26 U.S. Code § 877 - Expatriation to avoid tax

(a)Treatment of expatriates
(1)In general
Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2)Individuals subject to this section
This section shall apply to any individual if—
(A)the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,
(B)the net worth of the individual as of such date is $2,000,000 or more, or
(C)such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.
In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined

under section 1(f)(3) for such calendar year by substituting “2003” for “1992” in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b)Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or 55, except that—

(1)the gross income shall include only the gross income described in section 872(a) (as modified by subsection (d) of this section), and

(2)the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.

(c)Exceptions

(1)In general

Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2)Dual citizens
(A)In general
An individual is described in this paragraph if—
(i)the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and
(ii)the individual has had no substantial contacts with the United States.
(B)Substantial contacts
An individual shall be treated as having no substantial contacts with the United States only if the individual—
(i)was never a resident of the United States (as defined in section 7701(b)),
(ii)has never held a United States passport, and
(iii)was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.
(3)Certain minors
An individual is described in this paragraph if—
(A)the individual became at birth a citizen of the United States,
(B)neither parent of such individual was a citizen of the United States at the time of such birth,
(C)the individual's loss of United States citizenship occurs before such individual attains age 18½, and
(D)the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.
(d)Special rules for source, etc.

For purposes of subsection (b)—

(1)Source rules

The following items of gross income shall be treated as income from sources within the United States:

(A)Sale of property

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B)Stock or debt obligations

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C)Income or gain derived from controlled foreign corporation

Any income or gain derived from stock in a foreign corporation but only—

(i)if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I)the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II)the total value of the stock of such corporation, and

(ii)to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2)Gain recognition on certain exchanges

(A)In general

In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

(B)Exchanges to which paragraph applies
This paragraph shall apply to any exchange during the 10-year period beginning on the date the individual loses United States citizenship if—
(i)gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,
(ii)income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and
(iii)income derived from the property acquired in the exchange would be from sources outside the United States.
(C)Exception
Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D)Secretary may extend period

To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein. In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.

(E)Secretary may require recognition of gain in certain cases

To the extent provided in regulations prescribed by the Secretary—

(i)the removal of appreciated tangible personal property from the United States, and

(ii)any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3)Substantial diminishing of risks of ownership

For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) and the period applicable under paragraph (2) shall be suspended for any period during which the individual’s risk of loss with respect to the property is substantially diminished by—

(A)the holding of a put with respect to such property (or similar property),

(B)the holding by another person of a right to acquire the property, or

(C)a short sale or any other transaction.

(4)Treatment of property contributed to controlled foreign corporations

(A)In general

If—

(i)an individual losing United States citizenship contributes property during the 10-year period beginning on the date the individual loses United States citizenship to any corporation which, at the time of the contribution, is described in subparagraph (B), and

(ii)income derived from such property immediately before such contribution was from sources within the United States (or, if no income was so derived, would have been from such sources),

any income or gain on such property (or any other property which has a basis determined in whole or part by reference to such property) received or accrued by the corporation shall be treated as received or accrued directly by such individual and not by such corporation. The preceding sentence shall not apply to the extent the property has been treated under subparagraph (C) as having been sold by such corporation.

(B)Corporation described

A corporation is described in this subparagraph with respect to an individual if, were such individual a United States citizen—

(i)such corporation would be a controlled foreign corporation (as defined in section 957), and

(ii)such individual would be a United States shareholder (as defined in section 951(b)) with respect to such corporation.

(C)Disposition of stock in corporation

If stock in the corporation referred to in subparagraph (A) (or any other stock which has a basis determined in whole or part by reference to such stock) is disposed of during the 10-year period referred to in subsection (a) and while the property referred to in subparagraph (A) is held by such corporation, a pro rata share of such property (determined on the basis of the value of such stock) shall be treated as sold by the corporation immediately before such disposition.

(D)Anti-abuse rules
The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this paragraph, including where—
(i)the property is sold to the corporation, and
(ii)the property taken into account under subparagraph (A) is sold by the corporation.
(E)Information reporting
The Secretary shall require such information reporting as is necessary to carry out the purposes of this paragraph.

(e)Comparable treatment of lawful permanent residents who cease to be taxed as residents
(1)In general
Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2)Long-term resident
For purposes of this subsection, the term “long-term resident” means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the

period of 15 taxable years ending with the taxable year during which the event described in paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3)Special rules

(A)Exceptions not to apply

Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B)Step-up in basis

Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4)Authority to exempt individuals

This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5)Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

(f)Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual’s loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

(g)Physical presence

(1)In general

This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

(2)Exception

(A)In general

In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

(i)such employer is related (within the meaning of section 267 and 707) to such individual, or
(ii)such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.
Not more than 30 days during any calendar year may be disregarded under this subparagraph.
(B)Individuals with ties to other countries
An individual is described in this subparagraph if—
(i)the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—
(I)such individual was born,
(II)if such individual is married, such individual's spouse was born, or
(III)either of such individual's parents were born, and
(ii)the individual becomes fully liable for income tax in such country.
(C)Minimal prior physical presence in the United States
An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D) shall apply for purposes of this subparagraph.

(h)Termination
This section shall not apply to any individual whose expatriation date (as defined in section 877A(g)(3)) is on or after the date of the enactment of this subsection.

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§ 2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, § 421(e)(5), Nov. 6, 1978, 92 Stat. 2876; Pub. L. 96–222, title I, § 104(a)(1), (4)(H)(v), Apr. 1, 1980, 94 Stat. 214, 217; Pub. L. 99–514, title XII, § 1243(a), Oct. 22, 1986, 100 Stat. 2580; Pub. L. 102–318, title V, § 521(b)(31), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, § 1401(b)(11), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title V, § 511(a)–(d), (f)(1), Aug. 21, 1996, 110 Stat. 2093–2098; Pub. L. 105–34, title XVI, § 1602(g)(1)–(4), (h)(3), Aug. 5, 1997, 111 Stat. 1095, 1096; Pub. L. 108–357, title VIII, § 804(a)(1), (2), (c), Oct. 22, 2004, 118 Stat. 1569, 1570; Pub. L. 109–135, title IV, § 403(v)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 110–245, title III, § 301(c)(2)(A), (d), June 17, 2008, 122 Stat. 1646; Pub. L. 113–295, div. A, title II, § 213(c)(2), Dec. 19, 2014, 128 Stat. 4034; Pub. L. 115–141, div. U, title IV, § 401(a)(153), Mar. 23, 2018, 132 Stat. 1191.)