

2010



Department of the Treasury
Internal Revenue Service

Instructions for Form 8854

Initial and Annual Expatriation Statement

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

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, complete Parts I, II, and V. If you expatriated after June 16, 2008, and before January 1, 2010, complete Parts I and III. If you expatriated in 2010, 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."

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

If you are required to file Form 1040NR, U.S. Nonresident Alien Income Tax Return, attach this form to your timely filed Form 1040NR and send a copy to the address under *Where To File* below. If you are not required to file Form 1040NR, send this form to the address under *Where To File* below by the due date for filing Form 1040NR.

Where To File

If you are present in the United States following your expatriation and are subject to tax as a U.S. citizen or resident, file Form 8854 with your Form 1040 and send a copy to the address below.

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 for the 5 tax years ending before the date of expatriation is more than \$145,000 (\$139,000 for 2008).
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.

Covered expatriate. You are a covered expatriate if you meet (1), (2), or (3) above.

Exception for dual-citizens and certain minors. Dual-citizens and certain minors (defined next) are not subject to the expatriation tax even if they meet (1) or (2) above. However, they still must provide the certification required in (3) above.

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

- You expatriated before you were 18½.
- 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 \$627,000.

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 payment of mark-to-market tax. You can make an irrevocable election to defer 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, file this form by the due date of your income tax return (including extensions). If you are not required to file Form 1040 or Form 1040NR, submit this form by the due date for filing Form 1040NR. For most individuals, the due date before extensions will be June 15, 2011.

Where To File

Attach Form 8854 to your Form 1040 or Form 1040NR and send a copy of Form 8854 to the address below. If you are not otherwise required to file a U.S. tax return, send Form 8854 to:

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	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
After June 16, 2008, and before January 1, 2010	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
During 2010	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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* on page 1.

Line 5

If you are a person who expatriated between June 3, 2004, and 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* on page 1).

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 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 between June 4, 2004, and June 16, 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 on page 2.

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 2007 and 2008 at IRS.gov. For years before 2007, get Pub. 1796, IRS Tax Products DVD. For information on how to get Pub. 1796, see *Quick and Easy Access to Tax Help* in the 2010 Instructions for Form 1040 or the 2010 Instructions for Form 1040A, or *Other Ways to Get Help* in the 2010 Instructions for Form 1040EZ.

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, 2010

You must file Part III if you:

1. Deferred tax on any property on your 2008 or 2009 Form 8854;
2. Reported an eligible deferred compensation item on your 2008 or 2009 Form 8854; or
3. Reported an interest in a nongrantor trust on your 2008 or 2009 Form 8854.

Line 1

Use the information from Part B, line 8, of your 2008 Form 8854, or Part IV, line 9, of your 2009 Form 8854, to complete columns (a), (b), and (c).

If you disposed of any property in 2010 on which you deferred 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 2010 Form 1040NR. See Satisfying your deferred tax liability on page 7 for information on arranging payment.

Line 2

Check the "Yes" box if you received any distributions of eligible deferred compensation items in 2010. 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 below applies, check the "Yes" box if you received any direct or indirect distributions of property (including money) from a nongrantor trust in 2010. 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 2008 or 2009 as a deferred compensation item or part of a specified tax deferred account.

Exception. Do not check the "Yes" box if you elected on your 2008 or 2009 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 2010

Section A—Expatriation Information

This section must be completed by all individuals who expatriated in 2010.

Line 2

You can use the balance sheet on page 5 of the form to arrive at your net worth.

Line 5

Check the "Yes" box if:

- You expatriated before you were 18½, 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* on page 2). 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 portion 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. 2010-4, 2010-1 I.R.B. 122, available at www.irs.gov/irb/2010-01_IRB/ar09.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 2010 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 portion 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 (\$627,000), 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, and 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 (\$627,000) by a ratio of the deemed gain attributable to each gain property over the total gain of all the gain properties deemed sold.

$$\text{Asset A: } \frac{\$1,800,000}{\$2,000,000} \times \$627,000 = \$564,300$$

$$\text{Asset B: } \frac{\$200,000}{\$2,000,000} \times \$627,000 = \$62,700$$

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

$$\begin{aligned} \text{Asset A: } & \$1,800,000 - \$564,300 = \$1,235,700 \\ \text{Asset B: } & \$200,000 - \$62,700 = \$137,300 \end{aligned}$$

Column (f). Complete this column in order to list the schedule or form on which you reported each gain or loss amount for each property listed in column (a) (for example, Schedule D (Form 1040) or Form 4797).

Column (g). Complete this column only for those properties for which you are electing to defer 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 in 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 in line 8, column (e), over the total amount of gain of all gain properties of 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 in 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 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 portion 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 Pub. 519, chapter 1, 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 Schedule D 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 tax on the gain reported on line 8, column (e), report on the appropriate 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 60 of the first return.

Line 13

Enter on line 13 the amount of tax on line 60 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 payment. In order to defer any portion 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 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 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 2010, 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 prior to your expatriation and ended on the date that you first filed Form 8854, you must attach a statement explaining the changes. Also, 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 the fair market value (in U.S. dollars) of each class of assets and your U.S. adjusted basis (in U.S. dollars) in the class of assets. 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 the balance sheet on page 5 of Form 8854) 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 the balance sheet on page 5 of Form 8854) 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 the balance sheet on page 5 of Form 8854) 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.

Note. If you are subject to section 877 for all or a portion 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 computed under such sections exceeds the tax that would be imposed on you under section 871. This generally 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 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* on page 2) 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 prior to 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 in the space provided and fill in the *Paid Preparer Use Only* area. 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.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.
