



The Embassy of the United States, London
Renunciation Packet

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RENUNCIATION OF U. S. CITIZENSHIP

U. S. citizens have the right to remain citizens until they intend to give up citizenship. It is also the right of every citizen to relinquish U. S. citizenship. Section 349(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1481) states:

“A person, who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing U. S. nationality:

Section 349(a)(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

Section 349(a)(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense.”

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U. S. citizenship. In order for a renunciation under Section 349(a)(5) to be effective, all of the conditions of the statute must be met. In other words, a person wishing to renounce American citizenship must appear in person at a U.S. Embassy or Consulate and sign an oath of renunciation before a consular or diplomatic officer. Renunciations which are not in the form prescribed by the Secretary of State have no legal effect. Because of the way in which Section 349(a)(5) is written and interpreted, Americans cannot effectively renounce their citizenship by mail, through an agent, or while in the United States.

Section 349(a)(6) provides for renunciation of U. S. citizenship under certain circumstances in the United States when the United States is in a state of war. Such a state does not currently exist. Questions concerning renunciation of American citizenship under Section 349(a)(6) should be addressed to the Attorney General.

Advice about Possible Loss of U.S. Citizenship and Dual Nationality

The Department of State is responsible for determining the citizenship status of a person located outside the United States or in connection with the application for a U.S. passport while in the United States.

POTENTIALLY EXPATRIATING ACTS

Section 349 of the Immigration and Nationality Act (8 U.S.C. 1481), as amended, states that U.S. citizens are subject to loss of citizenship if they perform certain *specified* acts *voluntarily* and *with the intention to relinquish* U.S. citizenship. Briefly stated, these acts include:

1. obtaining naturalization in a foreign state (Sec. 349 (a) (1) INA);
2. taking an oath, affirmation or other formal declaration to a foreign state or its political subdivisions (Sec. 349 (a) (2) INA);
3. entering or serving in the armed forces of a foreign state engaged in hostilities against the U.S. or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state (Sec. 349 (a) (3) INA);
4. accepting employment with a foreign government if (a) one has the nationality of that foreign state or (b) an oath or declaration of allegiance is required in accepting the position (Sec. 349 (a) (4) INA);
5. formally renouncing U.S. citizenship before a U.S. diplomatic or consular officer outside the United States (sec. 349 (a) (5) INA);
6. formally renouncing U.S. citizenship within the U.S. (but only under strict, narrow statutory conditions) (Sec. 349 (a) (6) INA);
7. conviction for an act of treason (Sec. 349 (a) (7) INA).

ADMINISTRATIVE STANDARD OF EVIDENCE

As already noted, the actions listed above can cause loss of U.S. citizenship only if performed voluntarily and with the intention of relinquishing U.S. citizenship. **The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they obtain naturalization in a foreign state, subscribe to a declaration of allegiance to a foreign state, serve in the armed forces of a foreign state not engaged in hostilities with the United States, or accept non-policy level employment with a foreign government.**

DISPOSITION OF CASES WHEN ADMINISTRATIVE PREMISE IS APPLICABLE

In light of the administrative premise discussed above, a person who:

1. is naturalized in a foreign country;
2. takes a routine oath of allegiance to a foreign state;
3. serves in the armed forces of a foreign state not engaged in hostilities with the United States, or
4. accepts non-policy level employment with a foreign government,

and in so doing wishes to retain U.S. citizenship need not submit prior to the commission of a potentially expatriating act a statement or evidence of his or her intent to retain U.S. citizenship since such an intent will be presumed.

When, as the result of an individual's inquiry or an individual's application for registration or a passport it comes to the attention of a U.S. consular officer that a U.S. citizen has performed an act made potentially expatriating by Sections 349(a)(1), 349(a)(2), 349(a)(3) or 349(a)(4) as described above, the consular officer will simply ask the applicant if there was intent to relinquish U.S. citizenship when performing the act. If the answer is no, the consular officer will certify that it was **not** the person's intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship.

PERSONS WHO WISH TO RELINQUISH U.S. CITIZENSHIP

If the answer to the question regarding intent to relinquish citizenship is **yes**, the person concerned will be asked to complete a questionnaire to ascertain his or her intent toward U.S. citizenship. When the questionnaire is completed and the voluntary relinquishment statement is signed by the expatriate, the consular officer will proceed to prepare a certificate of loss of nationality. The certificate will be forwarded to the Department of State for consideration and, if appropriate, approval.

An individual who has performed **any** of the acts made potentially expatriating by statute who wishes to lose U.S. citizenship may do so by affirming in writing to a U.S. consular officer that the act was performed with an intent to relinquish U.S. citizenship. Of course, a person always has the option of seeking to formally renounce U.S. citizenship abroad in accordance with Section 349 (a) (5) INA.

DISPOSITION OF CASES WHEN ADMINISTRATIVE PREMISE IS INAPPLICABLE

The premise that a person intends to retain U.S. citizenship is not applicable when the individual:

1. formally renounces U.S. citizenship before a consular officer;
2. serves in the armed forces of a foreign state engaged in hostilities with the United States;
3. takes a policy level position in a foreign state;
4. is convicted of treason; or
5. performs an act made potentially expatriating by statute accompanied by conduct which is so inconsistent with retention of U.S. citizenship that it compels a conclusion that the individual intended to relinquish U.S. citizenship. (Such cases are very rare.)

Cases in categories 2, 3, 4 and 5 will be developed carefully by U.S. consular officers to ascertain the individual's intent toward U.S. citizenship.

APPLICABILITY OF ADMINISTRATIVE PREMISE TO PAST CASES

The premise established by the administrative standard of evidence is applicable to cases adjudicated previously. Persons who previously lost U.S. citizenship may wish to have their cases reconsidered in light of this policy.

A person may initiate such a reconsideration by submitting a request to the nearest U.S. consular office or by writing directly to:

Express Mail:

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
4th Floor
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Regular Mail

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-29, 4th Floor
Washington, D.C. 20520

Phone: 202-736-9110

Fax: 202-736-9111

Email: ASKPRI@state.gov

Each case will be reviewed on its own merits taking into consideration, for example, statements made by the person at the time of the potentially expatriating act.

LOSS OF NATIONALITY AND TAXATION

P.L. 104-191 contains changes in the taxation of U.S. citizens who renounce or otherwise lose U.S. citizenship. In general, any person who lost U.S. citizenship within 10 years immediately preceding the close of the taxable year, whose principle purpose in losing citizenship was to avoid taxation, will be subject to continued taxation.

See ...

- Internal Revenue Service Instructions for Completion of Form 8854
- Internal Revenue Service Guidance on Expatriation Reporting Requirements
- Internal Revenue Service Expatriation Tax

Copies of approved Certificates of Loss of Nationality are provided by the Department of State to the Internal Revenue Service pursuant to P.L. 104-191. Questions regarding United States taxation consequences upon loss of U.S. nationality should be addressed to the U.S. Internal Revenue Service.

DUAL NATIONALITY

Dual nationality can occur as the result of a variety of circumstances. The automatic acquisition or retention of a foreign nationality, acquired, for example, by birth in a foreign country or through an alien parent, does not affect U.S. citizenship. It is prudent, however, to check with authorities of the other country to see if dual nationality is permissible under local law. Dual nationality can also occur when a person is naturalized in a foreign state without intending to relinquish U.S. nationality and is thereafter found not to have lost U.S. citizenship: the individual consequently may possess dual nationality. While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. Government also recognizes the problems which it may cause. Claims of other countries upon dual-national U.S. citizens often place them in situations where their obligations to one country are in conflict with the laws of the other. In addition, their dual nationality may hamper efforts to provide U.S. diplomatic and consular protection to them when they are abroad.

ADDITIONAL INFORMATION

See also information flyers on related subject available via the Department of State, Bureau of Consular Affairs home page on the internet at <http://travel.state.gov>. **These flyers include:**

- Dual Nationality
- Advice About Possible Loss of U.S. Citizenship and Seeking Public Office in a Foreign State
- Advice About Possible Loss of U.S. Citizenship and Foreign Military Service
- Renunciation of United States Citizenship
- Renunciation of U.S. Citizenship by Persons Claiming a Right of Residence in the United States

Renunciation of U.S. Citizenship

A. THE IMMIGRATION & NATIONALITY ACT

Section 349(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1481(a)(5)) is the section of law that governs the ability of a United States citizen to renounce his or her U.S. citizenship. That section of law provides for the loss of nationality by voluntarily performing the following act with the intent to relinquish his or her U.S. nationality:

"(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States *in a foreign state* , in such form as may be prescribed by the Secretary of State" (emphasis added).

B. ELEMENTS OF RENUNCIATION

A person wishing to renounce his or her U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship:

1. appear in person before a U.S. consular or diplomatic officer,
2. in a foreign country (normally at a U.S. Embassy or Consulate); and
3. sign an oath of renunciation

Renunciations that do not meet the conditions described above have no legal effect. Because of the provisions of section 349(a)(5), Americans cannot effectively renounce their citizenship by mail, through an agent, or while in the United States. In fact, U.S. courts have held certain attempts to renounce U.S. citizenship to be ineffective on a variety of grounds, as discussed below.

C. REQUIREMENT - RENOUNCE ALL RIGHTS AND PRIVILEGES

In the case of *Colon v. U.S. Department of State* , 2 F.Supp.2d 43 (1998), plaintiff was a United States citizen and resident of Puerto Rico, who executed an oath of renunciation before a consular officer at the U.S. Embassy in Santo Domingo. The U.S. District Court for the District of Columbia rejected Colon's petition for a writ of mandamus directing the Secretary of State to approve a Certificate of Loss of Nationality in the case because the plaintiff wanted to retain one of the primary benefits of U.S. citizenship while claiming he was not a U.S. citizen. The Court described the plaintiff as a person, "claiming to renounce all rights and privileges of United States citizenship, [while] Plaintiff wants to continue to exercise one of the fundamental rights of citizenship, namely to travel freely throughout the world and when he wants to, return and reside in the United States." See also *Jose Fufi Santori v. United States of America*, 1994 U.S. App. LEXIS 16299 (1994) for a similar case.

A person who wants to renounce U.S. citizenship cannot decide to retain some of the privileges of citizenship, as this would be logically inconsistent with the concept of renunciation. Thus, such a person can be said to lack a full understanding of renouncing citizenship and/or lack the necessary intent to renounce citizenship, and the Department of State will not approve a loss of citizenship in such instances.

D. DUAL NATIONALITY / STATELESSNESS

Persons intending to renounce U.S. citizenship should be aware that, unless they already possess a foreign nationality, they may be rendered stateless and, thus, lack the protection of any government. They may also have difficulty traveling as they may not be entitled to a passport from any country. Even if they were not stateless, they would still be required to obtain a visa to travel to the United States, or show that they are eligible for admission pursuant to the terms of the Visa Waiver Pilot Program (VWPP). If found ineligible for a visa or the VWPP to come to the U.S. a renunciant, under certain circumstances, could be barred from entering the United States. Nonetheless, renunciation of U.S. citizenship may not prevent a foreign country from deporting that individual back to the United States in some non-citizen status.

E. TAX & MILITARY OBLIGATIONS /NO ESCAPE FROM PROSECUTION

Also, persons who wish to renounce U.S. citizenship should also be aware that the fact that a person has renounced U.S. citizenship may have no effect whatsoever on his or her U.S. tax or military service obligations (contact the Internal Revenue Service or U.S. Selective Service for more information). In addition, the act of renouncing U.S. citizenship will not allow persons to avoid possible prosecution for crimes which they may have committed in the United States, or escape the repayment of financial obligations previously incurred in the United States or incurred as United States citizens abroad.

F. RENUNCIATION FOR MINOR CHILDREN

Parents cannot renounce U.S. citizenship on behalf of their minor children. Before an oath of renunciation will be administered under Section 349(a)(5) of the INA, a person under the age of eighteen must convince a U.S. diplomatic or consular officer that he/she fully understands the nature and consequences of the oath of renunciation, is not subject to duress or undue influence, and is voluntarily seeking to renounce his/her U.S. citizenship.

G. IRREVOCABILITY OF RENUNCIATION

Finally, those contemplating a renunciation of U.S. citizenship should understand that the act is irrevocable, except as provided in section 351 of the INA (8 U.S.C. 1483), and cannot be canceled or set aside absent successful administrative or judicial appeal. (Section 351(b) of the INA provides that an applicant who renounced his or her U.S. citizenship before the age of eighteen can have that citizenship reinstated if he or she makes that desire known to the Department of State within six months after attaining the age of eighteen. See also Title 22, Code of Federal Regulations, section 50.20).

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U.S. citizenship. Please consider the effects of renouncing U.S. citizenship, described above, before taking this serious and irrevocable action. If you have any further questions regarding this matter, please contact:

Express Mail:

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
4th Floor
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Regular Mail

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-29, 4th Floor
Washington, D.C. 20520

Phone: 202-736-9110

Fax: 202-736-9111

Email: ASKPRI@state.gov

Renunciation of U.S. Citizenship by Persons Claiming a Right of Residence in the U.S.

Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481) governs how a U.S. citizen shall lose U.S. nationality. Section 349(a) states:

A person who is a national of the United States whether, by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality:

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense.

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U.S. citizenship. Those contemplating a renunciation of U.S. citizenship should understand that renunciation is irrevocable, except as provided in Section 351 of the Immigration and Nationality Act, and cannot be cancelled or set aside absent successful administrative or judicial appeal. Put another way, renunciation cannot be “taken back”, and it does not merely “suspend” citizenship but irrevocably renounces citizenship. Consequently, renunciation of U.S. citizenship is not a step to be taken lightly. Because renunciation is a serious matter to be undertaken soberly and advisedly, persons contemplating renunciation are advised by U.S. consular officers to consider the matter carefully and, if they chose to proceed, to come back to the U.S. embassy or consulate after a period of reflection.

In accordance with Section 358 of the Immigration and Nationality Act, while persons seeking to renounce U.S. citizenship submit the necessary documentation to a U.S. consular officer at a U.S. Foreign Service post abroad, the decision whether to approve the renunciation is made by the Department of State in Washington, D.C. Accordingly, unless and until a certificate of loss of nationality is approved by the U.S. Department of State, the oath of renunciation, even though signed by the individual is not/not legally effective in terminating the person's U.S. citizenship.

In order for a renunciation under Section 349(a)(5) to be effective, all of the conditions of the statute must be met. In other words, a person wishing to renounce American citizenship must appear in person and sign an oath of renunciation before a U.S. consular or diplomatic officer abroad, generally at an American Embassy or Consulate. Moreover, Section 349(b) of the Act provides that:

Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this of any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

In addition, please be aware that:

The U.S. Department of State has concluded that the intention to relinquish U.S. nationality required for purposes of finding loss of nationality under Section 349(a) of the INA does not exist where a renunciant plans or claims a right to continue to reside in the United States, unless the renunciant demonstrates that residence will be as an alien documented properly under U.S. law.

Renunciations which are not in the form prescribed by the Secretary of State have no legal effect. Because of the way in which Section 349(a)(5) is written and interpreted, Americans cannot effectively renounce their citizenship by mail, through an agent or parent, or while in the United States. Section 349(a)(6) provides for renunciation of United States citizenship under certain narrow circumstances in the United States strictly defined by statute. Questions concerning renunciation of American citizenship under Section 349(a)(6) should be addressed to the Attorney General or the Department of Homeland Security.

Persons who contemplate renunciation of U.S. nationality should be aware that, unless they already possess a foreign nationality or are assured of acquiring another nationality shortly after completing their renunciation, severe hardship to them could result. In the absence of a second nationality, those individuals would become stateless. As stateless persons, they would not be entitled to the protection of any government. They might also find it difficult or impossible to travel as they would probably not be entitled to a passport from any country. Further, a person who has renounced U.S. nationality will be required to apply for a visa to travel to the United States, just as other aliens do. If found ineligible for a visa, a renunciant could be barred from the United States. Renunciation of American citizenship does not necessarily prevent a former citizen's deportation from a foreign country to the United States as an alien.

Persons considering renunciation should also be aware that the fact that they have renounced U.S. nationality may have no effect whatsoever on their U.S. tax or military service obligations. Nor will it allow them to escape possible prosecution for crimes which they may have committed in the United States, or repayment of financial obligations previously incurred in the United States or incurred as a United States citizen abroad. Questions about these matters should be directed to the government agency concerned. Those persons who, after careful consideration of the contents of this letter and its enclosures, desire to renounce U.S. citizenship may contact the U.S. embassy to make an appointment, bearing in mind that they will be asked to demonstrate proof of foreign residence, or failing that, evidence that they intend to enter the United States as an alien with documentation to that effect. Moreover, a person in possession of a U.S. passport will be asked to submit that passport to the U.S. consular officer for cancellation. If the certificate of loss of nationality is approved by the U.S. Department of State, the individual's name will be entered in the Department's name check system and they will be ineligible for U.S. passports in the future.

As previously stated, **persons contemplating renunciation of U.S. citizenship are reminded that renunciation is irrevocable, except as provided in Section 351 of the Immigration and Nationality Act (8 U.S.C. 1483), and cannot be cancelled or set aside absent successful administrative or judicial appeal.**

If you have any questions, contact a U.S. consular officer at the U.S. embassy or the Department of State (CA/OCS/PRI) at:

Express Mail:

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
4th Floor
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Regular Mail

Director
Overseas Citizens Services, Office of Legal Affairs (CA/OCS/L)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-29, 4th Floor
Washington, D.C. 20520

Phone: 202-736-9110

Fax: 202-736-9111

Email: ASKPRI@state.gov



U. S. Department of State
Bureau of Consular Affairs

**STATEMENT OF UNDERSTANDING CONCERNING THE CONSEQUENCES AND
RAMIFICATIONS OF RENUNCIATION OR RELINQUISHMENT OF U.S. NATIONALITY**

I, _____, understand that:

1. I have the right to renounce/relinquish my United States nationality.
2. I have the intention of relinquishing my United States nationality.
3. I am exercising my right of renunciation/relinquishment freely and voluntarily without force, compulsion or undue influence placed upon me by any person.
4. Upon renouncing/relinquishing my U.S. nationality, I will become an alien with respect to the United States, subject to all laws and procedures of the United States regarding entry and control of aliens.
5. If I do not possess the nationality/citizenship of any country other than the United States, upon my renunciation/relinquishment I will become a stateless person and may face extreme difficulties traveling internationally and entering most countries and maintaining a place to reside.
6. If I am found to be deportable by a foreign country, my renunciation/relinquishment may not prevent my involuntary return to the United States.
7. My renunciation/relinquishment may not affect my military or selective service status, if any. I understand that any problems in this area must be resolved with the appropriate agencies.
8. My renunciation/relinquishment may not affect my liability, if any, to prosecution for any crimes which I may have committed or may commit in the future which violate United States law.
9. My renunciation/relinquishment may not affect my liability for extradition to the United States.
10. My renunciation/relinquishment may not exempt me from United States income taxation. With regard to United States taxation consequences, I understand that I must contact the United States Internal Revenue Service. Further, I understand that if my renunciation of United States nationality is determined by the United States Attorney General to be motivated by tax avoidance purposes, I will be found excludable from the United States under Immigration and Nationality Act, as amended.
11. Upon renouncing/relinquishing my U.S. nationality, I will no longer be able to transmit U.S. nationality to my children born subsequent to this act.
12. The extremely serious and irrevocable nature of the act of renunciation/relinquishment has been explained to me by the (Vice) consul _____ at the American Embassy/Consulate General at _____. I fully understand its consequences.

I: do do not choose to make a separate written explanation of my reasons for renouncing/relinquishing my United States nationality. I: swear affirm that I have: read had read to me this statement in the _____ language and fully understand its contents.

Name (Typed) _____

Signature _____

CONSULAR OFFICER'S ATTESTATION

_____ appeared personally and: read had read to him/her
this statement after my explanation of its meaning and the consequences of renunciation/relinquishment of United States
nationality and signed this statement: under oath by affirmation before me this _____ day of

(Month) (Year)

SEAL

Consul of the United States of America



U. S. Department of State

BUREAU OF CONSULAR AFFAIRS

OATH/AFFIRMATION OF RENUNCIATION OF NATIONALITY OF UNITED STATES

_____ at _____ (Embassy/Consulate) _____ ss: _____ (Country)

I, _____ Name (Print Full Name), a national of the United States, solemnly swear/affirm that I was born at _____ (City or Town) _____ (Province or County), _____ (State or Country), on _____ Date (mm-dd-yyyy)

That I formerly resided in the United States at:

_____ (Street Address) _____ (City, State and ZIP Code)

That I am a national of the United States by virtue of:

- [] Birth in United States or Abroad to U.S. Parent(s)
[] Naturalization Date of Naturalization _____ Date (mm-dd-yyyy)

(If naturalized, give the name and place of the court in the United States before which naturalization was granted.)

_____ (Name of Court) _____ (Street Address) _____ (City, State and ZIP Code)

I desire and hereby make a formal renunciation of my U.S. nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act of 1952, as amended, and pursuant thereto, I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.

_____ (Signature)

Subscribed and sworn/affirmed to before me this _____ day of _____

at the _____ (Embassy/Consulate) _____ (Place)

_____ (Signature of Officer)

_____ (Typed Name of Officer)

_____ (Title of Officer)

SEAL

Note: A renunciation of United States nationality/citizenship is effective only upon approval by the U.S. Department of State but, when approved, the loss of nationality/citizenship occurs as of the date the above Oath/Affirmation was taken.

Expatriation Tax

Please refer to the IRS website for up-to-day information:

<http://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax>

The expatriation tax provisions under Internal Revenue Code (IRC) sections 877 and 877A apply to US citizens who have renounced their citizenship and long-term residents (as defined in IRC 877(e)) who have ended their US resident status for federal tax purposes. Different rules apply according to the date upon which you expatriated.

- [Expatriation on or after June 16, 2008](#)
- [Expatriation after June 3, 2004 and before June 16, 2008](#)
- [Expatriation on or before June 3, 2004](#)
- [What to do if you haven't filed a Form 8854](#)
- [What to do if you haven't filed an Income Tax Return](#)
- [Significant Penalty Imposed for Not Filing Expatriation Form](#)

Expatriation on or after June 16, 2008

If you expatriated after June 16, 2008, the new IRC 877A expatriation rules apply to you if any of the following statements apply.

- Your average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than a specified amount that is adjusted for inflation (\$145,000 for 2009 and 2010, \$147,000 for 2011, and \$151,000 for 2012).
- Your net worth is \$2 million or more on the date of your expatriation or termination of residency.
- You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.

IRC 877A(g)(4) provides that a citizen will be treated as relinquishing his or her U.S. citizenship on the earliest of four possible dates: (1) the date the individual renounces his or her U.S. nationality before a diplomatic or consular officer of the U.S., provided the renunciation is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the U.S. Department of State; (2) the date the individual furnishes to the U.S. Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)), provided the voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the U.S. Department of State; (3) the date the U.S. Department of State issues to the individual a certificate of loss of nationality; or (4) the date a U.S. court cancels a naturalized citizen's certificate of naturalization.

For long-term residents, per IRC 7701(b)(6), as amended, a long-term resident ceases to be a lawful permanent resident if (A) the individual's status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration laws has been revoked or has been administratively or judicially determined to have been abandoned, or if (B) the individual (1) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, (2) does not waive the benefits of the treaty applicable to residents of the foreign country, and (3) notifies the IRS of such treatment on Forms 8833 and 8854.

IRC 877A imposes a mark-to-market regime, which generally means that all property of a covered expatriate is deemed sold for its fair market value on the day before the expatriation date. IRC 887A further provides that any gain arising from the deemed sale is taken into account for the taxable year of the deemed sale notwithstanding any other provisions of the Code. Any loss from the deemed sale is taken into account for the taxable year of the deemed sale to the extent otherwise provided in the Code, except that the wash sale rules of IRC 1091 do not apply.

Under IRC 877A(a)(3), the amount that would otherwise be includible in gross income by reason of the deemed sale rule is reduced (but not to below zero) by \$600,000, which amount is to be adjusted for inflation for calendar years after 2008 (the "exclusion amount"). For calendar year 2010, the exclusion amount as adjusted for inflation is \$627,000. For calendar year 2011, the exclusion amount is \$636,000. For calendar year 2012, the exclusion amount is \$651,000.

The amount of any gain or loss subsequently realized (i.e., pursuant to the disposition of the property) will be adjusted for gain and loss taken into account under the IRC 877A mark-to-market regime, without regard to the exclusion amount under IRC 877A(a)(3). Pursuant to IRC 877A(b), a taxpayer may elect to defer payment of tax attributable to property deemed sold.

For more detailed information regarding the IRC 877A mark-to-market regime, refer to [Notice 2009-85](#).

[Form 8854, Initial and Annual Expatriation Information Statement](#) (PDF), has been revised to permit individuals to meet the new notification and information reporting requirements. Revised Form 8854 and its [instructions](#) (PDF) also address how individuals should certify (in accordance with the new law) that they have met their federal tax obligations for the five preceding taxable years and what constitutes notification to the Department of State or the Department of Homeland Security.

Note. If you expatriated before June 17, 2008, the expatriation rules in effect at that time continue to apply. See chapter 4 in [Publication 519, U.S. Tax Guide for Aliens](#), for more information.

Expatriation after June 3, 2004 and before June 16, 2008

The American Jobs Creation Act (AJCA) of 2004 amends IRC section 877, which provides for an alternative tax regime for certain, expatriated individuals. Amended IRC 877 eliminates the tax avoidance criteria for imposition of the expatriation tax on certain types of income for 10 years following expatriation, and creates objective criteria to impose the tax on individuals with an average income tax liability for the 5 prior years of \$127,000 for tax year 2005 (\$131,000 for 2006; \$136,000 for 2007; \$139,000 for 2008) or a net worth of \$2,000,000 on the date of expatriation. In addition, it requires individuals to certify to the IRS that they have satisfied all federal tax requirements for the 5 years prior to expatriation and requires annual information reporting for each taxable year during which an individual is subject to the rules of IRC 877.

Further, expatriated individuals will be subject to U.S. tax on their worldwide income for any of the 10 years following expatriation in which they are present in the U.S. for more than 30 days, or 60 days in the case of individuals working in the U.S. for an unrelated employer.

Finally, even if they do not meet the monetary thresholds for imposition of the IRC 877 expatriation tax, the new law (per IRC 7701(n)) provides that individuals will continue to be treated as U.S. citizens or long-term residents for U.S. tax purposes until they have notified the Secretary of the Department of State or of Homeland Security of expatriation or termination of residency. The implementation date of this provision is retroactive and applies to expatriations occurring after June 3, 2004. The expatriation is not effective until the notification and tax satisfaction certifications are filed with the IRS and the Department of State or of Homeland Security.

Expatriation on or before June 3, 2004

The expatriation tax provisions (prior to the AJCA amendments) apply to U.S. citizens who have renounced their citizenship and long-term residents who have ended their US residency for tax purposes, if one of the principal purposes of the action is the avoidance of U.S. taxes. You are presumed to have tax avoidance as a principle purpose if:

- Your average annual net income tax for the last 5 tax years ending before the date of the action is more than \$124,000, or
- Your net worth on the date of the action is \$622,000 or more.

If you meet either of the tests shown above, you may be eligible to request a ruling from the IRS that you did not expatriate to avoid U.S. taxes. You must request this ruling within one year from the date of expatriation. For information that must be included in your ruling request, see Section IV of Notice 97-19. If you receive this ruling, the expatriation tax provisions do not apply.

The expatriation tax applies to the 10-year period following the date of the expatriation action. Individuals that renounced their US citizenship and long-term residents that terminated their US residency for tax purposes on or before June 3, 2004 must file an initial Form 8854, Initial and Annual Expatriation Information Statement. For more detailed information refer to Expatriation Tax in [Publication 519, U.S. Tax Guide for Aliens](#).

- [Form 8854, Initial and Annual Expatriation Information Statement](#) (PDF)
- [Instructions for Form 8854](#) (PDF)
- [Notice 2005-36, Form 8854 and Expatriation Reporting Rules](#) (PDF)
- [Press Release IR-2005-49 \(issued 4/22/05\), IRS, Treasury Release Guidance on Expatriation Reporting Requirements](#)

What to do if you haven't filed a Form 8854

Individuals that renounced their US citizenship or terminated their long-term resident status for tax purposes on or before June 3, 2004 must file a Form 8854 to comply with the notification requirements under IRC 877 and 877A. For more detailed information refer to Expatriation Tax in [Publication 519, U.S. Tax Guide for Aliens](#).

Individuals that renounced their US citizenship or terminated their long-term resident status for tax purposes after June 3, 2004 must file a Form 8854 to effect the expatriation tax provisions under IRC 877. Furthermore, pursuant to IRC 7701(n), until such individuals both files a Form 8854 with the IRS and notifies either the Department of State or of Homeland Security of their expatriation or termination of long-term resident status for tax purposes, such individuals will continue to be treated as if they were still US citizens or residents for tax purposes.

Also, for individuals that expatriated after June 3, 2004, IRC 6039G requires annual information reporting for each taxable year during which such an individual is subject to the rules of IRC 877. The annual Form 8854 is due on the date that the individual's U.S. income tax return for the taxable year is due or would be due if such a return were required to be filed.

Form 8854, Initial and Annual Expatriation Information Statement, has been revised to permit individuals that expatriated after June 3, 2004 to meet the new notification and information reporting requirements under IRC 6039G.

For more detailed information on how, when and where to file Form 8854, refer to the Instructions for Form 8854.

What to do if you haven't filed an Income Tax Return

Among the various new requirements contained in IRC 877 and 877A, individuals that renounced their US citizenship or terminated their long-term resident status for tax purposes after June 3, 2004 are required to certify to the IRS that they have satisfied all federal tax requirements for the 5 years prior to expatriation. If all federal tax requirements have not been satisfied for the 5 years prior to expatriation, even if the individual does not meet the monetary thresholds in IRC 877 or 877A, the individual will be subject to the IRC 877 and 877A expatriation tax provisions.

Individuals that have expatriated should file all tax returns that are due, regardless of whether or not full payment can be made with the return. Depending on an individual's circumstances, a taxpayer filing late may qualify for a payment plan. All payment plans require continued compliance with all filing and payment responsibilities after the plan is approved.

For more detailed information on what to do if you have not filed your required federal income tax returns, refer to [Haven't Filed an Income Tax Return? Here's What to Do.](#)

Significant penalty imposed for not filing expatriation form

The Internal Revenue Service reminds practitioners that anyone who has expatriated or terminated his U.S. residency status must file [Initial and Annual Expatriation Information Statement">Form 8854, Initial and Annual Expatriation Information Statement](#) (PDF). Form 8854 must also be filed to comply with the annual information reporting requirements of Internal Revenue Code section 6039G, if the person is subject to tax under Section 877 of the Code. A \$10,000 penalty may be imposed for failure to file Form 8854 when required.

IRS is sending notices to expatriates that have not complied with the Form 8854 requirements, including the imposition of the \$10,000 penalty where appropriate.

The [Instructions for Form 8854](#) (PDF) provide details about the filing requirements, related definitions and line-by-line instructions for completing the form. Failure to file or not including all the information required by the form or including incorrect information could lead to a penalty.

References/Related Topics

- [U.S. Citizens and Resident Aliens Abroad](#)
- [Form 8854, Initial and Annual Expatriation Information Statement](#) (PDF)
- [Instructions for Form 8854](#) (PDF)

Note: This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the [Tax Code, Regulations, and Official Guidance](#) page. To access any Tax Court case opinions issued after September 24, 1995, visit the [Opinions Search](#) page of the United States Tax Court.

Page Last Reviewed or Updated: 02-Aug-2012

Initial and Annual Expatriation Statement

Department of the Treasury
Internal Revenue Service

For calendar year 2012 or other tax year beginning _____, 2012, and ending _____, 20

► Information about Form 8854 and its separate instructions is at www.irs.gov/form8854.

► Please print or type.

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 **Expatriation date.** Check the box that applies (see instructions).

June 4, 2004 – June 16, 2008. Complete Parts II and V

June 17, 2008 – December 31, 2011. Complete Part III if:
• You made an election to defer the payment of tax on a prior year Form 8854,
• You have an item of eligible deferred compensation, or
• You have an interest in a nongrantor trust.
Otherwise, you do not need to file Form 8854.

January 1, 2012 – December 31, 2012. Complete Parts IV and V

5 Date of notification of expatriating act, termination of residency, or claim of treaty benefits (see instructions).

Citizen. Date notification given to Department of State _____

Long-term resident. Date notification given to Department of Homeland Security _____

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 Number of days you were physically present in the United States in the current year _____

7 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 7a _____

8 How you became a U.S. citizen By birth By naturalization

Part II For Persons Who Expatriated After June 3, 2004, and Before June 17, 2008

1 Did you complete Form 8854 for any period after June 3, 2004, and before June 17, 2008?
 No. STOP. You must complete Form 8854 for the year in which you expatriated for immigration purposes before filing this form (see instructions).
 Yes. Tax year for which Form 8854 first filed _____ . Go to line 2.

2 Were you physically present in the United States for more than 30 days but not more than 60 days during the tax year? **Yes** **No**

a If you checked "Yes" to line 2, were you performing services for an unrelated employer? **Yes** **No**

b If you checked "Yes" to line 2a, are you a citizen or resident, fully liable for income tax, in the country in which you were born, your spouse was born, or either of your parents was born? **Yes** **No**
Next: Go to Part V.

Part III For Persons Who Expatriated After June 16, 2008, and Before January 1, 2012

- 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 2012 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)

2 Did you receive any distributions of eligible deferred compensation items for 2012? Yes No
 If "Yes," Amount of distribution: _____ Amount withheld at source, if any: _____

3 Did you receive any distributions from a nongrantor trust for 2012? Yes No
 If "Yes," Amount of distribution: _____ Amount withheld at source, if any: _____

Part IV For Persons Who Expatriated During 2012

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
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

2 Enter your net worth on the date of your expatriation for tax purposes \$ _____

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? Yes 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? Yes 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? Yes 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)? Yes No

Section B | Property Owned on Date of Expatriation

Do not complete Section B if:

- Your average net income tax liability for the 5 tax years immediately before expatriation (see line 1 in Section A) was not more than \$151,000, 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.

7a 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 deferred compensation item under 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 **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 **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 **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).

8 Recognition of gain or loss on the deemed sale of mark-to-market property. **Caution.** Do not include in column (a) any property described on line 7a, 7b, 7c, or 7d.

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)
9 Total. Add the amounts in column (d) and column (e)						
10 Total tax deferred. Add the amounts in column (g). Enter here and on line 15						

*You must designate any property for which you are electing to figure basis without regard to section 877A(h)(2). Identify as “(h)(2).” This election is irrevocable.

Section C | **Deferral of Tax**

Election to defer tax. *You can defer tax only if you have provided adequate security. Adequate security is described in the instructions.*

- 11** 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. **Yes** **No**

If you checked the "Yes" box, continue to line 12. Otherwise, do not complete lines 12 through 15.

12	Enter the total tax you would have reported on Form 1040, line 61, for the part of the year including the day before the expatriation date absent the deferral election	12	
13	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	13	
14	Subtract line 13 from line 12. This is the amount of tax eligible for deferral	14	
15	Enter the total tax deferred from line 10, column (g)	15	
	<ul style="list-style-type: none"> • If you are filing Form 1040, enter this amount in brackets to the left of the entry space for line 61. Identify as "EXP." • If you are filing Form 1040NR, enter this amount in brackets to the left of the entry space for line 60. Identify as "EXP." 		

Part V Balance Sheet and Income Statement

Schedule A Balance Sheet

List in U.S. dollars the fair market value (column (a)) and the U.S. adjusted basis (column (b)) of your assets and liabilities as of the following date.

- Part II filers - the end of the tax year for which you are filing the form
- Part IV filers - your expatriation date

For more details, see the separate instructions.

Assets	(a) Fair market value (FMV)	(b) U.S. adjusted basis	(c) Gain or (loss). Subtract column (b) from column (a)	(d) FMV on beginning date of U.S. residency (optional, for long-term residents only)
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 by trusts you own under sections 671 through 679 (see instructions)				
10 Beneficial interests in nongrantor trusts (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. Do not 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).				

Schedule B Income Statement

Provide income information for the following period.

- Part II filers - the tax year for which you are filing the form
- Part IV filers - the part of the tax year that ends with the day before your expatriation date; but enter -0- for lines 5 through 7.

1	U.S. source gross income not effectively connected with the conduct of a U.S. trade or business.				
a	Interest	1a			
b	Dividends	1b			
c	Royalties	1c			
d	Pension distributions	1d			
e	Other	1e			
f	Total. Add lines a through e				1f
2	Gross income that is effectively connected with the conduct of a U.S. trade or business				2
3	Income from the performance of services in the United States				3
4	Gains from the sale or exchange of:				
a	Property (other than stock or debt obligations) located in the United States	4a			
b	Stock issued by a U.S. domestic corporation	4b			
c	Debt obligations of U.S. persons or of the United States, a state or political subdivision thereof, or the District of Columbia	4c			
d	Total. Add lines a through c				4d
5	Income or gain derived from certain foreign corporations to the extent of your share of earnings and profits earned or accumulated before the date of expatriation (see instructions)				5
6	Gains on certain exchanges of property that ordinarily would not be recognized (see instructions)				6
7	Income received or accrued by certain foreign corporations (see instructions)				7
8	Add lines 1f, 2, 3, 4d, 5, 6, and 7				8
9	Gross income from all other sources				9
10	Total. Add lines 8 and 9				10

Sign Here

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than filer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.



Instructions for Form 8854

Initial and Annual Expatriation Statement

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8854 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8854.

General Instructions

Purpose of Form

Expatriation tax provisions apply to U.S. citizens who have relinquished their citizenship and long-term residents who have ended their residency (expatriated). Form 8854 is used by individuals who have expatriated on or after June 4, 2004.

The date on which you are considered to have expatriated determines which Parts of the form you must complete. You are considered to have expatriated on the date you relinquished your citizenship (in the case of a former citizen) or terminated your long-term residency status (in the case of a former U.S. resident). If you expatriated after June 3, 2004, and before June 17, 2008, see the relevant section under *General Instructions* and complete Parts I, II, and V. If you expatriated after June 16, 2008, and before January 1, 2012, see the relevant section under *General Instructions* and complete Parts I and III. If you expatriated in 2012, complete Parts I, IV, and V.

Expatriation. Expatriation includes the acts of relinquishing U.S. citizenship and terminating long-term residency.

Date of relinquishment of U.S. citizenship. You are considered to have relinquished your U.S. citizenship on the earliest of the following dates.

1. The date you renounced your U.S. citizenship before a diplomatic or consular officer of the United States (provided that the voluntary renouncement was later confirmed by the issuance of a certificate of loss of nationality).

2. The date you furnished to the State Department a signed statement of your voluntary relinquishment of U.S.

nationality confirming the performance of an expatriating act (provided that the voluntary relinquishment was later confirmed by the issuance of a certificate of loss of nationality).

3. The date the State Department issued a certificate of loss of nationality.

4. The date a U.S. court canceled your certificate of naturalization.

Date of termination of long-term residency. If you were a U.S. long-term resident (LTR), you terminated your lawful permanent residency on the earliest of the following dates.

1. The date you voluntarily abandoned your lawful permanent resident status by filing Department of Homeland Security Form I-407 with a U.S. consular or immigration officer, and the Department of Homeland Security determined that you had, in fact, abandoned your lawful permanent resident status.

2. The date you became subject to a final administrative order for your removal from the United States under the Immigration and Nationality Act and you actually left the United States as a result of that order.

3. If you were a dual resident of the United States and a country with which the United States has an income tax treaty, the date you commenced to be treated as a resident of that country and you determined that, for purposes of the treaty, you are a resident of the treaty country and gave notice to the Secretary of such treatment. See Regulations section 301.7701(b)-7 for information on other filing requirements if you are such an individual.

Long-term resident (LTR) defined.

You are an LTR if you were a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the year your status as an LTR ends. In determining if you meet the 8-year requirement, do not count any year that you were treated as a resident of a foreign country under a tax treaty and did not waive treaty benefits applicable to residents of the country.

Lawful permanent resident. You are a lawful permanent resident of the

United States if you have been given the privilege, according to U.S. immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if you have been issued an alien registration card, also known as a "green card," and your green card has not been revoked or judicially or administratively determined to have been abandoned, and you have not elected to be treated as a resident of a foreign country under a tax treaty between the United States and such foreign country. If you elected to be treated as a resident of a foreign country under a tax treaty, have not waived the benefits of such treaty applicable to foreign residents, and have notified the IRS of such a position on a Form 8833, you are not treated as a lawful permanent resident and you will be treated as having expatriated if you were a LTR at the time you elected to be treated as a resident of such foreign treaty country.

Expatriation After June 3, 2004, and Before June 17, 2008

The rules in this section apply to persons who are considered to have expatriated after June 3, 2004, and before June 17, 2008.

Date of Tax Expatriation

For purposes of filling out Part I, the date of your expatriation is the later of the date you notified the relevant agency of your expatriating act or the date Form 8854 was first filed in accordance with these instructions. Apply the rules of section 7502 to determine the date on which this form is filed. Generally, the postmark date is the filing date.



Until you file Form 8854 and notify the Department of State or the Department of Homeland Security of your expatriating act, your expatriation for immigration purposes does not relieve you of your obligation to file U.S. tax returns and report your worldwide income as a citizen or resident of the United States.

Who Must File

You must file Form 8854 to:

- Establish that you have expatriated for tax purposes; or
- Comply with the annual information reporting requirements of section 6039G, if you are subject to tax under section 877.

Note. If you were a naturalized citizen, but lost your citizenship because a federal court revoked your naturalization under section 340 of the Immigration and Nationality Act, you do not need to complete this form if, after the revocation, you hold the status under the Immigration and Nationality Act of an alien lawfully admitted for permanent residence. You must complete this form, however, if you were a naturalized citizen and you gave up your citizenship by expatriation under section 349 of the Immigration and Nationality Act.

Taxation Under Section 877

You are subject to taxation under section 877 if you are a former U.S. citizen or former LTR and any one of the following applies to you.

1. Your average annual net income tax liability for the 5 tax years ending before the date of your expatriation is more than the amount listed next.
 - a. \$124,000 if you expatriated in 2004.
 - b. \$127,000 if you expatriated in 2005.
 - c. \$131,000 if you expatriated in 2006.
 - d. \$136,000 if you expatriated in 2007.
 - e. \$139,000 if you expatriated in 2008.
2. Your net worth is \$2 million or more on the date of your expatriation.
3. You fail to certify on Form 8854 that you have complied with all of your federal tax obligations for the 5 tax years preceding the date of your expatriation.

If you are subject to tax under section 877, you are no longer taxed as a citizen or resident on your worldwide income. However, you must compute your tax as a nonresident according to the special rules of section 877. These rules expand the categories of income and gain on which you owe tax. You are also subject to special rules for gift and estate tax purposes that differ from those applicable to other nonresident aliens.

Tax consequences of presence in the United States after expatriation.

If, for any tax year during the 10-year period in which you are otherwise subject to section 877, you are present in the United States for more than 30 days in a calendar year ending in such tax year, you will be treated as a U.S. citizen or resident for that tax year. You will be subject to U.S. tax on your worldwide income unless the following exception applies.

Exception. You can be present in the United States for up to 60 days without being treated as a U.S. citizen or resident if you are performing personal services in the United States for an employer who is not related (within the meaning of sections 267 and 707) to you and you meet either of the following requirements.

- You were a U.S. citizen and, within a reasonable period following your expatriation, you became a citizen or resident fully liable to tax in the country in which you, your spouse, or either of your parents was born; or
- For each year in the 10-year period ending on the date of expatriation, you were physically present in the United States for 30 days or less.

See Pub. 519, U.S. Tax Guide for Aliens, for details about what constitutes a day of presence in the United States.

When To File

File your initial Form 8854 as soon as possible after the date you relinquish U.S. citizenship or terminate your long-term residence. You remain subject to tax as a U.S. citizen or resident until you both file your initial Form 8854 and notify the appropriate authorities of your expatriating act. See the Caution in *Date of Tax Expatriation*, earlier.

In most cases, you must file your annual Form 8854 by the due date for filing Form 1040NR, U.S. Nonresident Alien Income Tax Return, regardless of whether you are required to file Form 1040NR. If you are required to file Form 1040NR, attach Form 8854 to your Form 1040NR and file your Form 1040NR at the address in the Instructions for Form 1040NR. Also send a copy of Form 8854 to the address under *Where To File* below. If you are not required to file Form 1040NR, send your Form 8854 to the address under *Where To File* below.

If you are present in the United States following your expatriation and

are subject to tax as a U.S. citizen or resident under the rules described in *Exception*, earlier, file Form 8854 with your Form 1040 by the due date for filing Form 1040. Also send a copy of Form 8854 to the address under *Where To File* below by the due date for filing Form 1040.

Where To File

Send your Form 8854 (or a copy of your Form 8854 if you are required to attach the original to a Form 1040NR or a Form 1040) to this address.

Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0549

Expatriation After June 16, 2008

The rules in this section apply to persons who are considered to have expatriated after June 16, 2008.

Who Must File

If you expatriated after June 16, 2008, the expatriation rules apply to you if any of the following statements apply.

1. Your average annual net income tax liability for the 5 tax years ending before the date of expatriation is more than the amount listed next.
 - a. \$139,000 for 2008.
 - b. \$145,000 for 2009.
 - c. \$145,000 for 2010.
 - d. \$147,000 for 2011.
 - e. \$151,000 for 2012.
2. Your net worth was \$2 million or more on the date of your expatriation.
3. You fail to certify on Form 8854 that you have complied with all federal tax obligations for the 5 tax years preceding the date of your expatriation.
4. You expatriated before 2012 and you:
 - a. Deferred the payment of tax,
 - b. Have an item of eligible deferred compensation, or
 - c. Have an interest in a nongrantor trust.

Covered expatriate. You are a covered expatriate if at least one of the statements in paragraphs (1), (2), or (3), set out above (under *Who Must File*) applies.

Exception for dual-citizens and certain minors. Dual-citizens and certain minors (defined next) will not be treated as covered expatriates (and

therefore will not be subject to the expatriation tax) solely because one or both of the statements in paragraph (1) or (2) above (under *Who Must File*) applies. However, these individuals will still be treated as covered expatriates unless they file Form 8854 and certify that they have complied with all federal tax obligations for the 5 tax years preceding the date of expatriation as required in paragraph (3) above (under *Who Must File*).

Certain dual-citizens. You may qualify for the exception described above if you meet both of the following requirements.

- You became at birth a U.S. citizen and a citizen of another country and you continue to be a citizen of, and are taxed as a resident of, that other country.
- You were a resident of the United States for not more than 10 years during the 15-tax-year period ending with the tax year during which the expatriation occurred. For the purpose of determining U.S. residency, use the substantial presence test described in chapter 1 of Pub. 519.

Certain minors. You may qualify for the exception described above if you meet both of the following requirements.

- You expatriated before you were 18^{1/2}.
- You were a resident of the United States for not more than 10 tax years before the expatriation occurs. For the purpose of determining U.S. residency, use the substantial presence test described in chapter 1 of Pub. 519.

Taxation Under Section 877A

If you are a covered expatriate in the year you expatriate, you are subject to income tax on the net unrealized gain in your property as if the property had been sold for its fair market value on the day before your expatriation date ("mark-to-market tax"). This applies to most types of property interests you held on the date of your expatriation. But see *Exceptions* below.

Gains from deemed sales are taken into account without regard to other U.S. internal revenue laws. Losses from deemed sales are taken into account to the extent otherwise allowed under U.S. internal revenue laws. However, section 1091 (relating to the disallowance of losses on wash sales of stock and securities) does not apply. The net gain that you otherwise must include in your income is reduced (but not below zero) by \$651,000.

Exceptions. The mark-to-market tax does not apply to the following.

1. Eligible deferred compensation items.
2. Ineligible deferred compensation items.
3. Specified tax deferred accounts.
4. Interests in nongrantor trusts.

Instead, items (1) and (4) are subject to withholding at source. In the case of item (2), you are treated as receiving the present value of your accrued benefit as of the day before the expatriation date. In the case of item (3), you are treated as receiving a distribution of your entire interest in the account on the day before your expatriation date. See paragraphs (d), (e), and (f) of section 877A for more information.

Deferral of the payment of mark-to-market tax. You can make an irrevocable election to defer the payment of the mark-to-market tax imposed on the deemed sale of property. If you make this election, the following rules apply.

1. You make the election on a property-by-property basis.
2. The deferred tax on a particular property is due on the return for the tax year in which you dispose of the property.
3. Interest is charged for the period the tax is deferred.
4. The due date for the payment of the deferred tax cannot be extended beyond the earlier of the following dates.
 - a. The due date of the return required for the year of death.
 - b. The time that the security provided for the property fails to be adequate. See item (6) below.
5. You make the election in Part IV, Section C.
6. You must provide adequate security (such as a bond).
7. You must make an irrevocable waiver of any right under any treaty of the United States that would preclude assessment or collection of any tax imposed by section 877A.

When To File

If you expatriated after June 16, 2008, attach Form 8854 to your income tax return (Form 1040 or Form 1040NR) for the year that includes your expatriation date, and file your return by the due date of your tax return (including extensions). Also send a copy of your

Form 8854 to the address in *Where To File*, later. If you are not required to file Form 1040NR or Form 1040, send your Form 8854 to the address in *Where To File*, later, by the date your Form 1040NR (or Form 1040) would have been due (including extensions) if you had been required to file. (See *Resident Alien or Nonresident Alien* in the Instructions for Form 1040NR.)

Note. If you elected to defer the payment of any tax due (see *Section C—Deferral of Tax*, later), you must file Form 8854 annually for each year up to and including the year in which the full amount of deferred tax and interest is paid. For each year that you are required to file a Form 1040NR (or Form 1040), attach your annual Form 8854 to your Form 1040NR (or Form 1040) and send a copy to the address under *Where To File*, later. For each year that you are not required to file Form 1040NR (or Form 1040), send your Form 8854 to the address in *Where To File*, later, by the date your Form 1040NR (or Form 1040) would have been due (including extensions) if you had been required to file a Form 1040NR (or Form 1040).

Where To File

Send your Form 8854 (or a copy of your Form 8854 if you are required to attach the original to a Form 1040NR or a Form 1040) to this address.

Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0549

Specific Instructions

See Chart A to determine which Parts of Form 8854 you must complete.

Chart A. Which Parts To Complete

IF your expatriation date is:	THEN you must complete the following Parts.				
	I	II	III	IV	V
After June 3, 2004, and before June 17, 2008	✓	✓			✓
After June 16, 2008, and before January 1, 2012 *	✓		✓		
During 2012	✓			✓	✓

* Only if you deferred the payment of tax OR have an item of eligible deferred compensation OR have an interest in a nongrantor trust.

Identifying number. Generally, this number is your U.S. social security number. An incorrect or missing identifying number may result in a continued obligation to file U.S. tax returns as a citizen or resident of the United States for persons expatriating after June 3, 2004, and before June 17, 2008, and/or a penalty of \$10,000. If you were never issued a social security number, please attach a statement explaining the reason.

Part I — General Information

This section is to be completed by all filers.

Line 1

If you have a P.O. box, enter your box number instead of your street address only if your post office does not deliver mail to the street address.

Line 2

Enter the information in the following order: street address, city, province or state, and country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

Line 3

Enter the country of which you are considered a resident for tax purposes if it is different from the country in which your principal foreign residence is located.

Line 4

Your expatriation date is the date you relinquish citizenship (in the case of a former citizen) or terminate your long-term residency (in the case of a former U.S. resident). See *Date of relinquishment of U.S. citizenship* or *Date of termination of long-term residency*, earlier.

Line 5

If you are a person who expatriated after June 3, 2004, and before June 17, 2008, and you have not yet notified the Secretary of State or Secretary of Homeland Security in connection with your expatriating act, you must file an amended Form 8854 stating the date on which such notification occurs.

Citizen. Check this box if you are a former U.S. citizen, and enter the date on which you gave notice of your expatriation to the Department of State.

Long-term resident. Check this box if you are a former LTR, and enter the date on which you gave notice of termination of your lawful permanent resident status to the Department of Homeland Security.

Long-term resident with dual residency. Check this box if you are an LTR with dual residency in a treaty country, and enter the date you commenced to be treated for tax purposes as a resident of the treaty country (see *Date of termination of long-term residency*, earlier).

If you are a person who expatriated after June 16, 2008, you expatriated as of the date that you commence to be treated for tax purposes as a resident of the treaty country. But you must notify the IRS by filing a Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), and a Form 8854 to avoid penalties.

Line 6

Enter the number of days or parts of days you were physically present in the United States during the year.



If you expatriated after June 3, 2004, and before June 17, 2008, and were physically present in the United States for more than 60 days during the tax year, you will be taxed as a U.S. citizen or resident for that tax year. For more information, see Tax consequences of presence in the United States after expatriation, earlier.

Line 7

List all countries (other than the United States) of which you are a citizen and the date on which you became a citizen.

Line 8

If you are a former U.S. citizen, indicate how you became a U.S. citizen.

Part II—For Persons Who Expatriated After June 3, 2004, and Before June 17, 2008

Line 1

Check the “No” box if you expatriated after June 3, 2004, and before June 17, 2008, and have not previously filed Form 8854. You must complete Form 8854 for the year in which you

expatriated for immigration purposes before you can file Form 8854 for the current year. You can download Form 8854 for any year at www.irs.gov/form8854.

Check the “Yes” box if you completed Form 8854 for any period after June 3, 2004, and before June 17, 2008. Enter the tax year for which you first filed Form 8854 and go to line 2.

Line 2

If you were physically present in the United States more than 30 days but not more than 60 days during the tax year, complete lines 2a and 2b. If you answer “No” to either question, you will be taxed as a U.S. citizen or resident and must file Form 1040 for the current tax year. If you answer “Yes” to both questions, you remain subject to section 877 for the tax year.

Part III—For Persons Who Expatriated After June 16, 2008, and Before January 1, 2012

You must file Part III if you:

1. Deferred the payment of tax on any property on a Form 8854 filed in a previous year;
2. Reported an eligible deferred compensation item on a Form 8854 filed in a previous year; or
3. Reported an interest in a nongrantor trust on a Form 8854 filed in a previous year.

Line 1

If you deferred the payment of tax in an earlier year, refer to the Form 8854 you filed for that earlier year to complete columns (a), (b), and (c). For 2008, use the information from Part B, line 8; for 2009, use the information from Part IV, line 9; for 2010 and 2011, use the information from Part IV, line 8.

If you disposed of any property in 2012 on which you deferred the payment of tax on a previous return, also complete column (d). You must report the gain or loss from the property disposed of on the appropriate line (or schedule) of Form 1040NR.



You must pay the deferred tax, plus interest, on any property you disposed of, no later than the due date (without extensions) of your 2012 Form 1040NR. See Satisfying your deferred tax liability, later, for information on arranging payment.

Line 2

Check the “Yes” box if you received any distributions of eligible deferred compensation items in 2012. Enter the part of the distribution that you would include in gross income if you continued to be subject to tax as a U.S. citizen or resident. Also enter the total amount of tax withheld by the payer(s) of any eligible deferred compensation items.



Do not enter the part of any payment that is attributable to services performed outside the United States before or after the expatriation date while you were not a citizen or resident of the United States.

Line 3

Unless the exception at the end of this section applies, check the “Yes” box if you received any direct or indirect distributions of property (including money) from a nongrantor trust in 2012. Enter the part of the distribution that you would include in gross income if you continued to be subject to tax as a U.S. citizen or resident. Also enter the total amount of tax withheld by the payer(s) of any distribution.



Do not include any distribution from a trust if your interest in the trust was treated in an earlier year as a deferred compensation item or part of a specified tax deferred account.

Exception. Do not check the “Yes” box if you elected on a previously filed Form 8854 to be treated as having received the value of your entire interest in the trust as of the day before your expatriation date.

Part IV—For Persons Who Expatriated During 2012

Section A—Expatriation Information

This section must be completed by all individuals who expatriated in 2012.

Line 2

You can use the balance sheet in Part V (Schedule A) to arrive at your net worth.

Line 5

Check the “Yes” box if:

- You expatriated before you were 18¹/₂, and
- You have been a resident of the United States for not more than 10 tax years before you expatriated. For the purpose of determining U.S. residency, use the substantial presence test described in chapter 1 of Pub. 519.

Line 6

Check the “Yes” box if you have complied with your tax obligations for the 5 tax years ending before the date on which you expatriated, including but not limited to, your obligations to file income tax, employment tax, gift tax, and information returns, if applicable, and your obligation to pay all relevant tax liabilities, interest, and penalties. You will be subject to tax under section 877A if you have not complied with these obligations, regardless of whether your average annual income tax liability or net worth exceeds the applicable threshold amounts.

Section B—Property Owned on Date of Expatriation

Complete Section B only if you are a covered expatriate (see *Covered expatriate*, earlier). If you need additional space for the description of property, or if you need additional entry lines, attach a continuation statement.

Line 7

None of the amounts checked on line 7 are subject to the mark-to-market tax. Do not include them on line 8.



Some of these amounts may be otherwise taxable or subject to income tax withholding at source. You must provide Form W-8CE to the payer of the relevant items. See paragraphs (d), (e), and (f) of section 877A for more information.

Line 7a. Generally, a deferred compensation item is one of the following.

1. Any interest in a plan or arrangement described in section 219(g)(5). This includes a qualified pension, profit-sharing (including 401(k)), annuity, SEP, and SIMPLE plan.

2. Any interest in a foreign pension plan or similar retirement arrangement or program.

3. Any item of deferred compensation. This is any amount of compensation if, under the terms of the plan, contract, or other arrangement providing for such compensation, the following conditions were met.

- a. You had a legally binding right on your expatriation date to such compensation,

- b. The compensation has not been actually or constructively received on or before the expatriation date, and

- c. The compensation is payable on or after the expatriation date.

Examples of items of deferred compensation include: a cash-settled stock appreciation right, a phantom stock arrangement, a cash-settled restricted stock unit, an unfunded and unsecured promise to pay money or other compensation in the future (other than such a promise to transfer property in the future), and an interest in a trust described in section 402(b)(1) or (4) (commonly referred to as a secular trust).

4. Any property, or right to property, that you are entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83. Examples of these items include, but are not limited to, restricted stock, stock-settled stock appreciation rights, and stock-settled restricted stock units.

For more information, see section 5B of Notice 2009-85, 2009-45 I.R.B. 598, available at www.irs.gov/irb/2009-45_IRB/ar10.html.

Eligible deferred compensation item means any deferred compensation item with respect to which: (i) the payer is either a U.S. person or a non-U.S. person who elects to be treated as a U.S. person for purposes of section 877A(d)(1) and (ii) the covered expatriate notifies the payer of his or her status as a covered expatriate and irrevocably waives any right to claim any withholding reduction on such item under any treaty with the United States. Special guidance will be issued providing a procedure for a payer who is a non-U.S. person and wishes to be treated as a U.S. person for purposes of section 877A(d)(1).

Note. If you have more than one eligible deferred compensation item, you must attach a statement to the form that separately identifies each eligible

deferred compensation item and includes the following language for each item. "I irrevocably waive any right to claim any reduction in withholding for this eligible deferred compensation item under any treaty with the United States."

Line 7b. Ineligible deferred compensation item means any deferred compensation item that is not an eligible deferred compensation item.

Note. If you have more than one ineligible deferred compensation item, you must attach a statement to the form that separately identifies each ineligible deferred compensation item and provides the present value of such ineligible deferred compensation item as of the day before your expatriation date.

Line 7c. A specified tax deferred account includes:

1. An individual retirement plan (except those described in section 408(k) or 408(p)),
2. A Coverdell education savings account, or
3. A health savings account or an Archer medical savings account.

Note. If you have more than one specified tax deferred account, you must attach a statement to the form that separately identifies each specified tax deferred account and provides the entire account balance of each specified tax deferred account on the day before your expatriation date.

Line 7d. A nongrantor trust is the part of any trust, whether domestic or foreign, of which you were not considered the owner on the day before your expatriation date. You are considered a beneficiary of such trust if:

1. You are entitled or permitted, under the terms of the trust instrument or applicable local law, to receive a direct or indirect distribution of trust income or corpus (including, for example, a distribution in discharge of an obligation);
2. You have the power to apply trust income or corpus for your own benefit; or
3. You could be paid from the trust income or corpus if the trust or the current interests in the trust were terminated.

Unless you elect to be treated as having received the value of your interest in the trust, as determined for purposes of section 877A, as of the day before your expatriation date, you may not claim a reduction in withholding on

any distribution from the trust under any treaty with the United States. Before you can make the election, you must get a letter ruling from the IRS as to the value, if ascertainable, of your interest in the trust as of the day before the expatriation date by following the procedures set forth in Rev. Proc. 2012-1, 2012-1 I.R.B. 1, available at www.irs.gov/irb/2012-01_IRB/ar06.html.

You must make this election by checking the box under line 7d of this form and attaching a copy of the letter ruling both to this form and to your timely filed tax return (including extensions) for the 2012 tax year. Until you obtain the valuation letter ruling and provide a copy of such letter ruling to the trustee of the nongrantor trust together with certification, under penalties of perjury, that you have paid all tax due as a result of your election, any taxable distributions that you receive from the trust will be subject to 30% withholding.

Note. If you have an interest in more than one nongrantor trust, you must attach a statement to the form that separately identifies each nongrantor trust and includes one of the following statements for each interest.

1. "I waive any right to claim any reduction in withholding on any distribution from such trust under any treaty with the United States.", or
2. "I elect under section 877A(f)(4) (B) to be treated as having received the value of my entire interest in the trust (as determined for purposes of section 877A) as of the day before my expatriation date. I attach a copy of my valuation letter ruling issued by the IRS."

Line 8

Column (a). An interest in property includes money or other property, regardless of whether it produces any income or gain. In addition, an interest in the right to use property will be treated as an interest in such property. However, do not list the following.

1. Deferred compensation items.
2. Specified tax deferred accounts.
3. Interests in nongrantor trusts.

You are considered to own any interest in property that would be included in your gross estate for federal estate tax purposes under Chapter 11 of Subtitle B of the Code if you died on the day before the expatriation date as a citizen or resident of the United States. Whether property would be included in

your gross estate will be determined without regard to sections 2010 through 2016. For this purpose, you are considered to own your beneficial interest(s) in each trust (or part of a trust), other than a nongrantor trust subject to section 877A(f), that would not be included in your gross estate as described in the preceding sentences. Your beneficial interest(s) in such a trust shall be determined under the special rules set forth in section III of Notice 97-19, which is on page 40 of Internal Revenue Bulletin 1997-10 at www.irs.gov/pub/irs-irbs/irb97-10.pdf.

Column (b). Use the fair market value (FMV) on the day before your expatriation date. FMV is the price at which the property would change hands between a buyer and a seller when both have reasonable knowledge of all the necessary facts and neither has to buy or sell. If parties with adverse interests place a value on property in an arm's-length transaction, that is strong evidence of FMV.

Column (c). Generally, the cost or other basis in this column cannot be less than the fair market value of the property on the date you first became a U.S. resident. However, you can make an irrevocable election to determine basis without regard to this restriction. Print "(h)(2)" after any entry for which you make this election.

Column (e). Before you complete column (e), you must allocate the exclusion amount to the gain properties on a separate schedule. Attach a copy of the separate schedule to this form. To allocate the exclusion amount, determine the gain of each gain property listed in column (a) and enter that gain in column (d). If the total gain of all the gain properties exceeds the exclusion amount (\$651,000), then allocate the entire exclusion amount to the gain properties by multiplying the exclusion amount by the ratio of the gain determined for each gain property in column (d) over the total gain of all gain properties listed in column (d). After you have allocated the exclusion amount to the gain properties, subtract the exclusion amount allocated to each gain property from the gain reported for that property in column (d), and enter the resulting amount of gain in column (e). If the total gain of the gain properties in column (d) is less than the exclusion amount (but greater than -0-), then you must use the total gain amount as the exclusion amount, and you must allocate the exclusion amount, as adjusted, to the gain properties under

the method described above. The exclusion amount allocated to each gain property may not exceed the amount of that gain property's built-in gain.

See Notice 2009-85, section 3B, for more information.

Example. X, a covered expatriate, renounced his citizenship on Date 2. On Date 1, the day before X's renunciation of his citizenship, X owned three assets, which he had owned for more than one year. Asset A is business property and assets B and C are personal property. As of Date 1, Asset A had a fair market value of \$2,000,000 and a basis of \$200,000; Asset B had a fair market value of \$1,000,000 and a basis of \$800,000; Asset C had a fair market value of \$500,000 and a basis of \$800,000. X must allocate the exclusion amount as follows:

Step 1: Determine the built-in gain or loss of each asset by subtracting the basis from the FMV of the asset on Date 1.

	Basis	FMV	Built-in Gain/ Loss
Asset A	200,000	2,000,000	1,800,000
Asset B	800,000	1,000,000	200,000
Asset C	800,000	500,000	(300,000)

Step 2: Allocate the exclusion amount to each of the gain properties by multiplying the exclusion amount (\$651,000) by a ratio of the deemed gain attributable to each gain property over the total gain of all the gain properties deemed sold.

$$\begin{array}{l} \text{Asset A} \\ \hline 1,800,000 \\ 2,000,000 \end{array} \times 651,000 = 585,900$$

$$\begin{array}{l} \text{Asset B} \\ \hline 200,000 \\ 2,000,000 \end{array} \times 651,000 = 65,100$$

Step 3: Figure the final amount of deemed gain on each asset by subtracting the exclusion amount allocated to each asset.

$$\begin{array}{l} \text{Asset A: } 1,800,000 - 585,900 = 1,214,100 \\ \text{Asset B: } 200,000 - 65,100 = 134,900 \end{array}$$

Column (f). Complete this column in order to list the schedule or form on which you reported the deemed sale of each property listed in column (a) (for example, Form 4797 or Form 8949).

Column (g). Complete this column only for those properties for which you are electing to defer the payment of tax.

First, complete Section C to line 14. On a separate attachment, allocate the amount of tax eligible for deferral among all gain properties listed on line 8. The tax attributable to a particular property is determined by multiplying the amount on Section C, line 14, by the ratio of the gain for that property entered on line 8, column (e), over the total amount of gain of all gain properties on line 8, column (e). On line 8, column (g), enter the tax attributable to each property for which you are electing to defer tax. Then enter the total deferred tax for those properties from line 10, column (g), on Section C, line 15.

Example. Line 8 lists four assets, each resulting in a deemed gain in column (d). The amount of tax eligible for deferral on Section C, line 14, is \$575,000. You must go back to Section B, line 8, column (g), to allocate the deferred tax among the individual properties.



You must attach a computation to show how you figured the tax attributable to each property.

See the instructions for Section C and Notice 2009-85, section 3E, for more information on deferring the payment of tax.

Reporting gain or loss. You must report and recognize the gain (or loss) of each property reported in line 8, column (a), on the relevant form or schedule of your Form 1040 for the part of the year that includes the day before your expatriation date. The return to which you attach your form or schedule will depend on your status at the end of the year. See chapter 1 of Pub. 519 to determine which form you should file. The gain from column (e) or loss from column (d) attributable to each property is reported in the same manner as if the property had actually been sold. For example, gain recognized from the deemed sale of a rental property that has been depreciated is reported on Form 4797 as if it had been sold. Gain recognized from the deemed sale of personal property (such as stock or a personal residence) is reported on Form 8949 as if it had been sold. Capital gain retains its character as capital gain; ordinary gain retains its character as ordinary income.

Section C—Deferral of Tax

Use lines 12 through 15 to figure the amount of tax you can defer. Before completing lines 12 through 15, you must fill out two hypothetical individual income tax returns using Form 1040. The first return includes all income,

including the section 877A(a) gain and loss. The second return includes all income except the section 877A(a) gain and loss. Attach both returns to this Form 8854.

Line 11

If you are not electing to defer the payment of tax on the gain reported on line 8, column (e), report on the appropriate income tax return schedule or form the gain amount attributable to each particular property as listed in line 8, column (e), and report the loss amount attributable to each particular property as listed in line 8, column (d). If you are electing to defer tax, go to line 12.

Line 12

Enter on line 12 the amount of tax on line 61 of the first return.

Line 13

Enter on line 13 the amount of tax on line 61 of the second return.

Line 15

This is the amount of tax you elect to defer. If you are deferring tax on all properties, enter the amount from line 14. If you are electing deferral on only certain properties, go to Section B, line 8, column (g), to show how much deferred tax is allocated to each property. Attach a computation.

Procedure for deferral of the payment of tax. In order to defer any part of the mark-to-market tax, you must enter into a tax deferral agreement with the IRS and provide adequate security. Notice 2009-85 contains a sample agreement (Appendix A). Adequate security can be either:

1. A bond that is furnished to, and accepted by, the IRS, that is conditioned on the payment of tax (and interest thereon), and that meets the requirements of section 6325; or
2. Another form of security (including letters of credit) that is acceptable to the IRS.

You must contact the following office in order to make the appropriate arrangements for providing security.

Internal Revenue Service
SBSE Advisory Office
7850 SW 6th Court
Mail Stop 5780
Plantation, FL 33324-3202
Telephone: (954) 423-7344

You can pay any tax deferred, together with interest, at any time. However, the time for the payment of tax attributable to a particular deferral asset can be extended only until a) the year the asset is ultimately disposed of or b) the year of death.



You must file Form 8854 annually for years up to and including the year in which the full amount of deferred tax and interest is paid.

Waiver of treaty benefits. As a further condition to making the election to defer the payment of tax on a particular asset, you must waive any right under any U.S. tax treaty that would preclude the assessment or collection of the tax.

Satisfying your deferred tax liability. If you entered into an agreement for the deferral of tax with the IRS Advisory Office and dispose of one or more assets for which you elected to defer tax, you must contact that office to make arrangements to satisfy your tax liability. The address for the Advisory Office is shown above.

Part V—Balance Sheet and Income Statement

The financial information in Part V is required under section 6039G.

Who Must Complete

Section 877. If you checked the “Yes” box in Part II, line 1, you must complete Part V.

Section 877A. If you expatriated in 2012, you must complete Part V.

Schedule A—Balance Sheet

Note. If there have been significant changes in your assets and liabilities for the period that began 5 years before your expatriation and ended on the date that you first filed Form 8854, you must attach a statement explaining the changes. Also, if you expatriated after June 3, 2004, and before June 17, 2008, attach a similar statement if you expect significant changes in the 10-year period after expatriation or termination of residency.

Columns (a) and (b)

List in U.S. dollars the fair market value (column (a)) and the U.S. adjusted basis (column (b)) of your assets and liabilities as of:

- The end of the tax year for which you are filing this form if your expatriation date is before June 17, 2008, or
- Your expatriation date if you expatriated on or after June 17, 2008.

You can use good faith estimates of fair market value and basis. Formal appraisals are not required.

Column (c)

Subtract the amounts in column (b) from the amounts in column (a) and show the gain or (loss) in column (c). Enter negative amounts in parentheses.

Column (d)

If you are a former U.S. LTR, it may benefit you to complete column (d). For more details, see section 877(e)(3)(B) or section 877A(h)(2). Only former U.S. LTRs should complete column (d).

Enter in column (d) the fair market value of each asset on the date you first became a U.S. resident for tax purposes.

Note. The date you first became a U.S. resident for tax purposes is not always the same as the date you first became a U.S. lawful permanent resident. For details on U.S. residency (including the substantial presence test), see Pub. 519.

Line 5a

List the appropriate amount in each column for all nonmarketable stock and securities issued by foreign corporations that would be controlled foreign corporations if you were still a U.S. citizen or resident. Note that these amounts are already included on line 5. Do not include amounts on this line in the total on line 20.

Line 8

List the total value of all your partnership interests. If you hold an interest in one or more partnerships, you must attach a statement to Form 8854 that lists each partnership separately. Include the employer identification number (EIN), if any, for each partnership. Describe the assets and liabilities (using the categories on this balance sheet) from your interest in each partnership.

Line 9

List the total value of all assets held by trusts that you are considered to own for tax purposes. You must attach a statement to Form 8854 that lists each

trust separately. Include the EIN (if any) for each trust. Describe the assets and liabilities (using the categories on this balance sheet) from your interest in each trust.

Note. To determine if you are an owner of a trust, see sections 671 through 679.

Line 10

List the total value of all assets held by nongrantor trusts in which you are considered to have a beneficial interest. You must attach a statement to Form 8854 that lists each trust separately. Include the EIN (if any) for each trust. Describe the assets and liabilities (using the categories on this balance sheet) from your interest in each trust.

Note. To determine if you are a beneficiary of a nongrantor trust, you must allocate the property interests of the trust based on all relevant facts and circumstances. To determine the value of your beneficial interest, use the valuation principles under section 2512. See Section III of Notice 97-19 for examples of how the property interests of a nongrantor trust should be allocated to the beneficiaries of the trust.

Lines 11 and 12

Intangible property includes any of the following items that have substantial value independent of the services of any individual.

- Patent, invention, formula, process, design, pattern, or know-how.
- Copyright, literary, musical, or artistic composition.
- Trademark, trade name, or brand name.
- Franchise, license, or contract.
- Method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data.
- Any similar item.

Line 19

Attach a statement describing and listing the total value of any other assets you have that are not included on lines 1 through 18.

Line 20

Combine lines 1 through 5 and 6 through 19, not including any amounts on line 5a. The amounts on line 5a are included in determining the amounts on line 5.

Line 23

Attach a statement describing and listing the total value of any other liabilities you have that are not included on lines 21 and 22.

Schedule B—Income Statement

Schedule B is required to satisfy the requirements of section 6039G(b)(5). You must complete Schedule B without regard to whether you have income subject to tax under section 877 or section 877A for the tax year.

- If your expatriation date is before June 17, 2008, provide income information for the tax year for which you are filing Form 8854.
- If your expatriation date is after June 16, 2008, provide income information for the part of the tax year that ends with the day before your expatriation date, but enter zero on lines 5, 6, and 7.

Note. If you are subject to section 877 for all or a part of the tax year, and you have income subject to tax under section 877 for the tax year, you are liable for tax on that income as provided in section 1 or section 55, if the tax figured under such sections exceeds the tax that would be imposed on you under section 871. In most cases, this means that you must report all income subject to tax under section 877 on Form 1040NR, whether or not it is effectively connected with the conduct of a trade or business in the United States, and you are not permitted to exclude certain types of income, such as portfolio interest or capital gains, which normally would be exempt from tax in the hands of a nonresident alien.

Treaty residents. Most U.S. tax treaties do not prevent the United States from continuing to tax former citizens and former LTRs under domestic law. Unless the treaty prevents it, you will be subject to the rules of section 877.

If you deferred the payment of tax under section 877A(b), you waived any right under a treaty that would prevent assessment or collection of any tax imposed because of section 877A. If you are a covered expatriate (see *Covered expatriate*, earlier) and had eligible deferred compensation items or an interest in a nongrantor trust as of the day before your expatriation date, you waived any right under a treaty that would reduce the rate of withholding tax on the payment of such income item or trust distribution, unless you elected to be treated as receiving the value of your entire interest in a nongrantor trust as of the day before your expatriation date.

Line 1

Include all U.S. source gross income that is not effectively connected with the conduct of a U.S. trade or business on lines 1a through 1e.

Lines 3 Through 6

Lines 3 through 6 require reporting income that, but for the application of section 877(d), would be income from sources outside the United States. If you report income on these lines, you also must report this income as taxable income on Form 1040NR.

Line 5

If you owned (within the meaning of section 958(a) or (b)) at any time during the 2-year period ending on the date of your expatriation, more than 50% of the vote or value of a foreign corporation, income or gain you receive from the foreign corporation during the tax year will be treated as from sources within the United States, to the extent such income or gain is not more than the earnings and profits from such stock that were earned or accumulated before the date of your expatriation while such ownership requirements were met.

Line 6

If, during the current tax year, you exchanged any property and (a) the gain would not (but for this paragraph) be recognized on such exchange in whole or in part, (b) 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 (c) income derived from the property acquired in the exchange would be from sources outside the United States, then the property will be treated as sold for its fair market value on the date of the exchange, in accordance with Section V of Notice 97-19. The removal of appreciated property with an aggregate fair market value in excess of \$250,000 from the United States is an exchange of property covered by this provision.

Enter on line 6 the total amount of gain resulting from any such exchanges during the tax year and, if you have elected to enter into a gain recognition agreement with the IRS deferring the gain, attach a copy of the agreement to your Form 1040NR. If you dispose of any property covered by a gain recognition agreement during the tax year, also list the gain realized on this line. See Section V of Notice 97-19 for

additional information on exchanges and gain recognition agreements.

Line 7

If, during the 10-year period beginning on the date of your expatriation, or during the 5-year period before your expatriation, you contributed U.S.-source property to a foreign corporation that would be a controlled foreign corporation had you remained a U.S. citizen or LTR, any income or gain on that property received or accrued by the foreign corporation during the tax year is treated as received or accrued by you. See Section VI of Notice 97-19 for additional information.

Line 8

Add lines 1f through 7 to report your total income from U.S. sources.

Line 9

List the total amount of all other income or gain for the tax year.

Penalties

If you are subject to section 877 or section 877A and required to file Form 8854 for any tax year, and you fail to file or do not include all the information required by the form or the form includes incorrect information, you will owe a penalty of \$10,000 for that year, unless it is shown that such failure is due to reasonable cause and not willful neglect.

Signature

Form 8854 is not considered valid unless you sign it. If you have someone else prepare Form 8854, you are still responsible for its correctness.

Paid preparers. Generally, anyone you pay to prepare Form 8854 must sign it and include their preparer tax identification number (PTIN) in the space provided. The preparer must give you a copy for your records. Someone who prepares Form 8854 but does not charge you a fee should not sign it.

Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act

unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue

law. Generally, tax returns and return information are confidential, as required by section 6103.

The average time and expenses required to complete and file this form

will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.
