Internal Revenue Service

Department of the Treasury

Index Number: 877.01-00

Washington, DC 20224

Number: **199917044**
Release Date: 4/30/1999

Person to Contact:

Telephone Number:

In Re:

Refer Reply To:
PLR-110854-97
Date:
January 29, 1999

DO:
TY:

A =

Country B =
Country C =
Country D =
Country E =
Year L =
Year M =
Year N =
Year O =
Year P =
Year Q =
Year R =
Date S =
Date T =
Date U =
Date V =

Dear Mr.:

This responds to your letter dated May 12, 1997, on behalf of A, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that A's loss of U.S. citizenship did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. Additional information was submitted in letters dated October 2, 1997, October 7, 1997, November 4, 1997, and November 14,

1997. The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A was born on Date S and is a citizen by birth of Country C. She came to the United States for college in Year L. During a college vacation she met a U.S. citizen and they were subsequently married in Country C in Year M. A and her husband established a residence in New York where their two children were born.

In Year N, A and her husband were divorced and her husband purchased an apartment for her and the children two blocks from his in New York. The separation agreement required that the children receive their primary and secondary education in the United States. Based on legal advice received at the time, A became a naturalized U.S. citizen on Date T.

As her children grew older, she spent increasing amounts of time in Country C and in Europe developing her career. She initially spent 3-4 months per year in Europe, increasing to 8-9 months per year during the last five years. Her business operations have always been centered in Europe, with only minimal activity in the United States. She has not pursued any business activity in the United States since Year P.

A is not a member of any clubs and does not have any strong social ties in the United States. Her New York driver's license, issued in June 1992, has expired. A has never owned a burial plot and has always intended to be buried in Country C. A's only remaining tie to the United States is her son who works and resides in New York. He travels to Country C once a year and she intends to visit him in New York for four to six weeks annually. Her daughter has resided in Country E since 1990.

A currently lives in both Country C and Country D where she rents apartments. She met B, a citizen of Country C, in year O and they have lived together since Year P. The careers of both A and B parallel one another's and they work together in Country C and Country D. It was represented that A is a resident of Country C for Country C tax purposes. Her personal belongings are now in Country C and have been since September of Year Q. A's parents, brother and sister, nieces and nephews are all nationals of Country C and have always resided there. All are currently living with the exception of her father who has passed away. Her mother is now quite old and requires a great deal of her attention.

On Date V, after the effective date of section 877 (as amended by the Health Insurance Portability and Accountability Act of 1996), A voluntarily relinquished her U.S. citizenship. A's net worth on the date of loss of citizenship exceeded $500,000. A's gross assets had, and continue to have, a fair market value of more than $1,000,000, but less than $10,000,000.

A's assets primarily consist of cash and interests in a U.S. and a foreign partnership. A's unrealized gains on the partnership interests constitute the total unrealized income or gain on all of her assets. The partnerships were set up by her ex-husband to be investment vehicles primarily for him and the children. A chose to

participate because her ex-husband had a successful track record for investments. The foreign partnership, started in Year Q, invests solely in foreign growth stocks. The U.S. partnership is phasing its investments into foreign stocks. It is not anticipated that A will sell her partnership interests, but she should be able to obtain a distribution if she needs cash in the future. A's current assets are generally representative of the assets she owned for the period that began five years prior to the date on which A lost U.S. citizenship and ending on the date A's ruling request was submitted, with one exception.

About two and one half months prior to her expatriation, A sold her principal residence in the United States and elected to defer the gain under section 1034 of the Code. A represents that she intends to purchase another principal residence within the replacement period of section 1034(k) and that she will timely provide notice of the purchase on a Form 2119, which she will send to the Philadelphia Service Center. If a new residence is not purchased within the required replacement period, or if the purchase price of the new residence is less than the adjusted sale price of the old residence, A has represented that she will file an amended Year R Form 1040X and a revised Form 2119 for the Year R taxable year and pay the full tax liability and any applicable interest on the reportable gain.

Section 877, as amended, generally provides that a U.S. citizen who loses U.S. citizenship (an individual who "expatriates") within the 10-year period immediately preceding the close of the taxable year will be taxed on U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. Sections 2107 and 2501(a)(3) provide special estate and gift tax regimes, respectively, for individuals who expatriate with a principal purpose to avoid taxes.

A former citizen will be treated as having expatriated with a principal purpose to avoid U.S. taxes for purposes of sections 877, 2107 and 2501(a)(3) if the individual's average income tax liability or the individual's net worth on the date of expatriation exceeds certain thresholds. See sections 877(a)(2), 2107(a)(2)(A) and 2501(a)(3)(B). For purposes of applying the foregoing provisions, a former citizen is presumed to have lost U.S. citizenship with a principal purpose to avoid U.S. taxes if (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation is greater than $100,000, or (ii) the individual's net worth on the date of expatriation is $500,000 or more (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code.

Under Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, 1998-27 I.R.B. 30, a former citizen whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance if that former citizen is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the

avoidance of U.S. taxes. See sections 877(c)(1), 2107(a)(2)(B), and 2501(a)(3)(C). The rule also applies to an individual subject to section 877 who expatriated after February 5, 1994, but on or before July 8, 1996, and who submitted a ruling request by July 8, 1997, pursuant to Notice 97-19. See also section 877(e)(1).

Notice 97-19, as modified by Notice 98-34, requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes.

A is eligible to request a ruling under section 877 because she is described in two statutory categories of individuals eligible to submit ruling requests. First, after the date of A's expatriation, A continued to be a citizen of Country C, the country in which A was born. Second, A continued to be a citizen of Country C, the country in which A's parents were born. See sections 877(c)(2)(A)(ii)(I) and (c)(2)(A)(ii)(III).

A submitted substantially all of the information required in Notice 97-19, including any additional information requested by the Service after review of the submission. Accordingly, based solely on the information submitted and the representations made, it is held that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 97-19, as modified by Notice 98-34, and therefore, A will not be presumed to have expatriated with a principal purpose of tax avoidance.

However, because the information submitted does not clearly establish the existence or lack of a principal purpose to avoid taxes under subtitle A or B of the Code, no opinion is expressed as to whether A's expatriation had for one of its principal purposes the avoidance of such taxes. While this ruling rebuts the presumption of tax avoidance under section 877(a)(2), it is not conclusive as to whether A subsequently may be found to have a principal purpose of tax avoidance under sections 877(a)(1), 2017(a)(1), and 2501(a)(3)(A) based on all the facts and circumstances. See section 877(c)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed as to A's U.S. tax liability for taxable periods prior to her loss of citizenship or for taxable periods after her loss of citizenship under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this

letter is being sent to A.

Sincerely,

Allen Goldstein
Reviewer
Office of the Associate Chief
Counsel (International)

cc: