

Rev. Rul. 92-109 (IRS RRU), 1992-52 I.R.B. 5, 1992-2 C.B. 3, 1992 WL 359982

Internal Revenue Service (I.R.S.)
Revenue Ruling

INDIVIDUAL LOST U.S. CITIZENSHIP; SUBSEQUENTLY
CITIZENSHIP RETROACTIVELY RESTORED

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[26 CFR 1.1-1](#): Income tax on individuals.

(Also [Sections 871](#), [877](#), [2501](#), [2511](#), [6012](#), [6019](#), [6159](#), [6501](#), [7122](#), [7701](#), [7805](#); 1.871-1, 1.6012-1, 25.2501-1, 301.7805-1.)

***1** Individual lost U.S. citizenship; subsequently citizenship retroactively restored. Guidance is provided to several categories of individuals who have failed to file past years' federal income and gift tax returns, including individuals who lost their U.S. citizenship and subsequently had (or have) that citizenship retroactively restored.

ISSUES

Issue 1.

Whether, and to what extent, United States citizens who lost their United States citizenship and subsequently had that citizenship retroactively restored. are liable for federal income and gift taxes as United States citizens.

Issue 2.

Whether, and to what extent, former United States citizens who are eligible to have their United States citizenship retroactively restored (but have not applied to do so) are liable for federal income and gift taxes as United States citizens.

Issue 3.

Whether, and to what extent, United States citizens who performed certain expatriating acts but did not lose their United States citizenship are liable for federal income and gift taxes as United States citizens.

Issue 4.

Whether, and to what extent, United States citizens residing outside the United States who did not perform expatriating acts and did not lose their United States citizenship are liable for federal income and gift taxes as United States citizens.

FACTS

Situation 1.

A is a United States citizen. On June 17, 1981, A performed an expatriating act, as defined in the Immigration and Nationality Act, section 349, [8 U.S.C. section 1481](#) (1976 & Supp. III 1977-1980) (amended 1981, 1986, and 1988). A's expatriating act did not have for one of its principal purposes the avoidance of federal income, estate, or gift taxes.

A's expatriating act was reported to the United States Department of State ("Department of State"). Following review, the Department of State determined that A had lost her United States citizenship, and, on November 16, 1981, approved a certificate of loss of nationality for A. In 1989 A applied to have her loss of United States citizenship administratively reviewed. The Department of State reviewed A's loss of United States citizenship, and determined that A did not intend to relinquish her United States citizenship when she performed her expatriating act. As a result in 1990 the Department of State vacated A's certificate of loss of nationality, and retroactively restored her United States citizenship.

A filed federal income and gift tax returns for 1981, the year she lost her United States citizenship. A has not filed federal income or gift tax returns for 1982 through 1989, the period after the year she lost her United States citizenship and before the year it was retroactively restored. A computes her taxable income on the basis of a calendar year taxable year.

Situation 2.

B is a former United States citizen. On May 24, 1974, B performed an expatriating act, as defined in the Immigration and Nationality Act, section 349, [8 U.S.C. section 1481](#) (1976 & Supp. II 1977-1979) (amended 1981, 1986, and 1988). B's expatriating act did not have for one of its principal purposes the avoidance of federal income, estate, or gift taxes.

*2 B's expatriating act was reported to the Department of State. Following review, the Department of State determined that B had lost his United States citizenship, and, on October 19, 1979, approved a certificate of loss of nationality for B. B has not applied to have his loss of United States citizenship administratively reviewed.

B filed federal income and gift tax returns for 1979, the year he lost his United States citizenship. B has not filed federal income or gift tax returns since the 1979 returns. B computes his taxable income on the basis of a calendar year taxable year.

Situation 3.

C is a United States citizen. On August 25, 1980, C performed an expatriating act, as defined in the Immigration and Nationality Act, section 349, [8 U.S.C. section 1481](#) (1976 & Supp. III 1977-1980) (amended 1981, 1986, and 1988). C's expatriating act did not have for one of its principal purposes the avoidance of federal income, estate, or gift taxes.

C's expatriating act was not reported to the Department of State. As a result, the Department of State did not review C's citizenship status, did not determine that she had lost her United States citizenship, and did not approve a certificate of loss of nationality for C. C did not intend to relinquish her United States citizenship when she performed her expatriating act. As a result, if the Department of State had determined that C lost her United States citizenship, C would now be eligible to have her citizenship retroactively restored.

C filed federal income and gift tax returns for 1982, the year she performed the expatriating act. C has not filed federal income or gift tax returns since the 1982 returns. C computes her taxable income on the basis of a calendar year taxable year.

Situation 4.

D is a United States citizen who resides outside the United States. D has never performed an expatriating act, as defined in the Immigration and Nationality Act, section 349, [8 U.S.C. section 1481](#) (1988), and therefore the Department of State has never approved a certificate of loss of nationality for D. D has not filed federal income or gift tax returns during the period of his foreign residence. LAW

[Section 1 of the Internal Revenue Code](#) imposes a tax on the taxable income of every individual. [Section 441\(a\)](#) of the Code provides that taxable income shall be computed on the basis of a taxpayer's taxable year. In general, individuals compute their taxable income on the basis of a calendar year taxable year.

Sections 1.1-1(b) and 1.871-1(a) of the [Income Tax Regulations](#) provide that citizens of the United States, wherever resident, and resident alien individuals are taxable on income received from sources within and without the United States. [Section 2\(d\)](#) of the Code provides that in the case of a nonresident alien individual, the tax imposed by [section 1](#) shall apply only as provided by [section 871](#) or [877](#).

[Section 1.1-1\(c\)](#) of the [income tax regulations](#) provides that every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For rules governing the loss of citizenship, [section 1.1-1\(c\)](#) refers to sections 349 to 357, inclusive, of the Immigration and Nationality Act, 8 U.S.C. sections 1481-1489 (1976) (sections 1482 and 1484- 1487 repealed 1978) ([section 1481](#) amended 1978, 1981, 1986, and 1988; [section 1483](#) amended 1981, 1986, and 1988; [section 1489](#) amended 1988).

***3** [Section 7701\(b\)\(1\)\(A\)](#) of the Code provides that, for purposes of the Code (other than the estate and gift taxes), an alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) the individual: (i) is a lawful permanent resident of the United States at any time during that year; (ii) meets the substantial presence test provided in [section 7701\(b\)\(3\)](#); or (iii) makes the election provided in [section 7701\(b\)\(4\)](#). [Section 7701\(b\)\(1\)\(B\)](#) provides that an individual is a nonresident alien if that individual is neither a citizen of the United States nor a resident of the United States within the meaning of [section 7701\(b\)\(1\)\(A\)](#).

[Section 871](#) of the Code imposes a tax on certain income received by a nonresident alien individual. [Section 877](#) imposes an alternative tax on certain income received by a nonresident alien individual who after-March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless the loss of citizenship did not have for one of its principal purposes the avoidance of federal income, estate, or gift taxes, or resulted from the application of [section 301\(b\)](#), 350, or 355 of the Immigration and Nationality Act, as amended, 8 U.S.C. [section 1401\(b\)](#), 1482, or 1487 (1976) (repealed 1978). [Section 877](#) is effective for taxable years beginning after December 31, 1966.

[Section 2501](#) of the Code imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual. For gifts made after December 31, 1970, and before January 1, 1982, the tax imposed by [section 2501](#) is applicable for each calendar quarter. [Section 2511](#) provides that in the case of a nonresident not a citizen of the United States the gift tax imposed by [section 2501](#) shall apply to a transfer only if the property is situated within the United States.

[Section 25.2501-1\(b\)](#) of the Gift Tax Regulations provides that, for purposes of the gift tax, an individual is a United States resident if the individual's domicile is in the United States at the time of the gift. All other individuals are nonresidents of the United States for purposes of the gift tax.

Section 2501(a)(2) of the Code provides that, except as provided in section 2501(a)(3), the gift tax imposed by section 2501 shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States. Section 2501(a)(3) provides that the gift tax imposed by section 2501 shall apply to the transfer of intangible property by a nonresident not a citizen of the United States in the case of a donor who after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship, unless the loss of citizenship did not have for one of its principal purposes the avoidance of federal income, estate or gift taxes, or resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended, 8 U.S.C. section 1401(b), 1482, or 1487 (1976) (repealed 1978). Sections 2501(a)(2) and 2501(a)(3) are effective for transfers occurring on or after January 1, 1967.

*4 Section 6012(a)(1) of the Code provides, with certain exceptions, that every individual who has gross income for the taxable year which equals or exceeds the exemption amount (as defined in section 151(d)) shall file a federal income tax return. Section 1.6012-1(b)(2)(ii)(b) and (c) of the income tax regulations provides that an individual who abandons United States citizenship or residence during the taxable year, and is not a citizen or resident of the United States on the last day of the taxable year, must file a Form 1040NR federal income tax return for that year (if the individual is otherwise required to make a return for the taxable year). This return must include a separate schedule that shows the income tax computation for that part of the taxable year when the individual was a citizen or resident of the United States. Section 6019 provides, with certain exceptions, that any individual who makes a transfer by gift in any calendar year shall file a federal gift tax return. For gifts made after December 31, 1970, and before January 1, 1982, the filing requirement imposed by section 6019 is applicable for each calendar quarter.

Section 6501(c)(3) of the Code provides that in the case of a failure to file a federal tax return, the tax may be assessed, or a proceeding in court for the collection of that tax may be begun without assessment, at any time. Internal Revenue Service Policy Statement P-5-133, IRM 1218 PS P-5-133 (Nov. 24, 1980), states that taxpayers failing to file tax returns due will be requested to prepare and file all due returns except in instances where there is an indication that the taxpayer's failure to file the required return or returns was willful or if there is any other indication of fraud. If indications of willfulness or fraud exist, special procedures for handling those returns are followed. If indications of willfulness or fraud do not exist, the extent to which compliance for prior years will be enforced is determined by reference to several factors, including any special circumstances existing in the case of a particular taxpayer or class of taxpayers. Normally, application of these factors will result in enforcement of delinquency procedures for not more than six years.

Section 6159(a) of the Code authorizes the Internal Revenue Service to enter into written agreements with a taxpayer under which the taxpayer may satisfy a tax liability in installment payments. An installment agreement is considered when the Service determines that installment payments will facilitate collection of a tax liability.

[Section 7122\(a\)](#) of the Code authorizes the Internal Revenue Service to compromise any civil case arising under the internal revenue laws before the case is referred to the Department of Justice for prosecution or defense. Internal Revenue Service Policy Statement P-5-100, IRM 1218 PS P-5-100 (Jan. 30, 1992), states that the Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential.

***5** Internal Revenue Service District Directors administer the internal revenue laws and related statutes as they relate to persons residing within their districts. The Assistant Commissioner (International) administers the internal revenue laws and related statutes as they relate to United States citizens residing abroad and nonresident aliens deriving income from sources within the United States.

Section 349(a) of the Immigration and Nationality Act, [8 U.S.C. section 1481\(a\) \(1988\)](#), provides that United States citizens shall lose their citizenship if they voluntarily perform certain acts with the intention of relinquishing United States citizenship. Section 358 of the Immigration and Nationality Act, [8 U.S.C. section 1501 \(1988\)](#), and [section 50.41 of Title 22 of the Code of Federal Regulations, 22 C.F.R. § 50.41 \(1991\)](#), provide that a diplomatic or consular officer of the United States shall prepare a certificate of loss of nationality whenever that officer has reason to believe that a United States citizen has lost United States citizenship. If the Department of State approves a certificate of loss of nationality, thereby determining that the individual lost United States citizenship, a copy of the certificate is issued to the affected individual. If a certificate of loss of nationality is not approved by the Department of State for an individual under section 358 of the Immigration and Nationality Act, that individual is not considered to have lost United States citizenship. When a certificate of loss of nationality is approved, the loss of United States citizenship is considered retroactively effective to the date of the expatriating act.

Prior to November 14, 1986, the Immigration and Nationality Act did not expressly state the requirement that an expatriating act be performed with the intention of relinquishing United States citizenship. See Immigration and Nationality Act, section 349, [8 U.S.C. section 1481 \(1982\)](#) (amended 1986 and 1988). On November 14, 1986, the Immigration and Nationality Act was amended to expressly state this requirement. Immigration and Nationality Act Amendments of 1986, pub. L. No. 99-653, section 18(a), 100 Stat. 3655, 3658 (1986). This amendment was made applicable to actions taken before, on, or after November 14, 1986. Immigration and Nationality Act Amendments of 1986, [Pub. L. No. 99-653, section 23\(g\)](#), as added by the Immigration Technical Corrections Act of 1988, [Pub. L. No. 100-525](#), section 8(r), 102 Stat. 2609, 2619 (1988).

In accordance with this amendment, individuals who were determined by the Department of State to have previously lost United States citizenship may apply to the Department of State to

have their citizenship status administratively reviewed. Pursuant to this review, the Department of State may determine that individuals did not intend to relinquish their United States citizenship when they performed expatriating acts. In these cases, the Department of State will vacate the individuals' certificates of loss of nationality, and retroactively restore their United States citizenship. Individuals who have their United States citizenship retroactively restored are considered to have been United States citizens since birth or naturalization, and are taxable as United States citizens since birth or naturalization.

ANALYSIS AND HOLDINGS

***6** The following analysis and holdings relate to the federal tax treatment of the individuals described in this revenue ruling. This revenue ruling does not affect an individual's right to petition the Department of State for administrative review of that individual's citizenship status at any time.

Situation 1.

Individuals who lost their United States citizenship and had (or have) it retroactively restored before January 1, 1993, will not be held liable for federal income taxes as United States citizens between the date they lost their United States citizenship and the beginning of the taxable year when their citizenship was (or is) restored, and will not be held liable for federal gift taxes between the date they lost their United States citizenship and January 1 of the calendar year when their citizenship was (or is) restored.

As a result, A is not liable for federal income or gift taxes as a United States citizen between June 17, 1981, the date she lost her United States citizenship, and December 31, 1989, the end of the year preceding the year in which her United States citizenship was retroactively restored. A is liable for federal income and gift taxes as a United States citizen for taxable years beginning on or after January 1, 1990, the year in which her United States citizenship was retroactively restored.

Situation 2.

B is not taxable as a United States citizen, and has not been taxable as a United States citizen since May 24, 1979, the date he lost his United States citizenship. B is considered an alien individual under the Code, either a nonresident alien under [section 7701\(b\)\(1\)\(B\)](#) or a resident alien under [section 7701\(b\)\(1\)\(A\)](#). If B qualifies as a nonresident alien, he is taxable under [section 871](#). Alternatively, if B is considered a resident alien, he is taxable under [section 1](#).

For purposes of the gift tax, B's United States residency status is determined under section 25.2501-1(b) of the gift tax regulations. If B is considered a nonresident under [section](#)

25.2501-1(b), he is taxable under [section 2511](#). If B is considered a resident under [section 25.2501-1\(b\)](#), he is taxable under [section 2501](#).

B may apply to the Department of State to have his certificate of loss of nationality administratively reviewed. If B applied for this review, and if his certificate of loss of nationality is vacated, B's United States citizenship will be retroactively restored.

Individuals who lost their United States citizenship and have it retroactively restored after December 31, 1992, will not be held liable for federal income taxes as United States citizens between the date they lost their United States citizenship and the beginning of their first taxable year beginning after December 31, 1992, and will not be held liable for federal gift taxes between the date they lost their United States citizenship and January 1, 1993.

As a result, if B has his United States citizenship retroactively restored after December 31, 1992, B will not be liable for federal income or gift taxes as a United States citizen between May 24, 1979, and December 31, 1992. B will be liable for federal income and gift taxes as a United States citizen for taxable years beginning on or after January 1, 1993.

Situation 3.

***7** C is, and always has been since birth or naturalization, a United States citizen taxable under [sections 1](#) and [2501](#) of the Code. The Department of State never determined that C lost her United States citizenship, and never approved a certificate of loss of nationality for C. As a result, C never lost her United States citizenship. Therefore, C is not eligible for the relief granted in situations 1 and 2 of this revenue ruling.

Pursuant to policy statement P-5-133, the Internal Revenue Service has designated for special Consideration individuals who did not file federal income and gift tax returns as United States citizens because they had a reasonable, good faith belief that they had lost their United States citizenship. These individuals performed expatriating acts (as defined in the Immigration and Nationality Act as in effect at the time the acts were committed) but were not determined by the Department of State to have lost United States citizenship, and certificates of loss of nationality were not approved on their behalf. As a result, these individuals did not lose their United States citizenship. Furthermore, these individuals did not intend to relinquish their United States citizenship when they performed these acts. Under current law the acts these individuals performed are no longer considered expatriating, absent proof of intent to relinquish United States citizenship. As a result, if the Department of State had determined that these individuals lost their United States citizenship, these individuals would now be eligible to have their citizenship retroactively restored.

Pursuant to policy statement P-5-133, the Assistant Commissioner (International) and District Directors may grant relief similar to the relief granted in situations 1 and 2 of this revenue ruling. Among the circumstances that will be considered by the Assistant Commissioner (International) and District Directors when evaluating requests for relief from the individuals described in this situation 3 is whether they acted in a manner consistent with a good faith belief that they had lost United States citizenship by, among other things, not affirmatively exercising any rights of United States citizenship in the period when they did not file federal tax returns as United States citizens.

As a result, pursuant to policy statement P-5-133, C may apply to the Assistant Commissioner (International) or to the appropriate District Director for relief based on the particular circumstances of her case, and may be eligible for special consideration. Following review, the Assistant Commissioner (International) or the appropriate District Director may grant C relief similar to the relief granted in situations 1 and 2 of this revenue ruling. Decisions made by the Assistant Commissioner (International) and District Directors are not determinations of citizenship, and any relief granted by the Assistant Commissioner (International) or by a District Director only relates to federal taxes.

Situation 4.

***8** D is, and always has been since birth or naturalization, a United States citizen, taxable under [sections 1](#) and [2501](#) of the Code. D is not eligible for any relief from federal income or gift taxes based on this revenue ruling.

If extenuating circumstances prevented D from filing federal income and gift tax returns during the period of his foreign residence, D may apply to the Assistant Commissioner (International) and attempt to show that the extenuating circumstances justify relief under policy statement P-5-133. However, D is not eligible for any special consideration based on this revenue ruling. D may also attempt to show that he is eligible to settle his tax liabilities pursuant to an installment agreement or an offer in compromise. See [sections 6159\(a\)](#) and [7122\(a\)](#) of the Code, and policy statement P-5-100. See also Internal Revenue Service News Releases IR-92-114 (Dec. 7, 1992) and IR-92-94 (Sep. 30, 1992) (concerning the Internal Revenue Service initiative to bring nonfiling taxpayers back into the federal tax system).

PROSPECTIVE APPLICATION

The relief granted by this revenue ruling to individuals who lost their United States citizenship and subsequently had (or have) it retroactively restored is based on the authority contained in [section 7805\(b\)](#) of the Code.

DRAFTING INFORMATION

The principal author of this revenue ruling is Irwin Halpern of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Halpern on (202) 622-3850 (not a toll-free call).

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