

**International Issues:
Foreign Missionaries
and
Nonresident Alien Plan Participants**

Danny Miller
Erica Summers

Conner & Winters, LLP
1627 I Street NW, Suite 900
Washington, D.C. 20006

James D. Kemper

Ice Miller LLP
One American Square, Suite 3100
Indianapolis, IN 46282

Foreign Missionaries

- Eligible to participate in denominational retirement plan.
- Foreign missionary contributions included in “investment in contract”
- Taxed only on earnings on contributions
- Employer may make contributions and foreign missionary will still receive tax basis (post-1996 only)

Note: This applies to both 403(b) and 401(a) plans.
Also applies to lay missionaries as well as ministers.

Foreign Missionaries

Code section 911 –

- Missionaries who work and reside outside U.S. are eligible to exclude foreign earned income.
- Must qualify under either the bona fide residence or physical presence tests.
- Can exclude up to \$82,400 in foreign wages in 2006.
(Note: Amount of exclusion now indexed for inflation.)

Foreign Missionaries

Special Contribution Limits:

- Section 911 income is considered includible compensation for purposes of 415(c) contribution limits, even though not taxable
- Special 415(c) limit – Foreign missionaries can make contributions up to \$3,000, as long as AGI is \$17,000 or less

Foreign Missionaries

Special issues:

Contributions to Roth IRAs

- 401(k) regulations suggest that participant must have taxable compensation to make Roth contributions.
- If foreign missionary only has 911 compensation, there is no taxable compensation from which to make Roth contributions.

Note: Comment made to IRS on Roth contribution issue (See attachment)

Foreign Missionaries

Reporting 911 Compensation:

- Must file Form 2555 every year.
- May file Form 673 with employer – this form informs employer that there is no withholding obligation because the wages are eligible for 911 exclusion.

Query: Can employee file for partial 911 exclusion?

Nonresident Aliens

- Foreign nationals (technically in Code, “nonresident aliens”) may participate in U.S. employer’s retirement plan.
- U.S. employer permitted to exclude foreign nationals from plan.
- Nonresident aliens with no U.S.-source income are generally not taken into account for coverage and nondiscrimination testing.

Note: Resident aliens are generally treated same as U.S. citizens for tax purposes.