AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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)), but without regard to conditions (*1*) and (*2*) of subdivision (vi)(A) (the fifty percent conditions). Such interest expense shall not normally be apportioned under the asset method of §1.861–8(e)(2)(v). This is because, where section 911 is the operative section, the expense normally relates more closely to gross income generated from activities than to the amount of capital utilized or invested in activities or property. Deductions that are allocated and apportioned to foreign earned income must then be allocated and apportioned to foreign earned income that is excluded under section 911(a). If an individual has foreign earned income from both self-employment and other employment, the amount excluded under section 911(a)(1) shall be deemed to include a pro rata amount of the self-employment income and the income from other employment; thus, a pro rata portion of deductible expenses attributable to self-employment income must be disallowed. For purposes of section 911 (d)(6) and this section only, deductions, exclusions, or credits which are not definitely related to any class of gross income shall not be allocable or chargeable to excluded amounts and are, therefore, deductible to the extent allowed by chapter 1 of the Code. Examples of deductions that are not definitely related to a class of gross income are personal and family medical expenses, qualified retirement contributions (but see section

219(b)(1)), real estate taxes and mortgage interest on a personal residence, charitable contributions, alimony payments, and deductions for personal exemptions. In addition, for purposes of this section, amounts excludable or deductible under section 911 or 119 shall not be allocable or chargeable to other amounts excluded under section 911(a). Thus, an individual's housing cost amount which is excludable or deductible under §1.911–4(d) for a taxable year is not apportioned in part to the individual's foreign earned income which is excluded for such year under §1.911–3(d). Therefore, the entire amount of such exclusion or deduction is allowed to the extent provided in §1.911–4. This section does not affect the time for claiming any deduction, exclusion, or credit that is not allocated or apportioned to excluded amounts.

(b) *Moving expenses*—(1) *In general.* No deduction shall be allowed for moving expenses under section 217 to the extent the deduction is properly allocable to or chargeable against amounts of foreign earned income excluded from gross income under section 911(a). If an individual's new principal place of work is in a foreign country, deductible moving expenses will be allocable to foreign earned income. If an individual treats a reimbursement from his employer for the expenses of a move from a foreign country to the United States as attributable to services performed in a foreign country under §1.911–3(e)(5)(i), then deductible moving expenses attributable to that move will be allocable to foreign earned income. If the individual is a qualified individual who elects to exclude foreign earned income under section 911(a), then some or all of such moving expenses must be disallowed as a deduction.

(2) *Attribution of moving expense deduction to taxable years in which services are performed.* If a moving expense deduction is properly allocable to foreign earned income, the deduction shall be considered attributable to services performed in the year of the move as long as the individual is a qualified individual under §1.911–2(a) 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 the deduction as attributable to services performed in both the year of the move and the succeeding taxable year, if the move is from the United States to the foreign country, or the prior taxable year, if the move is from a foreign country to the United States. Notwithstanding the preceding two sentences, storage expenses incurred after December 31, 1983 shall be treated as attributable to services performed in the year in which the expenses are incurred.

(3) *Formula for disallowance of moving expense deduction.* The portion of the moving expense deduction that is disallowed shall be determined by multiplying the moving expense deduction by a fraction the numerator of which is all amounts excluded under section 911(a) for the year or years to which the deduction is attributable (under paragraph (b)(2) of this section) and the denominator of which is foreign earned income (as defined in §1.911–3(a)) for that year or years.

(4) *Effect of disallowance based on attribution of deduction to subsequent year's income.* An individual may claim a moving expense deduction in the taxable year in which the amount of the expense is paid or incurred even if attributable, in part, to the succeeding year. However, at such time as the individual excludes income under section 911(a) for the year or years to which the deduction is attributable, the individual shall either—

(i) File an amended return for the year in which the deduction was claimed that does not claim the portion of the deduction that is disallowed because it is chargeable against excluded income, or

(ii) Include in income for the year following the year in which the deduction was claimed an amount equal to the amount of the deduction that is disallowed.

Any amount included in income under paragraph (b)(4)(ii) of this section is not foreign earned income.

(5) *Moves beginning before January 1, 1984.* Notwithstanding paragraphs (b)(1) through (3) of this section, the rules of this paragraph (b)(5) shall apply for moves beginning before January 1, 1984.

(i) *Individual qualifies for the entire taxable year of the move.* If the individual is a qualified individual for the entire taxable year of the move, then the amount of moving expense disallowed shall be determined by multiplying the moving expense deduction otherwise allowable by a fraction the numerator of which is the foreign earned income excluded under section 911(a) for the taxable year of the move and the denominator of which is the foreign earned income for the same taxable year.

(ii) *Individual qualifies for less than the entire taxable year of the move.* If the individual is a qualified individual for less than the entire taxable year of the move, then, for the purpose of determining the portion of the otherwise allowable moving expense deduction that is disallowed, the individual must attribute a portion of the otherwise allowable moving expense deduction either to 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 moving expense deduction treated as attributable to services performed in the year of the move shall be determined by multiplying the otherwise allowable moving expense deduction by the following fraction:

$$\frac{\text{The number of qualifying days (as defined in §1.911-3(d)(3) in the year of the move}}{\text{The number of days in the taxable year of the move.}}$$

The portion of the moving expense deduction treated as attributable to the year succeeding or preceding the move shall be determined by subtracting the portion of the moving expense deduction that is attributable to the year of the move from the total moving expense deduction. The allocation of a portion of the moving expense deduction to a succeeding or preceding taxable year does not affect the time for claiming the allowable moving expense deduction. The portion of the moving expense deduction that is disallowed shall be determined by multiplying the moving expense deduction attributable to the year of the move or the succeeding or preceding year, as the case may be, by a fraction the numerator of which is amounts excluded under section 911(a) for that year and the denominator of which is foreign earned income for that year.

(c) *Foreign taxes*—(1) *Amount disallowed.* No deduction or credit is allowed for foreign income, war profits, or excess profits taxes paid or accrued with respect to amounts excluded from gross income under section 911. To determine the amount of disallowed foreign taxes, multiply the foreign tax imposed on foreign earned income (as defined in §1.911–3(a)) received or accrued during the taxable year by a fraction, the numerator of which is amounts excluded under section 911(a) in such taxable year less deductible expenses properly allocated to such amounts (see paragraphs (a) and (b) of this section), and the denominator of which is foreign earned income (as defined in §1.911–3(a)) received or accrued during the taxable year less deductible expenses properly allocated or apportioned thereto. For the purpose of determining the extent to which foreign taxes are disallowed, the housing cost amount deduction is treated as definitely related to foreign earned income that is not excluded. If the foreign tax is imposed on foreign earned income and some other income (for example earned income from sources within the United States or an amount not subject to tax in the United States), and the taxes on the other amount cannot be segregated, then the denominator equals the total of the amounts subject to tax less deductible expenses allocable to all such amounts.

(2) *Definitions and special rules*—(i) *Taxable year.* For purposes of paragraph (c)(1) of this section, the term ''taxable year'' means the individual's taxable

year for U.S. tax purposes. Such term includes the portion of any foreign taxable year within the individual's U.S. taxable year and excludes the portion of any foreign taxable year not within the individual's U.S. taxable year.

(ii) *Apportionment of foreign taxes.* For purposes of this paragraph (c), foreign taxes imposed on foreign earned income shall be deemed to accrue, on a pro rata basis, to income as the income is received or accrued. The taxes so accrued shall be apportioned to the taxable year during which the income is received or accrued. This rule applies for all individuals, regardless of their method of accounting.

(iii) *Effect of disallowance.* The disallowance of foreign taxes under this paragraph (c) shall not affect the time for claiming any deduction or credit for foreign taxes paid. Rather, the disallowance shall only affect the amount of taxes considered paid or accrued to any foreign country.

(iv) *Interest on foreign taxes.* Any interest expense incurred on a liability for foreign taxes is allocated and apportioned not under this paragraph (c) but under paragraph (a) of this section to foreign earned income and then to excluded foreign earned income and to that extent disallowed as a deduction under paragraph (a). In that regard, see also §1.861–8(e)(2) for the specific rules for allocation and apportionment of interest expense.

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

Example 1. In 1982 A, an architect, operates his business as a sole proprietorship in which capital is not a material income producing factor. A receives $1,000,000 in gross receipts, all of which is foreign source earned income, and incurs $500,000 of otherwise deductible business expenses definitely related to the foreign earned income. A elects to exclude $75,000 under section 911(a)(1). The expenses must be apportioned to excluded earned income as follows: $500,000 × $75,000/1,000,000. Thus, $37,500 of the business expenses are not deductible.

Example 2. The facts are the same as in example 1, except that $100,000 of A's gross receipts is U.S. source earned income and $68,000 of A's business expenses are attributable to the U.S. source earned income. Thus, A has $900,000 of foreign earned income and $432,000 of deductions allocated to foreign earned income. The expenses apportioned to excluded earned income are $432,000 × $75,000/$900,000, or $36,000, which are not deductible.

Example 3. B is a U.S. citizen, calendar year and cash basis taxpayer. B moves to foreign country N and maintains a tax home and is physically present there from July 1, 1984 through May 26, 1985. Among other possible periods, B is a qualified individual for 219 days in the year of the move. B pays $6,000 of otherwise deductible moving expenses in 1984. For 1984, B's foreign earned income is $60,000 and B excludes $47,869 ($80,000 × 219/366) under section 911(a). Under paragraph (b)(2) of this section, B's moving expenses are attributable to services performed in 1984. Under paragraph (b)(3) of this section, $6,000 × $47,869/$60,000, or $4,789, of B's moving expense deduction is disallowed. B may deduct $1,211 of moving expenses on his 1984 return.

Example 4. The facts are the same as in example 3 except that B maintains a tax home and is physically present in foreign country N from October 9, 1984 through September 3, 1985. Among other possible periods, B is a qualified individual for no more than 119 days in 1984 and 281 days in 1985. B's foreign earned income for 1984 is $60,000. B's foreign earned income for 1985 is $150,000. Because B is a qualified individual for less than 120 days in the year of the move, under paragraph (b)(2) of this section, B's moving expenses are attributable to services performed in 1984 and 1985. At the close of 1984, B may either seek an extension of time to file under §1.911–7(c) or may file an income tax return without claiming the exclusions or deduction under section 911. B does not seek an extension and files without excluding foreign earned income; thus B may deduct his moving expenses in full. B later amends his 1984 return and excludes foreign earned income for that year. B excludes foreign earned income for 1985. B must determine the portion of the moving expense deduction that is disallowed. The portion of the moving expense deduction that is disallowed is determined by multiplying the otherwise allowable moving expense deduction by a fraction. The numerator of the fraction is the sum of amounts excluded under section 911(a) for 1984 and 1985, that is $26,082 or $80,000 × 119/365, plus $61,589, or $80,000 × 281/365, which totals $87,671. The denominator of the fraction is the sum of foreign earned income for 1984 and 1985, that is $60,000 plus $150,000, or $210,000. B's allowable moving expense deduction is $3,495, or $6,000 − ($6,000 × $87,671/$210,000). If B does not file an amended 1984 return (and does not exclude foreign earned income for 1984), but excludes foreign earned income under section 911(a) for 1985, a portion of his moving expense deduction is disallowed, based on the same formula. The amount disallowed is $6,000 × $61,589/$210,000, or $1,760. This amount may be recaptured either by filing an amended return for 1984 or

by including it in income for 1985 (in which case it is not foreign earned income).

Example 5. C is a U.S. citizen, a self-employed individual, and a cash basis and calendar year taxpayer. For the entire 1982 taxable year C maintained his tax home and his bona fide residence in foreign country P. During 1982 C earned and received $120,000 of foreign earned income, none of which was attributable to employer provided amounts. C paid $40,000 of business expenses. C elected to exclude foreign earned income under section 911(a)(1) and claimed a housing cost amount deduction of $15,000. C received $10,000 of foreign source interest income which was included with C's earned income in a single tax base and taxed at graduated rates. For 1982, C paid $30,000 in income tax to foreign country P. The amount of C's business expenses that is properly apportioned to excluded amounts (and therefore, not deductible) equals $25,000, which is determined by multiplying the otherwise allowable deductions by C's excluded amounts over C's foreign earned income ($40,000 × 75,000/120,000). The amount of country P tax that is properly apportioned to excluded amounts (and therefore, not deductible or creditable) equals $20,000, which is determined by multiplying the tax of $30,000 by the following fraction:

$$\frac{\text{\$50,000 (\$75,000 excluded amounts less \$25,000 of deductible expenses allocable thereto)}}{\text{\$75,000 (((\$120,000 foreign earned income less \$40,000 of deductible expenses allocable thereto) less \$15,000 housing cost amount deduction allocable thereto) plus \$10,000 other taxable income).}}$$

Example 6. D is a U.S. citizen and an accrual basis and calendar year taxpayer for U.S. tax purposes. For the entire period from January 1, 1982 through December 31, 1983, D maintains his tax home and his bona fide residence in foreign country R. For purposes of R's income tax, D is a cash basis taxpayer and uses a fiscal year that begins on April 1 and ends on the following March 31. During his entire period of residence in R, D receives foreign earned income of $10,000 each month, all of which is attributable to employer provided amounts. For his foreign taxable year ending March 31, 1982, D pays $10,000 of income tax to R. For his foreign taxable year ending March 31, 1983, D pays $54,000 of income tax to R. Under paragraph (c)(2)(ii) of this section, all of the $10,000 of tax paid for this foreign taxable year ending March 31, 1982 is imposed on foreign earned income received in 1982, as is $40,500, or 9/12 × $54,000, of tax paid for his foreign taxable year ending March 31, 1983. (D received $10,000 per month for the last 3 months of his foreign taxable year ending March 31, 1982, all of which are within his U.S. taxable year ending December 31, 1982 under paragraph (c)(2)(i) of this section, and $10,000 per month for each month of his foreign taxable year ending March 31, 1983, of which the first 9 months are within his U.S. taxable year ending December 31, 1982. Under paragraph (c)(2)(ii) of this section, foreign taxes are deemed to accrue on a pro rata basis to income as it is received or accrued. Thus, all of the $10,000 of foreign taxes imposed on the income received during D's foreign taxable year ending March 31, 1982 accrue to D's 1982 foreign earned income, as do 9/12 (or $90,000/120,000) of foreign taxes imposed on income received during D's foreign taxable year ending March 31, 1983, for purposes of determining the amount of D's foreign taxes that is disallowed.) For 1982, D has no deductible expenses, and elects to exclude his housing cost amount of $21,000 under section 911(a)(2) and foreign earned income of $75,000 under section 911(a)(1). The amount of D's foreign taxes disallowed for deduction or credit purposes for 1982 is $8,000 (that is, $10,000 × $96,000/$120,000) of the taxes for his foreign taxable year ending March 31, 1982, plus $32,400 (that is, $40,500 × $96,000/$120,000) of the taxes for his foreign taxable year ending March 31, 1983, or $40,400. From 1982, D has $2,000 ($10,000 − $8,000) of deductible or creditable taxes accrued on March 31, 1982, and $8,100 ($40,500–$32,400) of deductible or creditable taxes accrued on March 31, 1983, after the disallowance based on his 1982 excluded income.

Example 7. E is a United States citizen, calendar year and cash basis taxpayer. E is physically present in and establishes his tax home in foreign country S on May 1, 1981. For purposes of country S, E's taxable year begins on April 1 and ends the following March 31. E receives foreign earned income of $15,000 each month beginning on May 1, 1981. At the end of his foreign taxable year ending on March 31, 1982, E pays $70,000 of income tax to S on $165,000 of foreign earned income. Under section 911, as in effect for taxable years beginning before January 1, 1982, E may not exclude any income that is earned or received during 1981. None of E's taxes paid in 1982 that are attributable to income earned or received in 1981 are subject

to disallowance because, under paragraph (c)(2)(ii) of this section, the only taxes disallowed are those deemed to accrue on income earned and received after December 31, 1981, and excluded from gross income. The amount of E's taxes paid in 1982 that are attributable to 1981 is $50,909, or $70,000 × $120,000/$165,000. E elects to exclude foreign earned income for 1982. The amount of E's taxes paid to S in 1982 that accrue to 1982 foreign earned income, and are therefore subject to disallowance based on excluded income, is $19,091, or $70,000 × $45,000/$165,000.

(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 2973, Jan. 23, 1985]

§ 1.911–7 Procedural rules.

(a) *Elections of a qualified individual*—(1) *In general.* In order to receive either exclusion provided by section 911(a), a qualified individual must elect, separately with respect to each exclusion, to exclude foreign earned income under section 911(a)(1) and the housing cost amount under section 911(a)(2). Any such elections may be made on Form 2555 or on a comparable form. Each election must be filed either with the income tax return, or with an amended return, for the first taxable year of the individual for which the election is to be effective. An election once made remains in effect for that year and all subsequent years unless revoked under paragraph (b) of this section. Each election shall contain information sufficient to determine whether the individual is a qualified individual as provided in §1.911–2. The statement shall include the following information:

(i) The individual's name, address, and social security number;

(ii) The name of the individual's employer;

(iii) Whether the individual claimed exclusions under section 911 for earlier years after 1981 and within the five preceding taxable years;

(iv) Whether the individual has revoked a previously made election and the taxable year for which such revocation was effective;

(v) The exclusion or exclusions the individual is electing;

(vi) The foreign country or countries in which the individual's tax home is located and the date when such tax home was established;

(vii) The status (either bona fide residence or physical presence) under which the individual claims the exclusion;

(viii) The individual's qualifying period of residence or presence;

(ix) The individual's foreign earned income for the taxable year including the fair market value of all noncash remuneration; and,

(x) If the individual elects to exclude the housing cost amount, the individual's housing expenses.

(2) *Requirement of a return*—(i) *In general.* In order to make a valid election under this paragraph (a), the election must be made:

(A) With an income tax return that is timely filed (including any extensions of time to file),

(B) With a later return filed within the period prescribed in section 6511(a) amending the foregoing timely filed income tax return,

(C) With an original income tax return that is filed within one year after the due date of the return (determined without regard to any extension of time to file); this one year period does not constitute an extension of time for any purpose—it is merely a period during which a valid election may be made on a late return, or

(D) With an income tax return filed after the period described in paragraphs (a)(2)(i)(A), (B), or (C) of this section provided—

(*1*) The taxpayer owes no federal income tax after taking into account the exclusion and files Form 1040 with Form 2555 or a comparable form attached either before or after the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion; or

(*2*) The taxpayer owes federal income tax after taking into account the exclusion and files Form 1040 with Form 2555 or a comparable form attached before the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion.

(*3*) A taxpayer filing an income tax return pursuant to paragraph (a)(2)(i)(D)(*1*) or (*2*) of this section must type or legibly print the following statement at the top of the first page of the Form 1040: ''Filed Pursuant to Section 1.911–7(a)(2)(i)(D).''