

wage limitation is 50 percent of those wages which are deducted in arriving at qualified production activities income.

In addition, the conference agreement repeals the special limitation on wages treated as allocated to partners or shareholders of passthrough entities. Accordingly, for purposes of the wage limitation, a shareholder, partner, or similar person who is allocated components of qualified production activities income from a pass-through entity is treated as having been allocated wages from such entity in an amount that is equal to such person's allocable share of wages as determined under regulations prescribed by the Secretary, even if such amount is more than twice the qualified production activities income that actually is allocated to such person for the taxable year. The shareholder, partner, or similar person will then include in its wage limitation only those wages which are deducted in arriving at qualified production activities income.

Effective date.—The conference agreement is effective with respect to taxable years beginning after the date of enactment.

E. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD

(Sec. 911 of the Code)

PRESENT LAW

In general

U.S. citizens generally are subject to U.S. income tax on all their income, whether derived in the United States or elsewhere. A U.S. citizen who earns income in a foreign country also may be taxed on that income by the foreign country. The United States generally cedes the primary right to tax a U.S. citizen's non-U.S. source income to the foreign country in which the income is derived. This concession is effected by the allowance of a credit against the U.S. income tax imposed on foreign-source income for foreign taxes paid on that income. The amount of the credit for foreign income tax paid on foreign-source income generally is limited to the amount of U.S. tax otherwise owed on that income. Accordingly, if the amount of foreign tax paid on foreign-source income is less than the amount of U.S. tax owed on that income, a foreign tax credit generally is allowed in an amount not exceeding the amount of the foreign tax, and a residual U.S. tax liability remains.

A U.S. citizen or resident living abroad may be eligible to exclude from U.S. taxable income certain foreign earned income and foreign housing costs.⁵⁵² This exclusion applies regardless of whether any foreign tax is paid on the foreign earned income or housing costs. To qualify for these exclusions, an individual (a "qualified individual") must have his or her tax home in a foreign country and must be either (1) a U.S. citizen⁵⁵³ who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (2) a U.S. citizen or

⁵⁵² Sec. 911.

⁵⁵³ Generally, only U.S. citizens may qualify under the bona fide residence test. A U.S. resident alien who is a citizen of a country with which the United States has a tax treaty may, however, qualify for the section 911 exclusions under the bona fide residence test by application of a nondiscrimination provision of the treaty.

resident present in a foreign country or countries for at least 330 full days in any 12-consecutive-month period.

Exclusion for compensation

The foreign earned income exclusion generally is available for a qualified individual's non-U.S. source earned income attributable to personal services performed by that individual during the period of foreign residence or presence described above. The maximum exclusion amount for any calendar year is \$80,000 in 2002 through 2007 and is indexed for inflation after 2007.

Exclusion for housing costs

A qualified individual is allowed an exclusion from gross income (or, as described below, a deduction) for certain foreign housing costs paid or incurred by or on behalf of the individual. The amount of this housing cost exclusion is equal to the excess of a taxpayer's "housing expenses" over a base housing amount. The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year for a taxpayer's housing (and, if they live with the taxpayer, for the housing of the taxpayer's spouse and dependents) in a foreign country. The term includes expenses attributable to housing such as utilities and insurance, but it does not include separately deductible interest and taxes. If the taxpayer maintains a second household outside the United States for a spouse or dependents who do not reside with the taxpayer because of dangerous, unhealthful, or otherwise adverse living conditions, the housing expenses of the second household also are eligible for exclusion. The base housing amount above which costs are eligible for exclusion in a taxable year is 16 percent of the annual salary (computed on a daily basis) of a grade GS-14, step 1, U.S. government employee, multiplied by the number of days of foreign residence or presence (as described above) in the taxable year. For 2006 this salary is \$77,793; the current base housing amount therefore is \$12,447 (assuming the taxpayer is a bona fide resident of or is present in a foreign country every day during the year).

To the extent otherwise excludable housing costs are not paid or reimbursed by a taxpayer's employer, these costs generally are allowed as a deduction in computing adjusted gross income.

Exclusion limitation amounts

The combined foreign earned income exclusion and housing cost exclusion (including the amount of any deductible housing costs) may not exceed the taxpayer's total foreign earned income for the taxable year. The taxpayer's foreign tax credit is reduced by the amount of the credit that is attributable to excluded income.

Tax brackets

A taxpayer with excludable income under section 911 is subject to tax on the taxpayer's other income, after deductions, starting in the lowest tax rate bracket.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Exclusion for compensation

The conference agreement provision adjusts for inflation the maximum amount of the foreign earned income exclusion in taxable years beginning in calendar years after 2005 (rather than, as under present law, after 2007). The limitation in 2006 therefore is \$82,400.⁵⁵⁴

Exclusion for housing costs

Under the conference agreement, the base housing amount used in calculating the foreign housing cost exclusion in a taxable year is 16 percent of the amount (computed on a daily basis) of the foreign earned income exclusion limitation (instead of the present law 16 percent of the grade GS-14, step 1 amount), multiplied by the number of days of foreign residence or presence (as previously described) in that year.

Reasonable foreign housing expenses in excess of the base housing amount remain excluded from gross income (or, if paid by the taxpayer, are deductible) under the conference agreement, but the amount of the exclusion is limited to 30 percent of the maximum amount of a taxpayer's foreign earned income exclusion.⁵⁵⁵ The Secretary is given authority to issue regulations or other guidance providing for the adjustment of this 30-percent housing cost limitation based on geographic differences in housing costs relative to housing costs in the United States. The conferees intend that the Secretary be permitted to use publicly available data, such as the Quarterly Report Indexes published by the U.S. Department of State or any other information deemed reliable by the Secretary, in making adjustments. The conferees also intend that the Secretary may adjust the 30-percent amount upward or downward. The conferees intend that the Secretary make adjustments annually.

Under the 30-percent rule described above, the maximum amount of the foreign housing cost exclusion in 2006 is (assuming foreign residence or presence on all days in the year) \$11,536 (= (\$82,400 × 30 percent) – (\$82,400 × 16 percent)).⁵⁵⁶

Tax brackets

Under the conference agreement, if an individual excludes an amount from income under section 911, any income in excess of the exclusion amount determined under section 911 is taxed (under the regular tax and alternative minimum tax) by applying to that in-

⁵⁵⁴This \$82,400 amount is calculated under section 911(b)(2)(D)(ii), as amended by the conference agreement provision, using current U.S. Bureau of Labor Statistics ("BLS") Consumer Price Index data.

⁵⁵⁵In certain programs including grant-making to subsidize rents, the U.S. Department of Housing and Urban Development considers maximum affordable housing costs to be 30 percent of a household's income. See, e.g., United States Housing Act of 1937, 42 U.S.C. sec. 1437a (a)(1)(A), as amended.

⁵⁵⁶The \$11,536 amount is based on a calculation under section 911(b)(2)(D)(ii), as amended by the conference agreement, using the BLS data described above.

come the tax rates that would have been applicable had the individual not elected the section 911 exclusion. For example, an individual with \$80,000 of foreign earned income that is excluded under section 911 and with \$20,000 in other taxable income (after deductions) would be subject to tax on that \$20,000 at the rate or rates applicable to taxable income in the range of \$80,000 to \$100,000.

Effective date

The conference agreement provision is effective for taxable years beginning after December 31, 2005.

TITLE IX—CORPORATE ESTIMATED TAX PROVISIONS

PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

In case of a corporation with assets of at least \$1 billion, payments due in July, August, and September, 2006, shall be increased to 105 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

With respect to corporate estimated tax payments due on September 15, 2010, 20.5 percent shall not be due until October 1, 2010.

With respect to corporate estimated tax payments due on September 15, 2011, 27.5 percent shall not be due until October 1, 2011.

Effective date.—The provision is effective on the date of enactment.

TITLE X—COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue