

Tax issues for American Expatriates

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Learning Objectives

- Review the historic evolution of the modern-day exit tax
- Identify covered expatriates & exempt individuals
- Learn how to properly expatriate
- Compute the tax assessed on those who renounce citizenship or relinquish a Green Card
- Understand that additional taxes may be imposed on gifts & bequests

News Teasers

- **Bobby Fischer reclaims championship title against Boris Spassky!**
- **Eritrean Consulate General expelled from Canada!**
- **Minors under age of 16 are insufficiently mature!**
- **Canadian's crystal ball accurately predicts exchange rates!**
- **Florida resident has a Massachusetts driver's license!**

Famous Former US Citizens



Alexander Boris de Pfeffel Johnson (PM) → United Kingdom (2015) when IRS taxed sale of London home

Tina Turner → Switzerland (2013); lived 20 years in-country & married to German music executive

Denise Rich → Austria (2011); moved to father's native country after pardon by President Clinton



Jet Li → Singapore (2009); school system for daughters but Singapore does not allow dual citizenship

Eduardo Savarin → Singapore (2009); was Brazilian first but moved to US when targeted for kidnapping



Bobby Fischer → Iceland (2005); arrested/jailed for 8 months in Japan when US passport revoked for "anti-American" activities

Sir John Templeton → Bahamas (1968); to avoid estate tax



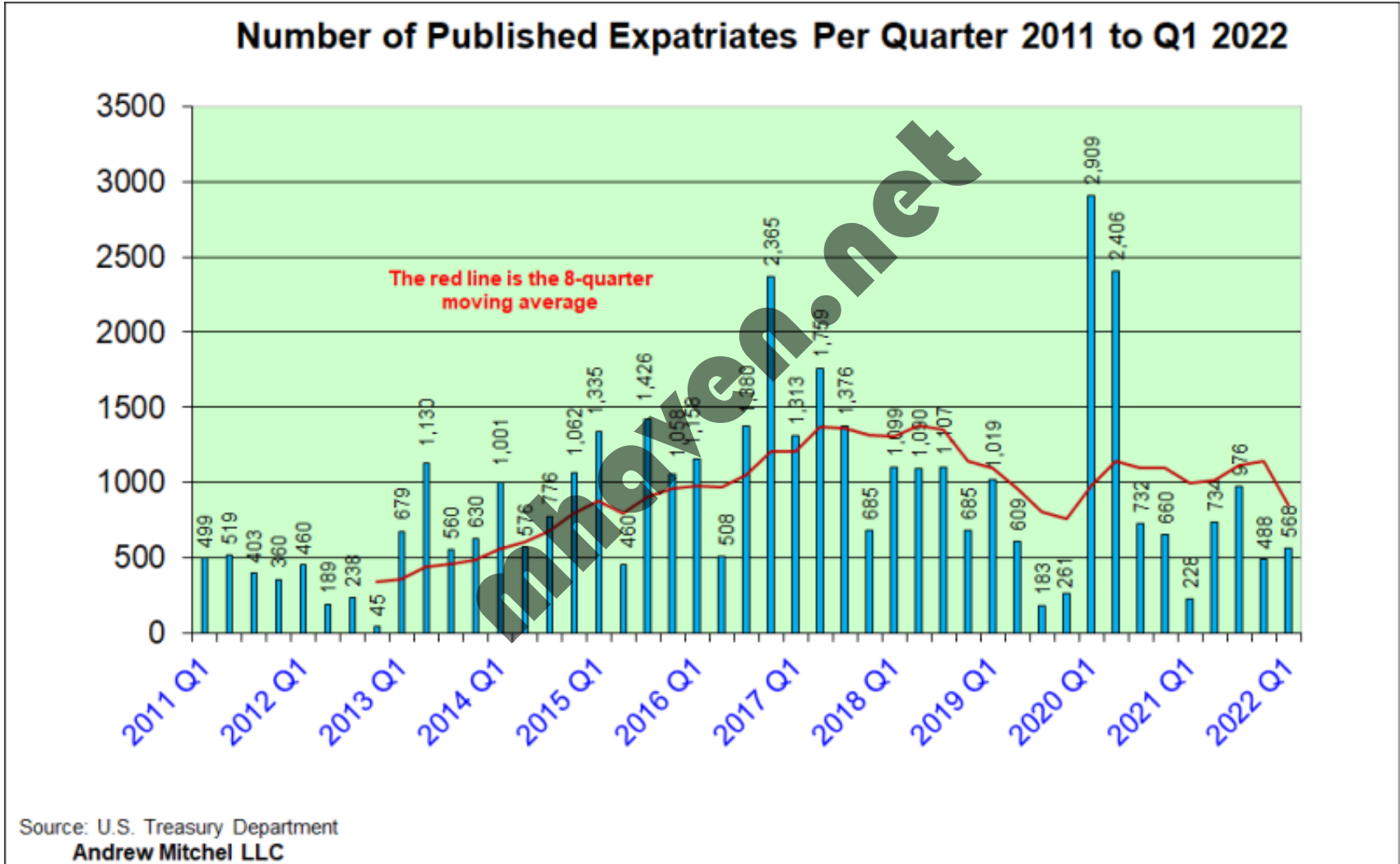
Yul Brynner → Switzerland (1965); renounced when IRS taxed dual citizen who "over-stayed" in US

President John Tyler → Virginia (1862); to accept a post as representative of the Confederacy

And the Not-so Famous

- **Donna-Lane Nelson** → Switzerland; Swiss bank threatened to close Americans' accounts due to FATCA reporting requirements
- **Laurie Lautman** → New Zealand; can't afford annual tax prep fee of \$3,360 to have US returns prepared
- **Christina Amman** → Switzerland; burdensome FBAR reporting for joint accounts with Swiss husband
- **Corine Mauch** → Switzerland; born to Swiss parents and feels "at home" in Zurich
- **Norman Heinrich-Gale** → Austria; moved to the Alps when overwhelmed by pace of American life
- **Quincy Davis, III** → Taiwan; joined national basketball team
- **Carol Tapanila** → Canada; wants to protect retirement savings earned in Canada from US tax

The exodus continues...



Why leave?

- US tax on worldwide income; high federal (& state) tax rates
- Reporting requirements for FBAR & FATCA
- Obtain (retain) citizenship in country that doesn't allow dual citizenship
- Protest US politics & policies: Civil rights activist Josephine Baker (1st Black woman & 1st entertainer to be inducted into the Panthéon mausoleum in Paris in 2021)
- Political office abroad: Andreas Papandreou, Prime Minister of Greece
- Obtain release from detention: Yasser Hamdi captured in Afghanistan & declared an “enemy combatant”

Reasons don't matter

- List of reasons is varied & long
- Some are “accidental” Americans – born in US or born to US parent but never lived in US
- Inadvertent forfeiture – Green Card holder who works & lives abroad claims Foreign Earned Income Exclusion (subject to residency tests) and does not return to the US to satisfy immigration rules
- Some are asked to leave

Americans wishing to leave need not explain

Whatever the reason

- US will assess a departure tax to discourage tax avoidance by forfeiting US citizenship or residency
- Assessed on unrealized gains
- Known as the “Exit” or Expatriation Tax



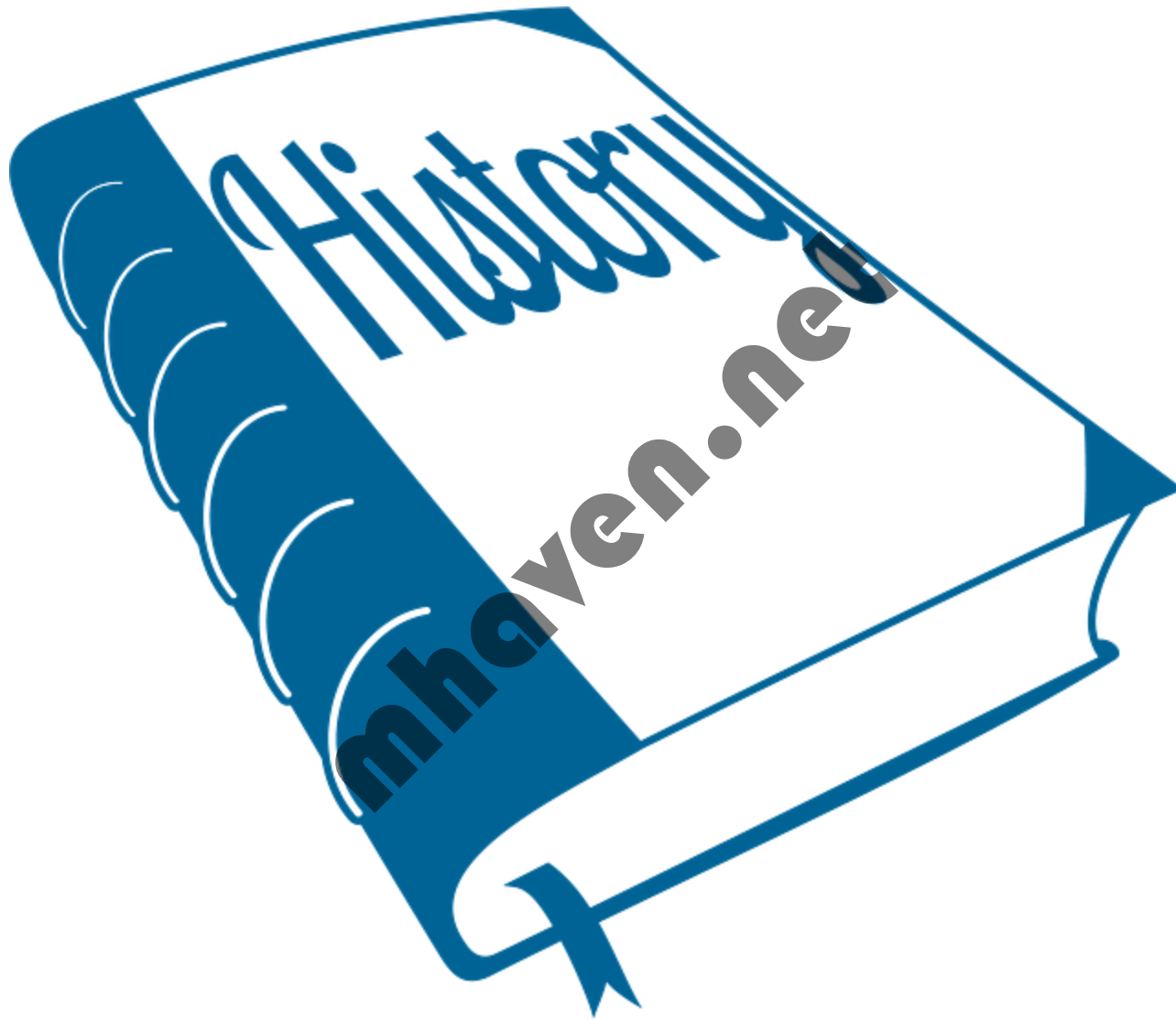


Polling Question # 1

The annual rate of US citizenship renunciation in recent years is generally trending in which direction?

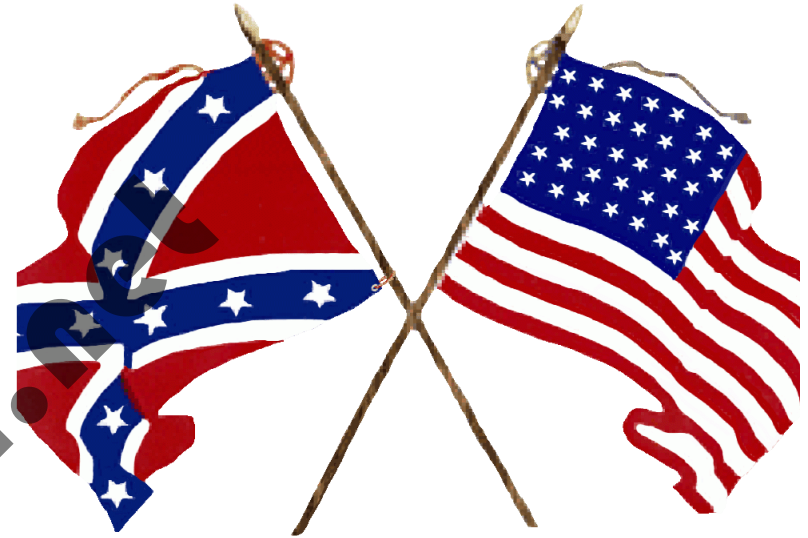
- Upward
- Downward

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Background

- 1861: 1st US income tax
 - 3% flat tax on income > \$800
 - Intended to fund Civil War
 - Specifically excluded foreign income
 - Civil War Tax expired 10 years later
- 1862: Introduced progressive tax rates, std. deduction, employer w/h's
 - Office of IRS Commissioner established
- 1894: declared unconstitutional 1 year later
 - Tax on investment income is a direct (not apportioned) tax [*Pollock v. Farmers' Loan*]



The Modern Income Tax

- 1913: 16th Amendment
 - Congress has “power to lay and collect taxes on incomes... *without apportionment*”
 - Power is “not dependent upon the domicile of the citizen”
 - Created tax regime that is *citizenship-based*
- 1924: Citizenship taxation is upheld
 - US citizen’s rental income in Mexico is taxable by US [*Cook v Tait*]
 - Reasoning: US citizen carries govt’s protection with him throughout the world; should not be allowed to escape the burdens of citizenship

Irrelevant Trivia

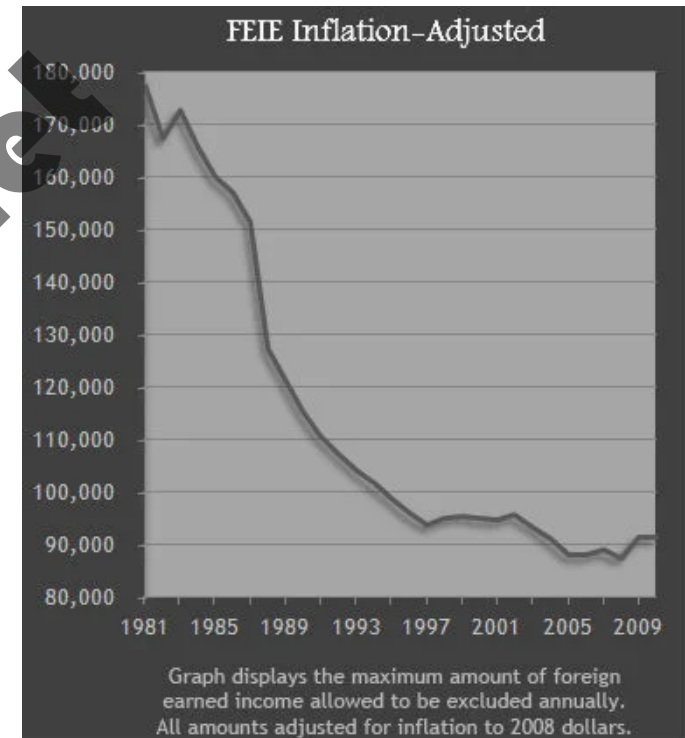
- MYTH: *Form 1040* given number of important date in history
 - 1040 BC: Prophet Samuel acceded to people's demands & gave them a king but warned that a king would demand they pay taxes
 - 1040 AD: Lady Godiva rode through streets of Coventry, England to protest taxes
- FACT: “1040” was next available form number in 1913
 - Forms & Publications Division picks sequentially
 - Blocks of numbers are set aside so future forms-to-be get number near existing relatives
 - Currently 1,006 forms available

| | | |
|--|---|-------------------|
| Form 11-C (Rev. December 2017) Department of the Treasury Internal Revenue Service | Occupational Tax and Registration Return for Wagering ▶ Go to www.irs.gov/Form11C for the latest information. Return for period from _____ to June 30, _____ (Month and day) (Year) (Year) | OMB No. 1545-0236 |
|--|---|-------------------|

| | |
|-----------------------------------|---|
| Form 15250 (April 2020) | Department of the Treasury - Internal Revenue Service Nonbank Trustee/Custodian Status Notification |
|-----------------------------------|---|

Mitigating Provisions

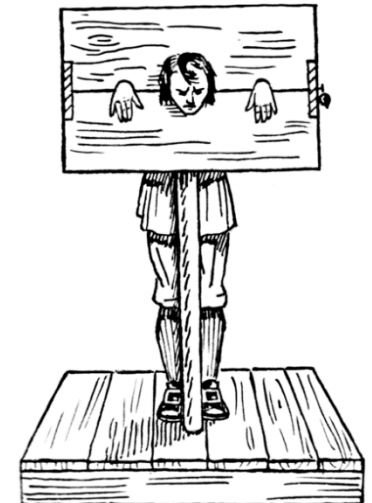
- Citizens taxed on *worldwide* income
- 1918: Foreign Tax Credit
- 1926: Foreign Earned Income Exclusion
 - No income limitations until 1962
 - Adjusted for inflation (2005)
 - Current exclusion = \$112,000 (2022)



- BUT non-resident citizens cannot contribute to foreign charities or make unlimited transfers to non-citizen spouses

Punishment

- 1966: 10-year tax on US-source income if motive was tax avoidance
 - Unenforceable since motive could not be objectively determined
- 1996: Law *presumes* tax avoidance
 - Billionaire Dart renounced → became citizen of Belize → appointed as consular officer in Florida
 - Reed Amendment: No re-entry into US if renunciation for tax avoidance
- 2004: Presumption converted to a *definition*
 - There just can't be any other reason to leave
 - IRS required to publish to name & shame
- 2008: Billionaires' Amendment
 - Applies to super-rich & covered expatriates





Polling Question # 2

While the expatriation tax was once based on the presumption that a US citizen would renounce his citizenship for no other reason than to avoid US taxation, today's law deems the reason for renunciation to be irrelevant.

- True
- False



Covered Expatriates

- Personal motives now irrelevant
- Expatriation (Exit) Tax applies to all who are “covered” [IRC §877]
- Based on 3 objective tests
 - Income Tax: Average 5-year tax liability > \$178K [in 2022]
 - Net Worth: Net assets > \$2 million on date of expatriation
 - Compliance: All returns must have been filed/paid for current & 5 prior years
- Must be US citizen or long-term resident
 - NRA is not subject to expatriation tax regime
 - Dual citizens at birth but have not lived in US for > 10 of most recent 15 yrs
 - Minors < 18½ who lived in US < 10 yrs

US Citizen

- Via birth or naturalization
- Rights
 - Enter US (travel w/ US passport)
 - Work
 - Vote (as per state law)
 - Pay tax (until expatriated)
- Must affirmatively & deliberately renounce
- Method depends on date
 - Before 6/3/04 → presume tax avoidance
 - 2004 – 2016 → define tax avoidance
 - After 6/17/08 → tax avoidance motive irrelevant



Long-term Permanent Residents

- Resident Aliens
 - Green Card or Substantial Presence
- LPR
 - Lawful residents in 8 of 15 years
 - Unless treated as resident of foreign country based on tie-breaker rules in treaty [*Form 8833*]
- Must formally abandon status

**All LPRs are resident aliens, but
not all resident aliens are covered expatriates**

Covered? Income Tax Test

- Average annual income tax for 5 most recent years ending before expatriation > \$178K [in 2022]
- Threshold adjusted annually for inflation
- Net tax liability = Regular Tax + AMT – Tax Credits
 - Foreign Tax Credit [*Form 1116*] is often enough to reduce net tax below threshold
 - If needed, use tax credits §§21 – 30D (dependent care, elderly/disabled, adoption expense, child tax, education, alternative fuel, plug-in vehicle)
- Enter each year's tax liability on *Form 8854*, Part II, Line 1

Covered? Net Worth Test

- Must be > \$2 million on date of expatriation
 - No inflation adjustment
- All values in USD
 - Use Treasury's or any verifiable currency exchange rate
- Taxpayer can employ pre-expatriation strategies to reduce net worth
 - Must disclose “significant changes” on *Form 8854*, Part II, Section B



Covered? Compliance Test

- Must certify compliance with all federal tax obligations for 5 most recent years ending before expatriation
 - Income tax returns
 - *Form 8938* (specified assets)
 - *FinCEN 114* (foreign accounts)
- No reasonable cause or de minimis exception
 - Smallest omission will cause failure → “covered” expatriate subject to exit tax
- **WARNING:** Weigh risk of non-compliance against cost (penalties) of compliance





Polling Question # 3

Three objective tests are used to determine whether a taxpayer is a “covered” expatriate subject to the exit tax regime. Which of the following tests is *not* used?

- Income Tax Test
- Net Worth Test
- Compliance Test
- Citizenship Test



How to Expatriate

- Renunciation – voluntary forfeiture of citizenship
 - Requires formal process before a US diplomatic or consular officer abroad
- Relinquishment – involuntary forfeiture of citizenship
 - Renounce in time of war with US Attorney General's approval
 - Commit an act of treason [will lose citizenship but not tax status]
 - Pledge an oath of allegiance to a foreign country
 - Join the armed services of another country engaged in war against US or join another country's army as an officer even if that country is not at war with the US
 - Work for a foreign government while also a citizen of that country
 - Accept employment by a foreign government in a job for which an oath of allegiance is required
- Abandonment – voluntary forfeiture of residency

Expatriation: US Citizens



U.S. Department of State
 BUREAU OF CONSULAR AFFAIRS
 CERTIFICATE OF LOSS OF NATIONALITY OF THE UNITED STATES

This form is prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940 (54 Stat. 1171) and Section 358 of the Act of June 27, 1952 (66 Stat. 272).

Expatriation effective when:

| | |
|--|----------------------------|
| <ol style="list-style-type: none"> Embassy/Consulate _____ of the United States of America at _____ SS: _____ I, _____ Name _____ hereby certify that, to the best of my knowledge and belief, _____ was born at _____ Town or City _____ Province or County _____ _____ State or Country _____, on _____ Date (mm-dd-yyyy) That: he/she resided/never resided* in the United States (Dates) _____; | <p>DEPARTMENT USE ONLY</p> |
|--|----------------------------|

- Renunciation before US diplomatic or consular officer is approved & certificate issued by US Dept. of State (DOS)
- Signed statement of voluntary relinquishment is submitted & certificate issued by DOS
- DOS issues certificate of loss of nationality
- US court cancels certificate of naturalization



Expatriation: LPRs

Tax residency ceases when:

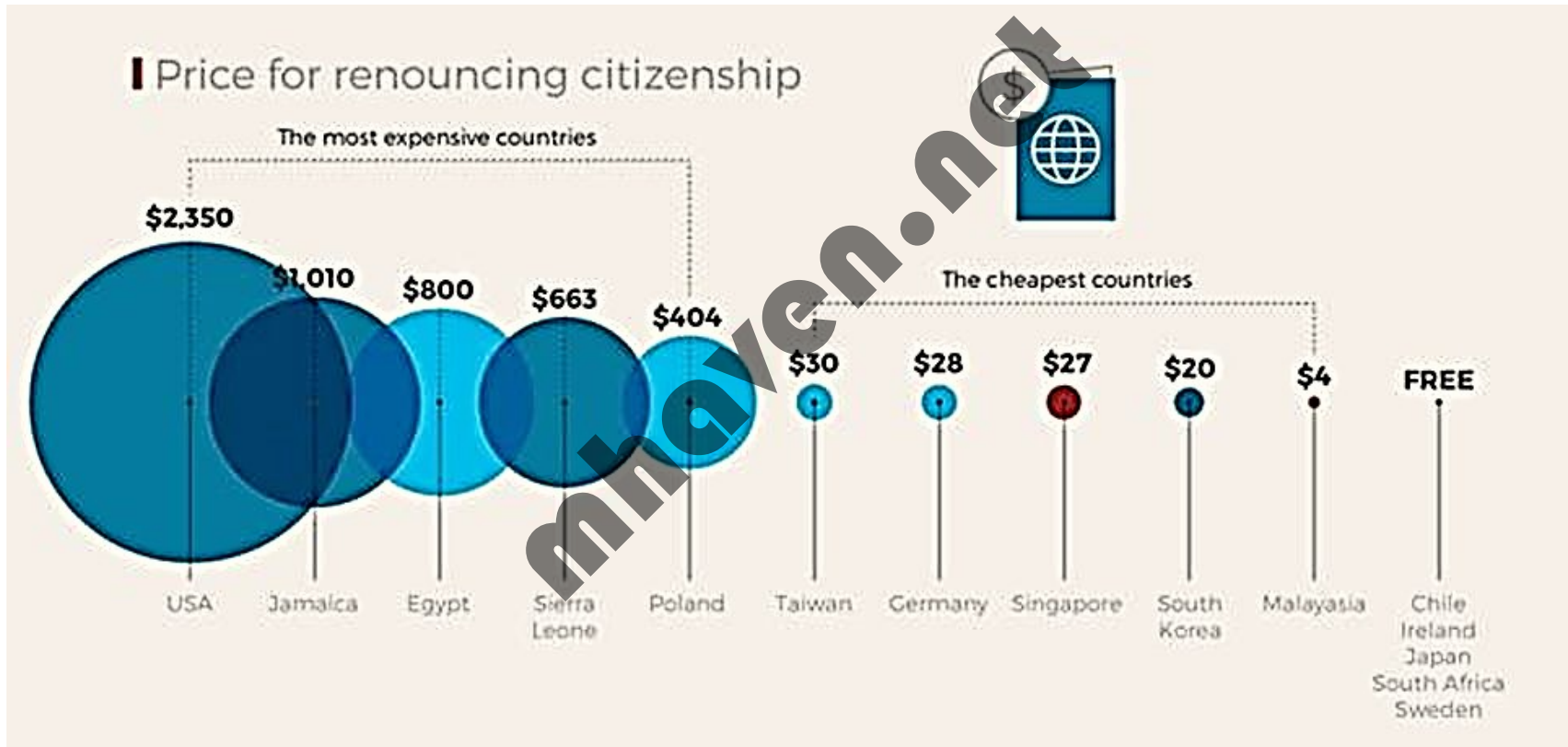
- Immigration & residency status revoked or administratively abandoned
- Inadvertent abandonment: Individual treated as resident of foreign country as per prevailing tax treaty & does not waive treaty provisions via *Form 8833*
- Formal abandonment: Individual submits *Form I-407* Abandonment of Lawful Permanent Resident Status to US consular officer

Expatriation: 5 Steps

- Obtain foreign citizenship (passport) in another country
- Leave the US
- Appear before US Consul in foreign country & pay fee
- Attach *Form 8854* to final US income tax return
 - Must cover period of residency & period of non-residency in year of expatriation
 - File *Form 1040-NR* & attach *Form 1040* (or comparable statement) to calculate tax liability accrued during residency
 - Mark top of return: “Dual Status Return”
- Pay any Exit Tax due



Expatriation: Processing Fee





Polling Question # 4

Expatriation is easy and free! Just cut up your passport.

- True
- False

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The “Exit” Tax

- Asset-based tax
 - Uses a mark-to-market regime (MTM)
 - Assessed on unrealized gains as if all assets sold 1 day before expatriation date
- Phantom gains (& losses) are subject to income tax
 - Subject to capital gains & ordinary income tax rates
 - Apply usual netting rules & loss limitations (EXCEPT wash sale rule)
 - Reported on *Form 8854* and *1040* forms & schedules
- Gains (losses) realized upon later disposition may be adjusted for phantom gains (losses) subject to exit tax
 - Basis of asset deemed sold is step-up to FMV on day before expatriation

Subject Property

- MTM is applied to all assets that would be includible if filing *Form 706*
 - Gross Estate w/o deductions (e.g. Unified Credit)
 - Also includes beneficial interest in trust (even if not part of gross estate)
- Exempt assets
 - Deferred compensation items (e.g. foreign pensions & retirement arrangements)
 - Tax-deferred accounts (e.g. IRAs, §529 plans, HSAs & MSAs)
 - Interests in certain non-grantor trusts when expatriate is not the owner on day before expatriation

**Exempt assets are not subject to MTM
Instead, subject to 30% withholding upon distribution**

Exclusion Amount

- Deemed gains on sale may be reduced by exclusion amount
 - \$767K [in 2022] – indexed for inflation
 - Individual eligible for *one* lifetime exclusion
- Must be allocated on pro-rata basis to all gain properties
 - Exclusion is *not* allocated to properties with built-in losses



EXAMPLE: Allocate Exclusion

Facts

- Covered expatriate renounced on 11/1/21
- Assets owned on 10/31/21:

| <u>Asset</u> | <u>FMV on 10/31/ 21</u> | <u>FMV at Purchase (Basis)</u> | <u>Built-in Gain (Loss)</u> |
|--------------|-------------------------|--------------------------------|-----------------------------|
| X | 2,000,000 | 200,000 | 1,800,000 |
| Y | 1,000,000 | 800,000 | 200,000 |
| Z | 500,000 | 800,000 | (300,000) |

Step 1

Multiply total exclusion amount [\$744K in 2021] by ratio of individual gain over aggregate gain

Asset X: $(1.8 \text{ million} \div 2 \text{ million}) \times 744,000 = \$669,600$

Asset Y: $(200,000 \div 2 \text{ million}) \times 744,000 = \$74,400$

EXAMPLE: Allocate Excln (cont'd)

Step 2

Subtract allocated exclusion amount from deemed gain

Asset X: 1.8 million – 669,600 = \$1,130,400

Asset Y: 200,000 – 74,400 = \$125,600

Step 3

- Report includible gains of Assets X and Y, as well as loss of Asset Z on *Form 1040* for the portion of the taxable year that includes day before expatriation
- Attach to *Form 1040NR* as explanatory schedule

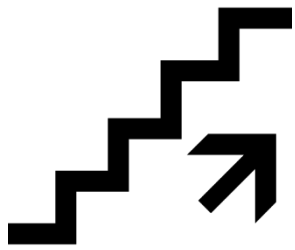
EXAMPLE: Future Sale

Facts

- Expatriate lives abroad
- Later sells Asset X for \$3 million, Asset Y for \$850K & Asset Z for \$700K

| Asset | Sales Proceeds | Basis on Expat | Gain (loss) on ACTUAL Sale* | Purchase Price | Gain (loss) on DEEMED Sale | Total Gain (Loss) |
|-------|----------------|----------------|-----------------------------|----------------|----------------------------|---------------------------|
| | A | B | $C = A - B$ | D | $E = B - D$ | $F = C + E$ [or $A - D$] |
| X | 3,000,000 | 2,000,000 | 1,000,000 | 200,000 | 1,800,000 | 2,800,000 |
| Y | 850,000 | 1,000,000 | (150,000) | 800,000 | 200,000 | 50,000 |
| Z | 700,000 | 500,000 | 200,000 | 800,000 | (300,000) | (100,000) |

* Amounts reported on *Form 1040-NR* in year of sale



Inbound Basis Step-up

- GENERAL RULE
 - NRAs who become US citizens/resident aliens do *not* get basis step-up

- SPECIAL RULE (under Expat regime *only*)
 - Basis stepped-up on date of expatriation for deemed sale computation
 - No downward basis adjustment if $FMV_{\text{Green Card}} < \text{Purchase Price}$
 - No basis step-up for trade or business property (unless specified in treaty)
 - NRA may opt-out of basis step-up for each asset [use *Form 8854*]

Example

NRA (w/ 2 non-biz assets) obtains Green Card in 2010 & relinquishes it in 2020

| | <u>Purch Price</u> | <u>FMV (2010)</u> | <u>FMV (2020)</u> | <u>Expat Basis</u> | <u>G/L (no elctn)</u> | <u>G/L (elctn)</u> |
|---|--------------------|-------------------|-------------------|--------------------|-----------------------|--------------------|
| X | 400,000 | 700,000 | 1,300,000 | 700,000 | 600,000 | 900,000 |
| Y | 500,000 | 300,000 | 800,000 | 500,000 | 300,000 | 300,000 |

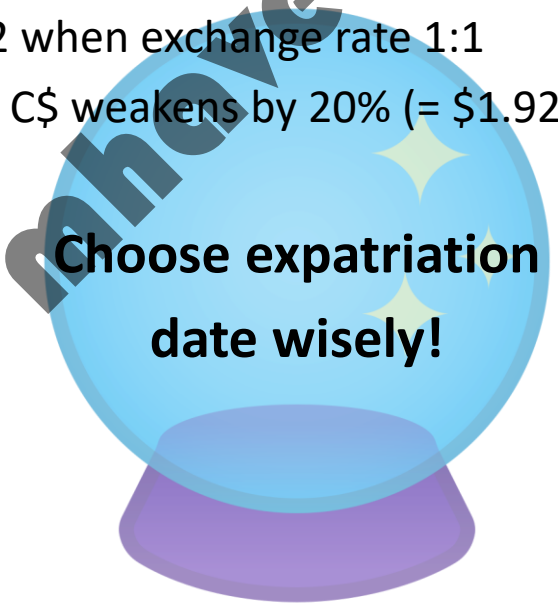
Currency Fluctuations

- All values must be reported in USD on *Form 8854*
- Use Treasury rates of exchange (www.fiscal.treasury.gov) or any verifiable rate source

Example

Canadian with net worth of C\$2.4 million

- Covered expatriate in 2012 when exchange rate 1:1
- Not covered in 2015 when C\$ weakens by 20% (= \$1.92 million) → no *Form 8854* req'd



**Choose expatriation
date wisely!**



Polling Question # 5

Which of the following statements is *not* true about the Exit Tax?

- The Exit Tax is an asset-based tax.
- The tax liability is based on phantom gains & losses calculated on the day after expatriation.
- Deemed gains may be reduced by an applicable exclusion amount.
- Certain assets are exempt from the MTM regime.



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WAIT!
There's More!



The Withholding Tax

- Assets exempt from the MTM are subject to 30% withholdings
 - “Eligible” assets subject to w/h at each distribution
 - Ineligible assets subject to w/h on present value of accrued benefits at expatriation
- Eligible assets – if paid by US person who agrees to withhold – include:
 - Deferred compensation
 - Distributions from non-grantor trusts (unless elect to use MTM)
- Ineligible assets include:
 - Foreign deferred compensation (unless payer elects to be treated as US person)
 - IRA, §529 plan, HSA or MSA

Form **W-8CE** | Notice of Expatriation and Waiver of Treaty Benefits
 (November 2009) | Department of the Treasury | Internal Revenue Service | OMB No. 1545-2138

EXAMPLE: Withholding Tax

| | | |
|----------------------|---|-------------------------------------|
| Please print or type | Name of owner | U.S. taxpayer identification number |
| | Permanent address | Expatriation date |
| | City, province or state, postal code, and country | |

Facts

- Company granted restricted stock units to employee in 2014, receivable in 2016 if he continues to work for company
- Taxpayer quits job & expatriates in 2015
- Units will be treated as vested on day before expatriation & subject to exit tax
- Instead taxpayer continues to work for company
- Notifies employer of status as covered expatriate [*Form W-8CE*]
- No exit tax inclusion but distributions subject to 30% withholding

The “Forever” Tax

- Covered expatriates are subject to:
 - *One-time* exit tax (MTM)
 - *Ongoing* withholdings on distributions
 - *Forever* tax on gifts & bequests to US citizens/residents
- Expat Gift/Estate regime enacted in 2008 but suspended pending final IRS regulations
 - Must file *Form 708* (due 18 months after close of calendar year of gift/bequest)
 - Expatriate not entitled to lifetime exclusion [currently \$12.06 in 2022]
 - Gift/bequest taxed at highest marginal rate [40% in 2022]; no brackets
 - Tax liability transferred to US donee/beneficiary
 - Expat can elect to file *Forms 709* (gift) or *706* (estate) → exempt from *708* filing



Example

US citizen has only cash assets on date of expatriation → no exit tax

Expat later bequeaths net worth to citizen child → entire net worth subject to estate tax



Reporting the MTM Tax

- Gain or loss from deemed sales are included on *Form 1040-NR* (*Forms 8949 & 4797*, and Schedule D)
 - Enter on *Form 8854, Section C*, Line 2 [attach statement re exclusion allocation]
 - Character of gain is preserved as capital or ordinary, short- or long-term
 - Pay tax due with *Form 1040-NR*
- May elect to defer payment until asset is sold & gain is realized



Deferring the Tax

- Irrevocable election to defer payment
 - Elect on *asset by asset* basis
 - Prepare TWO *Forms 1040-NR* to calculate tax liability to be deferred (= Tax on all deemed sales – tax due w/o selected sales)
- Must submit deferral agreement request + collateral by mail
 - Attach duplicate copy of Deferral Agreement to *Form 1040-NR*
- If deferral agreement accepted by IRS, payment must be made by the earlier of:
 - Due date of return for year in which asset is actually sold, OR
 - Due date of the return for the year of expat's death, OR
 - Date that posted bond is considered insufficient → IRS will provide 30-day notice to taxpayer to increase bond or pay tax

IRS Notice 2009-85

APPENDIX A

DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE

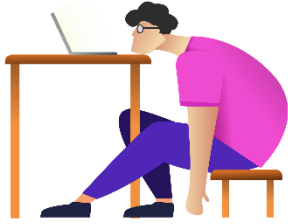
AGREEMENT ON DEFERRAL OF TAX IMPOSED UNDER I.R.C. § 877A

Under § 877A of the Internal Revenue Code of 1986, as amended (“I.R.C.”), the Taxpayer (as identified on the signature page of this agreement by Taxpayer’s name and address) (herein referred to as “Taxpayer”) and the Commissioner of Internal Revenue (the “Commissioner”) enter into the following agreement to defer tax with respect to the property(ies) identified below (this “Agreement”):

WHEREAS, I.R.C. § 877A(a) imposes tax on covered expatriates, as defined in I.R.C. § 877A(g), by deeming such individuals to have sold all of their property for its fair market value on the day before their expatriation date (“mark-to-market tax”), as provided in Notice 2009-85, I.R.B. 2009-45, and any subsequent guidance, and

WHEREAS, I.R.C. § 877A(b) provides that a covered expatriate may make an election to defer payment of the mark-to-market tax imposed on the deemed sale of property, on a property-by-property basis, if adequate security is provided with respect to such property, as provided in Notice 2009-85, I.R.B. 2009-45, and any subsequent guidance,

IT IS HEREBY DETERMINED AND AGREED THAT:



Polling Question # 6

Payment of the Expatriation Tax may be deferred.

- Yes
- No

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Filing Requirements

- *Form 8854* must be filed with US consulate or federal court at time of expatriation
 - Taxpayer must certify 5-year compliance under penalties of perjury
 - Must file even if no exit tax due
 - Failure to file penalty = \$10,000
- Must file *Form 8854* annually if in a prior year:
 - Payment of tax was deferred
 - Reported eligible deferred compensation item or interest in non-grantor trust [subject to 30% withholding tax]
- Must file *Form 1040-NR* if:
 - Receive US-source effectively connected income
 - Asset subject to MTM is sold or distributions received from exempt asset



Form 8854

| | | |
|--|--|---|
| Form 8854 Department of the Treasury Internal Revenue Service | Initial and Annual Expatriation Statement For calendar year 2019 or other tax year beginning _____, 2019, and ending _____, 20____ ▶ Go to www.irs.gov/Form8854 for instructions and the latest information. ▶ Please print or type. | OMB No. 1545-0047 20 Attachment Sequence No. 112 |
| | Name _____ | Identifying number (see instructions) _____ |

Part I General Information. For all filers.

- 1 Mailing address and telephone number where you can be reached after expatriation _____
- 2 Address of principal foreign residence (if different from line 1) _____
- 3 Country of tax residence (if different from line 2) _____
- 4 Check the box that applies. See instructions.
 Initial expatriation statement for persons who expatriated in 2019. Complete Part II.
 Annual expatriation statement for persons who expatriated before 2019. Complete Part III.
- 5 Date of expatriation under section 877A(g)(3) for expatriating citizens and long-term residents. See instructions.
 Citizen _____
 Long-term resident _____
 Long-term resident with dual residency in a treaty country. Date commencing to be treated, for tax purposes, as a resident of the treaty country _____
- 6 List all countries (other than the United States) of which you are a citizen.
 - a Name of country _____
 - b Date you became a citizen of each country listed in line 6a _____
- 7 How you became a U.S. citizen By birth By naturalization
- 8 Date you became a U.S. lawful permanent resident _____

Form 8854: "Covered" Tests

| Part II Initial Expatriation Statement for Persons Who Expatriated in 2019 | | | | | |
|---|--|---------------------------------|---------------------------------|---------------------------------|---|
| Section A Expatriation Information | | | | | |
| 1 | Enter your U.S. income tax liability (after foreign tax credits) for the 5 tax years ending before the date of expatriation. | | | | |
| | 1st Year Before Expatriation | 2nd Year Before Expatriation | 3rd Year Before Expatriation | 4th Year Before Expatriation | 5th Year Before Expatriation |
| | \$ _____ | \$ _____ | TEST # 1 | \$ _____ | \$ _____ |
| 2 | Enter your net worth on the date of your expatriation for tax purposes | | | | \$ TEST # 2 |
| 3 | Did you become at birth a U.S. citizen and a citizen of another country, and do you continue to be a citizen of, and taxed as a resident of, that other country? | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4 | If you answered "Yes" to question 3, have you been a resident of the United States for not more than 10 of the last 15 tax years? | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5 | Were you under age 18½ on the date you expatriated and have you been a U.S. resident for not more than 10 years? | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6 | Do you certify under penalties of perjury that you have complied with all of your tax obligations for the 5 preceding tax years? See instructions. | | | | TEST # 3 <input type="checkbox"/> Yes <input type="checkbox"/> No |

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 24126N Form **8854** (2019)

Form 8854: Net Worth

Form 8854 (2019)

Page **2**

Section B **Balance Sheet**

List in U.S. dollars the fair market value and the U.S. adjusted basis of your assets and liabilities as of your expatriation date. For more details, see the separate instructions.

| Assets | | (a) Fair market value (FMV) | (b) U.S. adjusted basis |
|--------------------|---|------------------------------------|--------------------------------|
| 1 | Cash, including bank deposits | | |
| 2 | Marketable stock and securities issued by U.S. companies | | |
| 3 | Marketable stock and securities issued by foreign companies | | |
| 4 | Nonmarketable stock and securities issued by U.S. companies | | |
| 5 | Nonmarketable stock and securities issued by foreign companies | | |
| a | Separately state stock issued by foreign companies that would be controlled foreign corporations if you were still a U.S. citizen or permanent resident. See instructions | | |
| b | Provide the name, address, and EIN, if any, of any such company | | |
| 6 | Pensions from services performed in the United States | | |
| 7 | Pensions from services performed outside the United States | | |
| 8 | Partnership interests. See instructions | | |
| 9 | Assets held in trust. See instructions | | |
| 10 | Beneficial interests in trusts not included in line 9. See instructions | | |
| 11 | Intangibles used in the United States | | |
| 12 | Intangibles used outside the United States | | |
| 13 | Loans to U.S. persons | | |
| 14 | Loans to foreign persons | | |
| 15 | Real property located in the United States | | |
| 16 | Real property located outside the United States | | |
| 17 | Business property located in the United States | | |
| 18 | Business property located outside the United States | | |
| 19 | Other assets. See instructions | | |
| 20 | Total assets. Add lines 1 through 5 and lines 6 through 19. Don't include amounts on line 5a in this total | | |
| Liabilities | | Amount | |
| 21 | Installment obligations | | |
| 22 | Mortgages, etc. | | |
| 23 | Other liabilities. See instructions | | |
| 24 | Total liabilities. Add lines 21 through 23 | | |
| 25 | Net worth. Subtract line 24 from line 20, column (a) | | |

Form **8854** (2019)

Form 8854: MTM Exemptions

Section C | **Property Owned on Date of Expatriation**

Don't complete Section C if:

- Your average net income tax liability for the 5 tax years immediately before expatriation (see line 1 in Section A) wasn't more than \$168,000, your net worth (see line 2 in Section A) was under \$2 million, and you checked "Yes" on line 6 in Section A;
- In Section A, you checked "Yes" on lines 3, 4, and 6; or
- In Section A, you checked "Yes" on lines 5 and 6.

1a Do you have any **eligible deferred compensation items**? Checking the "Yes" box is an irrevocable waiver of any right to claim any reduction in withholding for such eligible def. **NOT subject to MTM** any treaty with the United States Yes No

b Do you have any **ineligible deferred compensation items**? If "Yes," you must include in income the present value of your account on the day before your expatriation date **NOT subject to MTM** Yes No

c Do you have any **specified tax deferred accounts**? If "Yes," you must include in income the entire account balance on the day before your expatriation date **NOT subject to MTM** Yes No

d Do you have an interest in a **nongrantor trust**? Checking the "Yes" box is a waiver of any right to claim any reduction in withholding on any distribution from such trust under any treaty with the United States unless you make the election below **NOT subject to MTM** Yes No

Check this box to elect under section 877A(f)(4)(B) to be treated as having received the value of your entire interest in the trust (as determined for purposes of section 877A) as of the day before your expatriation date. Attach a copy of your valuation letter ruling issued by the IRS. See instructions.

Form 8854: Deemed Sales

- Recognition of gain or loss on the deemed sale of **mark-to-market property**. **Caution: Don't include in column (a) any property described on line 1a, 1b, 1c, or 1d.**

Complete column (g) only if you are deferring tax on gain from any property listed in column (a).

| (a) Description of property | (b) Fair market value on day before date of expatriation | (c) Cost or other basis* | (d) Gain or (loss). Subtract (c) from (b) | (e) Gain after allocation of the exclusion amount (see instructions) | (f) Form or Schedule on which gain or loss is reported | (g) Amount of tax deferred (attach computations) |
|--|---|-----------------------------|--|---|---|---|
| | | | | | | |
| | | | | | | |
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| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 3 Total. Add the amounts in column (d) and column (e) | | | | | | |
| 4 Total tax deferred. Add the amounts in column (g). Enter here and on Part II, Section D, line 5 | | | | | | |

* You must identify as "(h)(2)" any property for which you are making the special basis election under section 877A(h)(2). This election is irrevocable. See the instructions for Part II, Section C, line 2, column (c).

Form 8854 (2019)

Attach computations

Go to Section D

Form 8854: Defer Payment

| Section D | Deferral of Tax |
|---|--|
| <p>Election to defer tax. You can defer tax only if you have provided adequate security. Adequate security is described in the instructions.</p> | |
| 1 | <p>Are you electing to defer tax under section 877A(b)? Checking the "Yes" box is an irrevocable waiver of any right under any treaty of the United States that would prevent assessment or collection of any tax imposed because of section 877A <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If you checked the "Yes" box, continue to line 2. Otherwise, don't complete lines 2 through 5.</p> |
| 2 | <p>Enter the total tax you would have reported, absent the deferral election, on Form 1040 or 1040-SR, line 15, for the part of the year including the day before the expatriation date absent the deferral election</p> |
| 3 | <p>Enter the total tax for the same part of the tax year determined without regard to the amounts attributable to section 877A(a). Attach computation</p> |
| 4 | <p>Subtract line 3 from line 2. This is the amount of tax eligible for deferral</p> |
| 5 | <p>Enter the total tax deferred from Part II, Section C, line 4, column (g)</p> |
| | <ul style="list-style-type: none"> If you are filing Form 1040 or 1040-SR, enter this amount in brackets to the left of the entry space for line 15. Identify as "EXP." If you are filing Form 1040-NR, enter this amount in brackets to the left of the entry space for line 61. Identify as "EXP." |

Attach TWO Forms 1040

Form 8854: Prior-year Deferrals

Part III Annual Expatriation Statement for Persons Who Expatriated Before 2019

- If you made an election to defer the payment of tax, complete line 1.
- If you have an item of eligible deferred compensation, complete line 2.
- If you have an interest in a nongrantor trust, complete line 3.

1 Complete columns (a), (b), and (c) for all property on which you deferred tax on a prior year Form 8854. Complete column (d) for any property you disposed of in 2019 and see the instructions for Part III.

| (a) Description of property | (b) Amount of mark-to-market gain or (loss) reported on prior year Form 8854 | (c) Amount of tax deferred on prior year Form 8854 | (d) Date of disposition (if any) |
|--------------------------------|---|---|-------------------------------------|
| | | | |
| | | | |

Form 8854 (2019)

Page **5**

Part III Annual Expatriation Statement for Persons Who Expatriated Before 2019 (continued)

2 Did you receive any distributions of eligible deferred compensation items for 2019? Yes No
If "Yes," enter the amount of distribution(s) and amount withheld at source, if any, below.

| | Amount of distribution | Amount withheld at source, if any |
|----------|------------------------|-----------------------------------|
| 1 | | |
| 2 | | |
| 3 | | |

3 Did you receive any distributions from a nongrantor trust for 2019? Yes No
If "Yes," enter the amount of distribution(s) and amount withheld at source, if any, below.

| | Amount of distribution | Amount withheld at source, if any |
|----------|------------------------|-----------------------------------|
| 1 | | |
| 2 | | |
| 3 | | |



Polling Question # 7

Form 8854 must be filed at the time of expatriation and annually thereafter if:

- A. Payment of the Exit Tax was deferred.
- B. A deferred compensation item is reported.

- A only
- B only
- Both A and B





The Goal: Stay Uncovered!

- Reduce taxable income below threshold
 - File MFS since average annual income threshold is not based on filing status [**BEWARE:** Community property rules; cannot amend from MFJ to MFS]
- Reduce net worth below \$2 million
 - Spousal gift prior to expat date [**BEWARE:** gift to non-citizen spouse limited to \$164K (in 2022)]
 - Convert direct ownership assets to indirect via trust arrangement [**BEWARE:** *Form 3520-A* filings may be req'd]
 - Use family limited partnership to reduce asset valuation for minority interest, loss of control & illiquidity [**BEWARE:** IRS may disqualify “tax avoidance” strategies]
- Submit or amend prior-year returns to become compliant
 - **BEWARE:** cost & risk of compliance > cost of exit tax

Relief Procedures for Certain Former Citizens

- Available to expatriates who have or will renounce after 3/18/10
 - Accidental Americans: Citizens by birth but live abroad & unaware of status
- Eligible if:
 - Non-compliance not willful
 - Net worth < \$2 million
 - Must be > age 18
 - No *Form 1040-NR* previously filed
- Must file all outstanding returns, incl. 1040, 8938 & 709 [no e-file]
 - Should file *FinCEN 114* [no penalties if submitted with prior-year returns]
 - No SSN (or ITIN) required



\$0 due if aggregate tax < \$25K





Looking around: States

- Tax residency depends on physical presence or intent
 - Resident: Present in-state for non-transitory purpose
 - Domicile: Intended permanent home to which taxpayer will return
- California uses facts & circumstances, including
 - Time spent in/out of state
 - Personal, financial & social ties
- Massachusetts requires that the taxpayer does not intend to return
 - Former MA resident moved permanently to FL & obtained new FL driver's license
 - MA deemed her to be “resident” in MA b/c she did not notify MA of new FL license

State tax residency ≠ Federal tax residency

Looking around: Countries



- South Africa
 - Imposes MTM-like tax when taxpayer moves out
 - 40% of gain on deemed sale is taxed at taxpayer's marginal rate
- Japan
 - High net worth taxpayers (> \$800K) taxed on deemed sales of investments, gifts & inheritances if moving out
 - Japanese nationals, spouses & long-term residents are subject to tax (15.3%)
- Ireland
 - Companies that migrate or transfer assets offshore subject to tax (12.5%)
 - Tax increased to 33% if anti-avoidance penalties assessed

**Same type of tax but US is only country
that assesses tax for giving up *citizenship* not residency**



Polling Question # 8

Strategies to mitigate or avoid the Expatriation Tax include all but:

- Reducing average annual income below the threshold amount applicable in the year of citizenship renunciation.
- Maintaining a net worth less than \$2 million.
- Not applying for a Green Card or remaining in the US for more than 183 days.
- Being a lawful resident of the US for more than 8 years.

You can't make me leave!

- Citizenship identifies an individual from birth
- Americans, in particular, are overtly patriotic



- Citizenship-based taxation
 - Most citizens are unaware
 - Others accept taxation as the cost of citizenship
 - Few wish to change status quo

Maybe you can?

- Foreign life insurance policies
 - Purchased by US citizens abroad from foreign carriers
 - Are treated as “investments” (not life insurance) by IRS
- Tax reporting required:
 - *Form 1040*: Accrued income is taxed annually, even if undistributed
 - *Form 8621*: Subject to tax (at highest bracket) on excess distributions if invested in mutual funds or other pooled assets
 - *Form 720*: US citizens/residents subject to excise tax (1 – 4%) on premiums paid
 - *Form 8938*: Life insurance with cash values are “foreign specified assets”
 - *FinCEN 114*: foreign policies are subject to FBAR regime
- IRS estimates 55 hrs to complete all requisite forms (not incl. 1040)



A tropical beach scene with palm trees in the foreground, a rocky shore, and a clear blue ocean under a bright sky. The text is overlaid on the right side of the image.

Banana Republics

Jimmy Buffett
(Steve Goodman)

Down to the Banana Republics
Down to the tropical sun
Go the expatriated Americans
Hopin' to find some fun

Some of them go for the sailing
Brought by the lure of the sea
Tryin' to find what is ailing
Living in the land of the free
Some of them are running to lovers
Leaving no forward address
Some of them are running tons of ganja
Some are running from the IRS

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