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REVENUE ADMINISTRATIVE BULLETIN 2002-5

Approved: March 28, 2002

INDIVIDUAL INCOME TAX - MICHIGAN RESIDENTS WORKING ABROAD

(Replaces Revenue Administrative Bulletin 1990-6)

RAB 2002-5. This Revenue Administrative Bulletin (RAB) explains the Michigan income tax treatment of Michigan residents engaged in foreign employment.

Federal Treatment

Internal Revenue Code (IRC) § 911(a) gives a qualified individual an election to exclude foreign earned income and housing cost amounts from gross income for the taxable year within the applicable limitations. All other sources of income subject to federal income tax are not affected by this provision. IRC § 911(d)(1) defines "qualified individual" as an individual whose tax home is in a foreign country and is:

1. A citizen of the United States (U. S.) and establishes bona fide residency in a foreign country for an uninterrupted period which includes an entire taxable year, or
2. A citizen or resident of the U. S. and who is physically present in a foreign country or countries for at least 330 full days during any 12 consecutive months.

Michigan Treatment

Under the Michigan Income Tax Act (ITA), an individual domiciled in this state is subject to a tax upon all taxable income from any source whatsoever, except that attributable to another state, under provisions of Sections 111 to 115 of the ITA and subject to credit provisions of Section 255 of the ITA. [MCL 206.110]

Under the provisions of IRC § 911, a qualified individual may make an election to exclude from his or her gross income reportable to the U. S.:

1. "Foreign earned income of such individual" as that term is defined in the IRC, and/or
2. "Housing cost amount of such individual" as that term is defined by the IRC.

An individual does not lose his or her domicile by simply qualifying for the IRC § 911 election. The taxable income of an individual domiciled in Michigan will not include any of those sums which he or she as a qualified individual has elected under IRC § 911 to exclude from gross income. Such individual must, however, report and pay the income tax levied by the State of Michigan upon all other taxable income from any source whatsoever.

An individual who expects to meet IRC § 911 and is a resident of Michigan must file an income tax return as a resident unless he or she can prove domicile in another state or jurisdiction. For Michigan income tax purposes, a resident is a person domiciled in this state. "Domicile" means the fixed, permanent and principal home to which a person, wherever temporarily located, always intends to return. [MCL 206.18] A person may have several residences or dwelling places but only may have one domicile at a particular time. Domicile, once established, is not lost until there is a concurrence of all the following:

1. The specific intent to abandon the old domicile.
2. The intent to acquire a specific new domicile.
3. Actual physical presence in the new state of domicile.

The issue of domicile is a factual one and will be decided on a case-by-case basis.