be able to exclude the remaining $5,294 attributable to services performed in 1983 and $5,294 attributable to services performed in 1984 if those amounts would be excludable if they had been received in 1983 or 1984 respectively. If C is entitled to exclude the additional amounts, C must claim the exclusion by filing an amended return for 1982.

*Example 4.* D is a U.S. citizen and a calendar year taxpayer. In September, 1984 D moves to a foreign country K. D is physically present in K, and D's tax home is in K, from September 15, 1984 through December 31, 1985. D receives $6,000 in April, 1985 from his employer, as a reimbursement for expenses of moving to K, pursuant to a written agreement that such moving expenses would be reimbursed to D upon successful completion of 6 months employment in K. Under paragraph (e)(15)(i) of this section, the reimbursement is attributable to services performed in K. Under the physical presence test of §1.911–2(a)(2)(ii), among other periods D is a qualified individual for the period of August 10, 1984 through August 9, 1985, which includes 144 days in 1984. Under paragraph (e)(5)(ii)(A) of this section, for the purpose of determining the amount eligible for exclusion, the reimbursement is considered attributable to services performed in 1984 (the year of the move) because D is a qualified individual under §1.911–2(a) for a period that includes 120 days in 1984. The reimbursement may be excluded under paragraphs (d)(2) and (e)(2) of this section, to the extent that D's foreign earned income for 1984 that was earned and received in 1984 was less than the annual rate for the taxable year multiplied by the number of D's qualifying days in the taxable year over the number of days in D's taxable year ($80,000 × 144/366), or $31,475.

*Example 5.* The facts are the same as in example 4 except that D is not a qualified individual under the physical presence test, but is a qualified individual under the bona fide residence test for the period of September 15, 1984 through December 31, 1985. Under paragraph (e)(5)(ii)(A) of this section, for the purpose of determining the amount eligible for exclusion, the reimbursement is considered attributable to services performed in 1984 and 1985 because D is not a qualified individual for a period that includes 120 days in 1984 (the year of the move). The portion of the reimbursement treated as attributable to services performed in 1984 is $6,000 × 108/366, or $1,770, and may be excluded, subject to D's 1984 section 911(a)(1) limitation. The balance of the reimbursement, $4,230, is treated as attributable to services performed in 1985, and may be excluded to the extent provided in paragraphs (d)(2) and (e)(2) of this section.

*Example 6.* The facts are the same as in example 4, with the following additions. Before D moved to K, D and his employer signed a written agreement that D would perform services for the employer for at least one year, primarily in country K, and, if D did not voluntarily cease to work for the employer primarily in country K before one year had elapsed, the employer would reimburse D for one half of D's expenses, up to a maximum of $4,000, of moving back to the United States. The agreement also stated that, if D did not voluntarily leave the employment in K before two years had elapsed, the employer would reimburse D for all of D's reasonable expenses of moving back to the United States. The agreement further stated that D's right to reimbursement would not be conditioned upon the performance of services after D ceased to work in K. D worked in country K for all of 1985. On January 1, 1986, D left K and moved to the United States. In February, 1986 the employer paid D $3,500 as reimbursement for one-half of D's expenses of moving to the United States. Although D did not fulfill the condition in the agreement to receive full reimbursement, all of the conditions in the agreement set forth definitely ascertainable standards and no condition could be fulfilled after D moved back to the United States. The agreement fulfills the requirements of paragraph (e)(5)(i) of this section, and therefore is evidence that the reimbursement should not be attributable to future services to be performed at D's new principal place of work. Under the facts and circumstances, the reimbursement is attributable to services performed in K. Under paragraph (e)(5)(ii)(A) of this section, the entire reimbursement is attributable to services performed in 1985. The amount attributable to

1985 may be excluded to the extent provided in paragraphs (d)(2) and (e)(2) of this section.

(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)

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### § 1.911–4 Determination of housing cost amount eligible for exclusion or deduction.

(a) *Definition of housing cost amount.* The term ''housing cost amount'' means an amount equal to the reasonable expenses paid or incurred (as defined in section 7701(a)(25)) during the taxable year by or on behalf of the individual attributable to housing in a foreign country for the individual and any spouse or dependents who reside with the individual (or live in a second foreign household described in paragraph (b)(5) of this section) less the base housing amount as defined in paragraph (c) of this section. The housing cost amount must be reduced by the amount of any military or section 912 allowance or similar allowance excludable from gross income that is intended to compensate the individual or the individual's spouse in whole or in part for the expenses of housing during the same period for which the individual claims a housing cost amount exclusion or deduction.

(b) *Housing expenses*—(1) *Included expenses.* For purposes of paragraph (a) of this section, housing expenses include rent, the fair rental value of housing provided in kind by the employer, utilities (other than telephone charges), real and personal property insurance, occupancy taxes not described in paragraph (b)(2)(v) of this section, nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, household repairs, and residential parking.

(2) *Excluded expenses.* Housing expenses do not include:

(i) The cost of house purchase, improvements, and other costs that are capital expenditures;

(ii) The cost of purchased furniture or accessories or domestic labor (maids, gardeners, etc.);

(iii) Amortized payments of principal with respect to an evidence of indebtedness secured by a mortgage on the taxpayer's housing;

(iv) Depreciation of housing owned by the taxpayer, or amortization or depreciation of capital improvements made to housing leased by the taxpayer;

(v) Interest and taxes deductible under section 163 or 164 or other amounts deductible under section 216(a) (relating to deduction of interest and taxes by cooperative housing corporation tenant);

(vi) The expenses of more than one foreign household except as provided in paragraph (b)(5) of this section;

(vii) Expenses excluded from gross income under section 119;

(viii) Expenses claimed as deductible moving expenses under section 217; or

(ix) The cost of a pay television subscription.

(3) *Limitation.* Housing expenses are taken into account for purposes of this section only to the extent attributable to housing for portions of the taxable year within the period during which the individual satisfies the requirements of § 1.911–2(a). Housing expenses are not taken into account for the period during which the value of the individual's housing is excluded from gross income under section 119, unless the individual maintains a second foreign household described in paragraph (b)(5) of this section. If an individual maintains two foreign households, only expenses incurred with respect to the abode which bears the closest relationship, not necessarily geographic, with respect to the individual's tax home shall be taken into account, unless one of the households is a second foreign household.

(4) *Reasonableness.* An amount paid for housing shall not be treated as reasonable, for purposes of paragraph (a) of this section, to the extent that the expense is lavish or extravagant under the circumstances.

(5) *Expenses of a second foreign household*—(i) *In general.* The term ''second foreign household'' means a separate abode maintained by an individual outside of the U.S. for his or her spouse or dependents (who, if minors, are in the individual's legal custody or the joint custody of the individual and the individual's spouse) at a place other than the tax home of the individual because of adverse living conditions at the individual's tax home. If an individual