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New Developments

Personal

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RULING PROVIDES FILING RELIEF FOR EXPATRIATES

Individuals who performed expatriating acts and lost their U.S. citizenship are not liable for income or gift taxes as citizens during the expatriation period, according to [Rev. Rul. 92-109](#), [IRB 1992-52, 35](#). The Ruling also discusses possible relief for individuals who performed such acts but did not lose their citizenship, or were unable to file during a period of foreign residence due to extenuating circumstances.

Loss of citizenship.

In Situation 1, a taxpayer performed an expatriating act in 1981 under the Immigration and Nationality Act, [8 U.S.C. Section 1481](#), and lost her U.S. citizenship. The taxpayer did not have a principal purpose of avoiding income, estate, or gift taxes. She applied for administrative review in 1989 and her citizenship was retroactively restored in 1990. The taxpayer did not file income or gift tax returns for 1982 through 1989.

[Section 2\(d\)](#) states that the tax on nonresident aliens under [Section 1](#) applies only as provided under [Section 871](#) or [877](#). The former imposes an alternative tax on income of a nonresident alien who lost citizenship after 3/8/65 and within the ten years immediately preceding the close of the tax year, unless the loss did not have a principal purpose of tax avoidance. Under [Section 2501\(a\)\(3\)](#), a similar rule applies for gift tax purposes.

The Service ruled that individuals who lost their U.S. citizenship and had it retroactively restored before 1993 will not be liable for income taxes as U.S. citizens between the date of loss and the beginning of the tax year of restoration. In addition, they will not be liable for gift taxes between the date of loss and January 1 of the calendar year of restoration.

***139** Situation 2 involved similar facts except that the taxpayer did not apply to have his loss of citizenship administratively reviewed. The Service ruled that he was not taxable as a U.S. citizen from the date of loss. He was either a nonresident alien under [Section 7701\(b\)\(1\)\(B\)](#) and taxable under [Section 871](#), or a resident alien under [Section 7701\(b\)\(1\)\(A\)](#) and taxable under [Section 1](#). For gift taxes, if he was a nonresident under [Reg. 25.2501-1\(b\)](#), he was taxable under [Section 2511](#). If he was a resident, he was taxable under [Section 2501](#).

The Service concluded that individuals who lost their citizenship and have it retroactively restored after 1992 will not be liable for income taxes as U.S. citizens between the date of loss and the beginning of their first tax year after 1992. They also will not be liable for gift taxes between the date of loss and 1/1/93.

No loss of citizenship.

In Situation 3, an individual performed expatriating acts but did not lose her U.S. citizenship. The Service concluded that she was not eligible for the relief granted in Situations 1 and 2, but could apply to the Assistant Commissioner (International) or the appropriate district director for special consideration under IRS policy statement P-5-133. In the statement, the Service designated for special consideration those individuals who did not file income or gift tax returns as U.S. citizens because they had a reasonable, good-faith belief that they had lost their citizenship.

****2** The taxpayer in Situation 4 was a U.S. citizen residing outside the U.S. He did not perform expatriating acts and did not lose his citizenship. Thus, he was not eligible for special consideration under the Ruling but could apply to the Assistant Commissioner (International) to show that extenuating circumstances during his period of foreign residence justified relief.

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